THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.3369 of 2005

JUDGMENT:

The 2nd respondent Insurance Company in M.V.O.P.No.789 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Court, Kurnool is the Appellant in the present Appeal filed under Section 173 of Motor Vehicles Act, 1988. In the present appeal, challenge is to the order dated 15.3.2005 passed by the Tribunal, awarding compensation in favour of Respondents 1 to 4 herein.

2. Heard Sri T.Ramulu, learned Standing Counsel for the Appellant Insurance Company and Sri B.Siva Kesava Reddy, learned counsel for Respondents 1 to 4 and perused the material available before the Court.

3. In an accident that took place on 8.8.2002, the wife of the 1st respondent and the mother of Respondents 2 to 4 lost her life. The Claimants/Respondents 1 to 4 herein approached the Tribunal by way of filing M.V.O.P.No.789 of 2002. First respondent in the O.P. remained exparte and 3rd respondent filed a counter, denying the allegations of negligence on the part of the Driver of the Bus belonging to A.P. State Road Transport Corporation. The 2nd respondent/appellant herein filed a counter, resisting the O.P. and the claim made therein. On behalf of the claimants, P.Ws.1 to 3 were examined and Exs.A1 to A5 were marked. On behalf of Respondents, R.W.1-Senior Assistant in the Insurance Company was examined and Exs.B1 to B4 were marked. The Tribunal, on the aspect of rash and negligent driving of the driver of the TATA SUMO vehicle, found that the accident occurred due to rash and negligent driving of the driver of the TATA SUMO vehicle. While dealing with Issue No.2 as to quantum of compensation, the Tribunal granted

a sum of Rs.2,88,000/- with interest @ 9% per annum from the date of petition till the date of deposit and proportionate costs.

4. This appeal filed by the Insurance Company/2nd respondent in the O.P. challenges the validity and legal sustainability of the order passed by the Tribunal. According to the learned counsel for the appellant-Insurance company, the vehicle was insured as private vehicle and the same was used on hire basis, as such, the Tribunal grossly erred in fixing the liability on the Insurance Company. It is the further submission of the learned counsel that Exs.B1 to B4 filed on behalf of Insurance Company in unequivocal terms demonstrate the said aspect. It is also the submission of the learned counsel that the rate of interest granted by the Tribunal is excessive and the Tribunal grossly erred in granting interest @ 9% per annum instead of 7.5%.

5. On the contrary, it is submitted by the learned counsel for Claimants/ Respondents 1 to 4 herein that there is no error nor there exists any infirmity in the impugned order and in the absence of the same, the interference of this Court under Section 173 of M.V. Act is unwarranted. It is the further submission of the learned counsel that in view of the findings recorded by the learned Presiding Officer of the Tribunal on Exs.B1 to B4, the Insurance Company is not entitled for any indulgence of this Court.

6. In the above background, now the issue that emerges for consideration of this Court is whether the order passed by the Tribunal is in accordance with law or whether the same warrants any interference of this court under Section 173 of M.V. Act?

7. As per the case of the claimants, offending vehicle was not plying on hire basis and the same was arranged by the Assistant Project Director of DPAP Department for the purpose of attending water shed training

programme. The claimants also denied the version of the Insurance company that the vehicle was plying on hire basis at the time of accident. The claimants also pointed out the absence of specific plea in the counter of 2nd respondent to the said effect.

8. During the course of evidence, P.W.2 categorically stated that the vehicle was arranged for their transport by DPAP Department. P.W.3 also supported the same. It is also required to be noted that P.W.3 denied to have stated in his 161 statement that they took the offending vehicle on hire basis. On the ground that the appellant Insurance Company failed to examine the concerned Police Officer to prove Exs.B2 and B3, the Tribunal declined to take the same into consideration. The Tribunal also took into consideration Ex.A1-F.I.R. and Ex.A4-charge sheet and Ex.A5 accident report from Motor Vehicle Inspector to arrive at the conclusion that the vehicle was not plying on hire basis. The Tribunal also took note of the fact that R.W.1 had no personal knowledge of the accident and eventually held that the evidence of R.W.1 and contents of Exs.B2 to B4 would not be helpful to the Insurance Company and came to the conclusion that at the time of accident, the offending vehicle was not plying on hire basis. The Tribunal also kept it open to the Insurance company to proceed against the 1st respondent separately.

9. Obviously, taking into consideration all these aspects including absence of any evidence to prove that the offending vehicle was plying on hire basis at the time of accident, the Tribunal granted compensation to the claimants, directing Respondents 1 to 3 therein in O.P. to pay the amount. Therefore, this Court is not inclined to meddle with the said well articulated order passed by the Tribunal. However, having regard to the submissions made by the learned Standing Counsel for Insurance Company, this Court is of the

considered opinion that the interest granted by the Tribunal is liable to be scaled down from 9% to 7.5%.

10. In the result, this Appeal is partly allowed, confirming the compensation amount awarded by the Tribunal. But however, the interest is scaled down to 7.5% per annum. It is also made clear that other conditions in the Award shall remain intact. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 28.12.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.3369 of 2005

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