

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2744 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 15.04.2003 in O.P.No.552 of 1997 on the file of the Motor Accident Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal').

2. Heard the learned counsel for the appellant-Insurance Company and perused the record. The appeal against respondent No.2-owner was dismissed on 28.12.2015 for default. No representation for respondent No.1-claimant. This appeal is of the year 2005. Hence, it can be disposed of on merits.

3. Learned counsel for the appellant-Insurance Company would contend that the claimant was gratuitous passenger in the jeep. There is no coverage of risk of the claimant. The Tribunal granted excess compensation and excess rate of interest @ 9% per annum and ultimately prayed to set aside the impugned order.

4. The respondent-claimant was travelled in a jeep bearing No.MH-26-C-126 on the date of accident i.e., on 12.06.1997. There is evidence to believe that the claimant suffered injuries due to the rash and negligent driving of the driver of the said jeep.

5. As per the material placed on record, the Tribunal granted a compensation of Rs.75,000/- against the claim of Rs.1,00,000/- with interest @ 9% per annum for the injuries i.e., fracture of calcaneus, left foot painful and restricted movement of ankle and foot joint suffered by the claimant. The evidence of P.W.2-doctor supports the case of the claimant that he suffered 40% disability. The claimant also filed Ex.A1-copy of FIR, Ex.A2-discharge sheet, Ex.A3-disability certificate and Ex.A4-Insurance cover note. Ex.A3-disability certificate shows 40% disability suffered by the claimant. There is no doubt that the jeep was insured with the appellant and the insurance policy was valid on that date. The Tribunal while assigning reasons held that the appellant and the owner of the offending jeep are jointly and severally liable to pay the compensation to the claimant. There is nothing wrong in assessing the compensation and awarding the same; and also finding that the accident occurred due to the rash and negligent driving of the driver of the offending jeep.

6. As regards rate of interest, it is apt to refer to the decision of the Apex Court in *Dharampal Vs. State Road Transport Corporation*<sup>1</sup>, wherein, the Apex Court awarded interest @ 7.5% per annum on the amount awarded as compensation. In view of the same, awarding interest @ 9% per annum on the amount awarded as compensation by the Tribunal is held excessive.

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<sup>1</sup> MANU SC 7680 2008

7. Accordingly, this appeal is allowed in part modifying the order dated 15.04.2003 passed by the Tribunal in O.P.No.552 of 1997, only to the extent of awarding interest @ 7.5% per annum on the amount granted as compensation from the date of petition till realisation. The other terms of the order under challenge remain unaltered. On deposit of the compensation, the respondent-claimant is permitted to withdraw the entire amount with interest.

The Miscellaneous Petitions, if any, pending shall stand closed. There shall be no order as to costs.

Date: 16.07.2018  
ssp

Dr. SHAMEEM AKTHER, J

