

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.901 of 2006

JUDGMENT:

This appeal is filed by the insurance company, 2nd respondent in MVOP No.614 of 1998 filed by the claimant-1st respondent herein seeking compensation of Rs.1,50,000/- on account of the injuries sustained by him in motor vehicle accident involving a lorry bearing registration no.AP 16T 9995.

By the impugned judgment, the V Addl. District Judge, Visakhapatnam, as against the claim of Rs.1,50,000/- awarded a sum of Rs.2,01,000/- towards compensation with interest at 12% per annum from the date of filing of the petition till the date of deposit of the amounts in the Court.

2. Facts stated are:-on 07-01-1998, the claimant-2nd respondent herein along with others was proceeding from Bangarammapalem to Tuni on lorry bearing no.ABK 2056 and when the lorry reached near Prudivi Hotel, on NH 5 road, the offending lorry bearing registration no.AP 16T 9995 came from opposite direction, driven in a rash and negligent manner by its driver, dashed the lorry in which

the claimant-2nd respondent and others were travelling and due to the said accident and impact, the claimant and others sustained multiple injuries and a case in Cr.No.3/1998 for the offence under Section 337 and 338 IPC was registered against the driver of the offending lorry.

3. As regards the culpability in causing the accident, the Tribunal considering the evidence adduced and in the absence of rebuttal evidence adduced by the appellant-insurance company, held that the accident occurred on account of the rash and negligent driving of the offending lorry in question by its driver and in the facts and circumstances of the case, the said finding does not warrant any interference.

4. Learned counsel for the appellant-insurance company contends that though the claimant-2nd respondent herein made a claim for Rs.1,50,000/-, the Tribunal granted a sum of Rs.2,01,000/- more than the compensation sought by the claimant. It is contended that 40% disability fixed by the Tribunal is not based on acceptable evidence. It is also contended that the Tribunal granted interest at 12% per

annum, whereas in view of the decision of the Supreme Court in **RAJESH vs. RAJBIR SINGH**¹, the interest that can be allowed is only 7.5% per annum. On the other hand, learned counsel for the claimant-1st respondent made submission in support of the impugned judgment of the Tribunal and states that the claimant as on the date of accident was working as Compounder and as he has suffered multiple injuries, the Tribunal considering the disability sustained and the pain and suffering it caused on the claimant and the amounts incurred by the claimant for extra nourishment, granted just and reasonable compensation and, therefore, the appeal is liable to be dismissed.

5. It is to be seen that the claimant himself examined as PW3 besides examining PW4, medical officer. Ex.A7 is the copy of the wound certificate issued by the Community Health Centre, Government Hospital, Yellamanchili. Ex.A9 are a bunch of medical bills amounting to Rs.10,000/- Ex.A11 is the disability certificate issued by PW4. Exs.A12 to A14, which are photos of the injuries sustained by the

¹ 2013ACJ1403 = 2013(4)ALT35

claimant, indicates cut of the foot of the claimant. It has come in the evidence of PW4 that he has examined the claimant and he found injuries on both the knees, loss of toes of both the feet and fracture of left leg and he assessed the disability at 40% and it is permanent in nature. No contra evidence was adduced to disprove the same. The Tribunal considering this evidence, granted a sum of Rs.25,000/- towards pain and suffering, Rs.10,000/- towards extra nourishment, Rs.2,500/- towards transport to hospital, Rs.10,000/- towards medical bills and Rs.1,53,600/- towards loss of income, totalling to Rs.2,01,100/-, which is just and reasonable in the facts and circumstances of the case. The Supreme Court in

NAGAPPA vs. GURDAYAL SINGH² ruled that award of compensation in excess of amount claimed in the claim petition is permissible, as there is no stipulation in the Motor Vehicle Act to restrict award of compensation limited to the claim made by the claimants. It was also observed that technicalities of law should not be permitted to stand

² 2002 AIR SCW 5348

in the way and a fair compensation should be paid in respect of deaths. Hence, no exception can be taken for award of compensation than what is claimed by the claimant. However, in the light of the decision of the Supreme Court in **RAJESH vs. RAJBIR SINGH** (1 supra), the interest payable on the compensation awarded is allowable only at 7.5% per annum.

6. In the circumstances and following the decision of the Supreme Court in **RAJESH vs. RAJBIR SINGH** (1 supra), the rate of interest granted by the Tribunal at 12% per annum is reduced to 7.5 % per annum from the date of petition till the date of realization of the amounts.

7. In the result, the appeal is allowed in part and the impugned award in MVOP No.614 of 1998 is modified only to the extend indicated above. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

No order as to costs.

A.RAJASHEKER REDDY, J

Dated: 15-03-2018.
NRG

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**web****Date: 15-03-2018**

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