HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.2556 of 2005

JUDGMENT:

1. This appeal is filed by the United India Insurance Company against the award, dated 11.01.2005 passed in O.P No.561 of 2002 by the Chairman-cum-District Judge, Motor Vehicle Accidents Claims Tribunal, Nizamabad. Respondents 1 to 6 herein are the claimants and the 7th respondent is the owner of the crime lorry in the said O.P.

2. The averments in the claim petition, in brief, are that, on 09.04.2002 at about 12.30 night, one Anand (hereinafter referred to as 'deceased') was sleeping on the side of road near Shivashakthi stone crusher, Secunderapur village, when a lorry bearing No.A.P.25.T.7676 came there with a load of concrete and ran over the deceased from its back, while it was taking a reverse direction for the purpose of unloading the concrete without taking any precautionary measure and in a negligent manner. The deceased sustained head injuries and multiple fractures on other parts of the body and died on the spot. Consequently, the claimants, who are the legal representatives of the deceased, laid a claim before the Tribunal seeking compensation of Rs.10,00,000/-.

3. The 7th respondent herein, who is the owner of the lorry, filed counter denying the manner of accident, age, occupation and income of the deceased. It is contended that the deceased was negligently sleeping on the road side and as such he was responsible for the alleged accident. It is further contended that lorry was insured with the Insurance Company and the policy was in force as on the date of accident.

4. The Insurance Company resisted the claim by filing counter. It contended, *inter alia*, that the driver of the lorry did not possess valid driving licence to drive the vehicle and the accident was not reported to the insurance company by the owner of the vehicle as he was in collusive with the claimants to cause loss to the Insurance Company. It is further contended that the lorry was not insured with the Insurance Company and the policy was not in force as on the date of accident. It is further contended that the compensation claimed by the claimants is excessive and exorbitant.

5. During enquiry, on behalf of the claimants, P.Ws.1 to 3 were examined and Exs.A1 to A4 were marked. On behalf of the Insurance Company, Ex.B1 was marked. P.W.1 is the first claimant-wife of the deceased and P.W.2 is the eye-witness to the accident. P.W.3 is the friend of the deceased. Ex.A1 is the copy of FIR, Ex.A2 is the copy of Post Mortem Report of the

deceased, Ex.A3 is copy of report of Motor Vehicle Inspector and Ex.A4 is the copy of Charge Sheet. Eventually, at the culmination of enquiry, basing on the evidence of P.W.2 and Exs.A1 and A4, the Claims Tribunal held that the accident occurred due to rash and negligent driving of the lorry by its driver and then the Tribunal assessed the compensation and arrived at Rs.9,39,820/- and passed the award accordingly. Assailing the said award, the appellant-Insurance Company filed this appeal.

6. Though the award of Tribunal is challenged on many grounds, the learned Standing Counsel for the appellant-Insurance Company has taken only one contention before this Court that the Tribunal ought not to have granted interest @ 9% P.A. and prayed to reduce it to 7.5% P.A. He has also not touched upon the quantum of compensation amount awarded by the Tribunal.

7. On the other hand, learned Counsel for the respondents-claimants supported the award of the Claims Tribunal granting just and reasonable compensation amount and no interference is called for even with regard to the rate of interest.

8. I have considered the respective contentions of the parties and perused the impugned award passed by the Claims Tribunal.

9. As already stated, there is no contest with regard to the accident, which occurred due to the rash and negligent driving of the crime lorry by its driver. P.W.2, the Manager of Shiva Shakti Stone Crushing Machine Unit and eyewitness to the accident, stated in his evidence that on the date of accident, while the deceased was sleeping at Shiva Shakti Stone Crusher Compound situated by the side of road, the crime lorry being driven by its driver came with a load of stones for unloading the same in the stone crusher machine, and while taking the vehicle in reverse direction, the driver of the lorry drove the same at high speed in a rash and negligent manner and ran over the deceased, due to which the deceased died on the spot. The evidence of P.W.2 coupled with Exs.A1 and A4, copies of FIR and charge sheet respectively shows that the accident occurred due to the rash and negligent driving of the offending vehicle by its driver and Ex.B1, copy of insurance policy proves that the offending vehicle was insured with the insurance company. Therefore, the findings given by the Claims Tribunal on these aspects are confirmed.

10. Coming to the question of compensation amount, the Tribunal, on evidence, opined that the deceased, aged about 28 years, was working as labourer in the stone crushing unit and earning Rs.200/- per day and assessed his contribution to his

family at Rs.150/- per day, after deducting Rs.50/-towards his personal expenses, and Rs.4,500/- per month and Rs.54,000/- per year. By applying a suitable multiplier of 17.08, the Tribunal granted Rs.9,22,320/- (Rs.54,000 X 17.08) towards loss of contribution of the deceased to his family, apart from granting Rs.15,000/- towards loss of consortium and Rs.2,500/- towards funeral expenses. Thus the Tribunal granted a total compensation of Rs.9,39,820/- to the claimants payable by the respondents jointly and severally. In my view, the Tribunal awarded just and reasonable compensation and it does not warrant any interference from this Court. There is also no contest from the insurance company on the quantum of compensation amount awarded by the Tribunal, but to the extent of rate of interest.

11. The learned Standing Counsel appearing for the Insurance Company contended that the rate of interest @ 9% PA granted by the Tribunal cannot be sustained on the face of the interest rates being charged by the Nationalized Banks and it is liable to be reduced to 7.5% PA. Accepting the said contention, the rate of interest is reduced from 9% P.A to 7.5% P.A.

12. In the result, the Civil Miscellaneous Appeal is allowed in part to the extent of reduction of rate of interest as above and in

other respects, the award passed by the Tribunal is confirmed. No order as to costs. Miscellaneous applications, if any pending, shall stand closed.

JUSTICE J.UMA DEVI

10-02-2017
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