

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2911 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the United India Insurance Company Limited, aggrieved by the grant of compensation of Rs.1,69,500/- to respondent Nos.1 to 5/claimants with proportionate costs and interest at 9% per annum from the date of petition till the date of deposit into the Court, as against a claim of Rs.2,00,000/-, by the learned Chairman, Motor Accident Claims Tribunal – cum – IV Additional District Judge, Guntur (for short, “the Tribunal”) *vide* order, dated 19.11.2004, passed in M.V.O.P.No.404 of 2000.

2. Heard the learned Standing Counsel for appellant/Insurance Company and the learned counsel appearing for respondent Nos.1 to 5/claimants, and perused the record.

3. Learned Standing Counsel for the appellant/Insurance Company would contend that there is no negligence on the part of the driver of the auto bearing No.AP 23 T 8549, but there was negligence on the part of the driver of the auto bearing No.AP 13 V 475; that the entire criminal case record reveals the occurrence of the accident due to the rash and negligent driving of the driver of auto bearing No.AP 13 V 475 and nowhere in the said record, it is mentioned that the driver of auto bearing No.AP 23 T 8549 contributed for the occurrence of the accident, and in view of that, the Tribunal ought not have directed the appellant/Insurance Company to pay the entire compensation;

that the owner and insurer of the auto bearing No.AP 13 V 475 are not made as respondents in M.V.O.P.No.404 of 2000; that the Tribunal had granted the compensation of Rs.1,69,500/- with interest @ 9% per annum, which is excessive, and prayed to reduce the same and ultimately, prayed to set aside the impugned order.

4. On the other hand, learned counsel for respondent Nos.1 to 5/claimants would contend that there is oral evidence to prove the rashness and negligence on the part of the driver of auto bearing No.AP 23 T 8549 and the accident occurred due to the rashness and negligence of the said auto only; that the deceased Kandepu Sadasiva Rao succumbed to the injuries sustained in the accident due to the rash and negligent driving of the auto bearing No.AP 23 T 8549; that the owner and insurer of the auto bearing No.AP 13 V 475 are not the necessary parties; that the Tribunal has assigned reasons in awarding the compensation against the appellant/Insurance Company; that there are no merits in the appeal and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel for both sides, the points that arise for determination are:

“1) Whether the owner and insurer of auto bearing No.AP 13 V 475 are not necessary parties? and

2) Whether the Tribunal is justified in granting the compensation of Rs.1,69,500/- against the appellant herein and the owner of the auto bearing No.AP 23 T 8549?”

6. **POINTS:-** Admittedly, the owner and insurer of auto bearing No.AP 13 V 475 are not made as respondents. In the averments of the claim petition also, there is no mention that the accident

occurred due to the rash and negligent driving of the driver of auto bearing No.AP 13 V 475 or that the driver of the said auto contributed for the occurrence of subject accident. Even the settled legal position is that the aggrieved party is at liberty to proceed against any tortfeasor. So, the owner and insurer of the auto bearing No.AP 13 V 475 are not necessary parties.

7. As per the evidence of P.W.2, he along with the deceased was travelling in the auto bearing No.AP 13 V 475 on 17.12.1999. The auto bearing No.AP 23 T 8549 (offending auto) came in the opposite direction in a rash and negligent manner and dashed against the stationed auto by which the deceased Kandepu Sadasiva Rao and himself were travelling, and on that, their auto turned turtle and the deceased succumbed to the injuries sustained in the said accident. In the cross examination, P.W.2 reiterated what he stated in the chief examination.

8. As per the F.I.R., there was rashness and negligence on the part of the driver of auto bearing No.AP 23 T 8549. Further, it is appropriate to state that R.W.1 was examined on behalf of the Insurance Company. Admittedly, he was not an eye witness to the occurrence of the incident. As per the records, P.W.2 was the eye witness to the occurrence of the incident. His evidence is only to the effect that the auto bearing No.AP 23 T 8549 was driven in a rash and negligent manner by its driver and dashed the auto bearing No.AP 13 V 475 by which the deceased was travelling. It is also his evidence that the auto bearing No.AP 13 V 475 was stationed due to some mechanical defect. In view of that, when there is no rebuttal evidence, the Tribunal rightly held that the

deceased Kandepu Sadasiva Rao died due to the rash and negligent driving of the driver of auto bearing No.AP 23 T 8549. Further, the Tribunal rightly assessed the income of the deceased, and after applying suitable multiplier to the age of the deceased, awarded the compensation. It also awarded reasonable amounts on other conventional heads. There is nothing to interfere with the impugned order.

9. 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 @ 7.5% per annum on the amount awarded as compensation. In the instant case, the Tribunal granted interest @ 9% per annum, which is excessive. Hence, the quantum of compensation of Rs.1,69,500/-, which was awarded by the Tribunal in favour of respondent Nos.1 to 5/claimants is confirmed, but the rate of interest awarded thereon is reduced from 9% per annum to 7.5% per annum. The other terms of the impugned order remain unaltered.

10. Accordingly, this appeal is partly allowed modifying the order, dated 19.11.2004, passed in M.V.O.P.No.404 of 2000 by the Tribunal by reducing the interest granted by the Tribunal from 9% per annum to 7.5% per annum. There shall be no order as to costs.

11. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

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Date : 03.08.2018
AMD

¹ MANU SC 7680 2008

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