Union of India (UOI) Vs Korlapati Srinivasa Sivarama Prasad

Court: Andhra Pradesh High Court

Date of Decision: Sept. 29, 2004

Acts Referred: Evidence Act, 1872 â€" Section 102
Penal Code, 1860 (IPC) â€" Section 337, 338

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

Bench: Single Bench

Advocate: T. Ramakrishna Rao, for the Appellant; A. Rajendra Babu, for the Respondent

Final Decision: Allowed

Judgement

C.Y. Somayajulu, J.
Alleging that a lorry belonging to the appellant, being driven in a rash and negligent manner, dashed against his scooter

resulting in grievous injuries to him, respondent filed a claim petition seeking compensation of Rs.1,00,000/- from the appellant and examined

himself as P.W.1 and the Doctor who treated him as P.W.2 and marked Exs.A.1 to A.4 and Ex.X.1 on his behalf. Appellant filed a counter

contending that the lorry belonging to it, which allegedly caused the accident involving the respondent, was in the workshop on the fateful day and

so it could not have caused the accident and hence it is not liable to pay any compensation to the respondent, and examined three witnesses as

R.Ws.1 to 3 and marked Exs.B.1 to B.3 on its behalf. The Tribunal having held that the accident occurred due to the rash and negligent driving of

the driver of the lorry belonging to the appellant awarded Rs.55,000/- as compensation to the respondent. Hence, this appeal by the respondent

before the Tribunal.

2. The points for consideration in this appeal are:

1) Whether the lorry belonging to the appellant caused the accident to the respondent on 06-04-1995?

2) To what compensation, if any, is the respondent entitled to?

Point No.1:

3. The Tribunal did not discuss the evidence of P.W.1 and the documentary evidence adduced by him, but in para-12 of its award, the Tribunal

held that the burden of proving that the vehicle did not ply on the date of accident is on the appellant. So, it is clear that the Tribunal was under the

assumption that the burden of proof to establish that its vehicle did not cause the accident is on the appellant, obviously, without keeping in view

Section 102 of Evidence Act, which lays down that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at

all were given on either side. Since the appellant denied the accident, if both appellant and respondent did not adduce evidence, the claim of the

respondent has to be dismissed. So, it is clear that the burden to prove that the vehicle belonging to the appellant caused the accident is squarely

on the respondent.

4. The reasons that prompted the Tribunal to hold issue No.1 in favour of the respondent, as found in the award are as under.

But the petitioner has immediately lodged complaint with police with regard to the said accident. In a case where grievous injuries have been

sustained by the victim and the victim''s condition is precarious by going into unconscious state, it is not at all possible to gather particulars by the

victim himself. Therefore, the acquittal of the driver is not at all a ground to hold that there was no accident by the offending vehicle. Hence, the

point is decided against the respondent.

Since the Tribunal failed to advert to the evidence of P.W.1 and the documentary evidence adduced by him, I deal with the evidence of P.W.1 and

the documents relied on by him in detail to find out if respondent is able to establish his case, since evidence of P.W.2, the only other witness

examined by the respondent, is not relevant for deciding this point.

5. The evidence of P.W.1 is, when he was proceeding on a scooter from Sangam Diary to Sangamjagarlamudi, a lorry bearing No. ADM 9704

belonging to the railway department came at a high speed without blowing horn and dashed against his scooter resulting in injury to his left eye

brow and fracture to his left leg and so he was admitted in Government Hospital and was treated as an inpatient for four days and thereafter took

treatment as an out patient for six months. During cross-examination, he stated that though he has a driving licence, it is not available with him, and

denied the suggestion that he has no driving licence, and admitted that he did not file the driving licence into Court, and also admitted that he does

not have any documentary evidence to show that he is the owner of the scooter AEK 4581 involved in the accident and denied the suggestion that

he did not suffer injuries in a road accident.

