(2014) 10 KAR CK 0080

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 31710 of 2013 (MVC) C/W Miscellaneous First Appeal No. 31355 of 2012 (MVC)

Amaresh APPELLANT

Vs

The Divisional Manager United India Insurance Co. Ltd.
 The Divisional Manager United India Insurance Co. Ltd. Vs Amaresh RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), 151

Citation : (2015) 1 AKR 244 : (2015) 3 KCCR 2396

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : S.M. Bidari and S.S. Aspalli, Advocate for the Appellant; S.S. Aspalli, Preeti Patil Melkundi and S.M. Bidari, Advocate for the Respondent

Judgement

A.S. Pachhapure, J.—Though the matters are posted in the list of admission, with the consent of learned counsel for both the parties, they are taken up for final hearing and are being disposed of by this judgment.

2. While the claimants have filed an appeal seeking enhancement of compensation for the death of Avinash in the motorcycle accident, the insurer has filed other appeal challenging its liability to pay the compensation.

3. The facts reveal that on 02.12.2008 at about 6.30 p.m., the deceased (Avinash) was pillion rider on Hero Honda Splendor motorcycle bearing registration No. KA-32/R-9295 and Sharanbasappa was riding the motorcycle. At that time, a tractor-trailer bearing registration No. KA-32/T-9873-9874 hit the motorcycle and thereby the rider and pillion rider sustained severe injuries and died. The legal representatives of Avinash who was the pillion rider, have made a claim for compensation.

4. During the enquiry, appellant No. 1 was examined as PW. 1 and in their evidence Exs. P1 to P32 were marked. On behalf of the respondents, one witness

was examined as RW. 1 and in their evidence Exs. R1 to R3 were marked.

5. The tribunal after hearing the counsel and after appreciation of the evidence on record, allowed the claim petition in part and granted a sum of Rs. 7,60,000/- as compensation with interest at 6% per annum, directing the insurer of the motorcycle to pay the compensation. It held that it was the rider of the motorcycle who was negligent was responsible for the accident. The legal representatives of the deceased (Avinash) filed MFA No. 31710/2013 seeking enhancement of compensation whereas the insurer of the motorcycle has filed other appeal in MFA No. 31356/2012 challenging its liability.

6. An application is filed under Order 1 Rule 10 read with Section 151 of CPC to include legal representatives of the rider (owner of motorcycle) as a party to the proceedings.

7. Heard the learned counsel for both the parties.

8. The points that arise for consideration are:

i. Whether the legal representatives of the deceased are entitled for enhancement for compensation?

ii. Whether the insurer is liable to pay the compensation?

iii. Whether the owner of the motorcycle is necessary as a party in the proceedings?

9. Learned counsel for the claimants submits that the compensation awarded is on the lower side and needs enhancement. On the other hand, learned counsel for the insurer of the tractor-trailer submits that the award of the Tribunal is just and proper and it has rightly held that the insurer of the tractor-trailer is not responsible for the incident and is not liable to pay the compensation. Whereas, the learned counsel for the insurer of motorcycle submits that in the absence of the owner as a party to the proceedings, the insurer cannot be held liable to pay the compensation.

10. Perusal of the finding of the Tribunal reveals that it was the rider of the motorcycle bearing No. KA-32/R-9295, who was held to be rash and negligent in riding the motorcycle and was responsible for the accident. Unfortunately, the rider and owner of the motorcycle died in the accident, but the claimants did not included the legal representatives of the deceased Sharanabasappa as a party to the proceedings. The legal representatives of the rider (owner of motorcycle) were not impleaded as a party to the proceedings. So far as the tractor-trailer are concerned, the Tribunal has held that the negligence on the part of its driver is not proved. Therefore, it has exempted the insurer of the tractor-trailer from the liability.

11. It is well established principle of law and that the insurance contract is in between the owner of the motorcycle and the insurer i.e., the appellant in the other appeal. The insurer is liable to be pay the compensation and it is under the

contract of insurance, wherein the insurer has to indemnify the owner, in case if the owner is held responsible to pay the compensation. In the absence of the owner, a claim petition only against the insurer cannot be maintained.

12. It is in the aforesaid circumstances that an application has been filed by the legal representatives of Avinash under the provisions of Order 1 Rule 10(2) read with Section 151 of CPC to implead the legal representatives of Sharanabasappa, the owner of the vehicle as a party to the proceedings.

13. In view of this application and considering the fact that a claim petition against the insurer alone is not maintainable, the impugned judgment and award of the Tribunal will have to be set aside and the matter has to be remitted to the Tribunal for fresh disposal in accordance of law after hearing on the application for impleading and passing appropriate orders on the said application and affording opportunity to all the parties before disposal of the cases in accordance with law.

Consequently, the appeals are allowed. The judgment and award of the Tribunal are set aside. The matter is remitted to the Tribunal for fresh disposal.

To avoid the delay, the parties are directed to appear before the Tribunal on 02.12.2014.