

**HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**M.A.C.M.A. No.260 of 2006**

**JUDGMENT :**

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants – A.P. State Road Transport Corporation (for brevity "the Corporation") aggrieved by the judgment and decree dated 24.02.2005 in O.P.No.191 of 2001 passed by the Chairman, Motor Accidents Claims Tribunal (District Judge), Nizamabad (for brevity "the Tribunal"), awarding compensation of Rs.3,24,460/- as against the claim of Rs.6,00,000/- made by the respondents-petitioners under Section 166 of the Act, for the death of the deceased-Chavan Bansilal in a motor accident that occurred on 12.10.2000.

2. The facts need not be referred to since not in dispute. The points that arise for consideration in this appeal are:-

- (1) Whether there is contributory negligence on the part of the deceased?
- (2) Whether the compensation awarded by the Tribunal is highly excessive?
- (3) Whether the rate of interest awarded by the Tribunal is excess?

3. Learned Standing Counsel for the appellants-Corporation mainly submitted that the Tribunal has not considered the aspect of contributory negligence on the part of the deceased as the deceased sat on the top of the bus belonging to the appellants-Corporation and, therefore, he

was also negligent and responsible for the accident and hence contributory negligence has to be attributed to the deceased.

4. Heard Sri V.T.M. Prasad, learned Standing Counsel for the appellants-Corporation. Though notices have been served to respondent-petitioner Nos.1 to 5, none appeared on their behalf. Perused the impugned judgment and also the evidence on record.

5. On consideration of the evidence on record and the impugned judgment, in para-12 of the judgment, the Tribunal has observed as follows:

“..... The respondents-Corporation filed Ex.B.1 final report which shows the Sub Inspector of Police, P.S. Bheemgal after investigating into the accident submitted final report to the Court stating that the deceased Bansilal boarded on the top of the bus and standing on the top of the bus, while he was trying to sit on it, he struck to one electrical wire and fell down and received injuries and died subsequently on 17.10.2000. ....”

6. Learned Standing Counsel for the appellants-Corporation submits that there is no fault on the part of the Driver or Conductor of the bus and the deceased himself was responsible for the accident. In the alternative, it is also submitted that there is contributory negligence on the part of the deceased, who himself sat on the top of the bus and thereby responsible for the accident.

7. On consideration of the observations of the Tribunal and placing reliance on Ex.B.1 - Final Report filed before the

Tribunal, it is obvious that the deceased-Bansilal boarded and standing on the top of the bus and while he was trying to sit on it, he was struck to one electrical wire on the top of the bus and he fell down and received injuries. Therefore, there is some amount of negligence on the part of the deceased also. In fact, the Driver and Conductor of the bus ought not to have allowed the deceased to board on the top of the bus. However, the Tribunal has ignored this aspect and fixed the entire liability against the appellants-Corporation. Therefore, the contributory negligence on the part of the deceased can be fixed at 25%, while fixing 75% of the liability on the part of the Driver and Conductor of the bus belonging to the appellants-Corporation.

8. Learned Standing Counsel for the appellants-Corporation would further submit that the quantum of compensation awarded by the Tribunal is highly excessive.

9. On consideration of the material on record, it is to be seen that there are no valid reasons or grounds to interfere with the impugned judgment passed by the Tribunal in awarding compensation, except the rate of interest awarded at 9% per annum, which appears to be excessive. As per Section 171 of the Act, which deals with the rate of interest, the rate of interest can be awarded depending on the facts and circumstances of the case. Therefore, keeping in view the guidelines laid down by the Hon'ble Supreme Court in

***Dharampal and others Vs. U.P. State Road Transport Corporation***<sup>1</sup>, and exercising the power under Section 171 of the Act, the rate of interest awarded by the Tribunal is reduced from 9% to 7.5% per annum from the date of petition till the date of realization.

10. In the result, the Civil Miscellaneous Appeal is allowed in part, modifying the impugned judgment dated 24.02.2005, fixing 25% of the liability on the deceased, while fixing 75% of the liability on the appellants-Corporation from out of the compensation amount awarded by the Tribunal. The rate of interest @ 9% per annum is reduced to 7.5% per annum from the date of petition to till the date of realization. The appellants-Corporation is directed to deposit its share of 75% of the compensation amount awarded by the Tribunal into the Court within two months from the date of receipt of a copy of this judgment. On such deposit, the respondents-petitioners are permitted to withdraw their respective shares as per the apportionment made by the Tribunal. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE G. SHYAM PRASAD

04.10.2017.  
Msr

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<sup>1</sup> MANU/SC/7680/2008

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