

THE HON'BLE MRS. JUSTICE ANIS

MA CMA NO. 244 of 2008

JUDGMENT:

This appeal is filed by the appellants/respondents under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 22.12.2004, passed by the District Judge-cum-Chairman, Motor Accident Claims Tribunal, Nizamabad in O.P.No. 863 of 1999, awarding compensation of Rs.63,980/- with interest @ 9% P.A.

2. The respondent/petitioner filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.2,50,000/- on account of the injuries sustained by him in a motor vehicle accident.

3. The brief averments of the claim petition are as follows,

The respondent/claim petitioner stated that on 29.8.1998 he along with his village Sarpanch had been to Nizamabad and while they were returning on a scooter and when they reached Gandhinagar Tanda, an RTC bus bearing No. AP-9-Z-8996 came in a rash and negligent manner and dashed against the scooter due to which the respondent/petitioner who was the pillion rider sustained multiple fractures to his right leg, knee joint and other injuries. Immediately the respondent/petitioner was shifted to Government Hospital, Nizamabad where he took treatment as inpatient for about 30 days and thereafter he took treatment from private doctors. The petitioner incurred an amount of Rs.50,000/- for treatment and medical expenses. The petitioner was a mason and contractor of building

construction work and was earning Rs.6,000/- per month. Due to the injuries he got permanent disability. The accident occurred due to the rash and negligent driving of the RTC bus by its driver and therefore prayed the Court to grant compensation of Rs.2,50,000/-.

4. The brief averments made by the respondents/appellants herein, in the counter are as follows,

The appellants denied the manner of accident, age, occupation and income of the respondent and the injuries suffered by him and the expenditure incurred for his treatment. The respondents contended that at about 4.30 P.M. near Gandhinagar Tanda the bus driver observed one scooter coming in the opposite direction at high speed duly overtaking a lorry which was proceeding ahead of the scooter and the bus driver slowed down the bus and took the bus completely to the left side of the road, but the scooterist was unable to control the scooter and dashed against the front portion of the bus. Thus the accident occurred purely on account of lack of anticipation of the scooterist and the bus driver was in no way responsible for the accident. Therefore the respondents/appellants prayed the Court to dismiss the claim petition.

5. Basing on the pleadings, the Tribunal framed two issues and to substantiate the claim, the petitioner examined himself as P.W.1 and one doctor as P.W.2 and got marked Exs.A1 to A8 and X1 and X2 and also C1-disability certificate. On behalf of the respondents, no oral or documentary evidence was produced.

6. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the RTC bus by its driver and awarded compensation of Rs.63,980/- together with interest @ 9% P.A.

7. Aggrieved by the award passed by the Tribunal, the respondents in the claim petition preferred the present appeal.

8. The learned counsel for the appellants argued that the Tribunal has not considered that there was contributory negligence on the part of rider of scooter on which the respondent/petitioner was pillion rider. The learned counsel also argued that the Tribunal, without considering the documentary evidence, has awarded the compensation. He also argued that the respondent/petitioner is not entitled to interest @ 9% P.A. and it has to be reduced to 7.5% in view of the judgments of the Hon'ble Supreme Court reported in *Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Service* ¹ and *Rebeka Minz and others Vs. Divisional Manager, United India Insurance Company Limited and another* ² and prayed the Court to reduce the rate of interest.

9. On the other hand, the learned counsel for the respondent/claim petitioner justified the compensation and interest awarded by the Tribunal which is just and reasonable and therefore, prayed to dismiss the appeal.

10. Having regard to the submissions made by the learned counsel for the parties, the points that arise for consideration are:

¹ 2013 ACJ 2733

² 2012 ACJ 2328

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the interest @ 9 % awarded by the Tribunal is just and reasonable?

11. **Points:**

A perusal of the oral and documentary evidence particularly Ex.A1-copy of the FIR and Ex.A2-copy of charge sheet, shows that the respondent/claim petitioner was riding on the pillion of the scooter and the accident occurred due to the rash and negligent driving of the RTC bus by its driver as a result the claim petitioner sustained injuries. To disprove the same, the respondents/appellants have not produced any evidence. Considering all these aspects, the Tribunal has rightly held that the accident occurred due to the rash and negligent driving of the RTC bus by its driver and the said finding of the Tribunal needs no interference.

12. Coming to the injuries sustained by the respondent/claim petitioner and the compensation awarded by the Tribunal, no doubt the claim petitioner sustained simple as well as grievous injuries. Ex.A3-wound certificate and Ex.C1-disability certificate also proved this fact. As per Ex.A4-discharge summary, the claim petitioner was admitted in the Government hospital on 29.8.1998 and discharged from the hospital on 23.9.1998. He suffered fracture of shaft femur right, fracture of patella right. Again the claim petitioner was admitted in the hospital on 3.5.2000 and discharged on 24.5.2000. After considering the evidence of P.Ws. 1 and 2 and documentary evidence produced by the claim petitioner, the Tribunal

granted compensation of Rs.63,980/- for the injuries sustained by the claim petitioner in the accident. To disprove the evidence of P.Ws 1 and 2 the respondents/appellants have not produced any evidence to show that the claim petitioner has not received grievous injuries in the accident and he has not suffered any disability. Therefore the award of the Tribunal granting quantum of compensation needs no interference.

13. The learned counsel for the appellants argued that in view of the judgments of the Hon'ble Supreme Court reported in *Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Service* (1st supra) and *Rebeka Minz and others Vs. Divisional Manager, United India Insurance Company Limited and another* (2nd supra), the rate of interest has to be reduced from 9% to 7.5 % PA. In view of the same, the rate of interest of interest is reduced from 9% to 7.5 % PA from the date of appeal till realisation.

14. With these observations, the appeal is disposed of. There shall be no order as costs. Miscellaneous applications, if any, shall stand closed.

ANIS, J

Dt. 4.1.2017
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