

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A.No.3602 OF 2004

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant-Oriental Insurance Company Limited aggrieved by the order, dated 13.04.2004, passed in O.P.No.820 of 1994 by the Chairman, Motor Accident Claims Tribunal-cum-Additional District Judge, Nizamabad ('the Tribunal', for brevity), awarding compensation of Rs.2,77,800/- to respondent Nos.1 to 3/claimants, as against the claim of Rs.7,00,000/-, on account of death of one Yerram Chandraiah in a motor accident occurred due to rash and negligent driving of the tractor and trailer bearing Nos.AP-25-T-1949 and APH-5844.

2. Heard the learned Standing Counsel appearing for the appellant and perused the record. No representation for the respondents. This appeal is of the year 2004. Hence, it can be disposed of now basing on the material available on record.

3. Respondent No.3 reported died. No steps are taken by the appellant. In view of the same, appeal against him stands abated.

4. Learned Standing Counsel for the appellant would submit that the Tribunal had granted excessive compensation. Though the accident is of the year 1994, the appellant – insurer was added as respondent by order, dated 18.07.2003. The Tribunal, while dealing

with the subject matter, initially determined the compensation at Rs.77,000/- *ex parte*, but when the said *ex parte* decree was set aside and this appellant was brought on record, without there being any evidence and material on record, the Tribunal determined the compensation at Rs.2,77,800/- and awarded interest at 9% per annum, which is excessive and ultimately, prayed to set aside the impugned order.

5. Admittedly, when the O.P. was filed in the year 1994, the appellant – insurer was not made as a party to the O.P. proceedings. Later, by order, dated 18.07.2003, passed in I.A.No.1962 of 2003, the appellant was brought on record as respondent. Before impleading the appellant herein, the Tribunal passed an *ex parte* decree awarding compensation of Rs.77,000/-. After the said *ex parte* decree was set aside, the Tribunal, basing on the evidence available on record, determined the compensation at Rs.2,77,800/-. Therefore, the compensation awarded by the Tribunal cannot be construed as excessive.

6. Further, while dealing with the subject matter of the claim petition, the Tribunal held that the offending tractor and trailer was duly insured with the appellant - insurer under the original of Ex.B1 – copy of policy. As per the record, there is no mention of violation of the terms and conditions of the policy. Therefore, tagging liability against this appellant cannot be faulted.

7. However, concerning the rate of interest, it is apt to refer to the decision in **Dharam Pal and others v. State Road Transport Corporation**¹, wherein the Honourable Apex Court was pleased to grant interest at the rate of 7.5% per annum. In view of the above decision, the rate of interest awarded by the Tribunal at 9% per annum is excessive and the same is liable to be reduced to 7.5% per annum. Further, it is apt to refer that the appellant – insurer was brought on record on 18.07.2003 in view of the orders passed in I.A.No.1962 of 2003. Therefore, the interest payable in the instant case would be with effect from 18.07.2003 to the date of realization.

8. Hence, the appeal is allowed in part modifying the order under challenge only to the extent of reducing the rate of interest on the compensation awarded by the Tribunal from 9% per annum to 7.5% per annum from 18.07.2003 till the date of realization. The other terms of the order under challenge remain unaltered.

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

Dr. SHAMEEM AKTHER, J

July 03, 2018.
MD

¹ Manu SC 7680 2008