(2013) 12 KAR CK 0326

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10473 of 2010 (MV) and Miscellaneous First Appeal CROB No. 194 of 2011 (MV)

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

H. Siddegowda, Smt. Shanthamma, Noorulla Moin and M. Manjunath
 H. Siddegowda and Smt. Shanthamma Vs Bajaj Allianz General Insurance Company Ltd., Noorulla Moin and M. Manjunath RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0326

Hon'ble Judges : N.K. Patil, J;Budihal R.B., J

Bench : Division Bench

Advocate : A.N. Krishnaswamy, in Miscellaneous First Appeal No. 10473/2010, Sri. M.S. Rajendra Prasad and Sri. S. Keerthikar, in Miscellaneous First Appeal CROB No. 194/2011, for the Appellant; M.S. Rajendra Prasad, for R-1 and R2 in Miscellaneous First Appeal No. 10473/2010 and Sri. A.N. Krishnaswamy, for R-1 in Miscellaneous First Appeal CROB No. 194/2011, for the Respondent

Judgement

Budihal R.B., J.—These two appeals are directed against the judgment and award dated 28.7.2010 passed in MVC No. 120/2009 on the file of the Presiding Officer, Fast Track Court-V and Motor Accident Claims Tribunal, Mysore, (for short ''the Tribunal''). MFA No. 10473/2010 is filed by Bajaj Allianz General Insurance Company Limited to set aside the impugned judgment and award contending that the claimants have committed fraud in obtaining the judgment and award. M.F.A. Cr.Ob. No. 194/2011 is filed by the claimants-legal representatives of the deceased Santhosh seeking enhancement of compensation.

2. Brief facts of the case presented before the Tribunal are that, the claimants filed the above claim petition before the Tribunal u/s 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 68,30,000/- with interest at 12% p.a. with costs, for the death of their son S. Santhosh, who is said to have been expired in the motor vehicle accident that occurred on 8.2.2009. It is the case of

the claimants that the deceased was hale and healthy prior to the accident. The deceased was aged about 26 years at the time of the accident and was working as a Software Engineer at Excel Soft Technology Private Limited, Belavadi Industrial Area, Mysore, drawing salary of Rs. 18,000/- per month. Out of the said income, he was maintaining his parents and himself. On 7.2.2009, the deceased and his brother had been to attend a birthday party at Royal-Inn-Hotel and after attending the party, they returned back to the house. There afterwards, the deceased received a phone call from Vijay, a friend of the deceased, stating that his vehicle is in trouble and asked the deceased to go to the hotel to drop him. Both the deceased and his brother went to the said hotel by separate motor cycles. By then, it was 3.30 a.m. on 8.2.2009. While the deceased was coming by motor cycle bearing registration No. KA-04-U-733 along with his friend Vijay/ pillion rider in order to drop him to his house, another motor cycle bearing registration No. KA-09-EJ-5945 came from back in a rash and negligent manner and dashed the moving motor cycle of the deceased. Due to the impact, the deceased fell down and sustained injuries. Soon after the accident, the deceased was shifted to Vikram Hospital, Mysore and in spite of better treatment, he succumbed to the injuries on 11.2.2009. It is the case of the claimants that the accident took place because of the rash and negligent riding of Noorulla Moin, the rider of the motor cycle bearing No. KA-09-EJ-5945 i.e., 1st respondent before the Tribunal and the said vehicle belonged to Manjunath, the 2nd respondent before the Tribunal and it was insured with the insurance company at the time of the accident. Hence they filed the claim petition against driver, owner and the insurer of the offending motor cycle KA-09-EJ-5945.

3. The driver and the owner of the offending motor cycle KA-09-EJ-5945 were represented by their learned Counsel before the Tribunal and filed a common objection statement denying each and every averments made in the claim petition. It is contended that the deceased was riding his motor cycle in a rash and negligent manner and as he could not control his vehicle, he might have fallen from the vehicle. Therefore, Noorulla Mom, the driver was not responsible for the accident. Even then, the claimants in collusion with the police got registered a case against the driver Noorulla Moin, rider of the motor cycle bearing No. KA-09-EJ-5945. It is further contended that the said vehicle was insured with the insurance company and that the driver Noorulla Moin had a valid and effective driving licence at the time of the accident. They sought for dismissal of the claim petition filed against them.

