

(2010) 09 AP CK 0031
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 2605 of 2003

Shaik Beebi

APPELLANT

Vs

B.Venkata Subbamma and Another

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Citation : (2011) 2 ALT 395

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : S.V. Muni Reddy, for the Appellant; A.V.K.S. Prasad, Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This Civil Miscellaneous Appeal arises out of award dated 31-3-2003 in M.V.O.P. No. 107/2000 on the file of the Motor Accidents Claims Tribunal-District Judge, Kadapa (for short "the Tribunal").

2. The claimant in M.V.O.P. No. 107/2000 is the Appellant. She filed the said O.P. claiming compensation of Rs. 1,70,000/- for the injuries she has suffered due to accident involving Tractor bearing registration No. AP 4T 4470. It is the case of the Appellant that on 22-2-1999 at about 12 Noon, when she and her daughter were traveling in auto from Kampalli cross roads to Kadapa, at Nagireddipalli cross roads, the above mentioned Tractor attached with Trailer bearing registration No. AP 4T 4771, came in the opposite direction in high speed and driven in a rash and negligent manner and hit the legs of the Appellant causing multiple fractures to left thigh bone. After being taken to Government Hospital, Kadapa, she was advised to go to General Hospital, Kurnool or Tirupathi. However, the Appellant is stated to have taken treatment from a bone setter at Puttur and she suffered disability of shortening of leg by 4 inches.

3. In support of her claim, the Appellant examined herself as PW-1 and one of the Doctors who treated her, as PW-2. The Appellant got Exs.A-1 to A-4 marked

on her side which included Ex.A-3 - wound certificate and Ex.A-4 - medical disability certificate. PW-2 in his evidence has opined that the disability suffered by the Appellant is 40%. The Tribunal has non-suited the Appellant on the sole ground that she was unable to establish that Respondent No. 1 was the owner of the Tractor and Trailer which was involved in the accident.

4. In Ex.A-1 - FIR, the Appellant has not indicated the registration number of the Tractor and the name of the driver on the ground that she was not aware of those details. However, in her report she has mentioned that she came to know through somebody that the offending Tractor belongs to one Bhagyalakshmi of Goodavandlapalli village. Ex.A-2 - charge sheet, the registration number of the Tractor has been mentioned as AP 4T 4470 and that of the Trailer as AP 4T 4471. However, interestingly, having mentioned the said registration numbers in her affidavit filed in lieu of chief examination, in the cross-examination the Appellant admitted to a suggestion put to her that the Tractor belongs to Bhagyalakshmi but not to Respondent No. 1. On the basis of this material, the Tribunal has held that as the Appellant failed to implead the true owner of the Tractor involved in the accident, neither Respondent No. 1 nor the Insurance Company is liable for payment of compensation.

5. At the hearing, Sri S.V. Muni Reddy, learned Counsel for the Appellant submitted that the provisions of the Motor Vehicles Act 1988 providing for payment of compensation being part of welfare legislation, the Tribunal ought not to have thrown away the Appellant's claim petition. The learned Counsel lamented that while proper care was not taken by his counterpart in handling his client's case, the Tribunal ought to have given an opportunity to the Appellant to implead the true owner of the Tractor and Trailer.

6. Sri A.V.K.S. Prasad, learned Standing Counsel representing Respondent No. 2 sought to justify the award of the Tribunal.

7. I have carefully considered the submissions of the learned Counsel for the parties. From the material discussed above, it is evident that the registration numbers of the Tractor and the Trailer which were involved in the accident were available on record. The only aspect which required to be ascertained was whether Respondent No. 1 was the registered owner of the Tractor or somebody else. It is indeed unfortunate that the Appellant was denied proper legal advice and accordingly not guided in a right way leading to rejection of her claim on the short ground that the identity of the owner of the Tractor was not established. It is nobody's case that the Appellant was not involved in the accident and suffered injuries. The lack of efforts on the part of those who handled the Appellant's case to implead the right person despite availability of the details of the Tractor and Trailer involved in the accident shall not result in deprivation of just compensation to the Appellant. It is disappointing that even the Tribunal has not taken the responsibility of adjudicating the dispute by displaying positive approach and undertaking measures such as summoning the policy from Respondent No. 2 - Insurance Company, which would have disclosed the details

of the owner of the Tractor and Trailer. In stead, it has displayed a very hyper-technical and conservative approach in treating this claim as adversarial litigation. The Tribunal ought to have kept in mind the fact that a victim of an accident needs to be treated in a manner different from a litigant fighting adversarial litigation.

8. Inasmuch as the details of the Tractor and Trailer are available, the Appellant cannot be denied just and proper compensation only on account of the fact that the owner of the offending vehicle was not impleaded. Having given my anxious consideration to the facts and circumstances of the case, I am of the opinion that interests of justice would be met if the Appellant is given an opportunity to implead the true owner of the Tractor and Trailer.

9. Accordingly, within four weeks from today, Respondent No. 2 shall furnish to the Appellant a copy of the insurance policy containing details of the owner of the Tractor and Trailer bearing registration Nos. AP 4T 4470 and AP 4T 4471. The Appellant shall approach Respondent No. 2 within the above mentioned period for this purpose. Within eight weeks from today, the Appellant shall file necessary applications for impleadment and amendment of pleadings in M.V.O.P. No. 107/2000. On receipt of such applications, the Tribunal shall dispose of the applications and the O.P. afresh. Needless to observe that the party which may be impleaded as owner and Respondent No. 2 are entitled to put forth their respective defences and contest the case.

10. The Civil Miscellaneous Appeal is accordingly allowed to the extent indicated above.