
(2004) 09 AP CK 0022

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 883 of 2000

Agnuru Jaya Ramulu alias Jaya Ramudu

APPELLANT

Vs

Mohammed Afzal Miyan and Another

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 476(7)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 170
Penal Code, 1860 (IPC) — Section 193

Citation : (2005) 1 ACC 553 : (2006) ACJ 855 : (2004) 6 ALD 734

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K. Rathanga Pani Reddy, for the Appellant; N.S. Bhaskara Rao, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Alleging that when he was proceeding from Wanaparthy to Kurnool in a Maruthi car, driver of the lorry belonging to the first respondent and insured with the second respondent, due to his rash and negligent driving, dashed the lorry against the car in which he was travelling, resulting in grievous injuries and permanent disability to him, appellant filed a claim petition seeking compensation of Rs.7,20,000/- and examined himself as P.W.1 and two other witnesses as P.Ws.2 and 3 and marked Exs.A.1 to A.16 and Ex.X.1 on his behalf, before the Tribunal. First respondent chose to remain ex parte both before the Tribunal and this Court. Second respondent who filed a counter contesting the claim did not adduce any oral evidence but marked Ex.B.1 by consent on its behalf. The Tribunal after having held that the accident occurred due to the rash and negligent driving of the driver of the lorry belonging to the first respondent awarded Rs.1,45,000/- as compensation to the appellant. Dissatisfied with the compensation awarded to him, this appeal is preferred by the claimant.

2. The contention of the learned counsel for the appellant is since the voluminous

documentary evidence adduced by the appellant shows that he had to spend a heavy amount for his treatment and in view of the fact that petitioner has to undergo another operation, as stated by P.W.3, compensation awarded by the Tribunal is too meager that too because appellant suffered a permanent disability and is unable to live his normal life as he used to prior to the accident, and so he is entitled to the entire compensation claimed.

3. Though first respondent, against whose driver an allegation of rash and negligent driving is made, chose to remain ex parte and the second respondent did not think it fit to obtain permission from the Tribunal to contest the claim on all the pleas open to the first respondent, after considering the evidence on record, I am of the considered opinion that the appreciation of evidence by the Tribunal on issue No.1 relating to negligence of the driver of the lorry of the respondent, is not proper, and so by virtue of the power vested in the appellant Court by Rule 33 of Order XLI C.P.C., I wish to reconsider the said issue, because this Court cannot shut its eyes to the fraud played on the Tribunal and allow an apparently erroneous and unsustainable finding to become final, and thereby enable the appellant to enrich himself, probably in collusion with the first respondent, at the expense of a nationalized insurance company.

4. P.W.1, the appellant, naturally stated that the accident occurred due to the negligence of the driver of the lorry. P.W.2, a friend of the appellant said to be travelling with the appellant at the time of accident also stated that the accident took place due to the rash and negligent driving of the driver of the lorry belonging to the first respondent. P.W.2 being a friend of appellant would be an interested witness. Men may lie. Documents and circumstances won't lie. Ex.A.1, F.I.R. issued in connection with the accident, shows that brother of the appellant gave the report to the police about the accident that allegedly took place on 12.07.1997 at 1.00 a.m., on 13/07/1997 at 6.00 p.m. in Manopad Police Station. Ex.A.3, charge sheet filed by the police, against the driver of the lorry belonging to the first respondent, shows that the accident involving the appellant occurred during the intervening night of 12/13-07-1997 at about 1.00 a.m. i.e. 01.00 a.m. on 13.07.1997. In their evidence, P.W.1 and P.W.2 stated that when they were returning in a car during the night of 12/07/1997 they were involved in an accident. Whether the accident took place during the intervening night of 12/13.07.1997 as alleged in Ex.A.3 and the evidence of P.Ws.1 and 2 is doubtful, because their evidence shows that after the accident, P.W.1 was shifted to R.R. Hospital, Kurnool, and was kept there for about a day. P.W.2, who, according to Ex.A.3 (charge sheet), received simple injuries, did not state that he went to any hospital, for treatment of the injuries suffered by him, but stated that he and the other friend of him and the appellant, who was sitting in the backside of the car and who did not receive any injuries, shifted the appellant to R.R. Hospital, Kurnool, from the scene of accident. P.W.3, Dr. B.Chandranna, who issued Ex.A.2 injury certificate relating to the appellant, stated that he, who is working as Assistant Professor in Orthopedic Department, Government Medical College, Kurnool, is also working in R.R. Hospital, Kurnool, and treated P.W.1 on

