
(2015) 07 AP CK 0059
In the Andhra Pradesh High Court
Case No : C.M.A. No. 4069 of 2004

Ananthati Vishnu

APPELLANT

Vs

T. Anjaiah and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 173
Penal Code, 1860 (IPC) — Section 337

Citation : (2015) 4 ACC 678 : (2015) 5 ALD 352 : (2015) 4 ALT 784

Hon'ble Judges : T. Sunil Chowdary, J

Bench : Single Bench

Advocate : P. Lakshmi, Counsel, for the Appellant

Final Decision : Dismissed

Judgement

T. Sunil Chowdary, J—This appeal is filed under Section 173 of the Motor Vehicles Act, assailing the judgment and award dated 16.03.2004 passed in O.P. No. 1484 of 2001 on the file of Principal Motor Accidents Claims Tribunal at Nalgonda, whereby and whereunder an amount of Rs. 50,614/- was granted as compensation to the petitioner as against the claim of Rs. 80,000/-. For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed before the Tribunal.

2. The facts leading to the filing of the present appeal are briefly as follows:

3. On 14.11.2001 at about 4.30 a.m. the petitioner was proceeding from Choutupal to Chennai by driving his DCM lorry bearing No. AP 24 T 8829 with a load of vegetables. When the lorry reached the outskirts of Kavali, the driver of the lorry bearing No. AP 27 U 1499 came in opposite direction and hit the lorry of the petitioner. The Station House Officer Kavali Police Station registered a case in Cr. No. 106 of 2001 against the petitioner under Section 337 IPC. Due to the accident, the petitioner sustained fracture on various parts of the body and took treatment as in-patient in Sanjeevini Hospital, Hyderabad and underwent

operation. Due to the fractures, the petitioner could not attend his work and thereby lost his income. The petitioner also incurred disability due to the fracture sustained by him. As on the date of accident, the lorry bearing No. AP 27 U 1499, which belongs to the first respondent, was validly insured with the second respondent. Hence the petitioner filed claim petition seeking compensation of Rs. 80,000/- contending that both the respondents are jointly and severally liable to pay compensation to him.

4. First respondent filed counter denying the averments made in the petition inter alia contending that the accident occurred due to the rash and negligence on the part of the petitioner only. It is further contended that as on the date of accident, the crime vehicle was insured with the second respondent and hence the second respondent alone has to pay the compensation, if any payable, to the petitioner.

5. Second respondent filed counter denying the averments made in the petition inter alia contending that the petition is not maintainable for non-impleading of the owner and insurer of lorry bearing No. AP 27 U 1499.

6. Basing on the above pleadings, the Tribunal framed the following issue for trial:

"Whether the petitioner is entitled to a compensation of Rs. 80,000/- with simple interest @ 24% from R-1 owner and R-2 Insurer of lorry, AP-24- T-8829, for the injuries caused to him in the accident on 14.11.2001 at about 4.30 a.m. on being hit by another lorry, AP-27-U-1499?"

7. During the course of trial, the petitioner himself examined as P.W. 1 and got marked Exs.A.1 to A.8. No oral or documentary evidence was adduced on behalf of the respondents.

8. The Tribunal, after appreciating the oral, documentary evidence and other material available on record, held that the petitioner is entitled to an amount of Rs. 50,614/- as compensation. As stated supra, dissatisfied with the said amount of compensation awarded by the Tribunal, the claimant preferred the present appeal.

9. The learned counsel for the petitioner submitted that the trial Court has not considered Ex. A.3 disability certificate in right perspective and erroneously discarded the same. She further submitted that the amount of compensation awarded by the Tribunal is too meagre.

10. Per contra, the learned counsel for the second respondent submitted that the Tribunal has awarded just and reasonable compensation. He further submitted that the Tribunal cannot consider the disability certificate without examining the doctor who issued the said certificate.

11. Now the points that arise for consideration in this appeal are:

"(i) Whether the Tribunal committed error in discarding Ex. A.3 disability certificate?"

(ii) Whether the Tribunal has awarded just and reasonable compensation?"

Point Nos. (i) & (ii);

12. Since both the points are interrelated to each other, these two points are simultaneously addressed as under:

13. A perusal of the record reveals that the petitioner filed the claim petition under Section 163-A of the M.V. Act. It is an admitted fact that by the date of accident, the petitioner was driving the lorry bearing No. AP 24 T 8829. The police concerned registered a criminal case against the petitioner. The Tribunal awarded an amount of Rs. 30,000/- for the two grievous injuries, Rs. 5,000/- towards one simple injury, Rs. 5,000/- towards pain and suffering, Rs. 7,614/- towards medicines and Rs. 3,000/- towards wages. In total, the Tribunal awarded an amount of Rs. 50,614/- as against the claim of Rs. 80,000/-.

14. The predominant contention of the learned counsel for the petitioner is that the Tribunal has not awarded any amount towards loss of future earnings even though the petitioner incurred 40% disability. Ex. A.3 is the disability certificate dated 16.7.2002. For one reason or the other, the petitioner did not choose to examine the doctor who issued the disability certificate. It is needless to say that the claimants in M.V.O. Ps have to examine the doctor to prove the percentage of functional disability incurred by them so as to determine the loss of future earnings. If the claimants have obtained disability certificate from the medical board, he/she has to examine one of the doctors of the board to prove the recitals of the document. It is a settled principle of law that mere marking of document would not amount to proof of the recitals of the same. The doctor who issued Ex. A.3 is the competent person to say the percentage of functional disability incurred by the petitioner. In Para No. 7 of the judgment, the Tribunal made an observation that Ex. A.3 disability certificate was not proved by examining competent person. The Tribunal or the Court shall not place reliance on the disability certificate without examining the doctor concerned. Apart from this, the Tribunal also observed that there is discrepancy between the recitals of Ex. A.2 discharge card and Ex. A.3 disability certificate. Unless this aspect is properly explained by the competent doctor, it is not safe to place reliance on such documents. This may be one of the reasons for not placing reliance on Ex. A.3 disability certificate. I am fully agreeing with the finding recorded by the Tribunal on this aspect.

15. A perusal of the record reveals that the Tribunal has awarded just and reasonable compensation under different heads to the petitioner. Hence there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal. The appeal lacks merits and bonafides. Accordingly, this appeal is dismissed. As a sequel, miscellaneous petitions, pending in this appeal, if any, shall stand closed. No order as to costs.