THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL MISCELLANEOUS APPEAL No.4638 OF 2003

JUDGMENT:

This appeal is preferred by the Insurance Company, the 2nd respondent before the Tribunal, aggrieved by the award, dated 17.06.2003, in M.V.O.P.No.50 of 1998 passed by the Motor Vehicles Accident Claims Tribunal (District Judge), Guntur.

2. Against death of one Kota Venkat Narayana in a motor vehicle accident, which took place on 09.01.1998, the Tribunal awarded Rs.2,67,600/- as against the claim of the claimants for Rs.3,00,000/- with interest at 9% per annum against the Insurance Company with a direction to pay the aforesaid compensation and later recover the same from the 3rd respondent – owner of the offending Car bearing No.AP 16D 9475. Aggrieved by the same, the Insurance Company came up with the instant appeal.

3. Heard Sri Kota Subba Rao, learned counsel for appellant. Though respondents 1 to 5 were represented by Sri A. Rajendra Babu, learned counsel, and respondent No.6 was represented by Sri K. Subba Rao, learned counsel, none appeared for them.

4. The argument of learned counsel for the appellant is dipronged. Firstly, the Tribunal erred by giving a direction to pay and recover. Secondly, the Car in question is a private vehicle and it should be used for personal purpose of the 3rd respondent – owner, but the 3rd respondent hired the vehicle to the deceased

and PW.2, who committed breach of the terms of the contract. Lastly, the interest awarded by the Tribunal was highly exorbitant and the same needs to be scaled down. Learned counsel further submits that though the Tribunal accepted the contention of the Insurance Company to that effect, still it directed the Insurance Company to pay the compensation amount and recover the same from the 3rd respondent.

5. In the light of the above arguments, the point for consideration is,

"Whether the award passed by the Tribunal is legally sustainable?"

6. <u>POINT</u>:- A perusal of the award passed by the Tribunal shows that it was convinced that the deceased and PW.2 hired the vehicle in question as per the recitals in the First Information Report. However, the Tribunal by following the judgment in **New India Assurance Company Limited v. Kamla and others**[1] directed the Insurance Company to pay the compensation amount and recover the same from the 3rd respondent – owner. I find no irregularity or illegality in the said direction. Admittedly, the policy was in force by the date of accident and breach of the conditions was not the fundamental cause for the accident. As such, the Tribunal was right in directing the Insurance Company to pay and recover the compensation amount from the 3rd respondent - owner.

7. So far as the rate of interest is concerned, I find force in the submission of the learned counsel for the appellant. Since

[1] 2001 ACJ 843

the interest awarded is on higher side, the same is reduced to 7.5% per annum from the date of appeal till the date of realisation.

8. In the result, the Civil Miscellaneous Appeal is partly allowed and while confirming the award, dated 17.06.2003, in M.V.O.P.No.50 of 1998 passed by the Motor Vehicles Accident Claims Tribunal, Guntur, the rate of interest of 9% per annum awarded by it is reduced to 7.5% per annum, payable from the date of appeal till the date of realisation. The original rate of 9% per annum shall be payable from the date of said M.V.O.P. till the date of filing of the appeal. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Appeal shall stand closed. No costs.

U.DURGA PRASAD RAO, J

Date:18.10.2016
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