

(2014) 09 AP CK 0175
In the Andhra Pradesh High Court
Case No : CMA No. 4373 of 2004

Telugu Bheemudu

APPELLANT

Vs

Girish Kumar Raval and Others

RESPONDENT

Date of Decision : 20-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(a), 173 — Penal Code, 1860 (IPC) - Section 337, 338

Citation : (2015) 4 ACC 424 : (2015) 3 ALD 562

Hon'ble Judges : Anis, J.

Bench : Single Bench

Advocate : T. Nagarjuna Reddy, for the Appellant

Final Decision : Partly Allowed

Judgement

Anis, J.?This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act"), aggrieved by the award, dated 30.7.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal, Kurnool District, in MVOP No. 261 of 2003, awarding compensation of Rs. 33,720/-. The appellant/petitioner filed the above O.P., under Section 166(a) of the Act, claiming compensation of Rs. 1,00,000/- against respondent Nos. 1 and 2, on account of the injuries suffered by him in a motor vehicle accident, that occurred on 11.1.2002.

2. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the original petition.

3. The brief averments made in the petition are that on 11.1.2002 at 3:00 p.m., while the petitioner was travelling in the lorry bearing No. KA.03.A.5541 as loading and unloading coolie along with the cleaner and driver towards Nandyal, and by the time the said lorry reached near Nannur on Kurnool-Betamcharla Road, the driver of the first respondent, drove the Lorry Bearing No. MH.04.P.7536 in a rash and negligent manner at high speed, came in opposite

direction and dashed against the lorry bearing No. KA.03.A.5541, in which the petitioner was travelling, on its right side, as a result of which the petitioner sustained fracture to his left wrist. Immediately after the accident, the petitioner was shifted to Government Hospital, Kurnool, where his wrist was operated. The petitioner spent Rs. 5,000/- for medicines. Even after taking treatment, he is not in a position to lift heavy weights, since the movement of his left wrist was restricted and he suffered permanent disability of 40%. The driver of the lorry bearing No. KA.03.A.5541 lodged a complaint against the driver of the first respondent with Orvakal Police, based on which a case in Cr. No. 6 of 2002 for the offences punishable under Sections 337 and 338 of I.P.C., was registered against the driver of the first respondent and after due investigation, police laid charge-sheet against him. The petitioner was aged 35 years, earning Rs. 100/- per day working as Hamali. After the accident, he is not in a position to do any work with his left hand and hence, claimed compensation against both the respondents.

4. Before the Tribunal, the first respondent remained ex parte.

5. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, age, income of the petitioner and stated that there was no rash and negligent driving on the part of the driver of the first respondent and entire negligence is on the part of the driver of the lorry bearing No. KA.03.A.5541. Further, the petitioner took treatment in the Government Hospital, Kurnool. There is no need for spending amount much less Rs. 5,000/- for treatment and medicines. Further, there is contributory negligence on the part of the driver of both lorries, since there is a head on collision and accident occurred on the highway and finally stated that the compensation claimed by the petitioner is excessive and exorbitant.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined PWs. 1 and 2 and got marked Exs. A1 to A5 on his behalf. On behalf of the contesting respondent, no oral evidence was adduced but Ex. B1 got marked by consent.

7. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. MH.04.P.7536 belonging to the first respondent and awarded compensation of Rs. 33,720/- along with interest at 9% p.a. against both the respondents.

8. Being not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

9. The learned Counsel appearing for the appellant/petitioner argued that the Tribunal failed to take into consideration the disability suffered by the petitioner

as per the evidence of PW 2 and also failed to consider Ex. A5, which was issued by the Medical Board, wherein the disability is shown as 15%; that the Tribunal also failed to see that the petitioner was getting Rs. 100/- per day by doing hamali work; that the Tribunal fixed the income as Rs. 65/- per day and the Tribunal has not considered the evidence of PW 2, who treated the petitioner, and who clearly stated in his evidence that disability is 5% to 10%; that the Tribunal erroneously has taken into consideration the disability at 5% only, which is very low and finally prayed the Court to enhance the compensation.

10. On the other hand, the learned Counsel appearing for the second respondent argued that there is contributory negligence on the part of both the drivers, and therefore the Tribunal has not considered that aspect; that admittedly, the accident was head on collision, which was occurred on the highway, which clearly proved that the drivers of both the lorries drove them in rash and negligent manner and caused the accident; that the Tribunal after considering the oral and documentary evidence, rightly fixed the disability as 5%; that PW 2 in his evidence clearly stated that Ex. A5 was issued by the Medical Board and PW 2, Medical Officer, who treated the petitioner stated that the petitioner was suffering from permanent disability of 5% to 10%; that PW 2 clearly stated in his cross-examination that the petitioner suffered minimal deformity of left wrist and fixed the disability as 5% and after considering the evidence of PW 2 only, the Tribunal awarded just and reasonable compensation, which needs no interference of this Court and prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned Counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellant is entitled for enhancement of compensation as prayed for?

