
(1996) 11 AP CK 0003
In the Andhra Pradesh High Court

Sanasapuri Pedda Sambamurthi

APPELLANT

Vs

K. Rama Rao and Another

RESPONDENT

Date of Decision : 01-11-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1997) 2 ACC 417 : (1997) 1 APLJ 394

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Judgement

B.K. Somasekhara, J.—The award of the Motor Accident Claims Tribunal, Srikakulam dated 25.6.1990 dismissing OP No. 19 of 1988, which was filed u/s 110-A of the M.V. Act, 1939 (for short, the Act) seeking a compensation of Rs. 75,000/- for the injuries and the disability suffered by the claimant/ appellant due to the accident on 29.6.1987 at 9.30p.m. said to be due to the negligence of the 1st respondent, is in challenge in this appeal. The OP was dismissed on the ground that the claimant failed to prove that it was the 1st respondent who caused the accident and secondly for not proving the case to get the compensation, although assessed at Rs. 15,000/- in view in view of the failure to prove the accident as against the 1st respondent.

2. Mrs. Renuka, the learned Counsel for the appellant has assailed the award on the ground that the appreciation of evidence by the Tribunal in regard to the proof of the 1st respondent causing the accident in addition to his negligence, is not in accordance with the materials available on record and secondly against the materials demonstrating that respondents tried to avoid the involvement of the 1st respondent in the consequences of the accident by manipulating the records the Tribunal accepted the evidence of R.Ws. 1 and 2, the driver and the official of the RFO's Office although conflicting and producing negative inferences.

3. Mrs. Usha Kiran, the learned Government Pleader for Civil Supplies and Mrs. Jhansi, the learned Counsel for the 1st respondent, have tried to persuade this Court about the correctness of the award based on material wherein the claimant

did not take sufficient pains to prove the accident, in the first place, involvement of the jeep belonging to the 2nd respondent in the accident and secondly regarding the 1st respondent, being the driver driving the vehicle at the relevant time resulting in the accident. It is also argued by them that the amount of compensation assessed cannot be interfered with having due regard to the fact that sufficient reasons are given by the Tribunal.

4. The case of the appellant/claimant is that on 29.6.1987 at about 9.30 p.m. while he was travelling in a rickshaw near Bhajana Mandiram, Relli Street, Srikakulam, it was hit by a jeep APS 7457 coming from the opposite direction with high speed and driven rashly and negligently due to which he sustained serious Injuries and suffered disability. With the materials on record, the Tribunal did not doubt the accident in question nor the injuries and the disability suffered by the claimant due to such an accident, but doubted about the involvement of the jeep in the accident and the 1st respondent in causing the accident. The evidence available in the case is the testimony of the claimant as per P.W-1, an eye witness. P.W-2 and also the testimony of the 1st respondent as R.W-1 and a Junior Assistant of the RFO's Office as per R.W-2. The documentary evidence comprised is Exs. A-1 to A-15 for the claimant and Exs. B-1 to B-7 for the respondents. Ex. A-1 is the FIR laid by one J. Hariprasad, P.W. 2, on 29.6.1987 at 10 p.m. whereas the accident is said to have taken place at 9.30 p.m. In column No. 2 of Ex. A. 1, it is mentioned that one driver of the jeep bearing No. APS 7457 caused the accident. In other words, the identity of the vehicle has been reported to the police within half an hour of the accident. That lends to the credibility of the person who filed the FIR in addition to his testimony as per P.W-2. Both P.Ws. 1 and 2 were certain in their testimony that the jeep hit the rickshaw in which the claimant was travelling although they could not give the number of the vehicle. Therefore, it was certain that a jeep was involved in the accident whose number was disclosed in the FIR to the police at the earliest point of time. As against this, the case of the 1st respondent is that he had taken the jeep to give a drop to some official on the instructions of the RFO and he never caused any accident muchless the vehicle was involved in the accident. Furthermore, the case of the 2nd respondent is that the vehicle had been unauthorisedly taken by the 1st respondent and a charge memo was issued to him as per Ex. B-2. The 2nd respondent/RFO is not examined. But a Junior Assistant of the Office is examined as R.W-2. The testimony of R.Ws. 1 and 2 is at loggerheads wherein the former admits that he was in charge of the vehicle from 7.30 p.m. onwards on that day and that he had taken it to give a drop to somebody on the instructions of the RFO, whereas R.W-2 tried to say that the vehicle had been taken away by the 1st respondent unauthorisedly. Barring Ex. B-2, there is no material to say that either the 1st respondent was not in charge of the vehicle at the relevant time or that he had taken the vehicle unauthorisedly. There is also no material concerning the office of the 2nd respondent in relation to the vehicle in question showing that any memo was issued to the 1st respondent immediately or within a reasonable time or that the