6. Ex.A.1, F.I.R. issued in connection with the accident, shows that it was registered on the basis of a statement of the respondent recorded by a

Head Constable in the Government Hospital on 07-04-1995 at 5.00 p.m., where he stated that on 06-04-1995 at about 12.00 Noon he left his

house on his scooter AIK 4581 to a mechanic shop at Vadlamudi Centre, and after getting his scooter repaired, when he was on his return journey

and proceeded to a distance of 11/2 K.Ms. and reached near Garuvupalem, by about 1.00 p.m., a lorry bearing No.ADM 9704 came at a high

speed and in a rash and negligent manner from inside Garuvupalem, without blowing horn, and dashed against his scooter and so he who was

thrown away to a distance, fractured his left leg and received other injuries and the persons who witnessed the accident took him to Government

Hospital, Tenali, and while he was being examined, his relatives, who came to know about his involvement in an accident, came there and took him

to Guntur to the hospital of Haribabu by 6.00 p.m., and that on 7.4.1995, as per the advice of the Doctor, his father-in-law, Narasimha Rao,

brought him to the Government Hospital, Guntur, in the morning and that he is undergoing treatment in that hospital and the cause for the injuries

over his body is the rash and negligent driving of the lorry ADM 9704 and that both the scooter and the lorry involved in the accident are still there

at the scene of accident, which is in the limits of Chebrolu police station. That statement was received in the Chebrolu police station at 8.00 a.m. on

08-04-1995 and was registered as Cr.No.27 of 1995 u/s 337 I.P.C.

7. The material part of Ex.A.2, the charge sheet filed against R.W.1 in connection with the accident u/s 338 I.P.C., reads:

On 06-05-1995 morning LW.1 who is a resident of Sangamjagarlamudi village came to Vadlamudi on his scooter AIK-4581 to attend minor

repairs and after getting repaired LW-1 is going to Sangamjagarlamudi on his scooter and when he reached Garuvupalem Centre Accused noted

in the margin driving his lorry ADM-9704 in a rash and negligent manner coming from Garuvupalem village hit LW-1 resulting which LW-1 fell

down on the road side causing injuries to the Left Leg ankle above region and on the left eye brow. Unknown passengers standing at the centre

shifted the injured to G.H. Tenali from where LW.1 went absconding and again on 7-4-95 admitted himself at G.G.H. Guntur for treatment to the

injury. On the Intimation of the M.O. Casualty LW-3 recorded the statement of LW-1 and sent the statement along with the Hospital Intimation to

LW-4 who in turn sent the same to LW-5 for investigation on point of jurisdiction. On receipt of the Hospital Intimation and statement of LW-1,

LW-5 registered a case in Cr.No.27/95 u/s. 337 IPC and investigated into. Accused is absconding since the date of commission of the offence.

LW-6, verified the investigation of LW.5. L.W.2 treated L.W.1 and issued a certificate opining that the injuries received by LW-1 are

GRIEVOUS in nature. LW-7 finalised investigation and filed chargesheet.

The following are witnesses cited in Ex.A.2 charge sheet. Respondent, L.W.1; Dr.N.Subbarao, Medical Officer, Government General Hospital,

Guntur, L.W.2; K.Babu Rao, HC 1891 of G.G.H. O.P.P.S., L.W.3; B.Veera Reddy, HC 72 of Kothapet, L & O P.S., L.W.4; M.Srinivasa

Rao, HC 684 of Chebrole Police Station, L.W.5; T.V.Ratna Swamy, Sub-Inspector of Police, Chebrole P.S., L.W.6; and K.Sudhakar, Sub-

Inspector of Police, Chebrole P.S., L.W.7.

8. From Ex.A.2 it is clear that police did not conduct a panchanama of the scene of accident nor have they sent the vehicles involved in the

accident for examination by the Motor Vehicles Inspector, though in Ex.A.1 the respondent clearly stated that both the vehicles involved in the

accident are still lying at the scene of accident, and that the police, believing what the respondent stated to them is the absolute truth, without

examining any other witness, filed the charge sheet. The averments in Ex.A.1 clearly show that some persons who witnessed the accident took him

to Tenali Government Hospital and when he was being examined his relatives came there. (Government asupatrilo chupinchuchundaga, telusukoni

ma bandhuvulu Tenali Government asupatriki na vaddaku vachinaru)

Since respondent was taken to government hospital with injuries in a road accident, caused by another vehicle, it would be a medico legal case and

so the government doctor is bound to make an entry of the same in the accident register. Ex.A.2 is silent about the treatment given to the

respondent at Tenali Government Hospital. Respondent failed to summon the accident register from Tenali Government Hospital. The statement of

the respondent in Ex.A.1 that he was taken to the hospital of Dr.Haribabu from Government Hospital, Tenali, cannot be true because in Ex.A.2 it

is stated that respondent absconded from the Government Hospital, Tenali. When the respondent was taken to Government Hospital, Tenali, with

injuries received in a road accident, the doctor at the Government Hospital, Tenali, would have informed the police about the same and the police

at Tenali would have recorded the statement of respondent. So, the investigation officer should have verified if Tenali police registered any case

and what are the entries in the accident register of Government Hospital, Tenali, with regard to the injuries of the respondent. So, merely because

Ex.A.3, extract from the accident register of Government Hospital, Guntur, prepared on 07.6.1995 at 10.45 a.m. shows that respondent received

injuries in an accident caused by a lorry, it cannot be said that the respondent received injuries in an accident caused by a lorry on the previous

day. In fact for non-production of the accident register from Government hospital, Tenali, an adverse inference has to be drawn against the

respondent.

