

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2509 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 06.04.2005 in M.V.O.P.No.780 of 2000 on the file of the Motor Accident Claims Tribunal-cum-III Additional District and Sessions Judge (Fast Track Court), Ongole (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-Insurance Company and perused the record.

3. Though the matter is posted 'for orders', there is no representation for 1st respondent-claimant and 2nd respondent-owner. This appeal is of the year 2005. Hence, it can be disposed of on merits basing on the material available on record.

4. The learned Standing Counsel for appellant-Insurance Company would contend that there was negligence on the part of the driver of APSRTC bus bearing No.AP9Z 6104. There is no negligence on the part of lorry bearing No.PY 01 D 9100. The RTC employees influenced the police and got fabricated the case against the driver of the lorry. There is no evidence to the said accident. Though there is head on collision between the two vehicles, the Tribunal had not given any finding to that effect. Further, the valuation made by the RTC is a self serving one. The Tribunal erroneously granted compensation of Rs.2,67,335/- with interest @ 9% per annum against the appellant and the owner of the lorry jointly and severally and ultimately prayed to set aside the impugned order.

5. In view of the submissions made by the learned Standing Counsel for the appellant-Insurance Company, the points that arise for determination are as follows:-

1. Whether there was contributory negligence on the part of both the drivers of the vehicles?
2. Whether the Tribunal justified in granting compensation of Rs.2,67,335/- with interest @ 9 per annum?

6. POINT No.1:- Though the appellant-insurer would contend that there was rashness and negligence on the part of the driver of the RTC, no oral evidence is adduced to substantiate the same. There is evidence of P.W.2-driver of the RTC bus and also criminal case record to establish the rash and negligent driving on the part of the driver of lorry bearing No.PY 01 D 9100. The Tribunal had analysed the entire oral and documentary evidence and held that the damage to the RTC bus bearing No.AP9Z 6104 was caused due to the rash and negligent driving of the driver of lorry bearing No.PY 01 D 9100. There is no infirmity in the impugned order. There is nothing to take a different view.

7. POINT No.2:- While dealing with the subject matter, the Tribunal had analysed the evidence of P.Ws.1 to 4 and awarded compensation of Rs.2,67,335/- for the damages caused to the RTC bus bearing No.AP9Z 6104. The assessment is made basing on the evidence of the witnesses and also the document marked as Ex.A4-cost of repairs. It is also specific evidence of P.W.4-Mechanical Supervisor that the bus was repaired in their workshop between 13.06.1997 and 12.07.1997. The estimated cost was Rs.1,10,280/- as personal cost i.e., loss of man hours of 1267; Rs.1,51,229/- towards material cost; and Rs.5,826/- towards over head cost, total cost was

Rs.2,67,335/-. The evidence given by P.W.4 is based on record that may not be disturbed. The Tribunal accepted the evidence of P.W.4 and assigned reasons. There is nothing to take a different view with regard to compensation awarded at Rs.2,67,335/-.

8. As regards rate of interest, it is apt to refer to the decision of the Apex Court in Dharampal Vs. State Road Transport Corporation¹, wherein, the Apex Court awarded interest @ 7.5% per annum on the amount awarded as compensation. In the instant case, the grant of interest @ 9% per annum by the Tribunal is excessive.

9. Accordingly, this appeal is allowed in part modifying the order, dated 06.04.2005 in M.V.O.P.No.780 of 2000, passed by the Tribunal, only to the extent of reducing the interest @ 7.5% per annum from 9% per annum on the amount granted as compensation from the date of petition till the date of deposit. The other terms of the order under challenge remain unaltered.

The Miscellaneous Petitions, if any, pending shall stand closed.
No costs.

Dr. SHAMEEM AKTHER, J

Date: 24.08.2018
ssp

¹ MANU SC 7680 2008