(2015) 08 KAR CK 0280

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 3773 and 4311/2014 (MV)

Asha Datt and Others APPELLANT

Vs

The New India Assurance Co. Ltd. and Others RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 2, 3, 3(1), 75
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2016) 1 ACC 964 : (2015) ILR (Kar) 4490 : (2015) 6 KarLJ 81

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : S.P. Shankar, Senior Advocate for Mamata G. Kulkarni, for the Appellant; R. Jaiprakash, Advocates for the Respondent

Judgement

S. Abdul Nazeer, J—These two appeals are directed against the judgment and award in MVC No. 5411/2007 dated 11.3.2014 on the file of the Motor Accident Claims Tribunal and XXI Addl. Judge, Court of Small Causes, Bangalore.

2. P. Bharath filed the claim petition MVC No. 5411/2007 seeking compensation on account of the injuries sustained by him in a motor vehicle accident occurred on 25.11.2006. It was contended that on the aforesaid date at about 10.10 a.m., he was going to school on his bicycle. When he came near Nagarabhavi main road, Maruthinagar, Bangalore, a car driven by Smt. Asha Datt bearing registration No. KA-03 N-5235 in a rash and negligent manner dashed against his bicycle and caused the accident. He suffered severe head injury and other injuries all over his body because of the accident. He was taken to various hospitals for treatment. He has spent substantial amount towards medical expenses. In all, he has claimed compensation of Rs. 20 lakhs.

3. The insurer has filed the written statement contending that its liability is subject to verification of necessary documents like driving licence, permit and the terms and conditions of the insurance policy.

4. Smt Asha Datt, the owner-cum-driver of the vehicle has filed the written statement contending that she was not driving the car in a rash and negligent manner. It is contended that at the time of the accident, the claimant was riding his bicycle in a rash and negligent manner. He tried to overtake the car from the left side. Because of the narrow space and uneven surface of the road, the claimant lost the balance and fell down sustaining injuries.

5. On the basis of the pleadings of the parties, the Tribunal has framed the following issues:

"(1) Whether petitioner proves that on 25.12.2006 at 10.10 a.m. on Nagarbhavi Main Road, Opp: Shanthi Motors, Maruthi Nagara, Bangalore, he being the rider of the bicycle had met with an accident due to rash or negligent driving of the car, bearing Regn. No. KA-03 N-5235 by its driver and he sustained injuries in the accident as averred?

(2) Whether the petitioner is entitled for compensation and if so, what amount and from whom?

(3) What order and award?"

6. The father of the claimant was examined as P.W. 1 and a witness was examined as P.W. 2 and documents at Ex. P1 to Ex. P37 were marked in their evidence. On behalf of the respondents, three witnesses were examined as R.W. 1 to R.W. 3 and documents at Ex. R1 to Ex. R7 were marked in their evidence. The Tribunal dismissed the claim petition against the first respondent-insurer and awarded compensation of Rs. 60,000/- to the claimant by fastening the liability on the owner-cum-driver. The claimant challenged the said award by filing an appeal MFA No. 7071/2010. The owner of the vehicle filed an appeal challenging the said judgment and award in MFA No. 9128/2012. This Court allowed the appeals in part on 10.4.2013 and remanded the matter to the Tribunal for fresh consideration in accordance with law. The Tribunal was directed to provide an opportunity to the parties to lead additional evidence. After remand, claimant got himself examined as P.W. 3 and a witness was examined on behalf of the claimant as P.W. 4 and six additional documents were marked through them at Ex. P40 to Ex. P45. RW3 was recalled and two documents were marked in his evidence as Ex. R8 and Ex. R9. The Tribunal on appreciation of the materials on record, allowed the claim petition only against the owner. The claim petition against the insurer was dismissed. The owner was directed to pay a total compensation of Rs. 6,37,937/- with interest at 6% per annum from the date of the petition till the date of realisation.

7. The owner of the vehicle has filed MFA No. 3773/2014 challenging the judgment and award in so far as directing her to pay the compensation determined by the Tribunal. The claimant has filed the connected appeal MFA No. 4311/2014 seeking enhancement of compensation.

8. I have heard Sri S.P. Shankar, learned Senior Counsel appearing for the owner

of the vehicle, Sri R. Jayaprakash, learned Counsel for the insurer and Sri Lokesh Malavalli, learned Counsel for the claimant.

9. Learned Senior Counsel appearing for the owner argues that the owner-cum-driver of the vehicle was holding learner''s licence during the relevant point of time. Her colleague H.K. Balachandra, who was having valid driving licence was sitting beside her at the time of the accident and instructing her while driving the vehicle. There was no bar for the owner to drive the vehicle holding a learner''s licence when a person having a valid driving licence was sitting next to her at the time of the accident. The Tribunal has erroneously concluded that since the owner-cum-driver of the offending vehicle has admitted her guilt before the Criminal Court, the insurer is not liable to pay the compensation.

