
(2010) 08 AP CK 0010
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1076 of 1998

Pothina Yella Rao

APPELLANT

Vs

A.P. Ravindranath and Others

RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Citation : (2011) 2 ALD 54

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : M. Kesava Rao, for the Appellant; Srinivasa Rao Vutla, for the Respondent

Judgement

G. Bhavani Prasad, J.—The appeal is directed against the award, dated 30-09-1996 in M.V.O.P. No. 41 of 1993 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Visakhapatnam.

2. The factual background for the appeal is that the Appellant, a milk vendor, was proceeding towards Madhurawada as a pillion rider on a scooter, which was dashed against by motor cycle No. AP 31C 8090, driven rashly and negligently, and coming in a wrong direction. He fell down, sustained a compound fracture of right ankle and abrasions on the right leg and was treated at King George hospital, Visakhapatnam. The driver of the motor cycle-the 1st Respondent, the owner-the 2nd Respondent, and the insurer-the 3rd Respondent are, hence, sued for a compensation of Rs. 50,000/-.

3. The 1st Respondent contested the claim contending that he came on the left side of the road and was negotiating the traffic junction, when suddenly an auto rickshaw came in high speed followed by an ambassador car. To avoid any possible damage to him and his vehicle, the 1st Respondent stopped the vehicle and the Petitioner coming as a pillion rider on a scooter and the driver of the scooter were carrying LPG cylinders and they came fast rashly and negligently and attempted to overtake the ambassador car and auto rickshaw and hit the 1st

Respondent's vehicle. The fully loaded LPG cylinders fell on the feet of the Petitioner and the driver of the scooter and the injuries were sustained only due to the same and not due to causing of any accident by the 1st Respondent. The 1st Respondent, therefore, pleaded that he is not liable to pay any compensation for the injuries sustained by the Petitioner due to his own contributory negligence.

4. The 2nd Respondent adopted the counter of the 1st Respondent.

The 3rd Respondent contested the claim putting the Petitioner to strict proof of all his allegations and denying any liability to compensate the Petitioner. The 3rd Respondent pleaded that the Petitioner has to strictly prove that the motor cycle was validly insured, that the driver of the motor cycle had valid driving licence and other essential requirements to make the insurer liable. The 3rd Respondent, hence, desired the claim to be negated.

5. On such pleadings, the Tribunal framed appropriate issues on the manner of the accident and the entitlement of the Petitioner to compensation and during the enquiry, it examined P. Ws.1 and 2 and marked Exs.A.1 to A.3 and B.1 to B.4. It rendered the impugned award firstly concluding that the accident occurred due to the rash and negligent driving of the motor cycle by the 1st Respondent, for which purpose it accepted the evidence of P. Ws.1 and 2, corroborated by Ex.A.1 first information report. However, while coming to the entitlement of the Petitioner to compensation, the Tribunal observed that no documentary evidence was produced by P.W.1 to show that he was treated in King George hospital and he did not examine either the doctor, who treated him or the doctor, who issued the disability certificate and therefore, concluded that the Petitioner failed to establish that he received the injuries in the accident and sustained disability. Consequently, the petition was dismissed without costs.

6. The claimant preferred the present appeal against the said award contending that when the Tribunal concluded that the accident occurred due to the rash and negligent driving of the 1st Respondent, it ought to have granted just and adequate compensation to the Petitioner, more so, due to the death of Dr. G. Narasimha Reddy, who treated the Petitioner, during the pendency of the claim petition before the Tribunal itself. The disability certificate was issued by another doctor only on verification of records of King George hospital and the disability certificate should have been acted upon to grant compensation.

7. Heard Sri M. Kesava Rao, learned Counsel for the Appellant and Sri Srinivasa Rao Vutla, learned standing counsel for the 3rd Respondent. None appeared for Respondents 1 and 2.

8. The point for consideration is whether the Appellant has proved his entitlement to compensation and if so, to what quantum ?

Point:

9. In so far as the finding of the Tribunal about the rash and negligent driving of the motor cycle by the 1st Respondent being the cause for the accident is

concerned, the same was not challenged by any of the parties to the claim petition and the finding has become final. The ownership of the motor cycle with the 2nd Respondent and its subsisting insurance with the 3rd Respondent are also not in dispute, as seen from the pleadings of the parties and therefore, the liability of the Respondents to jointly and severally compensate the Petitioner justly and adequately for the injuries sustained by the Petitioner during the accident and their consequences cannot be in dispute.

