

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.1123 & 1396 OF 2006

COMMON JUDGMENT:

Since the facts of the case and the issues involved in both these appeals are one and the same, both the appeals are being disposed of by way of this common judgment.

2. The appellant/the New India Assurance Company Limited filed these appeals seeking to set aside the Awards passed in O.P.No.606 of 2003 and O.P.No.611 of 2003 on the file of the XI Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad, which were disposed of by a common order, dated 13.12.2005.

3. Heard the learned Standing Counsel for the New India Assurance Company Limited and perused the record. Though the matters are listed under the caption "For Orders", there is no representation for the claimants. As the appeals pertain to the year 2006, they are being disposed of basing on the material available on record.

4. Learned Standing Counsel for the appellant/Insurance Company would contend that there was no valid policy of insurance to the offending lorry bearing No.AP 9W 9971 to cover the risk of the claimants. However, the Tribunal erroneously tagged the liability against the appellant/Insurance Company and ultimately, prayed to set aside the impugned orders. Learned Standing Counsel has not disputed the assessment and award of compensation, but contended that the grant of interest at the rate of 9% per annum is on higher side.

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

“1. Whether the Tribunal is justified in granting the compensation against the appellant/Insurance Company jointly and severally along with the owner of the lorry bearing No.AP 9W 9971? and

2. Whether the Tribunal is justified in granting interest at the rate of 9% per annum?”

6. **POINT No.1:-** The claimants sustained injuries in the same accident which occurred on 25.07.2002 due to the rash and negligent driving of the driver of the lorry bearing No.AP 9W 9971. There is no dispute with regard to the subsistence of comprehensive policy of the lorry bearing No.AP 9W 9971. The only dispute is that the claimants were gratuitous passengers and in such event, the Tribunal ought not to have tagged the liability against the Insurance Company. The evidence of the claimant in O.P.No.606 of 2003 is that he was an employee of respondent No.1 therein/owner of lorry bearing No.AP 9W 9971. The evidence of claimant in O.P.No.611 of 2003 is that he was travelling in the lorry to claim repair charges from its owner. The Tribunal held that both the claimants were gratuitous passengers in the lorry bearing No.AP 9W 9971 and Ex.R-1 is a comprehensive policy which covers the self also and self means those persons travelling in the offending lorry. Learned Standing Counsel for the Insurance Company would contend that ‘self’ means covering the risk of the owner of the lorry i.e., respondent No.1 therein. Admittedly, the policy of insurance is a comprehensive policy. In view of that, a direction can be made to the appellant/Insurance Company to pay the compensation awarded at the first instance and then recover

the same from the owner of the lorry bearing No.AP 9W 9971 by filing Execution Petition before the Tribunal.

7. **POINT No.2:-** As regards the rate of interest, it is apt to refer to the decision of the Apex Court in **Dharampal Vs. State Road Transport Corporation**¹ wherein the Apex Court awarded interest at the rate of 7.5% per annum on the amount awarded as compensation. In the instant case, the Tribunal granted interest at the rate of 9% per annum, which is excessive.

8. Accordingly, the quantum of compensation of Rs.20,000/- and Rs.15,000/-, which was awarded by the Tribunal in O.P. Nos. 606 and 611 of 2003 respectively, in favour of the respective claimants is confirmed, but the rate of interest awarded thereon is reduced from 9% per annum to 7.5% per annum from the date of application till the date of realisation. Further, the appellant/Insurance Company is directed to deposit the compensation determined at the first instance before the Tribunal and then recover the same from the owner of the offending lorry bearing No.AP 9W 9971 by filing Execution Petition in the same proceedings before the Tribunal. The other terms of the impugned order remain unaltered.

9. With the above modification, both the appeals are allowed in part. There shall be no order as to costs.

10. Miscellaneous petitions pending, if any, in these appeals shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 04.09.2018
AMD

¹ MANU SC 7680 2008

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