

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 224 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 11.01.2005, in M.V.O.P. No.145 of 2000, on the file the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle, Chittoor District (for short, 'the Tribunal').

2. The appellant is the petitioner and the 1st respondent is the owner. 2nd and 5th respondents are the insurers of the crime vehicle, a jeep. 3rd respondent is the owner and 4th respondent is the insurer of the other crime vehicle, a lorry. The petitioner in M.V.O.P.No.145 of 2000 has filed this appeal, being aggrieved by the impugned order.

3. The brief facts of the case are that, on 05.07.1999 at about 10-30 a.m., while the appellant was traveling in A Jeep on Piler - Tirupati road along with others, the jeep met with accident and he sustained severe injuries and he was shifted to Government Hospital, Piler, and from there to Sri Venkata Ramanarayana Ruya Government General Hospital, Tirupati. During the course of treatment, the appellant had incurred an amount of Rs.39,000/- towards medicines, Rs.15,000/- towards extra nourishment and Rs.5,000/- towards attendant charges. The accident occurred due to rash and negligent driving of the driver of the lorry, who dashed the jeep. A case in Crime No.31 of 1999 for the offence under Section 337 I.P.C. was also registered against the driver of crime Jeep. Hence, claimed compensation of Rs.1,50,000/-.

4. Respondent Nos.1 and 3, owners of the vehicles, remained *ex parte* before the Tribunal.

5. Respondent No.2 filed written statement denying the rash and negligent act on the part of the driver of the crime jeep and contended that the driver of the Lorry was at fault and as such the 2nd respondent is not liable to pay any compensation as it is entitled to protection under Sections 149 and 170 of the Act and further contended that the quantum of compensation claimed by the appellant is excessive and exorbitant.

6. Respondent No.4 filed written statement attributing rash and negligent driving against the driver of the crime jeep and, insofar as the other material averments are concerned, raised the similar contentions as contended by the 2nd respondent.

7. Respondent No.5 filed written statement reiterating the stand taken by the 2nd respondent.

8. The Tribunal, on consideration of the pleadings and evidence of the witnesses PWs.1 and 2 and RW.1, and the documents Exs.A-1 to A-5 and Exs.B-1 to B-6, passed an Award against respondents 1 and 5 granting compensation of Rs.70,000/- with proportionate costs and interest at the rate of 9% p.a., as against his claim of Rs.1,50,000/- but dismissed the claim against respondents 2 to 4.

9. Being aggrieved by the quantum of compensation, the appellant preferred the instant Appeal for enhancement of the compensation.

10. Heard Si Md. Saleem, learned counsel for the appellant, and Si Meherchand Noori, learned counsel for the 5th respondent-insurance company.

11. The point for consideration in this matter is, whether there are sufficient grounds for enhancement of the compensation?

12. Admittedly, the Tribunal has awarded an amount of Rs.70,000/- as against the claim of Rs.1,50,000/- under various heads, which is shown below in the tabular form:

Sl.No.	Name of the Head	Compensation awarded
01.	One grievous injury	Rs.12,500/-
02.	Four simple injuries	Rs.4,000/-
03.	Medical expenses	Rs.3,500/-
04.	Extra nourishment	Rs.25,000/-
05.	Permanent disability	Rs.25,000/-
	TOTAL	Rs.70,000/-

13. In view of the principle laid down by the Apex Court in *Raj Kumar Vs. Ajay Kumar and another*¹, the Tribunal has to see whether the disability sustained is a permanent or partial disability. Though the disability was assessed at 20% by PW.2, the medical officer, whether it is affecting any functional disability has to be seen in this case. The Tribunal has to assess the functional disability for awarding the compensation. In view of the principle laid down by the Apex Court in *Raj Kumar*¹, if a medical officer gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is

¹ 201 (1) SCC 343

only to a limb. Mere production of disability certificate or discharge certificate will not be proof of the extent of disability stated therein, unless the doctor who treated the claimant or who medically examined, and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it may constitute a medical board and refer the claimant to such medical board for assessment of the disability. The Apex Court in *Raj Kumar*¹, held as follows in paragraphs 17 and 18 as follows:

“While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen’s Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board and refer the claimant to such Medical Board for assessment of the disability.”

14. PW.2 is the medical officer who issued the disability certificate showing the percentage of disability as 20%. PW.2 clearly deposed that on examination of the appellant he found the appellant suffering with gross mal-union with stiffness of right elbow. Only on consideration of this aspect the Tribunal might have awarded the amount of Rs.25,000/- towards permanent disability and Rs.25,000/- towards pain and suffering. Hence, I do not see any valid ground to interfere with the order of the Tribunal insofar as awarding compensation by the Tribunal under the heads of permanent disability, pain and suffering.

15. Learned counsel for the appellant submitted that the appellant had suffered one grievous injury and four simple injuries for which the Tribunal has not awarded adequate compensation and failed to award any compensation towards attendant charges and, hence, the same needs to be enhanced.

16. On consideration of the evidence on record, and in the light of the decision of the Apex Court in *Raj Kumar*¹, the appellant must have suffered functional disability due to the injuries received by him in the accident. The Tribunal while answering issue No.1 held that only due to the rash and negligence on the part of the driver of crime Jeep, the appellant sustained injuries and had undergone treatment. Even then, the Tribunal awarded a meager compensation. Hence, the same needs to be enhanced.

17. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court under some of the heads as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	One grievous injury	Rs.12,500/-	Rs.20,000/-
02.	Four simple injuries	Rs.4,000/-	Rs.12,000/-
03.	Medical expenses and extra nourishment	Rs.3,500/-	Rs.10,000/-
04.	Transportation and attendant charges	-----	Rs.10,000/-
05.	Pain and suffering	Rs.25,000/-	Rs.25,000/-
06.	Permanent disability	Rs.25,000/-	Rs.25,000/-
TOTAL		Rs.70,000/-	Rs.1,02,000/-

18. Accordingly, with the above calculation, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.70,000/- to Rs.1,02,000/-, with proportionate costs and interest at the rate of 7.5% p.a. from the date of decree till the date of realization on the enhanced amount of compensation. The rate of interest @9% on Rs.70,000/-, awarded by the Tribunal, from the date of petition till realization remains unaltered.

19. As a sequel to disposal of the appeal, miscellaneous petitions, if any, pending in this Appeal shall stand closed as infructuous.

G. SHYAM PRASAD, J

Date: 02.12.2016.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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