9. Thus, except the interested evidence of P.W.1 and Ex.A.2 charge sheet, prepared without conducting any investigation like examining eye

witnesses, conducting a panchanama of the scene of accident, sending the vehicles for inspection by Motor Vehicles Inspector, and basing on the

assumption that what is stated by respondent is truth, whole truth and nothing but truth, there is no other material on record to show that

respondent received the injuries in a road accident, muchless in an accident caused by the lorry belonging to the appellant.

10. As stated earlier, the fact that appellant has taken a stand that its lorry did not ply on the road on the date of accident, would have relevance

only when there is prima facie evidence to show that the lorry of appellant caused the accident involving the respondent. When respondent failed to

establish that he was involved in an accident caused by the lorry belonging to appellant, merely because there are some discrepancies in the

evidence of R.Ws.1 to 3, and the failure of the R.W.1 to produce the receipts, it cannot be said that the lorry of the appellant caused the accident

involving the respondent, more so because Ex.A.1 F.I.R. was given long after the accident and since the Accident Register and the case sheet

maintained in the hospital at Government Hospital, Tenali, are not produced. Obviously taking advantage of the fact that a lorry belonging to the

appellant usually plies on the road, near his village, respondent, with a view to claim compensation for the injuries received by him, in collusion with

the police, and not being aware that the lorry of the appellant did not ply on the road on the date of alleged accident, must have brought Ex.A.1

and Ex.A.3 into existence by informing the doctor at Government Hospital, Guntur, that he received injuries due to an accident caused by a lorry

belonging to the appellant. That that could be so is evident from the fact that there is no evidence on record to show that respondent either owns a

scooter, or has a driving licence. If a lorry being driven at a high speed dashes a scooter it would get damaged. So, as an ordinary prudent man,

respondent would not have failed to claim damages for the damage caused to his scooter also in his claim petition. His failure to make a claim for

the damage to his scooter is also a circumstance against the respondent.

11. In the above circumstances, it cannot but be held that the evidence on record does not establish that the petitioner received injuries in an

accident caused by a lorry belonging to the appellant. The point is answered accordingly.

Point No.2:

12. In view of my finding on the point No.1, though it is not necessary to give a finding on this point, I wish to give a finding on this point also.

13. In view of Exs.A.3 and A.4, it is clear that the respondent suffered a simple comminuted fracture and must have underwent pain and suffering

and so he would have been entitled to Rs.5,000/- towards pain and suffering. Since the evidence of P.W.2 shows that the fracture of the

respondent got united with a slight mal-union and that respondent attended the O.P. for 4 or 5 occasions, Rs.1,000/- towards transport to

hospital, Rs.500/- towards extra nourishment, Rs.500/- towards attendant charges would be a reasonable compensation.

14. Assuming that the evidence of P.W.1 that he, as an agent of Peerless, used to earn about Rs.2,000/- per month, is true, since he sustained only

a simple comminuted fracture, he could not have taken rest for more than two months and, so, he would have been entitled to Rs.4,000/- towards

loss of earnings. The slight mal-union of the fracture would not either hamper the earnings or the earning capacity of the respondent as an agent of

an insurance company but may cause some discomfort. So, Rs.10,000/- towards such discomfort would be a reasonable amount of

compensation.

15. Thus, respondent would have been entitled to Rs.5,000/- + Rs.1,000/- + Rs.500/- + Rs.500/- + Rs.4,000/- + Rs.10,000/- = Rs.21,000/- as

compensation for the injuries allegedly suffered by him in the accident. But, since I held that the evidence on record is not sufficient to hold that the

lorry of the appellant caused the accident, respondent is not entitled to that amount from the appellant. The point is answered accordingly.

16. In the result, the appeal is allowed and the award dated 01-02-1999 passed by the Motor Vehicles Accidents Claims Tribunal at Guntur in

M.V.O.P.No.426 of 1995 is set aside and the M.V.O.P.No.426 of 1995 is dismissed. Parties are directed to bear their own costs in this appeal.