
(2004) 03 AP CK 0113

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2665 of 1998

Nagiripadu Jayaramaiah

APPELLANT

Vs

Somasila Gopala Krishna and Another

RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2005) 2 ALD 27

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : N. Parameswara Reddy, for the Appellant; A. Malathi, for the Respondent

Judgement

C.Y. Somayajulu, J.—Appellant, while travelling in a lorry belonging to the first respondent and insured with the second respondent, met with an accident due to the rash and negligent driving of the driver of the lorry and filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (the Act), seeking compensation of Rs.55,000/- from the respondents for the disability caused to him due to the injuries received in the accident. He also filed another claim petition u/s 140 of the Act. Both the said petitions were clubbed.

2. Appellant examined himself as P.W.1 and two other witnesses as P.Ws.2 and 3 and marked Exs.A.1 to A.7. First respondent, though filed a counter contesting the petition, did not adduce evidence on his behalf either oral or documentary. Second respondent, who also contested the claim, examined one witness as R.W.1 and marked Exs.B.1 and B.2. Having held that the accident occurred due to the rash and negligent driving of the driver of the lorry, the Tribunal awarded Rs.12,000/- in the O.P. filed u/s 140 of the Act and Rs.7,250/- as compensation to the appellant against respondents 1 and 2 jointly and severally in the O.P. filed u/s 166 of the Act. Dissatisfied with the compensation awarded to him in the claim petition u/s 166 of the Act, claimant preferred this appeal.

3. The point for consideration is to what compensation is the appellant entitled

to?

4. The Tribunal awarded Rs.500/- towards transport to hospital; Rs.500/- towards medicines; Rs.5,000/- towards pain and suffering; and Rs.1,250/- towards loss of earning making a total of Rs.7,250/- but did not award any compensation towards the permanent disability because it awarded Rs.12,000/- to the appellant in the petition filed u/s 140 of the Act.

5. Since the appellant failed to produce documentary evidence to show the expenses incurred by him for his treatment, compensation of Rs.6,000/- awarded by the Tribunal towards transport to hospital, medicines and pain and suffering appears to be reasonable. Loss of earnings of Rs.1,250/- for a period of one month also appears to be reasonable.

6. The evidence of P.W.3, the Doctor who gave Ex.A.4, certificate of disability that appellant has 70% to 80% permanent disability cannot be accepted or believed, because appellant sustained a fracture in the accident. That fracture united. Even if there is mal union such mal union cannot cause 70% to 80% disability, because as per schedule I part II of the Workmen's Compensation Act, 1923, amputation below hip with stump not exceeding 12.70cms in length measured from tip of great trochanter causes 80% loss in earning capacity. P.W.3, who admitted during cross-examination that he did not treat the appellant and that there is no privation of any part of the body of P.W.1, with a view to help the appellant in getting higher compensation must have given Ex.A.4 disability certificate showing that appellant has 70% to 80% disability.

7. Appellant as P.W.1 stated that he does lemon business and because of the fracture he is not able to move about or sit properly. Even assuming that the fracture of the appellant did not heal properly it would cause only inconvenience to the appellant and would not in any way hamper his earnings or earning capacity as a businessman. For that alleged discomfort appellant can be awarded Rs.24,000/- as compensation.

8. Thus, appellant is entitled to Rs.6,000/- + Rs.1,250/- + Rs.24,000/- = Rs.31,250/- which can be rounded off to Rs.32,000/-. Since the appellant was awarded Rs.12,000/- towards no fault liability he is entitled only to Rs.20,000/-.

9. The contention of the learned counsel for second respondent that second respondent cannot be made liable for the enhanced compensation cannot be accepted because second respondent did not prefer an appeal or cross objections questioning the award passed against it by the Tribunal. If there is a violation of the terms of the policy by the owner of the vehicle, second respondent can proceed against the owner for recovery of the amount paid by it to the appellant after establishing that there is a violation of the terms of the policy and so I hold that both respondents are liable to pay Rs.20,000/- as compensation to the appellant. The point is answered accordingly.

10. In the result, the appeal is allowed in part and an award is passed for

Rs.20,000/- in favour of the appellant against the respondents jointly and severally with interest at 12% p.a. on Rs.7,250/- from the date of petition till the date of deposit into Court and with interest at 9% p.a. on Rs.12,750/- from the date of award of Tribunal i.e. 05.08.1993 till the date of deposit into Court with proportionate costs in the Tribunal. Rest of the claim of appellants is dismissed without costs. Parties are directed to bear their own costs in this appeal.