4. The insurance company, the 3rd respondent before the Tribunal, filed its objection statement denying age, occupation and income of the deceased and the claim amount of compensation and interest thereof. It had denied the relationship of the deceased with the claimants and further contended that the alleged accident was not due to rash and negligent riding of rider of motor cycle KA-09-EJ-5945, but was due to negligence of the deceased himself, who was also riding his motor cycle without following the traffic rules and regulations. It was further stated that though the motor cycle KA-09-EJ-5945 was insured with it

and the policy was in force at the time of the accident, but its liability was subject to terms and conditions of the policy. On these grounds, the insurance company sought for dismissal of the claim petition.

5. On the basis of the above pleadings and also the materials placed on record, the Tribunal allowed the claim petition in part with costs and awarded the compensation of Rs. 9,83,000/- with interest at 6% p.a. form the date of petition till its realization and directed the insurance company to deposit the compensation with costs and interest within three months from the date of the award. As against the said judgment and award of the tribunal, the present appeals have been preferred by the insurance company and the claimants/legal representatives of the deceased Santhosh respectively.

6. We have heard the arguments of learned Counsel appearing for the insurance company and the learned Counsel appearing for the claimants.

7. Learned Counsel appearing for the insurance company, during the course of his arguments, submitted that fraud has been committed by the legal representatives of the deceased in obtaining the judgment and award before the Tribunal. He submitted that the deceased Santhosh was riding his motor cycle in a drunken state and because of that reason, he fell down and sustained injuries. No other vehicle was involved in the said accident. He further submitted that in order to claim the compensation, the mother and brother of the deceased have created a story that the deceased and his brother came to house after attending party at Royal-Inn-Hotel, and one Vijay, a friend of the deceased, had phoned that his vehicle is in trouble and asked him to go the said hotel. Accordingly, the deceased and his brother Sanjay went on two separate vehicles to Royal-Inn-Hotel. The deceased took Vijay on his vehicle as a pillion rider and he himself is responsible for the accident. The learned Counsel further submitted that the medical records produced by the insurance company before the Tribunal which are marked at Exs. R. 3 to R. 5 clearly go to show that the deceased had consumed alcohol and he was in an intoxicated condition when the said incident took place. The counsel further made a submission that as per the medical records till 6.15 a.m. on 8.2.2009, no relative of the deceased were present in the hospital. So all these materials clearly go to show that fraud has been played in the case with an intention to get compensation. Learned Counsel further submitted that the vehicle bearing Registration No. KA-09-EG-5945 has been falsely implicated in the case. He submitted that in view of the said fact, the insurance company is not at all liable to pay any compensation and sought for setting aside the judgment and award passed by the Tribunal in so far as the insurance company is concerned.

8. As against this, learned Counsel appearing for the claimants, during the course of his arguments, submitted that no fraud has been committed in the case, but it is the insurance company which has played fraud in the case by suppressing the documents i.e., investigation report said to have been conducted by private agency about the incident. The learned Counsel submitted that so far

as the fraud is concerned, there is no pleading before the Tribunal and the medical record produced in the case is not the one issued by the Doctor, who was present when the deceased was taken to the hospital. But the Doctor who has produced the documents before the Tribunal has clearly admitted in his evidence that he was not present when the deceased was admitted to the hospital. The learned counsel made a submission that the Tribunal has properly appreciated the oral and documentary evidence adduced in the case and rightly came to the conclusion that the driver Noorulla Moin came in a rash and negligent manner with his vehicle KA-09-EJ-5945 and dashed to the vehicle of the deceased and caused the accident. The Counsel further made a submission that in order to escape from the liability to pay compensation, the insurance company has filed the appeal by making false averments in the appeal memorandum. The learned Counsel submitted that no illegality has been committed by the Tribunal nor there is any perverse or capricious view taken in coming to such conclusion. He submitted that the claimants are entitled for enhancement of compensation and sought for dismissal of the appeal filed by the insurance company.

9. In view of the submissions of the learned Counsel appearing for the parties, the point that arise for consideration is as follows:

Whether the judgment and award passed by the Tribunal calls for interference by this Court?

10. We have perused the claim petition and the written statement filed by respondent Nos. 1 to 3 before the Tribunal. We have also perused the oral evidence of P.Ws. 1 and 2 and R.Ws. 1 and 2 and the documents produced on both sides and the impugned judgment and award.

11. With regard to the contention of the learned Counsel for the insurance company that no accident has taken place on 8.2.2009 and the vehicle bearing registration No. KA-09-EJ-5945 has not at all caused any accident nor was it involved in the said accident and that, fraud committed is in the case is concerned, let us examined the materials on record.