10. Learned Counsel for the insurer argues that the driver of the vehicle has admitted her guilt before the Criminal Court. Therefore, the insurer is absolved from paying the compensation. It is further submitted that the owner has not established that a person having a valid driving licence was sitting in the car next to her when the accident had taken place.

11. Learned Counsel appearing for the claimant submits that the award of compensation is inadequate. On account of the accident, the claimant has lost one year of his studies. The award of compensation towards pain and suffering, medical expenses, loss of amenities is very meager and requires enhancement. The award of compensation towards loss of future income and future medical expenses is also inadequate. He submits that the compensation awarded by the Tribunal requires enhancement.

12. Having regard to the contentions urged, the first question for consideration is whether the Tribunal was justified in fastening the liability on the owner of the offending vehicle?

13. After the accident, FIR was lodged before the Jurisdictional Police as per Ex. P1. The Police have filed charge sheet at Ex. P2 before the competent Court after investigation. The charge sheet was filed under Sections 279 and 337 of the IPC. It is also not in dispute that the owner-cum-driver of the vehicle has admitted her guilt before the Criminal Court. It only means that she has admitted the charges levelled against her in the charge sheet. It does not amount to an admission of driving the vehicle without a valid driving licence. It is not in dispute that at the relevant point of time, the owner-cum-driver of the car was holding a valid learner''s licence (Ex. R2) and her colleague H.K. Balachandra was holding a driving licence (Ex. R9).

14. Section 3(1) of the Motor Vehicles Act, 1988 (for short ''the Act'') provides for necessity for driving licence. It states that no person shall drive a motor vehicle in any public place unless he holds a effective driving licence issued to him authorizing him to drive the vehicle and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75 unless his driving

licence specifically entitles him so to do.

15. The expression ''driving licence'' is defined in Sub-section (10) of Section 2, which means the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

16. The expression ''learner''s licence'' is defined in Sub-section (19) of Section 2, which means the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description.

17. Section 8 of the Act provides for grant of learner''s licence and Section 9 provides for grant of driving licence. Section 10 lays down the form in which learner''s licence and driving licence has to be issued and the contents of the licence.

18. Learner''s licence is issued in Form No. 3 under Rules 3 and 13 of the Central Motor Vehicles Rules, 1989 (''Rules'' for short). Rule 3 authorises the person holding a learner''s licence to drive the vehicle subject to certain conditions as under:

"3. General: The provisions of sub-section (1) of Section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as-

(a) xxxxx xxxxx xxxxx

(b) such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle, and

(c) xxxxx xxxxx xxxxx"

19. It is clear from the aforesaid provisions that a person holding of learner''s licence is authorised to drive the vehicle in any public place if such person is accompanied by an instructor holding an effective driving licence to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle, the object being to gain experience in driving with a view to present himself/herself for a test of competence to drive.

20. The case of the owner before the Tribunal is that RW3 was sitting next to her in the car at the time of the accident. The insurer has not taken a specific stand in its objections that a person holding a valid driving licence was not sitting next to the owner at the time of the accident. RW3 has stated in his chief examination that on 25.12.2006 at about 11.00 a.m., he had accompanied the owner of the car and he was sitting beside her. While she was driving the car on Nagarbhavi main road slowly on the left side of the road, the claimant riding his bicycle in a rash and negligent manner tried to overtake the car from the left side without following any traffic rules. The suggestion made to this witness by the learned

Advocate appearing for the insurer that at the time of the accident, he was not sitting in the car has been denied.

21. The claimant was examined as PW3. In his cross-examination, he has stated that after the accident, the car was stopped at a distance and a woman and another person got down from the car. From this evidence, it is clear that two persons were in the car at the time of the accident. According to P.W. 3, the other person, who got down from the car is RW3. The owner of the car was examined as RW2. She has stated in her evidence that on the date of the accident, she was holding learner''s licence and was accompanied by her colleague H.K. Balachandra, who was having a valid driving licence. He was sitting beside her at the time of the accident. She was not cross-examined on behalf of the insurer. Her statement that she was accompanied by her colleague H.K. Balachandra, who was sitting beside her in the car stood unchallenged.

22. The Legal Assistant of the first respondent-insurer was examined as RW1. In his chief examination, he has only stated that the second respondent had no valid and effective driving licence at the time of the accident and that she was holding learner''s licence and that there is clear violation of the terms and conditions of the insurance policy. In the cross-examination, he has admitted that he has not witnessed the accident. He has further stated that an enquiry was conducted by the insurer in relation to the accident. The result of the enquiry has not been disclosed in his evidence.

