
(2006) 02 AP CK 0037
In the Andhra Pradesh High Court
Case No : A.A.O. No. 2472 of 2004

J. Ramalakshmi

APPELLANT

Vs

Nalamari Lakshmi and Another

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 337

Citation : (2006) 2 ALT 218

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : Shanmukha Rao, for the Appellant; Jayanti S.C. Sekhar and N.S. Bhaskar Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Chandraiah, J.—The appellant is the 1st respondent, owner of the vehicle, in M.V.O.P. No. 1585 of 2001. The 1st respondent herein is the claimant and the 2nd respondent is the Insurance Company.

2. The appeal is filed aggrieved by the award, dated 13-2-2004 in M.V.O.P. No. 1585 of 2001. The Tribunal below, against the claim of Rs. 2,00,000/- under various heads, awarded an amount of Rs. 45,400/-. Aggrieved by the said award the appellant, owner of the vehicle, filed this appeal.

3. The parties are hereinafter referred to as arrayed in M.V.O.P. No. 1585 of 2001.

4. The brief facts of the case are that the petitioner-claimant was aged about 25 years, working as labourer and earning an amount of Rs. 2,000/- per month prior to the accident. On 26-8-2001 at about 17-30 hours after completing her work, she boarded a tipper bearing registration No. 31W459 at Pydivada Agraharam to go to her village and on the way at about 18-00 hours the driver of the tipper drove the vehicle at a high speed and in a rash and negligent manner and in that process lost control and the tipper capsized to its left side and as a result the petitioner sustained fracture of lower end of radius (right side). She

was shifted to Mother and Child Hospital, Sabbavaram and from there to Upper Grade Primary Health Centre and from there to K.G. Hospital, Visakhapatnam. She was treated as in-patient for ten days. After discharge, she took out-patient treatment. She spent Rs. 30,000/- (Rs. Thirty thousand only) on medicines and nutritious food. On a report, S.H.O. Sabbavaram Police Station registered a case in crime No. 70 of 2001 u/s 337 IPC against the driver of the tipper. Because of the injuries in the accident, she was bed-ridden and went into deep financial troubles as she lost her earnings and earning capacity. The 1st respondent in the O.P. is the owner and the 2nd respondent is the Insurer of the vehicle. Both of them are jointly and severally liable to pay the compensation of Rs. 2,00,000/-. The petitioner-claimant claimed the following amounts:

For Special Damages:

(a) Partial loss of earnings Rs. 4,000-00 (b) Transport to hospital Rs. 1,000-00 (c) Extra Nourishment & Medicines Rs. 30,000-00 (d) Damages to clothes & articles Rs. 2,000-00 For General Damages: (a) Compensation for pain & suffering Rs. 35,000-00 (b) Compensation for continuing permanent disability, if any Rs. 65,000-00 (c) Compensation for loss of earning power Rs. 65,000-00
_____ Total Rs. 2,00,000-00 _____

5. On behalf of the respondents counter was filed denying the averments of the claimant and also the amount of claim. On behalf of the petitioner-claimant, she examined herself as P.W.1 and got marked Exs.A-1 to A-3. On behalf of 1st respondent, the owner of the vehicle, she examined herself as R.W.1 and the Assistant Administrative Officer of the Insurance Company as R.W.2 and Ex.P-1 was marked.

6. The Tribunal below framed the following issues:

(1) Whether the accident resulting injuries sustained by the petitioner Smt. Nalamari Lakshmi, is due to the rash and negligent driving of the motor vehicle (lorry) bearing Reg. No. AP 31W 459 driven by its driver?

(2) Whether the petitioner is entitled to compensation? If any, if so, to what amount and from which of the respondents?

(3) To what relief?

7. After considering the evidence on record, the Tribunal below held that the accident took place due to rash and negligent driving of the tipper bearing No. AP 31W 459 by its driver in which the claimant sustained grievous injuries.

8. While dealing with issue No. 2, the Tribunal below awarded compensation of Rs. 45,400/- in the following manner:

(a) Compensation under the Head "injury" Rs. 27,000-00 (b) Compensation under the head "shock" pain and suffering Rs. 10,000-00 (c) Compensation under the head "hospital, medical, extra nourishment, transport, attendant and incidental charges Rs. 3,000-00 (d) Compensation under the head "loss of

earnings" (present) Rs. 5,400-00 _____ Total Rs. 45,400-00

and held that in view of the facts and circumstances of the case, it is only the 1st respondent, owner of the vehicle, is alone liable to pay the compensation and also held that the liability cannot be fastened on the Insurance Company since the petitioner-claimant was a traveller in the goods vehicle as gratuitous passenger.

9. The learned Counsel appearing for the appellant-1st respondent raised two contentions viz.,

(1) The Tribunal below has erred in awarding compensation against the 1st respondent in the O.P. in the absence of examining the driver of the tipper.

(2) The Tribunal below has also erred in awarding more compensation in respect of the injuries sustained by the petitioner-claimant. Therefore, the compensation is excessive and accordingly the award is liable to be set aside.

10. As far as the first issue is concerned, it can be seen that on behalf of the 1st respondent, she herself was examined as R.W.1. Though it was contended on behalf of the 1st respondent that the driver of the tipper was not rash and negligent and the petitioner is put to strict proof of the manner and method of accident pleaded by her, the petitioner as P.W.1 categorically deposed about the manner and method of accident in her evidence. Ex.A-1, true copy of the FIR, Ex.A-2, true copy of the charge sheet, Ex.A-3 true copy of the wound certificate are exhibited. When it was suggested to the petitioner-claimant on behalf of the 1st respondent that there is no negligence on the part of the driver of the vehicle, P.W.1 denied the said suggestion. Respondents 1 and 2 though examined as R.Ws.1 and 2, were admittedly not eye-witnesses to the accident. Hence, there is no rebuttal evidence on the aspect of negligence of the driver of the tipper. The manner and circumstances in which the accident took place *res ipsa loquitur* clearly shows that it was due to the rash and negligent driving of the driver of the vehicle. Therefore, it can be said that the driver of the tipper was responsible for the accident. The unrefuted and well corroborated evidence of P.W.1 is thus sufficient to safely hold that the pleaded accident occurred due to rash and negligent driving of the driver and the claimant sustained injuries.

11. In view of the evidence of P.W. 1 and from the documents exhibited i.e., Ex.A-1 -FIR, Ex.A-2 - true copy of the charge-sheet, Ex.A-3 - true copy of the wound certificate, which were not rebutted by the 1st respondent by adducing any evidence, the tribunal below came to the conclusion that there was rash and negligence on the part of the driver of the tipper. It is a finding of fact, which cannot be interfered with or it does not constitute a question of law, therefore, the contention of the learned Counsel for the petitioner on this issue does not sustain.

12. Coming to the 2nd aspect, the claimant claimed various amounts as

mentioned supra totalling to Rs. 2,00,000/-, but the Tribunal below based on the evidence of P.W.1 and in view of Ex.A-3, the true copy of the wound certificate, which shows that the injuries sustained by the petitioner-claimant were grievous in nature, and based on the settled law that compensation of Rs. 15,000/- to Rs. 50,000/- may be awarded in case of major fractures depending upon the facts and circumstances of each case and holding that as P.W.1 belongs to rural community and is a hard working labourer, awarded only an amount of Rs. 27,000/- against the head of injuries wherein the claimant was held to be sustained three grievous injuries. The Tribunal also taking into consideration the human experience in the facts and circumstances of the case, awarded an amount of Rs. 10,000/- only against the head of shock, pain and suffering. The petitioner-claimant claimed an amount of Rs. 30,000/-towards the medical expenses and contended that while she was receiving the treatment as in-patient in K.G. Hospital, she spent about Rs. 10,000/- and while receiving the treatment as out-patient in private hospital she spent the remaining amount, but the petitioner-claimant did not adduce any evidence in support of her claim. Therefore, relying on-the decision reported in Managing Director, A.P.S.R.T.C. Vs. Kathavath Gopal and Another, , the Tribunal below awarded only an amount of Rs. 3,000/- towards compensation against the head of hospital, medical, extra nourishment, transport, attendant, incidental charges against the claim of Rs. 30,000/-.

13. In respect of the loss of earnings, the Tribunal taking into consideration the nature of injuries sustained by the petitioner-claimant and the duration that required for curing the wounds and the loss she sustained during the course of her suffering against all the injuries, an amount of Rs. 1,800/- per month for three months amounting to Rs. 5,400/-was awarded. So altogether the amount that has been granted by the Tribunal below is only Rs. 45,400/- as against the claim of Rs. 2,00,000/-.

14. This Court at the time of admission of the CMA, did not grant any interim order. It is submitted by the learned Counsel for the appellant-respondent, that though this Court did not grant stay in the matter at the time of admission, the respondent-owner of the vehicle had not deposited the amount and thereby, the claimant is deprived of her legitimate compensation under the impugned order all these days. Therefore, he submitted that there are no grounds to interfere with the award passed by the Tribunal below which according to him is just and reasonable and there are no questions of law for consideration by this Court in the CMA.

15. Having regard to the submissions made by the learned Counsel for the petitioner appellant, the learned Counsel for the respondent-claimant and the 2nd respondent, and for the reasons stated above, I do not find any justification to interfere with the order passed by the Tribunal. Hence, the CMA is dismissed. No order as to costs.