HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 255 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 27.05.2005, in O.P. No.384 of 1998 on the file the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ongole, Prakasam District (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, and the 1st respondent is the owner of the crime Jeep bearing No.AP10G 7619 and 2nd respondent is its insurer, who filed the petition before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.4,00,000/- on account of the injuries sustained by him in a motor vehicle accident.

3. The brief facts of the case are that on 08.11.1997 while the appellant was traveling in the crime vehicle, it was driven in a high speed negligently and while negotiating a curve, the vehicle driver lost control, went off the road and hit against the RTC Bus, coming in its opposite direction, causing multiple injuries to the right eye, chin and fore-head of the appellant. Immediately, he was taken to Government Hospital and after first-aid, he was shifted to private hospital at Narasaraopet and, thereafter, to Hyderabad. He claims to have sustained permanent disability to his right eye and lost vision and, hence, claimed compensation against the both the respondents.

4. Respondent No.1, owner of the crime vehicle, 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 vehicle and contended that the driver of the RTC Bus was at fault and, hence, the RTC ought to have been joined as a party respondent. 2nd respondent further denied sustaining of grievous injuries by the appellant and contended that the claim of the appellant was highly excessive, exorbitant and sought for dismissal of the Petition.

6. The Tribunal, on consideration of the pleadings and evidence of the witnesses PWs.1 and 2, and the documents Exs.A-1 to A-10, passed an Award granting compensation of Rs.67,400/- with proportionate costs and interest at the rate of 9% p.a., as against his claim of Rs.4,00,000/-.

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

8. The appeal against respondent No.1, owner of the crime vehicle, was dismissed for default *vide* order of this Court on 20.04.2016.

9. Heard Sri P. Nagendra Reddy, learned counsel for the appellant, and Sri Kota Subba Rao, learned counsel for the 2nd respondent-insurance company.

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

11. POINT: learned counsel for the appellant submits that the Tribunal has not considered the correct income of the appellant for calculating compensation in this matter. The Tribunal considering the annual income of the appellant as Rs.5,850/-, basing on the income-tax returns submitted by him, fixed his notional annual income as Rs.15,000/- and awarded compensation. Learned counsel for the appellant further submits that the appellant has filed income-tax returns, respectively, for the years 1995-96 showing his annual income as Rs.2,2,00/-, 1996-97 as Rs.5,850/-, 1997-98 as Rs.26,170/- and 1998-99 his annual income as Rs.39,070/-. But the Tribunal has fixed the notional annual income of the year in which the accident occurred as Rs.15,000/- and basing on that erroneously awarded compensation.

12. Learned counsel for the 2nd respondent-insurance company submits that the Tribunal has taken the income of the appellant as Rs.5,850/- pertaining to the year 1997-98 in which the accident occurred. Therefore, calculation of the notional annual income of the appellant by the Tribunal is correct.

13. It is obvious that the appellant is a contractor by profession. His income may vary from year to year. As such, there is a steady increase in his income, as seen from the income-tax returns submitted by him for the years 1997-98 and 1998-99. Therefore, the annual income of the appellant taken by the Tribunal as Rs.15,000/-

does not appear to be justified. Hence, the income of the appellant, as stated by him as Rs.3,000/- p.m., can be taken into consideration for the purpose of calculation of compensation. Therefore, the annual income of the appellant can be taken into consideration as Rs.36,000/- p.a.

14. Learned counsel for the appellant submits that the Tribunal has considered only 30% disability basing on the disability certificate issued by the medical board. The appellant is a contractor by profession and he has suffered because of the disability. The medical certificate issued by the medical board reveals that he has blindness to his right eye and it had affected his business because of blindness to his right eye and, therefore, the disability has to be taken into consideration as 100% functional disability.

15. Learned counsel for the 2nd respondent-insurance company submits that the functional disability, if any, has to be taken into consideration while assessing the disability of a person. The appellant though has suffered 30% disability, his income is increasing every year and therefore the disability cannot be taken as 100% in his case. It is further submitted that the medical board has issued medical certificate showing only 30% disability and therefore the Tribunal has correctly considered the disability of 30%, as stated in the certificate by the authorities concerned. Therefore, there is no need to interfere with the finding of the Tribunal insofar as the aspect of 30% disability is concerned.

16. On consideration of the evidence available on record, it is obvious that the medical board has issued a certificate – Ex.A-5 which clearly shows that the appellant had suffered 30% disability. No doubt, in the certificate it was mentioned that the appellant has suffered blindness to his right eye. Merely, because it is stated in the certificate that he has suffered blindness to his eye, it cannot be treated that the appellant has suffered 100% functional disability. The medical board has issued a certificate stating that he has suffered 30% disability, is only needs to be taken into consideration. As rightly contended by the learned counsel appearing for the 2nd respondent, 30% disability suffered by the appellant cannot be treated as 100% functional disability in this case as the income of the appellant has been increasing from year to year and it shows that his functional disability is not 100% and the 30% disability assessed by the medical board appears to be genuine. Considering the arguments on either side on this aspect, there is no need to enhance the percentage of disability as assessed by the medical board.

17. Learned counsel for the appellant submitted that the Tribunal erroneously applied 7.68 multiplier relying on the principle laid down by this Court in *Bhagawan Das Vs. Mohd. Areef*[1] and as on date the decision no longer holds field requested to apply the multiplier laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*[2]. In view of the same, relevant multiplier applicable to the age group of the appellant between 46

[1] 1987 (2) ALT137
[2] 2009 (6) SCC 121

and 50 is 13 and if the same is multiplied with his annual income which is taken by this Court as Rs.36,000/-, the same would come to Rs.4,68,000/- and out of Rs.4,68,000/- 30% towards the disability suffered would come to Rs.1,40,400/-. Therefore, Rs.32,400/-, the amount of compensation awarded by the Tribunal under the head of 30% disability, is enhanced to Rs.1,40,400/-.

18. Learned counsel for the appellant submits that the amount of Rs.25,000/- awarded by the Tribunal towards pain and suffering is on lower side and sought for enhancement. I do not see any valid ground to enhance the amount under this head.

19. Learned counsel for the appellant further sought to enhance the amount of Rs.10,000/- awarded towards medical and other incidental expenses including transportation. As seen from the evidence on record, the medical bills submitted by the appellant were not marked as the medical officer, who treated the appellant, was not examined to prove the expenses incurred by the appellant. In such cases, it is appropriate to consider the notional medical expenditure keeping in view the nature of injuries, percentage of disability and the treatment undergone by him to enhance the compensation under this head. Accordingly, Rs.10,000/- awarded by the Tribunal towards medical and other expenses including transportation is enhanced to Rs.25,000/-.

20. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	30% disability	Rs.32,400/-	Rs.1,40,400/-
02.	Pain and suffering	Rs.25,000/-	Rs.25,000/-
03.	Medical, extra nourishment, attendant and transportation charges	Rs.10,000/-	Rs.25,000/-
TOTAL		Rs.67,400/-	Rs.1,90,400/-

21. Accordingly, with the above calculation, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.67,400/- to Rs.1,90,400/- keeping in tact the rate of interest awarded by the Tribunal as it is. Respondent No.2-insurance company is directed to deposit the entire amount of compensation within two months from the date of receipt of a copy of this order. Thereafter, the appellant is permitted to withdraw the entire amount, without furnishing any security.

22. 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: 24.11.2016.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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Date.24.11.2016

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