

(2004) 04 AP CK 0119
In the Andhra Pradesh High Court
Case No : CMA No. 445 of 2001

Bandaru Azad Chandra Sekhar

APPELLANT

Vs

K. Venkata Ramana and Another

RESPONDENT

Date of Decision : 13-04-2004

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 476(6)
Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2005) 2 ACC 582 : (2006) ACJ 2146 : (2004) 4 ALD 713 : (2004) 5 ALT 318

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : A. Rajendra Babu, for the Appellant; Ganesh, for the Respondent

Final Decision : Allowed

Judgement

B.S.A. Swamy, J.—This civil miscellaneous appeal is filed against the order and decree passed by the Motor Vehicle Accidents Claims Tribunal, Guntur in M.V. O.P. No. 35 of 1996, dated 22-11-1999.

2. This is yet another case to demonstrate how the members of the legal fraternity and the judicial officers are dealing with motor vehicle accidents claims. There is neither seriousness on the part of the advocates to put forth the case of their clients in the manner required nor the judicial officers are having any urge to do justice to a suffering victim by giving just and reasonable compensation for the injuries sustained by him.

3. In this case at the time of the accident the victim was aged about 10 years. He suffered not only a fracture to the bone on the left leg ankle, but the entire muscle was also peeled into pieces. In the result the boy has to undergo trauma in the prolonged treatment both at a hospital in Vijayawada and in NIMS at Hyderabad apart from the money spent by the father of the victim-child for giving treatment to his son.

4. Though the doctor who treated the patient is expected to give evidence on the treatment he has given to the patient, the advocate brings some other doctor and examines him, but not the doctors who actually treated and witnessed the pain and suffering of the victim-child. Though the witness says that the victim-child underwent three major operations in NIMS itself, I do not find any particulars of the treatment in the pleadings and from what date to what date he was in the hospital. But the bills issued by the NIMS Hospital running into thousands of rupees that are in the bundle remained unmarked in the case.

5. Time and again, I have been pointing out that even if the advocate fails in his duty to bring all the facts to the notice of the Court, the Court is duty bound to look into the matter carefully and see whether the advocate filed the entire documentary evidence that is required in the case, before awarding just and reasonable compensation commensurate with the pain and suffering of the victim, pointing out Rule 476(6) of A.P. Motor Vehicles Rules. Neither the Courts nor the advocates are bothered to see justice is done to the people in distress, instead they converted motor vehicle accidents claims as money spinning cases without any seriousness that is required.

6. The facts of the case are that the appellant-victim, who is aged about 10 years, while passing through main road near Sundaraiah Nagar, Tadepalli on 29-3-1995 at about 10-30 a.m., the driver of the accident-lorry bearing No. AP-04-T, 1009 coming from Guntur side, hit the boy by driving the vehicle in a rash and negligent manner.

7. According to the claimant he underwent treatment in a private hospital at Vijayawada for three months and thereafter he was shifted to NIMS, Hyderabad, where he underwent three major operations. In spite of the prolonged treatment, he could not recover from the injuries fully. He was physically present in the Court and brought to the notice of the Court that even now he is undergoing treatment. He filed this claim petition claiming a compensation of Rs. 3,00,000/-.

8. The defence of the respondent is one of denial.

9. Basing on the pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AP-04-T-1009.

2. Whether the petitioner is entitled to compensation and if so, to what amount?

3. To what relief?

10. To prove the case, the claimant's father namely B. Yedukondalu, who is working as a conductor in APSRTC, was examined as PW-1 and one Dr. V. Somanadham, Orthopedic Doctor working in Government Hospital at Vijayawada was examined as PW-2 and one D. Venkateswarlu was examined as PW-3, Exhibits A-1 to A-12 were also marked.

Ex.A1 : C.C. of FIR in Cr.No. 47/95 if Tadepalli P.S.

Ex.A2 : C.C. of Charge-sheet.

Ex.A3 : would certificate issued by Dr. M. Subba Rao.

Ex.A4 : O.P. Chit issued by Medinova Diagnostic Service, Khammam.

Ex.A5 : Receipt issued by Dr. M. Subba Rao for Rs. 25,000/-

Ex.A6 : A bench of 65 Medical Bills for Rs. 9,353-73Ps.

Ex.A7 : Diagnosis reports (3).

Ex.A8 : Attested copies of Bills issued by the NEVIS Hospital.

Ex.A9 : Photos with negatives to prove the disability.

Ex.A10: C.C. of wound certificate.

Ex.A11: X-ray.

Ex.A12: Photostat copy of Medical certificate to prove disability.

On behalf of the respondents none were examined.

11. Having held that the accident took place due to rash and negligent driving of the lorry driver and having considered the evidence available on record, the Tribunal awarded compensation of Rs. 85,000/- for the disabilities and injuries sustained by the claimant, and towards medical expenses Rs. 9,353-73ps. in all Rs. 94,353-73ps. with 12% interest from the date of filing of the claim petition.

12. My judicial consciousness has been completely shaken after observing the manner in which the learned n Additional District Judge awarded the compensation in this case and I am of the opinion that perhaps he signed the judgment without understanding the nature of the compensation to be awarded to the victim involved in the accidents.

13. PW-1 in his evidence admitted that his employer-APSRTC reimbursed the expenditure incurred by him in Nizam's Institute of Medical Sciences under Ex.A8. The learned Judge instead of observing that the expenditure incurred in the Nizam's Institute of Medical Sciences was already reimbursed by the employer of the claimant's father while awarding Rs. 9,353-73ps. towards the remaining bills, passed the award in the following terms.

