

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 241 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 03.10.2005, in O.P. No.140 of 2003 on the file the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, and the 1st respondent is the owner of the crime Bus bearing No.AP11V 4878 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.3,00,000/- on account of the injuries sustained by him in a motor vehicle accident.

3. The brief facts of the case are that while the appellant was traveling in a Car bearing No.AP9X 1260 from Kothakota to Hyderabad, along with other passengers, on 29.11.2002, the crime Bus came in opposite direction, at a high speed, being driven in a rash and negligent manner, dashed against the car, as a result of which the appellant and other passengers traveling in the Car sustained grievous injuries in the accident. The appellant suffered dislocation of right hip joint, fracture of right mandible, fracture of right acetabulum and injuries on the right side of the chest and other parts of the body. Immediately, he was shifted to Osmania General Hospital, Hyderabad and from there to Sai Krishna Super Specialty Hospital for better treatment. The appellant had undergone operation in the said hospital and he was advised to

undergo another operation in future. Prior to the accident, the appellant was doing optical business and earning Rs.5,000/- p.m. Hence, the appellant claimed compensation of Rs.3,00,000/- against the respondent No.1, owner of the crime Bus, and respondent No.2, its insurer. The police Shamshabad registered a case in Crime No.313 of 2002 against the driver of the crime Bus.

4. Respondent No.1, owner of the crime Bus, remained *ex parte* before the Tribunal.

5. Respondent No.2 filed counter denying the rash and negligent act on the part of the driver of the Bus and also contended that the driver of the Bus was not possessing valid driving license at the time of the accident and the Bus was not roadworthy to ply and it was not covered for a valid insurance policy and 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-16, passed an Award granting compensation of Rs.1,52,500/- with proportionate costs and interest at the rate of 7.5% p.a., as against his claim of Rs.3,00,000/-.

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 Bus, was dismissed for default *vide* order of this Court on 20.04.2016.

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

10. POINT: Sri K. Venkat Ram Reddy, learned counsel for the appellant, submitted that the Tribunal has not considered the disability suffered by the appellant, due to the injuries received by him in the accident, and he also referred the observation of the Tribunal in Para 18 of the order, which is as follows:

“18. As per Ex.A-13, the petitioner required further operation for the fracture of right mandible and its cost was estimated at Rs.35,000/- and it may vary. Further the PW.2 issued Ex.A-14 Disability Certificate and he assessed the disability at the rate of 25% which is partial and permanent in nature. The PW.2 is the doctor, who treated the petitioner throughout his treatment till issuing of Ex.A-14 and he assessed the disability as 25%.”

11. The Tribunal, on consideration of the evidence, awarded the following compensation under the various heads:

S.No.	Name of the Head	Compensation
1.	Loss of earnings	Rs.12,000/-
2.	Loss of future earnings towards 25% disability	Rs.50,000/-
3.	Future surgery	Rs.25,000/-
4.	Pain and suffering	Rs.30,000/-
5.	Hospital bills	Rs.27,000/-
6.	Medical expenses	Rs.3,500/-
7.	Transportation charges	Rs.5,000/-
TOTAL		Rs.1,52,500/-

12. The Tribunal further in Para 16 of the order has observed that in the light of the evidence of PWs.1 and 2 and Exs.A-4 to A-10,

sustaining of injuries by the appellant *i.e.*, fracture of right acetabulum with dislocation of right hip and also fracture of right side mandible, undergoing treatment in Osmania General Hospital for one day and thereafter undergoing treatment in Sai Krishna Super Specialty Hospital as inpatient for a further period of 12 days and thereafter his attending the said hospital for follow up treatment is proved and further he was advised for bed rest. Thus, the injuries sustained by the appellant are grievous in nature.

13. The observations of the Tribunal clearly reveal that the appellant had suffered fracture of right acetabulum, dislocation of right hip joint and also fracture of right mandible, which clearly reveal that he has suffered two grievous injuries. The appellant had also suffered disability of 25%.