subject of the vehicle having been taken unauthorisedly by the 1st respondent was disclosed to the 2nd respondent at the earliest possible opportunity by the proper official or the officer of the department or that any action was initiated against the 1st respondent. With such materials, the Tribunal has come to the conclusion that the 1st respondent did not cause the accident. The Tribunal appears to have proceeded on the presumption that the burden of proving the involvement of a vehicle in the accident is on the claimant and failure to do it cannot be allowed to make use of the weakness in the case of the respondents. There is no such rule operating in relation to Motor vehicle claim cases in view of the scheme of Section 110-A of the Act. It is true that the claimant has to prove the accident, involvement of a particular vehicle in the accident and also that a particular driver was driving the vehicle. There is no burden of proof within the strict meaning of the Evidence Act in a proceeding before the Tribunal u/s 110-A of the Act. However, by operating the rule of evidence and the human wisdom, the Tribunal, as a man at; common sense and worldly experience, will draw correct inferences. It is more than settled that the appreciation of evidence in a motor vehicle claim compensation case should not be as if by a Court applying strict rules of evidence, but on broad appreciation of all the materials on record, mainly depending upon the totality of the circumstances, or else the very purpose or the object of the Act and the relevant provisions would be defeated. No person suffering the accident or suffering death due to accident can be expected to know at the moment the details of the vehicle, its registration number, the name of the driver etc., as the accident occurs in the split of a second and the anxiety of the person suffering or becoming the victim would be immeasurable not diverted to know the particulars of such facts. It is of the common knowledge that such persons and other persons interested in them will be interested in arranging for medical assistance and any other reasonable assistance to see that they survive and revive to their original position. Expecting them to know all the particulars of the accident, the vehicle and the driver etc., would be a negate of the human experience. Judged in that line, the rule of burden of proof in such a case becomes a legal obstacle to achieve the object of social piece of legislation. If such a technical procedure adopted, it would deteriorate the individual and the law instead of ameliorating it. Even in such a case, although the so-called initial burden or onus commences and when the entire material is on record, it is for the Tribunal to draw the necessary inference based on circumstances and not to depend upon the strength or weakness of a particular party. In Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, , it was therefore pointed out that nothing more than proof of the accident is expected on the part of the claimant or the victim and all other remaining things which are in the special knowledge of the owner and the driver of the vehicle etc, are to be established under the circumstances.

5. In this case, when the claimant produced sufficient material showing the involvement of the vehicle and the accident and when the respondents took

specific and conflicting defences, it was for them to establish it. Failure to establish it as above is a circumstance against them in a case like this, which depends on the chain of circumstances, which cannot be ignored to draw the inference against the respondents. In the present case, when the respondents having taken conflicting defences and failed to establish the same, they should be exposed to the adverse inference that they are suppressing the truth and if the truth is produced, that ought to have been against them. Added to this, the manipulations or corrections in Exs. B-5 to B-7, entries in the log book, are additional factors to show that there must have been an attempted avoidance of the consequences of the implication of the vehicle and the driver in the accident. Added to these irregularities, the charge memo, as per Ex. B-2, issued after three months of the accident; shows an attempted support to avoid or to save an individual or the department. With such materials, it was possible to draw an inference against the respondents and to hold that the jeep belonging to the 2nd respondent, was the vehicle involved in the accident and that the 1st respondent was driving the vehicle at the relevant time and he was responsible for the accident, as he himself admits that he was in charge of the vehicle from 7.30 p.m. onwards on that day and in the absence of materials to show that he had not continued in possession of the same beyond that point of time, the inference is inevitable that he caused the accident.

