
(2014) 06 AP CK 0116

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 1239 of 2006

Munagala Srinivasulu Reddy

APPELLANT

Vs

S. Jayarami Reddy

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 158, 163-A, 166

Citation : (2014) 06 AP CK 0116

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : T.C. Krishnan, Advocate for the Appellant; R. Venkat Rao, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

B. Chandra Kumar, J.—This appeal is directed by the claimant against the Nil Award passed by the Motor Accidents Claims Tribunal-cum-District Judge, Nellore, in O.P. No. 120 of 2002, dated 19.04.2006.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts of the case, in brief, are as follows. That on 26.07.2001 at about 5.30 P.M. the claimant herein was proceeding as pillion rider on Hero Honda Motorcycle bearing No. AP-27-D-3903 from Kavali to Bitragunta. Another person namely N. Veera Raghava Reddy, who died in the accident, was driving the motor cycle. When the said motor cycle reached near Thallapalem Varava bridge, a jeep bearing No. AP 7T 7395 came in a rash and negligent manner and dashed against the motor cycle. The claimant alleged that the jeep driver had driven the same in a rash and negligent manner and dashed against the motor cycle, as a result of which said Veera Raghava Reddy received injuries and died on the spot and on behalf of the deceased separate claim petition was filed in O.P. No. 119 of 2002. The claimant herein received multiple injuries and claimed compensation

of Rs. 1,00,000/-.

4. The first respondent is the owner of the jeep and the second respondent is the Insurance Company. The first respondent remained ex parte. The second respondent contested the matter and denied the material averments made by the claimant.

5. The Tribunal framed the following issues.

1. Whether the pleaded accident occurred due to the fault of the driver of the motor jeep bearing No. AP 7T 7395 belonging to R1 and insured with R2 or due to the fault of the driver of the Hero Honda Motor Cycle bearing No. AP 27 D 3983?

2. Whether the petition is bad for non-joinder of the owner and insurer of the Hero Honda Motor Cycle bearing No. AP 27D 3983 as necessary parties?

3. Whether the petitioner is entitled to any compensation and if so, to what amount and from which of the respondents?

4. To what relief?

6. On behalf of the claimants, P.Ws. 1 to 4 were examined and Exs. A1 to A7 were marked and Ex. C1 was marked by the Tribunal. The claimant himself was examined as P.W. 3 and the other witnesses were concerned with O.P. No. 119 of 2002. On behalf of the respondents none were examined and no documents were marked except Insurance Policy as Ex. B1.

7. The Tribunal, on appreciation of oral and documentary evidence, came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the motor cycle. The Tribunal held that the claimant himself stated in his report that the driver of the motor cycle was negligent, so his evidence before the Tribunal that the driver of the jeep had driven the same in a rash and negligent manner and dashed against the motor cycle cannot be accepted. The Tribunal also has not taken into consideration the charge sheet filed by the police, and accordingly, passed "Nil" award.

8. The connected M.A.C.M.A. No. 1219 of 2006 was disposed of by this Court, by an order dated 25.04.2014. Having regard to the provisions of Section 158 and sub-section 3 of Section 166 of the Motor Vehicles Act, 1988 (for short "the Act"), this Court held that the report filed by the police can be treated as an application for compensation.

9. Sub-section (4) of Section 166 of the Act is as follows.

"The claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

10. Sub-section (6) of Section 158 of the Act is as follows.

"As seen as any information regarding any accident involving death or bodily

injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer."

11. The above provisions make it clear that the claimants need not file any application for compensation. Even in the absence of any application filed by the claimants for compensation the report submitted by the police under sub-section (6) of Section 158 of the Act has to be treated as an application for compensation. In view of the matter, it appears that the claimants need not specifically mention that they are making a claim u/s 166 or 163-A of the Act. So, this empowers the Tribunal to treat any application filed u/s 166 of the Act as an application u/s 163-A of the Act or an application filed u/s 163-A of the Act as an application filed u/s 166 of the Act. Now the settled legal position is that when a claim petition is considered u/s 163-A of the Act the claimants need not plead and prove the issue of negligence. When the claimants need not plead and prove the issue of negligence, the question of proving the negligence does not arise. What is required is the Tribunal has to verify whether the vehicles are involved in the accident or not. The involvement of vehicle in the accident is sufficient to claim compensation u/s 163-A of the Act. In view of the above provisions after referring several judgments of the Apex Court and other judgments i.e., in case between United India Insurance Co. Ltd., Armoor Branch, Nizamabad Dist. Vs. Kore Laxmi and Others, , and the judgment of the Karnataka High Court in case between Branch Manager, United India Insurance Company Limited v. Lalitabai and others (Misc. First Appeal No. 31626 of 2009 (MV), dated 30.08.2012), this Court came to the conclusion that the Tribunal ought to have awarded compensation u/s 163-A of the Act to the claimants.

