

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL MISCELLANEOUS APPEAL No.3865 of 2004

JUDGMENT:

This appeal is preferred by the appellant/claimant seeking enhancement of the compensation amount of Rs.35,000/- awarded by the Motor Accidents Claims Tribunal – cum – I Additional District Judge, Adilabad, in O.P.No.656 of 1999. The said O.P was disposed of on 12.08.2004 along with six other O.Ps arising out of the same accident.

It was alleged in the claim petition that on 12.03.1999 at about 8.30 am the claimant along with others boarded the jeep bearing No.ATS 7045 at Bharampur Village and on the way when the jeep reached near Devapur bridge, due to the rash and negligent driving of the driver of the jeep, the jeep fell down from the bridge into the river resulting in injuries to the claimant and others. Immediately, they were shifted to Government Headquarters Hospital, Adilabad, for treatment and thereafter they took treatment from private hospitals. A case was registered in Crime No.5 of 1999 by the Police, Talamadugu. The owner of the jeep remained *ex parte* and the second respondent took permission under Section 170 of the Motor Vehicles Act and filed the counter denying the liability. On the basis of the pleadings, the Tribunal framed the following issues:

“1. Whether the accident occurred on 12-3-1999 due to rash and negligent driving of the vehicle bearing Jeep No.ATS – 7045, by its driver?

2. Whether the petitioners are entitled to any compensation? If so, to what amount and against which of the respondents?

3. To what relief?”

All separate claims were clubbed together and a common order was passed by recording the evidence in O.P.No.656 of 1999. The claimant in O.P.No.656 of 1999 was examined as P.W.1 and Exs.A1 to A11 were marked. On behalf of the Insurance Company, R.W.1 was examined and Exs.R1 and R2 were marked. On the basis of oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of jeep bearing No.ATS 7045 on 12.03.1999.

Coming to the quantum of compensation payable to the claimant, the Tribunal recorded that the claimant suffered fracture – cum – dislocation of his left shoulder apart from other injuries on left temporal region and left thumb. He was treated in the District Headquarters Hospital, Adilabad, as inpatient for two days and thereafter he was referred to Yavathmal Higher Institute of Orthopedics where he took treatment in Phadke Hospital as inpatient for three days. Though the second respondent took the plea that the claimants were traveling in the jeep as fare paid passengers, in the absence of any evidence, the said plea was negatived by the Tribunal. P.W.8 – Orthopedic Surgeon, stated that the patients were admitted and

after performing the correctional surgery they were discharged. However, with regard to the claimant in O.P.No.656 of 1999, it was stated that he suffered partial disability to an extent of 20% as per Ex.A9. Since the claimant filed medical bills to the tune of Rs.5,278/-, the same was awarded. An amount of Rs.25,000/- was awarded for pain and suffering due to the injuries sustained by him in the accident on the ground that the fracture would normally interfere with the routine work for a period of two months. An amount of Rs.1,500/- was awarded for extra nourishment and Rs.3,000/- towards loss of earnings during the said period of two months. Thus, in all an amount of Rs.35,000/- was awarded to the claimant and seeking enhancement of the said amount, the present appeal is filed.

As could be seen from the evidence on record, the accident occurred on 12.03.1999 and the claimant was inpatient for a period of five days. The evidence of the doctor – P.W.8, shows that after performing the correctional surgery, he was discharged. Though it was stated that the claimant suffered disability to the extent of 20% as per Ex.A9, the said certificate was not taken into account as it was not issued by the Medical Board. The Tribunal also noticed that there was no evidence with regard to the further course of therapy given to the claimant. In view of the fact recorded by the Tribunal, the 20% disability claimed by the claimant cannot be accepted by this Court also. Keeping in view the amounts awarded by the Tribunal, this Court feels that the amounts are just and proper

for the accident that occurred on 12.03.1999 and also in view of the fact that the claimant was working as a labourer.

The appeal is, accordingly, dismissed confirming the order passed by the Tribunal. The miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

10.04.2018
vs

(A.RAMALINGESWARA RAO, J)

