

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1506 OF 2008

JUDGMENT:

This appeal is filed by the appellant-2nd respondent/insurance company aggrieved by the Order and Decree dated 29.10.2002 passed in O.P.No.718 of 1999 by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District, at NTR Nagar, Hyderabad (for short, the Tribunal).

2. The brief facts of the case are that on 24.04.1998 at 11.15 p.m., the claimant boarded DCM Van bearing No.AP 16/W 854 by paying fare to the driver to go to his native place. When the said D.C.M. Van reached near Green Hills Hotel at NTR Nagar on Vijayawada-Hyderabad National High Way, the driver lost control over his van and drove it towards its extreme side and dashed against private bus bearing No.AP 11T 8198, which was coming in its opposite direction, as a result of which the claimant and other inmates of the DCM Van sustained injuries. The claimant sustained fracture to his left leg and also head injury with cerebral concussion, besides multiple injuries all over his body. The claimant was admitted in Kamineni Hospital and was treated as inpatient till 01.05.1998. He incurred huge expenses for his treatment. From 02.05.1998 onwards, the claimant was admitted and treated as inpatient in Nivedita Hospital and was discharged on 04.06.1998. Due to the said accident, the claimant became permanently disabled person and he lost all his pleasures in life. The 1st respondent is the owner of the DCM van, while the 2nd

respondent is its insurer. Hence, both the respondents are liable to pay compensation of Rs.1,00,000/- with interest, which is claimed by the claimant in the claim petition.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the DCM van and awarded total compensation of Rs.50,184/-, with interest @ 9% per annum, fixing the liability against both the respondents i.e., Rs.25,000/- towards grievous injury and head injury, Rs.10,000/- towards pain and suffering, Rs.10,384/- towards medical expenses and Rs.4,800/- towards loss of salary. Aggrieved by the same, the appellant/2nd respondent/insurance company filed the present appeal.

5. Heard.

6. Learned counsel for the appellant submits that the 1st respondent/claimant was a passenger traveling in a goods vehicle. The DCM Van was not supposed to collect Rs.10/- from the 1st respondent/claimant for boarding the same and the driver of the DCM Van does not have valid driving licence as well as RC book at

the time of accident and, hence, prayed to exonerate the liability of the insurance company and fix the liability on the 2nd respondent/owner of the DCM Van to pay the compensation amount. Learned counsel further submitted that the compensation awarded by the Court below is excessive and the interest granted @ 9% is also excessive. He also submits that as held by the Apex Court in several decisions interest should be granted @ 7.5%.

7. In the similar circumstances, the Hon'ble Supreme Court in **Shivaraj Vs. Rajendra**¹, directed the insurance company to pay the compensation amount at the first instance and recover the same from the owner of the crime vehicle.

8. In the facts and circumstances of the case, this Court is of the opinion that the Tribunal granted just compensation, as such, I do not see any infirmity in the impugned order. But, however, since it is stated by the learned counsel for the appellant that the Apex Court in several decisions granted interest @ 7.5%, the interest granted by the Court below @ 9% is reduced to 7.5% on the awarded amount of Rs.50,184/-. The appellant/insurance company is directed to pay the compensation amount at the first instance and recover the same from the 2nd respondent/owner. Except the said modification, the remaining operative portion of the impugned order is confirmed.

¹ 2018 AIR (SC) 4252

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by reducing the interest from 9% to 7.5% on the compensation amount of Rs.50,184/- awarded by the Tribunal. The appellant/insurance company is directed to pay the compensation amount at the first instance and recover the same from the 2nd respondent/owner of the DCM Van. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 24th June, 2019

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