23. As stated above, the evidence of RW2, the owner-cum-driver of the offending vehicle that she was accompanied by her colleague H.K. Balachandra, who was sitting beside her in the car at the time of the accident has not been challenged. The claimant has stated that a woman and a person got down from the car after the accident. RW3 in his evidence has deposed that he was sitting in the car next to the owner. Except a suggestion that he was not sitting in the car, which has been denied, nothing has been elicited in his cross-examination to discredit his version. Reading of the aforesaid evidence together probabalises that RW3 was sitting next to the owner-cum-driver in the car at the time of the accident and was in a position to control or stop the vehicle.

24. The fact that the owner-cum-driver was holding a learner''s licence is not disputed. It is also not in dispute that RW3 was holding an effective driving licence at the relevant point of time. It is established that he was sitting next to owner-cum-driver (RW2) at the time of the accident, and was in a position to control or stop the vehicle. The owner-cum-driver was gaining experience in driving, the object being to present herself for a test of competence to drive. Thus, the owner-cum-driver has not violated Rule 3(b) of the Rules or the conditions of the policy at Ex. R1 while driving the vehicle. In the circumstances, the Tribunal was not justified in holding that since the owner-cum-driver has admitted the guilt before the Criminal Court, she is liable to pay the compensation.

25. That brings me to the next question as to whether the compensation determined by the Tribunal is adequate?

26. Learned Counsel for the claimant has taken me through the evidence of the parties and also voluminous documents produced before the Tribunal. It is clear that the claimant had sustained grievous injuries in the accident. Immediately after the accident, he was treated at NIMHANS Hospital and later sent to St. John''s Medical College and Hospital. Thereafter, he was admitted to Prestine Hospital for treatment. He was an inpatient in different hospitals for several days. Dr. M.S. Kiran was examined as P.W. 2. In his evidence, he has given the details of the injuries sustained by the claimant in the accident. He had assessed the permanent disability to the whole body of the claimant at 40%. The claimant was going to school during the relevant point of time and it is not disputed that he has lost one academic year on account of the accident. The claimant has also submitted medical bills worth Rs. 3,83,137/-. However, the Tribunal has awarded only a sum of Rs. 3,13,137/- towards medical expenses, which in my opinion is inadequate. The claimant has taken treatment for over a period of one year. I am of the view that the claimant is entitled for a sum of Rs. 1 lakh towards pain and suffering, a sum of Rs. 3,83,137/- towards medical expenses, a sum of Rs. 50,000/- towards nourishment, food and attendant charges. His income per month should be notionally fixed at Rs. 2,500/- per month. The claimant was aged 17 years at the time of the accident. By taking the income of the claimant at Rs. 2,500/- per month with the application of multiplier 18 and 40% permanent disability to the whole body, the compensation payable towards loss of future earning capacity comes to Rs. 2,16,000/-. He is entitled for a sum of Rs. 30,000/- towards loss of income during the laid up period. He is also entitled for Rs. 1 lakh towards loss of amenities and Rs. 1 lakh towards loss of one academic year. The compensation awarded by the Tribunal towards future medical expenses is just and reasonable. Thus, the compensation payable to the claimant is re-assessed as under:

27. Thus, the compensation payable to the claimant is enhanced to Rs. 9,99,137/- which is rounded off to Rs. 9,99,200/- as against the compensation awarded by the Tribunal in a sum of Rs. 6,37,937/-. The said sum of Rs. 9,99,200/- shall carry interest at 6% per annum.

28. In the light of the above discussions, I pass the following:

"ORDER

(i) The appeal filed by the owner of the offending vehicle in MFA No. 3773/2014 is allowed.

(ii) The judgment and award of the Tribunal directing the owner of the vehicle (appellant in MFA No. 3773/2014) to pay the compensation is hereby set aside.

(iii) The appeal filed by the claimant in MFA No. 4311/2014 is allowed in part.

(iv) The compensation payable to the claimant is determined at Rs. 9,99,200/-.

(v) The insurer of the vehicle-The New India Assurance Company Limited, is directed to deposit the entire compensation of Rs. 9,99,200/- with interest at 6% per annum from the date of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order.

(vi) On such deposit, the Tribunal is directed to keep a sum of Rs. 3,00,000/- in fixed deposit in the name of the claimant in any Nationalised Bank for a period of five years. The claimant is permitted to withdraw the balance of the amount.

(vii) The statutory deposit made by the appellant in MFA No. 3773/2014 (owner of the offending vehicle) shall be refunded to her forthwith. No costs."