14. Learned counsel for the appellant submitted that the income of the appellant was taken into consideration as Rs.2,000/- p.m. when he was alleged to have been earning Rs.5,000/- p.m. by doing optical business. As a matter of fact, the appellant did not produce any evidence to show that he was earning Rs.5,000/- p.m. and, therefore, the Tribunal has taken into consideration his income as Rs.2,000/- p.m. In fact, the income of Rs.2,000/- can be enhanced to Rs.3,000/- p.m. as it is a reasonable amount which may be earned by a casual labourer working in an unorganized sector in view of the decision of the Apex Court, wherein this Court in *Machineni Rama Devi and others Vs. M. Satyanarayana and another*¹, relying on the decision of the Supreme Court in *Lakshmi*

¹ 2013 (6) ALD 178

*Devi and others Vs. Mohd. Tabbar and another*², fixed the income of a deceased worker working in an unorganized sector, where there can be no evidence of the wages paid, as Rs.3,000/- p.m. Therefore, the notional monthly income of the appellant is fixed as Rs.3,000/- p.m. and as such loss of earnings for the period of six months would come to Rs.18,000/-. The Tribunal, basing on Ex.A-14, considering the disability of 25%, awarded an amount of Rs.50,000/- towards disability and loss of future earnings. But, the Tribunal has not adopted any method in assessing the future of loss of earnings at Rs.50,000/-.

15. In view of the principle laid down by the Apex Court in *Raj Kumar Vs. Ajay Kumar and another*³, the Tribunal has to see whether the disability sustained is a permanent or partial disability. Though the disability was assessed at 25% by 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. The nature of the job of the appellant was optical business. In the absence of any specific documentary evidence with regard to the proof of the income of the appellant, his notional income is taken as Rs.3,000/- p.m., his annual income would be Rs.36,000/-. The appellant was aged about 42 years as on the date of accident, and in view of the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*⁴, the relevant multiplier applicable to the age group of appellant between 41 and 45 years is '14'. The percentage of

² 2008 (3) ALD 129 (SC)

³ 201 (1) SCC 343

⁴ 2009 (6) SCC 121

disability suffered by the appellant is 25%. If the annual income of the appellant is multiplied with the relevant multiplier and 25% from out of the same is taken, amount of compensation to be awarded under the head of disability would come and the same in this case is $\text{Rs.}36,000/- \times 14 \times 25/100 = \text{Rs.}1,26,000/-$. In the instant case, on consideration of the evidence of PW.2, as the injury is to the right mandible and there is no specific evidence with regard to the functional disability, the appellant is not entitled for the total sum of $\text{Rs.}1,26,000/-$. Therefore, the appellant is awarded only $\text{Rs.}75,000/-$. Therefore, the amount of compensation awarded by the Tribunal towards future loss of earnings is enhanced to $\text{Rs.}75,000/-$.

16. In view of the principle laid down by the Apex Court in *Raj Kumar*³, 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 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*³, 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.”

17. PW.2 is the medical officer who has treated the appellant throughout till issuance of disability certificate Ex.A-14. The medical officer opined that the appellant requires further operation for the fracture of right mandible and it costs about Rs.35,000/- or it may vary. The Tribunal has awarded only Rs.25,000/- without considering the evidence of the medical officer. In the light of the evidence of PW.2 – medical officer, the appellant is entitled for the entire amount of Rs.35,000/- towards his future surgery.

18 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:

S.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of earnings	Rs.12,000/-	Rs.18,000/-
02.	Loss of future earnings towards 25% disability	Rs.50,000/-	Rs.75,000/-
03.	Future surgery	Rs.25,000/-	Rs.35,000/-
04.	Pain and suffering	Rs.30,000/-	Rs.30,000/-
05.	Hospital bills	Rs.27,000/-	Rs.27,000/-
06.	Medical expenses	Rs.3,500/-	Rs.3,500/-
07.	Transportation charges	Rs.5,000/-	Rs.5,000/-
TOTAL		Rs.1,52,500/-	Rs.1,93,500/-

19. The Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.1,52,500/- to Rs.1,93,500/-. The Tribunal has awarded reasonable interest, which is at the rate of 7.5% p.a., hence, the same needs no interference. 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.

20. 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.

Dsh

HON'BLE SRI JUSTICE G. SHYAM PRASAD

32



02122016

M.A.C.M.A. No. 241 OF 2006

Date. 02.12.2016

DSH