

(2010) 10 AP CK 0065

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2643 of 2003

Sri Sanjeevan Naragoud

APPELLANT

Vs

Sri M. Vasudeva Rao and General Manager, New India
Assurance Co. Ltd.

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166
Penal Code, 1860 (IPC) — Section 337

Citation : (2011) 6 ALT 338

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

Bench : Single Bench

Advocate : K. Raji Reddy, for the Appellant; None, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—This Civil Miscellaneous Appeal arises out of the award dated 27.02.2003 in O.P. No. 7 of 1999 on the file of the Motor Vehicle Accident Claims Tribunal-cum-Principal District Judge's Court, Medak at Sangareddy (for short "the Tribunal").

2. The claimant in the O.P. is the Appellant, who filed this appeal feeling dissatisfied with the quantum of compensation awarded by the Tribunal.

3. A perusal of the record shows that no proof of service on Respondent No. 1, owner of the vehicle, is available. Notice was served on Respondent No. 2, but there is no appearance on its behalf. In view of non-service of notice on Respondent No. 1, the Civil Miscellaneous Appeal is dismissed qua this Respondent.

4. The Appellant met with an accident on 02.06.1998 at about 8 a.m. when he was going from Himampur Village to Manoharabad. The accident was caused by a vehicle of tata sumo make bearing registration No. AP 9R 2424, which has hit the Appellant near Manoharabad Village resulting in causing multiple injuries to the Appellant. On the complaint lodged about the accident, Crime No. 78 of 1998

was registered by the Toopran Police Station against the driver of the vehicle for the offence u/s 337 I.P.C. For the injuries suffered by the Appellant, he has filed the abovementioned O.P. claiming a sum of Rs. 1,00,000/- as compensation. In support of his claim for compensation, he has examined himself as P.W.1 and examined Dr. S.T.R. Chary as P.W.2. The Appellant also filed Ex.A-4 certified copy of medical certificate. On consideration of the evidence on record, the Tribunal has in all awarded Rs. 35,000/- as compensation with interest at 9% p.a.,

5. At the hearing, the learned Counsel for the Appellant submitted that the Tribunal has committed a grievous error in awarding Rs. 30,000/- only as compensation for the permanent disability suffered by the Appellant. The learned Counsel further submitted that the Tribunal also fell into error by not awarding compensation for the injuries and in awarding the meager compensation of Rs. 5,000/- towards pain and suffering, medical expenses and extra nourishment etc.,

6. In his evidence as P.W.1, the Appellant has inter alia stated that he is a toddy topper earning Rs. 2,000/- per month prior to the accident and that he received two fractures of left thigh and left leg below the knee apart from the injuries to nose. He was shifted to Gandhi Hospital, Secunderabad, where he was admitted as inpatient for three months and that operation was conducted and rods were inserted in his left leg at two places. He further deposed that he was taking treatment at Balanagar even after discharge from the Gandhi Hospital and has spent Rs. 60,000/- to Rs. 70,000/- for medical treatment. In his cross examination, he has admitted that he has not filed any proof to show that he has taken treatment for three months in Gandhi Hospital and that he has incurred expenditure of Rs. 60,000/- to Rs. 70,000/- for treatment. He has further admitted that he has not filed toddy toppers licence and also any document to show that he was earning Rs. 2,000/- per month.

7. P.W.2, Dr. S.T.R. Chary, Orthopaedic Surgeon, who earlier worked at E.S.I. Hospital Sanathnagar, deposed that he has examined the Appellant clinically who was referred from Gandhi Hospital and that he treated the Appellant as inpatient as well as outpatient. He further deposed that the Appellant was operated for (fracture shaft femur left thigh) fracture of both bones of left leg. He has given the surgery details as "open reduction and extra middullarry nail fixation done". He also deposed that the Appellant requires removal of nails by surgery; that there is shortening of left lower limb by 1/2 inch and restriction of terminal degrees of rotation at the hip, restriction of terminal degrees of flaction at knee, resulting in limp and that partial permanent disability is approximately at 40%. The disability certificate issued by him is marked as Ex.C-1. Nothing material could be elicited on behalf of Respondent No. 1 to discredit his testimony.

8. From the evidence available on record, it is quite evident that the Appellant has received at least two grievous injuries. The Tribunal has not awarded any compensation for these injuries. The second schedule of the Motor Vehicles Act, 1988 (for short "the Act") which is made applicable in cases of claims arising u/s 163A of the Act (where wrongful act or neglect or default of the owner of the

vehicle need not be pleaded or established), Rs. 5,000/- is prescribed as compensation towards grievous injury. Though the second schedule cannot be applied as it is, in respect of claims arising u/s 166 of the Act, the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, has adopted the multiplier contained in the second schedule even in respect of the claims made u/s 166 of the Act. Inasmuch as the compensation provided under the second schedule is on a conservative side, there can be no reason why the same cannot be taken as a basis wherever it is not possible to assess the quantum of compensation in any of the heads in relation to the claims arising u/s 166 of the Act. Accordingly, I am of the opinion that the Appellant is entitled to award of Rs. 5,000/- as compensation for each of the two fractures.

9. Coming to the question of compensation payable for the permanent disability, the Tribunal has awarded Rs. 30,000/-. No basis is shown for arriving at the said figure. Even though the Appellant has not produced any proof in support of his plea that he was earning Rs. 2,000/- per month, even if he is treated as a labourer, if not a toddy topper, it is reasonable to presume that he would have been earning at least Rs. 1,000/- per month, if not more, at the time of the accident. The Appellant being 48 years of age at the time of the accident, the multiplier of "13" requires to be adopted following the judgment in *Sarla Verma v. Delhi Transport Corporation* 2009 (3) ALD 83 (SC). The Appellant, therefore, would have earned Rs. 1,30,000/-. As he suffered about 40% disability, the loss of income can be estimated at Rs. 50,000/-. Apart from the above, the Tribunal ought to have awarded at least Rs. 10,000/- towards medical expenses and extra nourishment instead of Rs. 5,000/-. Thus, in my opinion, the Appellant is entitled to a total compensation of Rs. 70,000/-.

10. For the aforementioned reasons, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal to Rs. 70,000/-. Respondent No. 2 alone is liable for payment of enhanced compensation which shall carry interest at 6% p.a. from the date of filing of the claim petition till its realization.