

(2004) 07 AP CK 0103

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2616 of 2000 and Cross Objections

The New India Assurance Company Ltd.

APPELLANT

Vs

Malavath Bheelya and Others

RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Penal Code, 1860 (IPC) — Section 337, 338

Citation : (2004) 07 AP CK 0103

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Nanda R. Rao, for the Appellant; V. Gulfi Reddy, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—First respondent filed a claim petition seeking compensation of Rs. 3,00,000/- from respondents 2 to 4 and the appellant alleging that he sustained injuries due to the rash and negligent driving of the Tractor bearing No. AP 25/T 4164 belonging to respondents 2 to 4, insured with the appellant, and examined himself as PW-1 and the doctor who issued a disability certificate to him as PW-2 and marked Exs A1 to A-14 on his behalf. Respondents 2 to 4 who contested the claim by filing counter, did not adduce any evidence on their behalf. Appellant who also contested the claim, examined one witness as RW-1 and marked Exs. B1 and B2 on its behalf. The Tribunal having held that the accident involving the firsts respondent occurred due to the rash and negligent driving of the offending tractor of respondents 2 to 4 awarded Rs.2,00,000/- as compensation to the firsts respondent against respondents 2 to 4 and the appellant. Aggrieved by the compensation awarded to the first respondent, the insurer of the offending vehicle preferred this appeal and dissatisfied with the compensation awarded to him the claimant preferred cross-objections.

2. Since the appellant did not obtain permission u/s 170 of the Motor Vehicles Act, 1988 in view of the ratio in National Insurance Co. Ltd., Chandigarh Vs.

Nicolletta Rohtagi and Others, , this appeal is liable to be dismissed as not maintainable and accordingly, the same is dismissed.

3. The point for consideration in cross objections is to what compensation is the first respondent entitled to?

4. In my considered opinion, the failure of the Tribunal in going through the documentary evidence adduced by the first respondent carefully, and its dealing with the case casually and its lavish and liberal award of Rs. 2,00,000/- as compensation to the first appellant made true the popular Telugu adage. Surprisingly firsts respondent, instead of feeling happy for the largess conferred on him by the Tribunal, in spite of the documentary evidence adduced by him, avariciously is seeking higher compensation through cross-objections. Had the owner of the offending vehicle preferred an appeal, this definitely would have been a fit case for interference and considerable reduction in the compensation awarded to the first respondent.

5. It is well known that when ever a victim in medico legal case is admitted in hospital a brief note as to how he received the injuries would be noted in the case sheet. Ex. A2, injury certificate relating to first respondent shows that he was admitted in Gandhi Hospital, Secunderabad on 24.12.1995 at 1.15 PM stating that he sustained the injuries due to a fall from his bullock cart on 23.12.1995 at 11 PM at Nagireddypet, Nizamabad District. Ex. A1, FIR registered u/s 337 IPC, shows that the report against the driver of the offending tractor was given at 10.30 AM on 26.12.1995, ie. About 2 days after the first respondent admitted himself in the Gandhi Hospital, Secunderabad. Ex. B2, certified copy of the judgment in CC No. 285 of 1996 shows that the driver of the Tractor bearing No. AP 25/T 4164 belonging to respondents 2 to 4, was acquitted of the offence u/s 337 IPC. From Exs. A1 and Ex. B2 it is clear that first respondent received only simple injuries, due to the accident allegedly caused by the offending tractor. If first respondent suffered the injuries stated by PW-2, the driver of the tractor should have been charge sheeted for an offence u/s 338 IPC, but not Section 337 IPC. Obviously PW-2 based his evidence on Ex. A-8, medical certificate issued by the Civil Assistant Surgeon, Community Hospital, Banswada District, Nizamabad, where first respondent was admitted on 3.2.1994 i.e more than five months after the accident. As stated earlier, if the first respondent was admitted in Community Hospital, Banswada, due to the injures received on 23.12.1995, the police would have charge sheeted the driver of the tractor for an offence u/s 338 IPC, but not for an offence u/s 337 IPC. Had the first respondent taken steps for production of the case sheet from Gandhi Hospital, Secunderabad, it would have revealed the period for which he had undergone the treatment and his condition at the time of discharge. Obviously, because the entries in the case sheet would not support the contention of the first respondent he did not summon his case sheet from Gandhi Hospital, Secunderabad, but examined PW-2 a doctor from Nizamabad.

6. In the above circumstances, I find no grounds to enhance the compensation

already liberally granted to him by the Tribunal. The point is answered accordingly.

7. Hence, Cross-objections are liable to be dismissed.

8. In the result, the appeal is dismissed without costs and cross-objections are dismissed with costs.