12.07.1997, when he was admitted in the R.R. Hospital, Kurnool. Since the evidence of P.W.3 is that he treated the appellant on 12.07.1997, since the accident took place at 1.00 a.m. and since it would take a few hours time for shifting the appellant from the scene of accident to R.R. Hospital, Kurnool, the accident in fact must have occurred during the intervening night of 11/12.07.1997. If really the accident took place during the intervening night of 12/13.07.1997, the date of admission in Ex.A.2 would have been noted by P.W.3, a Government Doctor, as 13.07.1997, but not 12.07.1997. Since the evidence of P.W.3 and Ex.A.2 clearly show that the appellant was admitted in the hospital on 12.07.1997 and was discharged on 13.07.1997, the accident could not have taken place at 1.00 a.m. during intervening night of 12/13.07.1997, but should have occurred on the intervening night of 11/12.07.1997. P.W.3, an Assistant Professor in Government Hospital, when he knew that appellant, being treated by him, was the victim of a medico legal case, would not have failed to enquire if information regarding the accident was given to the police or not, and if not he would and ought to have informed the police about the appellant receiving injuries in a road accident. Another significant and glaring omission on the part of P.W.3 is his failure to mention the time of examination of the appellant on 12.07.1997.

5. If really P.W.1 was admitted in R.R. Hospital at Kurnool as an in-patient on 12.07.1997 and was treated there by P.W.3, P.W.3 would have noted the injuries found on the body of the appellant at the time of his admission and his condition and also would have opened a case sheet containing the time and date on which he was brought to R.R. hospital. Failure of the appellant to summon the case sheet and other relevant material relating to his admission in and discharge from R.R. Hospital, Kurnool, i.e. the same town in which the Tribunal is functioning, when he took steps for production of the case sheet from Apollo Hospital, Hyderabad, was not either kept in view, or taken into consideration by the Tribunal. The Tribunal also did not focus its attention as to the date on which the accident actually took place, and when the report regarding the accident was given and the cause for the delay.

6. That the date and place of accident spoken to by P.W.1 and P.W.2 is incorrect, and that the police did not conduct any investigation worth the name, and made a table investigation and laid a charge sheet to help the appellant in claiming compensation from the Tribunal, is evident from the entries in Ex.X.1, case sheet of appellant, summoned from the Apollo Hospital, Hyderabad, by the appellant. The discharge summary available in the middle pages of Ex.X.1, while being discharged on 20.08.1997 after his admission on 13.07.1997, contains a column relating to History. It reads:

"Patient has allegedly sustained injuries to right lower limb on 11/7/97 at Kurnool in an RTA following which he has he has severe pain right hip and thigh with inability to bear weight on the affected limb. No history of loss of conscious/ seizures/ ENT bleeding. He was initially admitted at a Private Nursing Home at

Kurnool and shifted here for further management."

The entry dated 13.07.1997 of Ex.X.1 reads:

"H/o RTA 2 days back. Pt. Travelling in a car had a head on collision e a lorry."

(Two days back from 13.07.1997, would be 11.07.1997)

Thus, from the entries in Ex.X.2 got summoned by the appellant, it is clear that appellant received injuries in a road traffic accident on 11/07/1997 but not during the intervening night of 12/13.07.1997 as alleged in Ex.A.3 charge sheet. Had the police conducted a fair investigation, and or had taken pains to verify the treatment taken by the appellant at Apollo Hospital, they would not have failed to note that the appellant received injuries in an accident that took place on 11.07.1997, but not during the intervening night of 12/13.07.1997.

7. The averments in Ex.A.3 show that the Investigation Officer conducted a panchanama of the scene of accident. But, for the reasons best known to him, appellant did not produce the copy of the scene of accident panchanama, which would have shown the topography of the scene of accident and the facts obtaining thereat, which would have been of great assistance to the Court in deciding issue No.1 framed by the Tribunal. Failure to produce the scene of accident panchanama, entitles an adverse inference being drawn against the appellant.

