

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA Nos.2304 and 2312 of 2004

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COMMON JUDGMENT:

The 2nd respondent-Insurer in the two claim petitions(O.P.Nos.809 and 810 of 2002) including the owner of the auto bearing No.AP21 3 7631 maintained by the two respective claimants on the file of the Chairman, Motor Accidents Claims Tribunal–cum-II Addl. District Judge, Kurnool (for short, 'the Tribunal'), for claim of Rs.1,50,000/- in O.P.No.809 of 2002 and for Rs.1,00,000/- in O.P.No.810 of 2002 u/sec. 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), for the injuries sustained by them while they, being father and son, were proceeding on the motor cycle bearing No.AEB 7017 on 20.09.2001 at about 8.40p.m., due to rash and negligent driving of the driver of the auto supra coming from opposite in wrong direction, the tribunal by its common award dated 02.04.2004 granting Rs.37,000/- each in both the claim petitions with interest at 9% p.a. by fixing liability on both the respondents in both the petitions.

2. It is impugning the said common award, the Insurer(appellant herein preferred these appeals with common contentions in both the appeals that the quantum is excessive so also rate of interest and the insurer ought to have been exonerated for violation of the permit and policy conditions for the driver of the auto was possessing only learner's license which cannot be used for driving transport Light Motor Vehicle(LMV), even with learner's license one must take assistance of a person acquainted with the driving by the side as guide, hence sought for exoneration from liability.

3. Whereas, it is the contention of the learned counsel for the claimant, form the owner is served but failed to attend taken as heard, that the award of the tribunal holds good but for no cross-objections to enhance compensation, to dismiss the appeals and perused the material on record.

4. So far as the quantum of compensation is concerned, there is nothing to interfere as the quantum awarded by the tribunal is just and reasonable but rate of interest is concerned, the same is reduced from 9% p.a. to 7.5% p.a. as per the expression of Apex Court in **Rajesh v. Rajbir Singh**^[1]. So far as the fastening liability of the Insurer is concerned the tribunal rightly held on the aspect of pay and recover by the insurer. Even from the factual matrix and contentions of the Insurer, it is not a case for exoneration even from the settled expressions of the Apex Court in **National Insurance Company Limited Vs. Swaran Singh**^[2], **Oriental Insurance Company Limited Vs. Nanjappan & Others**^[3] **Kusumlatha V. Satbir**^[4] and also in later expression **S.Iyyappan Vs. United India Insurance Company**^[5].

5. In the result, both the appeals are allowed in part by confirming the compensation and liability but the rate of interest from 9%p.a. is reduced to 7.5% p.a. in both the appeal. Rest of the award holds good. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in both these appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 17.02.2016
Vvr

^[1] 2013 ACJ 1403=(4)ALT-35(SC).

^[2] (2004) 3 SCC 297=2004-ACJ-1

^[3] (2004) 13 SCC 224=2004-SAR(civil)-290

^[4] AIR 2011 SC 1234 = 2011 (2) SCJ 639

^[5] (2013) 7 SCC 62