

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2600 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/ Insurance Company, aggrieved by the grant of compensation of Rs.1,00,200/- as against a claim of Rs.2,00,000/- to the respondent No.1/claimant, by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari at Eluru ('the Tribunal', for brevity), vide order, dated 12.07.2005, passed in O.P. No.128 of 2003.

2. Heard both sides and perused the record.
3. The learned Standing Counsel for the Insurance Company would submit that respondent/claimant was travelling in the offending vehicle as a gratuitous passenger and while so, he suffered injuries; that the driver and owner of the offending vehicle violated the terms and conditions of the policy marked as Ex.B1; that the Tribunal erroneously tagged the liability against the appellant-insurance company to pay the compensation awarded jointly and severally along with the owner of the offending vehicle; that the compensation and interest awarded are also excessive, and ultimately prayed to set aside the impugned order.

4. On the other hand, the learned counsel for the respondent/claimant would contend that the Tribunal had taken all the factors into consideration and granted just and reasonable compensation. There are no circumstances to interfere with the same and ultimately prayed to dismiss the appeal.

5. In view of the above contentions, the points that arise for consideration in this appeal are whether the Tribunal is justified in tagging the liability against the appellant/insurance company and whether the compensation awarded by the Tribunal is liable to be modified ?

6. The respondent/claimant sustaining injuries in a road accident occurred on 3.7.2002 due to rash and negligent driving of driver of tractor and trailer bearing No.AP27T 7051 & 7052, is not in dispute. He was travelling by the offending vehicle, being engaged as a cooli to work on the tractor trailer. There is specific evidence to that effect. The same is mentioned in Ex.A1-certified copy of F.I.R. that the petitioner was working as a cooli on the offending tractor trailer for loading and unloading. Under Ex.B1-insurance policy also, there is specific mention that using the vehicle for carrying passengers except employees (other than driver) not exceeding six in number coming under the purview of the Workmen's Compensation Act, is prohibited. As per Ex.B1, risk of 6 coolies is covered. R.W.1, who was examined on behalf of the insurance company, is not

an eye-witness to the occurrence of the accident. He is not the right person to say whether the owner violated the terms and conditions of the policy. In view of the specific oral evidence of P.W.1 and the recitals in Ex.A1 that P.W.1 (claimant) was engaged in the offending vehicle as a cooli and there is coverage of his risk under Ex.B1, the appellant-insurance company cannot be absolved from its liability to pay compensation jointly and severally along with owner of the offending vehicle.

7. As far as the assessment and grant of compensation, the Tribunal relying on the evidence of P.W.2-Doctor and Ex.A2-certified copy of wound certificate, Ex.A13-bunch of medical bills and other medical record, granted compensation of Rs.1,00,200/- viz. Rs.30,000/- towards compensation for pain suffering for the injuries suffered by the claimant; Rs.63,000/- for medical expenditure and Rs.7,200/- towards loss of earnings. There are medical bills and other record to substantiate the award of the said compensation. Considering the nature of injuries and the consequences arose therefrom, the compensation awarded by the Tribunal cannot be said to be excessive.

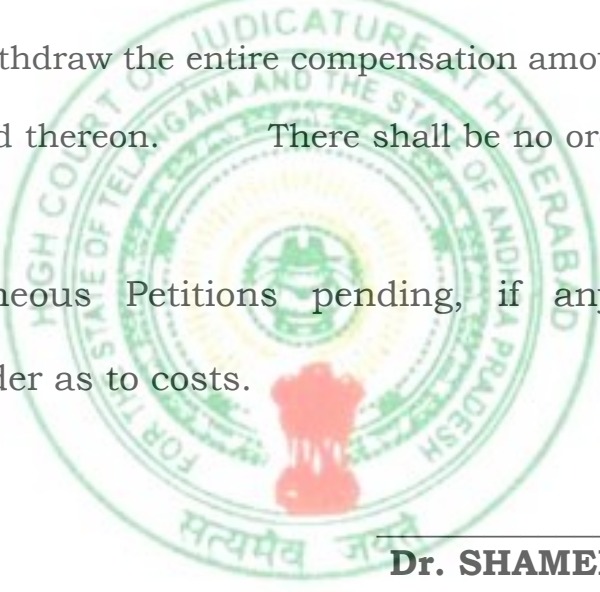
8. As regards the rate of interest, it is apt to refer to a decision in ***Dharampal v. State Road Transport Corporation***¹ wherein the Apex Court awarded interest @ 7.5% per annum on the amount awarded as compensation in similar cases. There are

¹ MANU SC 7680 2008

number of other decisions wherein interest was awarded @ 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. Therefore, the respondent/claimant is entitled for interest @ 7.5% per annum on the compensation amount awarded by the Tribunal.

9. In the result, the appeal is allowed in part. Except to the extent of reducing interest from 9% per annum to 7.5% per annum on the compensation awarded by the Tribunal, the rest of the impugned order is confirmed. On deposit, the respondent/claimant is entitled to withdraw the entire compensation amount together with interest accrued thereon. There shall be no order as to costs of the appeal.

Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.



Dr. SHAMEEM AKTHER, J

03.07.2018
DRK

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