
(2010) 11 AP CK 0054

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2760 of 2003

Baliya Raju

APPELLANT

Vs

N. Lakshmi Bai and Another

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Evidence Act, 1872 — Section 45

Citation : (2010) 11 AP CK 0054

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : T.M.K. Chaitanya, for the Appellant; None for Respondent No. 1 and B. Devanand, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This Civil Miscellaneous Appeal arises out of Award dated 19.2.2003 in M.V.O.P. No. 1114 of 2003 on the file the VI Additional District Judge-cum-Motor Accidents Claims Tribunal, (For short "the Tribunal), Visakhapatnam.

2. The Appellant is the claimant in the O.P. before the Tribunal. While, the Appellant along with another person was repairing the T.V.S. moped by the side of the road margin on 3.2.2001 at about 23.00 hours, a van bearing Registration No. AP 31 U 1492, coming from Narsipatnam and driven by its driver rashly, dashed the Appellant and another person. The Appellant has filed the O.P. claiming a sum of Rs. 2.00 lakhs as compensation for the injuries sustained by him. Respondent No. 1 is the owner and Respondent No. 2 is the insurer of the offending vehicle.

3. The Tribunal has given a finding that the driver of the offending vehicle has driven the vehicle in a rash and negligent manner and was responsible for causing of the accident. The Tribunal has however, declined to award any compensation on the ground that the Appellant has not adduced medical

evidence, except filing of three X-rays to show that he has suffered the injuries.

4. At the hearing, learned Counsel for the Appellant has strenuously contended that the Tribunal has committed an error in not awarding any compensation though the claimant examined himself as P.W.1 and another person, who was an eye witness to the incident was examined as P.W.2, who had deposed that the Appellant has received multiple injuries and that he was in hospital for two weeks. Learned Counsel further submitted that the Tribunal has awarded Rs. 1.00 lakh towards compensation in case of another person, who also sustained injuries in M.V.O.P. No. 1113 of 2001.

5. Sri B. Devanand, learned Standing Counsel representing Respondent No. 2 has opposed the above contention and submitted that in the absence of any medical evidence adduced by the Appellant, he is not entitled to any compensation and that the Tribunal has rightly rejected the Appellant's claim in toto.

6. A perusal of the record shows that the Appellant, who is examined as P.W.1, has deposed that on account of the injuries sustained by him, he was admitted in Government Hospital in Narsipatnam and treated as an in-patient for 12 days and on his report given to the police, an F.I.R. was registered, which was marked as Ex.A1 and the M.V.I. report was marked as Ex.A2. A close perusal of the Appellant's evidence shows that he has not spoken a word about the nature of injuries he has sustained. Though the Appellant has filed three x-rays, in the cross-examination, a suggestion was made to him that they were fabricated. The tribunal on a perusal of the x-rays held that they do not reveal that they belong to the Appellant. Learned Counsel for the Appellant has placed reliance on the judgment of Rajasthan High Court in Pokarmal Ram Narayan and Anr. v. Ram Saran and Ors. 1986 ACJ 122, in support of his submission that even in the absence of medical evidence, in appropriate cases, the Tribunal is empowered to award compensation for the injuries. In my opinion, there is no hard and fast rule in award of compensation for the injuries sustained. However, the initial burden lies on the claimant to prove the factum and nature of the injuries to enable the Tribunal to arrive at proper assessment of compensation. As noted above, the evidence of the Appellant is too vague, which does not inspire confidence at all. If the Appellant has suffered injuries worth the name, he would have referred to the nature of the injuries even if he was not diligent enough in examining the doctor. Even the x-rays filed by him do not reveal that they pertain to the Appellant.

7. In United India Insurance Company Limited Vs. Mohd. Khaj Rasool Sayyed @ Mohd. Khaja Main Shaik and Another, this Court has refused to rely upon the medical evidence filed by the claimant therein without examining the expert. This Court held that the medical evidence falls within the realm of expert evidence, as envisaged u/s 45 of the Indian Evidence Act, 1872. In the instant case, leave alone not letting in the medical evidence, the Appellant failed to file necessary documents showing the nature of injuries sustained by him, except three x-rays which, as already noted above, do not show that they pertain to the Appellant.

8. In the light of the above facts, I am of the opinion that the Tribunal has not committed any illegality in rejecting the claim of the Appellant for compensation.

9. For the above mentioned reasons, the Civil Miscellaneous Appeal fails and it is accordingly dismissed. No costs.