

(2011) 12 AP CK 0025

Andhra Pradesh High Court

Case No: C.M.A. No. 1086 of 2004 and Cross Objections (Sr) No. 52011 of 2004

The Managing Director, Aprtc,
Muhirabad, Hyd

APPELLANT

Vs

Rami Reddi Lakhmi Reddi

RESPONDENT

Date of Decision: Dec. 2, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173

Citation: (2012) 2 ALD 134 : (2012) 4 ALT 726

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Final Decision: Allowed

Judgement

L. Narasimha Reddy

1. This appeal u/s 173 of the Motor Vehicles Act is directed against the order, dated 23.12.2003, passed by the Motor Accident Claims Tribunal-cum-District Judge, Kadapa (for short "the Tribunal") in M.V.O.P. No. 120 of 2001. The respondent filed the M.V.O.P. claiming a sum of Rs. 5,00,000/- as compensation for the injuries received by him in an accident that occurred on 01.05.2000. He stated that he was proceeding as a pillion rider on a motorcycle bearing No. AP 04 C 3344, near old bus stand area and when it reached new Kodanda Ramaswamy Temple, Nagarajupet, a bus bearing No. AP 9Z 4137, owned by the appellant, came in the opposite direction in a rash manner and dashed against the two-wheeler. The respondent is said to have received grievous injuries and was shifted to Government Head-Quarter Hospital, Kadapa and thereafter, to Chennai Medical College, Chennai. He is said to have treated for one and half months as inpatient and ultimately, the right leg was amputated up to knee level. He furnished various particulars, such as the expenditure incurred for treatment and loss of earning capacity.

2. The appellant filed a counter denying its liability. It was stated that the accident occurred on account of the fact that the rider of the motorcycle made an attempt to overtake an auto rickshaw and in the process, has dashed against the rear portion of the bus. It was also stated that the driver of the bus, who was examined as R.W. 1, was acquitted in a criminal case.

3. Through the order under appeal, the Tribunal awarded a sum of Rs. 4,00,177/- as compensation. While the appellant challenges the compensation awarded by the Tribunal, the respondent has filed Cross-Objections.

4. The learned Standing Counsel for the appellant submits that the respondent did not choose to implead the rider of the motorcycle much less its owner and insurer and has chosen to file the M.V.O.P. against the appellant alone. He contends that the driver of the bus has categorically stated that the accident occurred on account of negligence on the part of the rider of the motorcycle and his evidence virtually remained un rebutted. He further submits that the Tribunal ought to have at least apportioned the liability. The quantum of compensation as well as the interest awarded thereon are also assailed.

5. Sri T.V.S. Kumar, learned counsel for the respondent, on the other hand, submits that even if there was any negligence on the part of the rider of the motorcycle also, it would be a case of composite negligence and not the one of contributory negligence. He submits that the respondent is only a victim and was not driving the motorcycle. Learned counsel further submits that if the parameters that are applicable to the respondent are taken into account, higher amount of compensation is payable.

6. The respondent deposed as P.W. 1 and the Doctor, who certified his disability, was examined as P.W. 2 Exs. A1 to A3 are F.I.R., charge sheet and wound certificate; Exs.A4 to A6 pertain to the treatment; Ex. A7 is the disability certificate; Ex. A8 is the employment certificate and Ex.A9 relates to the transport charges. On behalf of the appellant, the driver of the bus was examined as 7. R.W. 1 and the judgment in C.C. No. 263 of 2000 in which the driver was acquitted, was filed as Ex. B1.

8. The occurrence of the accident was spoken to by R.W. 1 alone. No other eye witness was examined. The respondent was travelling as a pillion rider. He did not examine the rider of the motorcycle also. He stated that the accident occurred on account of the negligence on the part of the driver, R.W. 1 The latter, on the other hand, stated that on noticing that an auto rickshaw and a motorcycle were coming in a rash and negligent manner, he stopped the bus and despite the same, the rider of the motorcycle hit the bus on rear side after losing control. It may be true that there is a possibility for treating it as a contributory negligence, since the rider of the motorcycle was not examined and the motorcycle hit the rear portion of the bus. That would have become necessary if only the compensation was claimed by the rider of the motorcycle. The respondent is a pillion rider and hardly he can be said to

have contributed to the accident. From his point of view, it becomes a case of composite negligence involving the driver of the bus, R.W. 1, on the one hand, and the rider of the motorcycle on the other. Though he could have claimed compensation against both of them, law permits him to choose any one of them. The appellant could have insisted on the owner, driver and insurer of the motorcycle to be impleaded and in such an event, there would have been a possibility for apportioning the liability for the accident. Since that step was not taken, the plea of the appellant that the accident must be treated as the one caused with the contributory negligence of the rider of the motorcycle also cannot be accepted.

9. So far as the quantum of compensation is concerned, the Tribunal has applied the correct parameters and it is not pointed out that the exercise suffers from any serious infirmity. The leg of the respondent was amputated. The expenditure incurred for treatment and loss of earning capacity were taken into account. This Court is not inclined to take a different view.

10. The Tribunal awarded interest at the rate of 9% per annum. It is a matter of common knowledge that in case of this nature, the interest is awarded at the rate of 7%.

11. Hence, the appeal is partly allowed upholding the award in all respects, but reducing the rate of interest from 9% to 7%.

12. Though the learned counsel for the respondent made an attempt to want this Court to enhance the compensation, no basis is shown therefor. Hence, the Cross-Objections are rejected. There shall be no order as to costs.