6. The claimant has established that the rickshaw in which he was travelling was hit by the jeep, he suffered the injuries and the disability. The finding shows that he has suffered the injuries and the disability and that is not successfully assailed in the appeal. To repeat again, the Supreme Court in Pushpabai's case (supra) has made it certain that when once the accident and the manner in which it has occurred was established, by operating the doctrine of *res ipsa loquitur*, the burden is on the driver to prove that there was no negligence on his part in regard to the accident and that is not done by the 1st respondent except to evade the whole responsibility in regard to the accident. Therefore, the accident must be held to be due to the negligence of the 1st respondent.

7. The law is settled that when once it is established that the accident has occurred in the course of the employment, the liability of the master is squarely is mulcted. The Supreme Court in Pushpabai's case (supra) had an occasion to deal with such a question and in view of the declaration of law therein that the State is liable for the negligence of its servants when the accident occurs in the course of the employment, with the facts established as above that the 1st respondent was in charge of the vehicle duly authorised by the RFO when the accident has occurred, the 1st respondent as a tort-feaser and the 2nd respondent as his master, cannot avoid the liability. The reasoning and the finding of the Tribunal in regard to these aspects cannot be supported.

8. Now coming to the assessment of compensation, the Tribunal has recorded a finding with the materials on record that the claimant suffered the following four injuries:

(i) a bleeding lacerated injury 4" x 1" bone deep on the front of the scalp in the middle forehead backwards and there is a clinical evidence of fracture of one frontal bone in the midline.

(ii) black eye on the right side.

(iii) a red abrasion of 2" x 2" on the left maxilla.

(iv) a contusion of 1" diameter on the left shoulder.

The Tribunal also found that the claimant suffered fracture of occipital bone and fracture of Tibia and Fibula on the right side leading to the disability to the extent of 20%. He was also treated for a sufficient period. He was aged about 59 years and was about to retire within one year from service. It is also found that the claimant was hospitalised for sufficiently long period at Visakhapatnam and he was unable to squat, even according to the evidence of P.W. 4. In spite of this, the Tribunal assessed the compensation at Rs. 15,000/-only. Neither the principles in assessment of compensation in personal injury claim cases nor the items of compensation are adverted to inasmuch as the comparable cases are considered to do so. When the claimant suffered so many injuries, he was bound to have the experience of shock and pain at the time of the accident inasmuch as pain and loss of amenities of life during the period of treatment, atleast for 3-4 months. Because his right lower limb was immobilised it would have taken atleast 4-6 months to unite and to undergo treatment for fracture of occipital bone. His normal movement and activities must have been stalled for such a period. His normal pleasures of life must have been reduced considerably during such a period. He is yet to suffer the same due to such disability during the remaining span of his life. Therefore, for shock, pain and loss of amenities of life, Rs. 10,000/- should be awarded in this case. For the fracture of occipital bone, which is a part of the skull, Rs. 10,000/- ought to be awarded in *Yograj v. Mohan Lal* 1985 ACJ 23; *Baldev Krishna v. Chander Jeep Jain* 1984 ACJ 163; *Omprakash v. Rukmini Devi* 1983 ACJ 300. For the fracture of Tibia and Fibula leading to disability, the Supreme Court and other High Courts awarded a minimum compensation of Rs. 20,000/- for accident of pre 70s and pre 80s and for an accident of the present date, 29.6.1987, it should be atleast Rs. 35,000/- (*MPSRTC v. Sudhakar* 1977 ACJ 290, *Pushpa Thakur Vs. Union of India (UOI)* and *Another*, *Huchappa v. Anantharaman* 1981 ACJ 20 and *Saghani v. Ponnen* 1981 ACJ 269). For medical and incidental expenses, in the absence of documentary evidence, Rs. 5000/- in this case would be reasonable. Since the claimant is in employment, there is no loss of income as such. But he must have been on leave for 2-3 months which he lost due to the accident and to judicially notice, such leave can be surrendered or made use of for better purposes and therefore a fixed sum of Rs. 5,000/- is awarded towards the said item in the absence of material to show the actual loss. As a whole, the claimant would be entitled to Rs. 65,000/- which is the just and proper compensation in this case.

9. In the result, the Appeal is allowed and the award of the Tribunal is set aside

and substituted with the following award. The claimant/appellant shall be entitled to recover a sum of Rs. 65,000/- by way of compensation from the respondents whose liability shall be joint and several, together with costs of the proceedings throughout and interest at 12% p.a. from the date of petition till the date of payment. The amount shall be deposited in any Nationalised Bank as per the guidelines issued by the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .