
(2004) 09 AP CK 0125
In the Andhra Pradesh High Court
Case No : C.M.A. No. 2579 of 2000

M. Yadagiri Reddy @ M. Yadi Reddy

APPELLANT

Vs

K. Rama and Another

RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 3 ACC 316 : (2005) 2 ALD 23 : (2005) 2 ALT 459

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : P. Ramakrishna Reddy, for the Appellant; R.K. Suri, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—This Civil Miscellaneous Appeal is filed u/s 173 of the Motor Vehicles Act, 1988, against the Award of the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, passed in O.P.No. 1217 of 1997.

2. The said claim petition was filed by the claimant, claiming compensation of Rs. 4,00,000/- on account of injuries and disability suffered by him, in a motor vehicle accident, which took place on 14-7-1997. As averred in the claim petition, it was the case of the claimant that when he was proceeding on two-wheeler scooter bearing No. ABM 1085, from Hyderabad to Anajipur on National Highway No. 9, a Maruthi car, bearing No. AP-9J-80, was driven by its driver in rash and negligent manner, and dashed against him. It was the case of the claimant that in the said accident, he has suffered grievous injuries including fractures to his right leg, apart from other injuries on face and to hands. In the claim petition, it was also stated that he was aged about 40 years and was earning Rs. 5000/- per month on his poultry business and agriculture. Pleading that he lost his earnings on account of disability suffered by him, the said claim petition was filed.

3. The owner of the vehicle remained ex parte. The second respondent-Insurance Company has resisted the claim, in the counter affidavit filed on behalf of the Insurance Company, they have disputed the injuries sustained by the claimant, his age, income, validity of the driving licence of the car driver, etc.,. Ultimately, it is stated that the compensation claimed by the claimant is excessive.

4. On the above said pleadings, the Tribunal below has framed four issues, which are extracted below:

(1) Whether the accident in question took place on 14-7-1997 at about 3 PM due to rash and negligent driving of the Maruthi car bearing No. AP. 9J.80 by its driver?

(2) Whether the petitioner is entitled to compensation claimed for the injuries sustained by him in the accident? If so, to what amount?

(3) which respondent is liable to pay the compensation amount?

(4) To what relief?

5. The claimant was examined as P.W.1, apart from examining P.Ws.2 and 3 and Ex.A-1 to A-10, and, Ex.X-1 were marked on their behalf. On behalf of the respondent, no oral evidence was adduced, however, Ex.B-1 copy of the policy was marked.

6. On appreciation of the oral and documentary evidence on record, the Tribunal below has recorded a clear finding that the accident occurred due to rash and negligent driving by the driver of the offending car bearing No. AP-9J-80. The Tribunal below assessed the compensation under various heads and awarded a total compensation of Rs. 2,10,381/-, which includes Rs. 5,000/- towards transportation charges, Rs. 77,945/- towards medical expenses and extra nourishment, Rs. 1,000/- towards damages to clothing; Rs. 9,000/-towards loss of earnings; Rs. 10,000/-towards pain and suffering, and, Rs. 1,07,436/- on account of permanent disability. Questioning the adequacy of the compensation awarded by the Tribunal below, the claimant has preferred this Civil Miscellaneous appeal.

7. On behalf of the appellant, it is contended by Sri P. Ramakrishna Reddy, learned Counsel that the appellant-claimant has suffered serious multiple injuries apart from fractures to his right leg and he was in-patient for number of days and was also operated upon; in spite of the same, the Tribunal has awarded only an amount of Rs. 10,000/- on account of pain and suffering. It is further submitted that the claimant has suffered permanent disability to the extent of 35%, but, the Tribunal while assessing the compensation on account of disability with regard to future earnings, has made deductions to the extent of 1/3. He submits that question of deduction 1/3 amount arises only in the claims by the legal representatives, but not in injuries case, where claim itself is, by the victim of accident.

8. On the other hand, the learned Counsel appearing for the respondent-Insurance Company supports the order of the Tribunal and submits that the Tribunal below has awarded reasonable compensation under various heads and the appellant-claimant is not entitled for enhancement of compensation.

9. With reference to the above contentions, it is to be seen that the Tribunal below has clearly recorded a finding that the accident occurred due to rash and negligent driving of car bearing No. AP-9J-80 by its driver. The said finding has become final and is not assailed by the Insurance Company.

10. With regard to the quantum of compensation under the head of "pain and suffering", it is to be seen that on account of accident, the claimant-appellant has suffered fracture to his right femur and compound fracture to the right leg, apart from other multiple injuries. Medical Certificate issued by the Doctor is marked as Ex.A-3. A perusal of Ex.A-3, coupled with the oral evidence of P.W.2-doctor, reveal that the claimant was operated on three occasions, i.e. on 14-7-1997, 16-7-1997 and 23-7-1997 and steel rods were inserted in right leg. From the deposition of P. W.3, it is clear that further operation is required to remove implants. In that view of the matter, I am of the view that the sum of Rs. 10,000/- awarded by the Tribunal below, on account of pain and suffering, is on lower side and requires enhancement. Having regard to the nature of injuries suffered by the claimant, which are grievous in nature, and, number of operations underwent by him, it is just and reasonable to award a sum of Rs. 20,000/- under the head -"pain and suffering". As such, the amount awarded by the Tribunal below under the head "pain and suffering" is increased from Rs. 10,000/- to Rs. 20,000/-.

11. So far as disability is concerned, Injury certificate-- Exs.A-3, coupled with the testimony of P.W.2, reveal that appellant-claimant has suffered permanent disability and he cannot attend to his normal duties and agricultural works and even, he cannot attend to calls of nature by freely squatting. Even P.W.2 - the doctor has categorically deposed that percentage of disability is 35%. The Tribunal below has taken the income of the claimant at Rs. 3,000/- per month, and, while calculating loss of future earnings on account of disability, 1/3rd deduction was made towards personal expenses. It is to be seen, 1/3rd deduction rises only in cases where legal representatives file claim petition on account of loss of dependency; but, in the instant case, the Claims Tribunal deducted 1/3rd amount while calculating loss of future earnings, though claimant himself is injured. The Tribunal below having taken into account Rs. 3000/- as monthly income of the claimant, ought to have calculated the annual earnings without any deduction and granted compensation in proportion to 35% disability. As such, if 1/3rd deduction is removed, the appellant-claimant is entitled to compensation of Rs. 1,61,154 (Rs. 3000 x 12 x 35/100 x 12.79) on account of permanent disability. In that view of the matter, the compensation awarded by the Tribunal below on account of permanent disability is enhanced from Rs. 1,07,436/- to Rs. 1,61,154/-. In all other aspects, the compensation awarded by

the Tribunal below, i.e. Rs. 5,000/- towards Transportation, Rs. 77,945/- towards Medical bills and extra nourishment, Rs. 1,000/-towards damages to clothing and Rs. 9,000/- towards loss of earnings is confirmed.

12. Accordingly, the Civil Miscellaneous Appeal is allowed, in part awarding compensation of Rs. 2,74,099/- with proportionate interest at Rs. 12% per annum from the date of petition till realization. No costs.