8. Though nobody connected with Ex.X.1, got summoned and marked by the appellant, is examined, it can be taken into consideration in view of Rule 476 (7) of A.P. Motor Vehicles Rules, 1989. Since the entry dated 13.07.1997 in Ex.X.1 extracted above shows that the accident was the result of a head on collision between the car and a lorry, and since the report regarding the accident was given about two days after the accident, and was not given by the appellant or by any of the persons allegedly travelling in the car of the appellant along with the appellant, but was given by the brother of appellant, who was not a witness to the accident, probably basing on the information given to him by somebody merely basing on the allegations in the Ex.A.1, and the obvious table investigation conducted by the police, who filed a charge sheet on 05/01/1998, even without verifying the records in the Apollo hospital and the R.R. hospital where the appellant claims to have undergone treatment, and even without sending both the vehicles i.e. car and lorry, involved in the accident to a Motor Vehicles Inspector for examination and report (Ex.A.3 - charge sheet does not show that the vehicles involved in the accident were inspected or tested by the Motor Vehicles Inspector) it would be traversity of justice to hold that the accident was caused by the lorry belonging to the first respondent during the intervening night of 12/13.07.1997, that too due to the rash and negligent driving of the driver of the lorry of the first respondent.

9. The entry dated 13.07.1997 in Ex.X.1 extracted above shows that there was a head on collision between the two vehicles. A head on collision between two

vehicles takes place only when the drivers of both the vehicles involved in the accident are negligent. So, from the above entry it is easy to see that appellant himself should have contributed to the accident. His contribution to the accident can in no event be less than 50%. Since the police did not send the vehicles involved in the accident for examination by a Motor Vehicles Inspector, the lorry that allegedly caused the accident is not known. Therefore, appellant in collusion with the first respondent and the police, with the help of P.W.2 must have filed a collusive petition to enable him to get compensation from the insurer of the lorry of the first respondent i.e. second respondent. For reasons best known to it, second respondent did not obtain permission u/s 170 of the Motor Vehicles Act, 1988 (the Act), to contest the case on all the grounds.

10. The Tribunal awarded Rs.25,000/- towards pain and suffering, Rs.50,000/- towards medical expenses, Rs.10,000/- towards travelling expenses, Rs.50,000/- towards functional loss of right hip joint and Rs.10,000/- towards loss of amenities, making a total of Rs.1,45,000/-. The contention of the learned counsel for appellant is that since the appellant after the accident is unable to attend to his business, he is entitled to loss of earnings. Petitioner is a partner in a firm carrying on business. Ex.A.16 Income tax assessment orders produced by the appellant show that the firm's earnings (profits) are going up year by year. So, it is clear that neither the appellant nor the firm, in which he is a partner, suffered any loss due to the injuries suffered by the appellant in the accident. Therefore, the Tribunal not awarding any compensation to the appellant towards loss of earnings cannot be said to be erroneous.

11. Nagappa v. Gurudayal Singh relied on by the learned counsel for the appellant has no application to the facts of this case.

12. Appellant, who did not come to Court with clean hands and filed the claim petition obviously in collusion with the first respondent, P.W.2 and the police, though the accident seems to have occurred due to his own negligence or contributory negligence of not less than 50%, instead of feeling happy for the unjust enrichment he could make through the award of the Tribunal, avariciously filed this appeal seeking more compensation than that was awarded by the Tribunal. Second respondent, for the reasons best known to it, failed to obtain permission from the Tribunal u/s 170 of the Act to file an appeal or cross objections questioning the award of the Tribunal. As an appellate Court, I do not want to interfere with the compensation awarded by the Tribunal, though, from the evidence on record, appellant should not have been awarded even that amount against the respondents.

13. Since there is prima facie evidence to show that the appellant, in collusion with P.W.2 and the investigating officer, made a false claim and gave false evidence and brought into existence false documents, in order to prevent recurrence of such events, it would be necessary in the interests of justice, to prosecute the appellant, P.W.2 and the investigation officer (who laid Ex.A.3 charge sheet without conducting proper investigation) for an offence u/s 193

I.P.C. Therefore, the Registrar (Judicial) is directed to make a complaint to the concerned Magistrate for an offence u/s 193 I.P.C. against the appellant, P.W.2 and the Police Officer who made the investigation and laid the original of Ex.A.3 charge sheet.

14. In the result, the appeal is dismissed with costs.