10. What can be in dispute is only the quantum of compensation, for which purpose, the injuries suffered and their consequences should have been proved by the Petitioner during enquiry. It is seen from the pleadings of the parties that the claim petition specifically alleged the details of the injuries sustained during the accident as a compound fracture of right ankle and abrasions on the right leg, for which treatment was taken at King George hospital, Visakhapatnam. The compensation of Rs. 50,000/- was also claimed towards medical expenses, extra nourishment, permanent disability, pain and suffering and loss of earning capacity specifically. The specific counter of the 1st Respondent, the driver of the motor cycle, adopted by the 2nd Respondent, the owner of the motor cycle, is that the accident had occurred at the time and the place claimed by the Petitioner and the defense is only that it did not occur in the manner claimed by the Petitioner. The counter of the 1st Respondent gave graphic details of the accident and it is significant to note that the counter did not dispute the specific injuries claimed by the Petitioner in the claim petition. It only stated that the injuries said to have been sustained by the Petitioner are the result of the contributory negligence on the part of the Petitioner himself. Therefore, the Petitioner sustaining injuries as claimed in the claim petition was not disputed by the 1st and 2nd Respondents and even the 3rd Respondent only put the Petitioner to strict proof of the said aspect, but did not deny the Petitioner sustaining the injuries as alleged. When the driver and the insured admit the Petitioner sustaining such injuries, the insurer may not be capable to denying the injuries themselves, which of course, it also did not specifically deny in the counter filed. Under the circumstances, when facts admitted need not be proved according to the well settled principles of law of evidence, the question would be whether the non-examination of the medical officers by the Petitioner would have proved fatal to the claim of the Petitioner and the answer should be an emphatic no, in view of the specific pleadings of the parties about the same.

11. That apart, the Petitioner/injured himself was physically present before the Tribunal, spoke about the fracture of right ankle sustained by him, for which he underwent treatment and produced Ex.A.2 disability certificate obtained by him from a competent expert. During his cross-examination by the Respondents, it was never suggested that the Petitioner did not sustain the injuries at all and the evidence of P.W.1 was corroborated by an eye witness as P.W.2, who also stated about the fracture of the right leg of P.W.1, and P.W.2 being the driver of the scooter on which P.W.1 was sitting as pillion rider, was not factually disputed during the cross-examination of P. Ws.1 and 2. If so, the evidence of P. Ws.1 and

2 can be safely considered to corroborate the contents of Ex.A.2 certificate about the physical disability suffered by P.W.1 on sustaining the fracture as alleged.

12. Therefore, the Tribunal, based on the admissions arising out of the pleadings of the parties and the positive probabilities arising out of the evidence of P. Ws.1 and 2, ought to have granted reasonable compensation to the Petitioner for the injuries sustained by him and their consequences.

13. The fracture of the right leg of the Petitioner resulted in 35 per cent disability according to Ex.A.2 and for carrying on the avocation as a milk vendor, mobility is very essential for the Petitioner, which was adversely affected due to the disability sustained as a consequence of the fracture sustained in the accident. The Petitioner also had to undergo treatment for a significant period and it can be taken judicial notice of that any healing of a fracture would normally take a minimum time of 6 to 8 weeks, during which period the Petitioner would have lost his earnings also. The Petitioner claimed a lump sum amount of Rs. 50,000/- towards pain and suffering, loss of earning capacity, medical expenses, extra nourishment, permanent disability, etc., and taking an overall view of all the facts and circumstances arising out of the evidence on record, the age of the Petitioner at the time of the accident at 35 years and avocation of the Petitioner as milk vendor, etc., awarding a lump sum compensation of Rs. 20,000/- will be just and reasonable. On such compensation of Rs. 20,000/-, interest also has to be awarded at 6 per cent per annum from the date of the petition till the date of realization. Proportionate costs also have to be paid by the Respondents on the sum awarded. An element of guess and estimate are inevitable in such assessment in such cases on such pleadings and evidence and the experience and wisdom of the Court have to be depended upon as safeguards against any arbitrary assessment in such circumstances.

14. Accordingly, the award, dated 30-09-1996 in M.V.O.P. No. 41 of 1993 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Visakhapatnam is set aside and the said M.V.O.P. No. 41 of 1993 is partly allowed by granting a compensation of Rs. 20,000/- (Rupees twenty thousand only) with interest at 6 per cent per annum thereon from the date of the petition till the date of realization with proportionate costs and the rest of the claim is dismissed without costs. The appeal is accordingly allowed in part without costs.