"On the basis of the disability and the injuries sustained by the petitioner, he can be awarded compensation of Rs. 85,000/- excluding the amount spent for medicines i.e., Rs. 9,353-73ps. Thus the petitioner is entitled to a total amount of Rs. 94,353-73ps. It has come in the evidence of PW-1 that RTC Department paid Rs. 20,000/- for the treatment. Therefore, as already PW-1 received the amount from RTC Department. The amount of Rs. 94,353-73ps. which sum is arrived to be paid as compensation to the petitioner would be reasonable to meet the expenditure incurred and towards loss of amenities, pain and suffering, which can be rounded of to Rs. 95,000/-. Both the respondents are liable to pay the

compensation."

14. Firstly, he did not award compensation under general damages and special damages. Without any basis he awards Rs. 85,000/- towards permanent disability and the injuries sustained by the claimant. He has not chosen to award any amount towards pain and suffering and the trauma undergone by the child, who is aged 10 years at the time of accident. At the time of giving evidence itself PW-1 stated that the victim is now studying intermediate. The father of the victim-child filed an affidavit in the Court that in spite of the sufferings undergone by the boy in the plastic surgery in NIMS Hospital, he was able to prosecute studies and he is now in 2nd year of intermediate. The boy secured 402 marks out of 440 marks in the 1st year intermediate course. This very fact establishes beyond doubt that the boy is a brilliant boy. The father of the boy is working as a conductor in APSRTC and with the limited means at his disposal the boy could fare very well in his studies, while undergoing physical and mental agony. Though the boy is having a bright future and the possibility of getting a respectable job with a handsome salary is there due to non-formation of the calf muscle of the left leg and the fracture in the ankle of the left leg the boy has to suffer this disability a throughout his life, which is going to affect his brilliant career in future.

15. The question that falls for consideration is what would be the just and reasonable compensation to be awarded for an injury of grave nature and the pain and suffering the victim-child has to undergo throughout his life from 10th year of his life.

16. From the affidavit filed by the father of the claimant before this Court it looks that the boy desires to become a doctor or a scientist since he is a Bi.P.C. student. As per Ex.A-12 certificate given by the medical board, the disability is permanent and partial and it is estimated at 40%. It is likely to restrict his movements whatever profession he pursues and the disability always haunts his mind that he is not able to give best of his ability to the society.

17. Since the medical board opined that the disability is permanent and partial to the extent of 40% I have no option except to make some guess work in this case for awarding compensation towards permanent disability sustained by the claimant considering his brilliant educational career till this date.

18. In view of the facts and circumstances of the case, I feel that the boy should be awarded at least Rs. 2,00,000/- towards permanent and partial disability sustained by him in the accident keeping his brilliant academic career and the possibility of getting a good job.

19. It is in the evidence that the boy underwent treatment at Vijayawada, thereafter at his grand father's place i.e., Khammam and ultimately admitted in MMS, where he underwent three operations including a plastic surgery. I myself had seen the boy and his parents suffering continuous since the fateful day. Likewise I inclined to award Rs. 50,000/- towards pain and suffering to which the

boy was subjected to and a compensation of Rs. 10,000/- for extra nourishment during the period in which he was undergoing treatment. I am sure that the father might have spent much more higher amounts in taking his child from one hospital to other. But as the expenditure incurred by him in the NIMS Hospital was reimbursed by his employer-APSRTC, the said amount cannot be taken into consideration and the rest of the bills produced and marked under Ex.A-6 were considered and the Tribunal awarded a sum of Rs. 9,353-73ps. towards medical expenses. The same do not call for any interference from this Court.

20. The case of the claimant is that immediately after the accident he was admitted in Myneni Bone and Joint Hospital, Vijayawada and he was in that hospital from 29-3-1995 to 8-6-1995 and some of the bills were marked under Ex.A6 relating to that period. But as per Ex.A5 the father of the claimant paid Rs. 25,000/- to the private hospital at Vijayawada. He did not choose to examine the doctor with reference to the hospital records. But at the same time, the evidence on record says that the boy underwent treatment in that hospital for a period of three months, if not Rs. 25,000/- he might have spent considerable amounts in that hospitals. It is a known fact that the private hospitals are taking the shape of corporate hospital. Hence, I am inclined to award an amount of Rs. 15,000/- towards hospital charges. In all Rs. 2,84,353-73ps. compensation is awarded which is rounded to Rs. 2,84,000/- and this amount shall carry interest @ 9% p.a. from the date of filing of the petition till the date of realization.

21. Since both the judicial officer as well as the advocate miserably failed in discharging their duties, keeping the bright future of the boy in mind and the fact that the accident has taken place about eight years back, I disposed of this claim petition by considering legal evidence available on record.

22. Accordingly, the award of the Motor Vehicles Accidents Claims Tribunal, Guntur is set aside and the appeal is allowed. No order as to costs.

23. Before parting with the case, I have to observe that the judicial officer elaborately dealt with the procedure to be followed while examining child witness, as if a child witness has been examined in this case, but to my surprise, I do not find any child witness and I do not know why the judicial officer of the rank of II Additional District Judge dealt with the said issue, leaving aside the main issue on which he has to give a judgment where he committed the gravest blunder.