12. As far as the present case is concerned though it is a fact that the claimant himself has lodged a complaint to the police but he gave evidence before the Tribunal. In his evidence he has categorically deposed that the jeep being driven by its driver in a rash and negligent manner came and dashed against their motor cycle. The deceased was no other than the brother of the claimant herein. The deceased was driving the motor cycle. His evidence further shows that he sustained fracture to his left leg near knee and other injuries and was admitted in the Government Hospital, Kavali and from there he was shifted to Vijaya Hospital, Nellore. On critical examination of evidence, it cannot be said that the version of the claimant is totally unbelievable. The standard of appreciation of evidence in claims arising out of motor accidents should be different from the standard to be applied in criminal cases. Normally in a criminal case each and every aspect has to be minutely examined and if there is any reasonable doubt the version of the complainant or eye witness should be looked with suspicion. But, in case of this nature, the version of an injured cannot be lightly disbelieved,

merely because he had put his signature on the complaint prepared by somebody giving a different version. The claimant specifically deposed that he became unconscious for few days after the accident. The very fact that a suggestion was given to the injured that the contents of FIR were read over to him go to show that he is not the author of the complaint. Somebody has drafted the complaint and obtained the signature of the claimant. Of course, in the cross-examination he has admitted that he lodged the FIR but denies that the contents of FIR were read over to him. When some other person who had written the complaint obtains the signature or thumb impression of an injured who is undergoing treatment it becomes a relevant fact as to whether contents of FIR were read over to him or not. No presumption can be drawn against the injured that since he signed in the complaint, he was read over the contents of the complaint. When a person has sustained fracture and became admittedly unconscious deposes that the contents of FIR were not read over to him, the Tribunal ought not to have disbelieved his version basing on the contents of the FIR.

13. It has to be seen that the police after completing investigation filed charge sheet against the driver of the jeep. Admittedly, the Insurance Company has not challenged the action of the police in filing charge sheet against the driver of the jeep. Admittedly, the person who was driving the motor cycle died in the accident. The only person who deposed about the accident is the claimant/injured. In view of the matter, since there is no rebuttal evidence in this case merely because the contents of FIR are different from the version of P.W. 1 the Tribunal seems to be not justified in holding that the version of the injured is untrustworthy. It has to be seen that the version of P.W. 3 injured is corroborated by the result of subsequent investigation. Therefore, the finding of the Tribunal appears to be not correct.

14. Moreover, as discussed in earlier paras, irrespective of the plea of negligence aspect the claimant can claim compensation u/s 163-A of the Act.

15. Now coming to the quantum of compensation, the claimant in this case was aged about 27 years as on the date of accident. According to him he sustained injuries on the right side of his forehead, fracture to the right leg near knee and fracture on his ankle. P.W. 4 is the doctor who examined the claimant and Ex. A7 is the wound certificate. The doctor opined that injury Nos. 2 and 3 are grievous in nature and injury No. 1 is simple in nature. According to the claimant he has spent about Rs. 2,000/- towards medical expenses, attendant and diet charges and Rs. 1,000/- towards transportation charges. Though the claimant claimed that he is permanently disabled, but there is no evidence on record to show that he became permanently disabled.

16. Having regard to the nature of injuries, I consider it just and reasonable to award Rs. 15,000/- each for the grievous injuries i.e., Rs. 30,000/- for two fractures, Rs. 5,000/- towards pain and suffering, Rs. 5,000/- towards medical expenses, Rs. 3,000/- towards attendant charges, Rs. 2,000/- towards

transportation charges and Rs. 5,000/- towards loss of earnings during the period of treatment and rest. Thus, in all the claimant is entitled to Rs. 50,000/-.

17. Accordingly, the M.A.C.M.A. is allowed in part granting compensation of Rs. 50,000/- to the claimant. The compensation amount shall carry interest at 7.5% p.a., from the date of petition till realization. However, in the circumstances, no costs.

18. As a sequel, the miscellaneous petitions, if any, pending in this M.A.C.M.A. shall stand closed.