

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A. Nos. 1440 AND 1449 OF 2004
AND M.A.C.M.A. No.1801 OF 2006

COMMON JUDGMENT:

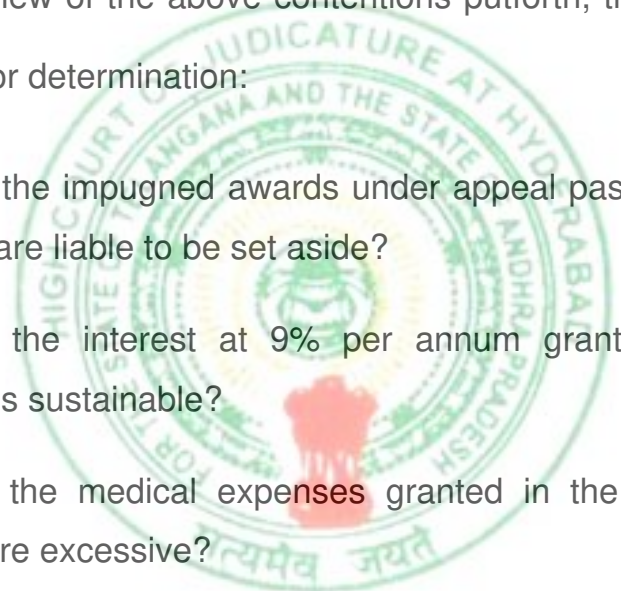
These three appeals, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), arise out of the common order dated 13.11.2003 passed in M.V.O.P. Nos.570 and 572 of 2000 along with another M.V.O.P. No.568 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Chittoor at Tirupati (for short, 'the Tribunal').

2. C.M.A. Nos.1440 and 1449 of 2004 are filed by the erstwhile Andhra Pradesh State Road Transport Corporation, represented by its Vice Chairman and Managing Director, Musheerabad, Hyderabad, aggrieved by the order passed M.V.O.P. Nos.570 and 572 of 2000. Whereas, M.A.C.M.A. No.1801 of 2006 is filed by the Oriental Insurance Company Limited, Bangalore, represented by its Divisional Manager, Tirupati, aggrieved by the order passed in M.V.O.P. No.570 of 2004.

3. The learned counsel for the appellant in C.M.A. Nos.1440 and 1449 of 2004-RTC would contend that there was no rash and negligent driving on the part of the driver of the RTC bus bearing No.AP 09Z 1283; the accident occurred only due to the rash and negligent driving of the driver of the bus bearing No.KA 01B 5999, however, the Tribunal has directed the appellant-RTC to pay 30% of the awarded amount in all the claims, which is not sustainable; the finding of the Tribunal is not based on record; and ultimately, prayed to set aside the impugned order under appeal passed against the appellant-RTC.

4. The learned counsel for the appellant in M.A.C.M.A. No.1801 of 2006, who is the insurer of bus bearing No.KA 01B 5999, would contend that the Tribunal has granted Rs.2,75,000/- and Rs.1,12,000/- to the claimants in M.V.O.P. Nos.570 and 572 of 2000 respectively, with interest at 9% per annum, which are excessive; the Tribunal ought to have granted minimum amount towards medical expenses, as prescribed in the Second Schedule of the Act; and ultimately, prayed to allow the appeal by reducing the compensation granted to the claimants.

5. In view of the above contentions putforth, the following points have come up for determination:

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- (1) Whether the impugned awards under appeal passed by the Tribunal are liable to be set aside?
 - (2) Whether the interest at 9% per annum granted by the Tribunal is sustainable?
 - (3) Whether the medical expenses granted in the impugned awards are excessive?

6. **POINT No.1:** It is brought to the notice of the Court that three persons died and 20 persons injured in the accident in question, caused by the drivers of the RTC bus bearing No.AP 09Z 1283 and a private bus bearing No.KA 01B 5999. The appellant-RTC had filed C.M.A. No.319 of 2004 before this Court, wherein similar contentions were advanced by the appellant-RTC and this Court held in page No.4 of the judgment dated 05.07.2006 as follows:

"Though P.W.1 is one of the claimants examined in support of his relationship with the deceased and marked Exs.A.1 to

A.3, in rebuttal, there has been an attempt on the part of the Appellant-Corporation to examine R.Ws.1 to 3 to show that there was no such rash and negligence on the part of the driver and thus, the fact remains that from the very nature of the accident occurred, certainly it is a very fatal one resulting in collision. From the evidence available on record, the Court below was right in fixing the percentage of compensation at 70:30 respectively. I do not find any error in regard to the said fact."

7. The material placed on record clearly establishes the rashness and negligence on the part of the drivers of both the vehicles. In view of the material on record, the insurer of the private bus bearing No.KA 01B 5999 was directed to pay 70% of the compensation awarded and the remaining 30% was directed to be paid by the RTC. Had the drivers of the RTC buses been careful, they would have avoided the accident. The manner of accident occurred establishes the rashness and negligence on the part of the drivers of both the vehicles in a ratio of 70:30 as determined by the Tribunal. There is nothing to take a different view. This point is answered accordingly.

8. **POINT No.2:** It is evident from the above judgment dated 05.07.2006 passed in C.M.A. No.319 of 2004 by this Court, where the rate of interest is reduced from 9% per annum to 8% per annum. In view of the same, the rate of interest is reduced to 8% from 9% per annum on the amounts awarded by the Tribunal to the claimants in both O.Ps. This point is answered accordingly.

9. **POINT No.3:** There are number of decisions where the total medical expenses incurred by the parties were granted. Moreover, the Second Schedule of the Act was envisaged on 14.11.1994. There are number of decisions to re-examine the Second Schedule of the Act and grant appropriate compensation to the accident victims. In view of the same, the finding of the Tribunal with regard to grant of medical expenses is concerned, it is based on record. No interference is warranted. Accordingly, this point is answered.

10. Accordingly, the common order dated 13.11.2003 passed by the Tribunal in M.V.O.P. Nos.570 and 572 of 2000 is modified and the rate of interest granted by the Tribunal is reduced from 9% to 8% per annum on the amounts awarded by the Tribunal in both the claims. The other terms of the common order under challenge remained unchanged.

11. In the result, these three appeals are disposed of with the above modification. As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 11.08.2017

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Dr. SHAMEEM AKTHER, J