THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. Nos.2731, 2741, 2747, 2844 AND 2877 OF 2005

COMMON JUDGMENT:

All these appeals, filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), arise out of a common order dated 09.11.2004 passed in M.V.O.P. Nos.402, 403, 404, 405 and 406 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Warangal (for short, 'the Tribunal'). The Oriental Insurance Company Limited, represented by its Divisional Manager, Warangal, who is respondent No.2 in all the claim petitions, preferred these appeals seeking to set aside the impugned common order, whereby the Tribunal granted compensation to the petitioners in all the claims, for to the injuries sustained by them in a motor accident occurred on 28.10.2002.

2. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petitions.

3. Brief facts of the case are that on 28.10.2002, when the petitioners were carrying cotton bags in a DCM van bearing No.AP 9V 4348 from Dardepally village to Warangal and when reached Standard Public School, Kasibugga, Warangal, the driver of the van suddenly applied brakes, as a result of which, the accident occurred. The petitioners received multiple injuries in the accident, took treatment in MGM Hospital, Warangal, and spent money towards treatment. Therefore, the petitioners filed petitions claiming compensation from the owner and insurer of the accident vehicle.

4. Respondent No.1, who is the owner of the crime vehicle, remained *ex parte* in all the petitions before the Tribunal.

5. Respondent No.2-insurer in all the petitions filed counter before the Tribunal denying all the averments made in the claim petitions and contended

that the compensation claimed by the petitioners is highly excessive and the petitioners travelled in a goods vehicle and violated the terms and conditions of the insurance policy. Therefore, the petitioners are not entitled to claim any compensation from the insurer of the crime vehicle.

6. The Tribunal tried all the claim petitions together and after considering the evidence of P.Ws.1 to 7 and the documents Exs.A.1 to A.19, granted compensation to the petitioners *vide* common order dated 09.11.2004, directing both the respondents to pay the same. Challenging the said common order, the insurer of the crime vehicle preferred all these appeals.

7. Heard the learned counsel for the appellant-insurer in all the appeals. No representation on behalf the respondents in all the appeals.

8. Learned counsel for respondent No.2-insurer (appellant in all the appeals) would submit that the claimants are not entitled to travel by the goods vehicle; the Tribunal failed to consider that the goods and the luggage are different, the same is required to be examined under Section 2(13) of the Act; the seating capacity of the crime vehicle is '3', i.e., driver, cleaner and owner of the goods or the representative of the goods and permitting the persons more than the seating capacity is against to the A.P. Motor Vehicles Rules, 1989; the insurer did not take the risk of passengers travelling in the offending vehicle; the Tribunal ought not have granted interest at 9% per annum; and ultimately, prayed to allow all these appeals by dismissing the claim against respondent No.2-insurer.

9. There is no representation on behalf of the claimants and the owner of the crime vehicle.

10. In view of the contentions raised on behalf of respondent No.2-insurer, the point for determination is, whether the impugned common order

dated 09.11.2004 passed in M.V.O.P. Nos.402, 403, 404, 405 and 406 of 2003 by the Tribunal is sustainable?

11. **POINT**: The specific case of the claimants is that they are the owners of cotton bags being transported by the DCM van bearing No.AP 9V 4348. The driver of the van applied brakes suddenly, so the DCM van turned turtle, and then the claimants received injuries. To substantiate the contentions, all the claimants were examined as P.Ws.1 to 5 and they have also examined P.W.6-Dr. S.Laxminarayana and P.W.7-Dr. R.Thirupathi Reddy and got marked Exs.A.1 to A.19. Ex.A.1 is the certified copy of F.I.R., Ex.A.2 is the certified copy of injury certificate of P.W.1, Ex.A.3 is the certified copy of X-ray report, Ex.A.4 is the certified copy of the charge sheet, Ex.A.5 is the copy of pahani for the year 2002-03 of P.W.1, Ex.A.6 is the certified copy of injury certificate of P.W.2, Ex.A.7 is the certified copy of X-ray report of P.W.2, Ex.A.8 is the photo with negative, Ex.A.9 is the bunch of medical bills, Ex.A.10 is the copy of pahani for the year 2002-03 of P.W.2, Ex.A.11 is the X-ray film pertaining to P.W.2, Ex.A.12 is the certified copy of injury certificate of P.W.3, Ex.A.13 is the certified copy of X-ray report of P.W.3, Ex.A.14 is the certified copy of injury certificate of P.W.4, Ex.A.15 is the certified copy of X-ray report of P.W.4, Ex.A.16 is the certified copy of injury certificate of P.W.5, Ex.A.17 is the certified copy of X-ray report of P.W.5, Ex.A.18 is the case sheet pertaining to P.W.5 and Ex.A.19 is the case sheet pertaining to P.W.2. On behalf of the respondents, including the insurer, none were examined and no documents were marked. The evidence of the claimants, i.e., P.Ws.1 to 5, is that they had loaded cotton bags in the DCM van bearing No.AP 9V 4348 and transporting the same at the time of occurrence of accident. Due to the rash and negligent driving of the driver of the DCM van, they suffered injuries. There is specific mention in Ex.A.1-certified copy of F.I.R. and other criminal case record filed before the Court about the accident and transportation of cotton bags by claimants. The investigation conducted by the

police also reveals the same. Therefore, it cannot be said that the claimants were not owners of goods and they were gratuitous passengers. Having analysed the entire evidence on record, the Tribunal had rightly concluded that the claimants were owners of goods. There was a valid insurance policy of DCM van with the insurer at the time of accident. The contention raised on behalf of insurer is that the seating capacity of the DCM van is, driver, cleaner and one owner. The claimants are five in number, not covered under the insurance policy. Since there is a valid insurance policy and the claimants are owners of goods and as they have suffered injuries, due to the use of DCM van bearing No.AP 9V 4348, the seating capacity is not detrimental to seek compensation against the insurer as well as the owner of the vehicle. The Tribunal, having analysed the entire evidence on record, rightly fastened liability on the owner and insurer of the DCM van. There is no infirmity in the impugned order. The claim against respondent-insurer cannot be dismissed on this ground.

12. The Tribunal was pleased to grant compensation of Rs.15,000/- in M.A.C.M.A. No.2731 of 2005 (M.V.O.P. No.402 of 2003), Rs.15,000/- in M.A.C.M.A. No.2741 of 2005 (M.V.O.P. No.403 of 2003), Rs.25,000/- in M.A.C.M.A. No.2747 of 2005 (M.V.O.P. No.406 of 2003), Rs.25,000/- in M.A.C.M.A. No.2844 of 2005 (M.V.O.P. No.405 of 2003) and Rs.30,000/- in M.A.C.M.A. No.2877 of 2005 (M.V.O.P. No.404 of 2003) by way of common order dated 09.11.2004 with interest at 9% per annum from the date of petitions till realisation. The Tribunal has granted interest at 9% p.a., the same is questioned in these appeals. There are many instances where the Hon'ble Apex Court and this Court granted interest at 9% p.a. Therefore, it is not appropriate to vary the interest from 9% to 7.5% p.a., as contended on behalf of the appellants. The calculation made by the Tribunal and award of compensation as indicated above is based on the evidence on record. Therefore, it cannot be said that the said awards are excessive. All the contentions raised on behalf of the insurer do

not merit consideration and are liable to be dismissed. This point is answered accordingly.

13. In the result, all these appeals are dismissed confirming the common order dated 09.11.2004 passed by the Tribunal in M.V.O.P. Nos.402, 403, 404, 405 and 406 of 2003.

14. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 20.10.2017
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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Date.20-10-2017

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