12. The insurance company has produced the medical records at Exs. R. 3 to R. 5. Ex. R. 3 is an outpatient case record issued by Vikram Hospital Private Limited. In Ex. R. 3, it is mentioned that history of RTA on 8.2.2009 at around 3.50 a.m., near Royal-Inn-Hotel, Mysore, the patient was unconscious when brought to the hospital. The patient was brought by Police (traffic) Head Constable Basavaraju. Patient''s attenders were not present and that traffic Police Constable was present and history was not known. It is also mentioned that the patient was under the influence of alcohol. In another sheet of Ex. R. 3 dated 8.2.2009, time is mentioned as 4.50 a.m. It is further mentioned that the informant is Mr. C.S. Raju (PC 553), h/o. RTA on 8.2.2009 at around 3.50 a.m., near Royal-Inn-Hotel on Ring Road, details not known. Patient was found unconscious. Patient was brought to the hospital in a police vehicle. No details known regarding vomiting or injuries. Breath smell of alcohol. It is further

mentioned that since there was no relative to accompany the patient, or take any decision, as an emergency and life saving measure, patient was resuscitated, first aid was given, police contacted. After discussion with the hospital General Manager Mr. Uday, it was planned to investigate with a CT brain-continue management in the ER till the relatives arrive. The Tribunal has not at all discussed in detail about relevancy of the medical records and its effect on case of the parties. However, at page No. 9 of the judgment, it is observed that while recording history of injuries at Ex. R. 4, it is noted the breath smell of alcohol. It is further observed by the Tribunal that deceased had consumed alcohol. But there is no details on this point in the defence to consider as to whether the deceased committed an offence u/s 185 of the MV Act or not? So with this observation, the Tribunal has left the matter as it is.

13. If the story of the claimants is presumed to be correct for the sake of the appreciation of the case, according to the claimants, the deceased and his brother Sanjay returned to the house after attending a birthday party at Royal-Inn-Hotel and they received a phone call from Vijay, a friend of the deceased, stating that his vehicle is in trouble and asked the deceased to go to the hotel to drop him. The deceased and his brother Sanjay both went to Royal-Inn-Hospital on two separate vehicles. When the deceased and Vijay were proceeding on the vehicle, at that time, Noorulla Moin 1st respondent before the Tribunal, driver of the another motor cycle came from behind and caused the accident. From the materials on record, it is found that the Police Constable and another Head Constable have shifted the deceased to Vikram Hospital. Therefore, Vijay, the pillion rider, Police Constable and the Head Constable were the best witnesses in the case to know the truth in the matter. But, they were not examined before the Tribunal. Even Noorulla Moin and Manjunath, the driver and owner of the offending vehicle, who are respondent Nos. 1 and 2 before the Tribunal, filed their written statement contending that the deceased himself was responsible for his death and they denied that Noorulla Moin has caused the accident. To substantiate their defence neither Noorulla Moin nor Manjunath have stepped into the witness box. Unless and until they give their evidence in respect of the contentions they have raised in the written statement, it cannot be said that they have proved the defence. Therefore, looking to the entire materials on record including the medical records at Exs. R-3 to R-5 and since the best witnesses were not brought before the Tribunal, the Tribunal would have issued summons to secure the presence of the Police Constable, Head Constable and the Doctor who recorded the statements when the deceased was admitted to the hospital. The Tribunal would have examined the medical records to come to a right conclusion in the matter to do substantial justice to the parties. Therefore, we are of the opinion that since the important witnesses were not brought before the Tribunal, it is necessary to remand the matter to the Tribunal to decide the same afresh. Having regard to the facts and circumstances as stated above, M.F.A. No. 10473/2010 filed by the insurance company and M.F.A. Cr.Ob. No. 194/2011 filed by the cross objectors are stand disposed off with the following

observations:

The judgment and award dated 28.7.2010 passed in MVC No. 120/2009 by the Presiding Officer, Fast Track Court-V and Motor Accident Claims Tribunal, Mysore, is set aside and the matter is remitted back to the Tribunal for fresh disposal in accordance with law.

The Tribunal is directed to dispose of the matter afresh after giving opportunity to both the parties, in accordance with law, and without being influenced by the observations made by this Court in the course of the judgment.

The parties are directed to appear before the jurisdictional Tribunal on 20.01.2014 at 11.00 a.m. to enable them to take necessary dates there afterwards. They are at liberty to adduce additional evidence, both oral and documentary, if they so desire.

All the contentions raised by the parties are kept open.

Since the accident is of the year 2009, the Tribunal shall dispose of the main matter as early as possible at any rate within a period of six months from the date of receipt of a copy of this judgment.

Office is directed to return entire original records to the jurisdictional Tribunal immediately.

The amount in deposit in MFA No. 10473/2010 shall be transferred to the Tribunal immediately.