2. Whether the Tribunal has granted just and reasonable compensation to the appellant or not?

12. Points 1 and 2:--As seen from the material available on record, the Tribunal after considering the oral and documentary evidence held that the driver of the lorry bearing No. MH.04.P.7536 belongs to the first respondent drove the vehicle in rash and negligent manner and the driver of the lorry bearing No. KA.03.A.5541 is not at fault. The main contention of the learned Counsel for the second respondent is that the accident is a head on collision and there is contributory negligence on the part of both the drivers in causing the accident.

13. It is no doubt in the counter filed by the second respondent a specific plea has been taken regarding the contributory negligence. The burden of proof lies on the second respondent to prove the said fact. The second respondent has not produced any oral evidence much less the evidence of the driver of the lorry bearing No. MH.04.P.7536. In the absence of any evidence, it is proved that the accident was caused due to rash and negligent driving of the driver of the lorry bearing No. MH.04.P.7536 and there is no contributory negligence and therefore,

the Tribunal rightly held and the said findings needs no interference of this Court.

14. As far as the quantum of compensation awarded by the Tribunal is concerned, PW 1 is the petitioner and in his evidence, he clearly stated that on the date of accident, while he was travelling in the lorry bearing No. KA.03.A.5541 as coolie for loading and unloading along with the cleaner and driver, towards Nandyal, at that time, the accident was caused due to rash and negligent driving of the driver of lorry bearing No. MH.04.P.7536. PW 1 also stated that he was working as hamali and earning Rs. 100/- per day. The Tribunal after considering the evidence of PW 1 and in pursuance of A.P. Gazette No. 263, dated 13.6.2000, fixed the daily income of the petitioner as Rs. 65/- per day i.e., Rs. 1,950/- p.m. and Rs. 23,400/- p.a. According to the petitioner, in the accident, he sustained fracture to his left wrist and Ex. A2 is the Wound Certificate issued by the Government Hospital, Kurnool, in which the age of the petitioner is mentioned as 35 years. Apart from Ex. A2 Wound Certificate, the petitioner has not filed any documentary evidence to prove his age. The Tribunal by considering the age of the petitioner in Ex. A2 fixed the multiplier as "16". The learned Counsel for the appellant/petitioner contended that the Tribunal has not granted compensation for the injuries sustained by the petitioner to his left wrist; that due to the fracture to the left wrist, he suffered permanent disability of 15% and filed Ex. A5 Disability Certificate issued by the Medical Board. To prove the said injury, he also examined PW 2-the Government Orthopaedic Surgeon, who also clearly stated that the petitioner suffered permanent disability at 5% to 10% as there is minimal deformity of the left wrist. The Tribunal after considering the evidence of PW 2 fixed the disability at 5%. On the other hand, PW 1 in his evidence stated that due to the accident and due to the injury, he is unable to lift heavy weights and the Disability Certificate issued under Ex. A5 has to be considered. PW 2 is not the doctor who issued Ex. A5. Further, he is not the member of the Medical Board. But, the fact remains that in the accident, the petitioner received injury to his left wrist and lost grip, and with that left wrist only the petitioner has to do his coolie work and lift weights. Therefore, I am of the view as per the evidence of PW 2 the disability sustained by the petitioner can be taken as 10% and therefore, the loss of future income due to 10% disability comes to Rs. 23,400/- x 16 x 10/100 = Rs. 37,440/-, which is hereby awarded. The learned Counsel for the appellant also argued that the Tribunal has not granted any compensation for the loss of earnings to the petitioner, who sustained grievous injury. Therefore, an amount of Rs. 2,000/- is awarded towards loss of earnings and Rs. 1,000/- towards transportation charges to the petitioner. The Tribunal already granted Rs. 10,000/- towards pain and sufferings and Rs. 5,000/- towards medical expenses and extra nourishment. Thus in total, the appellant/petitioner is entitled for compensation of Rs. 55,440/- [Rs. 37,440/- + Rs. 2,000/- + Rs. 1,000/- + Rs. 10,000/- + Rs. 5,000/-].

15. Therefore, in view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs. 33,720/- to Rs. 55,440/-. No order as to costs. Miscellaneous petitions,

if any, pending in this appeal and cross objection shall stand closed.