(2009) 06 KAR CK 0114

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2369 of 2004

B.M. Suresh Kumar APPELLANT

Vs

Om Prakash and Others RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Citation : (2011) ACJ 1032 : (2009) 3 KCCR 2122

Hon'ble Judges : N. Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : Mahesh R. Uppin, for the Appellant; S.M. Siddamallappa, for Respondent 1 and V. Narayanaswamy, for respondent 2, for the Respondent

Judgement

N. Kumar, J.—This is a claimant''s appeal seeking enhancement of compensation for the injuries sustained in a motor vehicle accident as well as challenging the finding of the Tribunal in so far as absolving the insurance company to pay the compensation awarded.

2. For the purpose of convenience, parties are referred to as they are referred to in the clam petition.

3. Case of the claimant is that he was working as cleaner-cum-conductor in bus bearing No. KA-16-2936; on 3- 6-2000 at about 7.00 p.m. near Gedlahally bus stop while the claimant was bringing down passengers luggage from top of the bus, driver of the bus all of a sudden, moved the bus without waiting for any signal. On account of the same, he fell down and sustained injuries. He was immediately admitted to Bapuji hospital, Davanagere. On account of the accident, he sustained injuries. He claims that he was getting a salary of Rs. 1,600/- and Rs. 40/- per day as batta. He therefore filed a claim petition claiming compensation of Rs. 5 lakhs.

4. After service of notice, respondents entered appearance. Respondents --1 & 2 - owner and driver did not file their written statement and respondent-3 - insurance company filed written statement denying the claim. However, it did not

dispute the accident or the insurance coverage. But respondent-3 contended that insurance policy does not cover the risk of a cleaner or conductor and it also denied that claimant was a conductor in the said bus.

5. On the aforesaid pleadings, the Tribunal framed three issues. In order to substantiate the claim, claimant examined himself as P.W. 1; he examined the doctor Anil S Nelavagi as P.W.2 and one witness by name Veeresh as P.W.3. The claimant produced 12 documents as Exs.P- 1 to P-12. On behalf of the respondents, one A G Deshpande was examined as R.W.1 and copy of the insurance policy was marked as Ex. R- 1. The Tribunal after taking into consideration the oral and documentary evidence, held that accident was on account of rash and negligent driving by the driver the bus and therefore, claimant has established actionable negligence. Thereafter, looking into the evidence of the doctor and medical records, Tribunal found that claimant had sustained Cerebral concussion and fracture of lower end of radius left writ joint. He was an inpatient for six days. Even after discharge, he was under treatment. The doctor - P.W.2 has deposed that claimant suffered permanent disability of left upper limb is to the extent of 15 to 20%. On the aforesaid materials on record, the Tribunal awarded Rs. 20,000/- towards pain and suffering, Rs. 3,761/- towards medical bills, Rs. 5,000/- towards loss of future amenities and Rs. 1,250/- towards food, conveyance and attendant charges and loss of earning during treatment, in all, awarded Rs. 30,000/- as global compensation to the claimant with interest at 8% p.a. from the date of petition till the date of payment.

6. However, the Tribunal has referred to the judgment of this Court in MM No. 3176/2008 where it was held that insurance company is not liable to indemnify the owner if there is no insurance coverage to the cleaner. Therefore, the Tribunal held that insurance company is not liable to indemnify the owner as the insurance policy has not covered the risk of the cleaner and therefore dismissed the petition in so far as insurance company is concerned.

7. Learned Counsel for the claimant, assailing the impugned award, contended that compensation awarded is very meagre and claimant is entitled to higher compensation. He further contends that insurance policy marked in this case as Ex.R-I clearly shows that owner had paid additional premium to cover the risk of the passenger. Therefore Tribunal was in error in not fastening the liability on the insurance company. Therefore, he sought for modification of the award of the Tribunal.

8. Learned Counsel for the insurance company contended that claimant was working as a cleaner and was not working as a conductor and therefore he cannot be treated as a conductor in the eye of law; in so far as cleaner is concerned, his risk is not covered under the policy in question; in such event, insurance company is under no obligation to indemnify the insured. Therefore, Tribunal was justified in not fastening the liability on the insurance company.

9. From the aforesaid material, it is clear that claimant was aged 30 years as on the date of accident. According to claimant, he was working as cleaner-cum-conductor in a passenger bus in the accident He sustained fracture of lower end of radius left wrist joint and cerebral concussion. The doctor has deposed that injuries has resulted in permanent disability to the extent of 15 to 20% of the left upper limb and 5% to the whole body. The evidence on record shows that be was being paid salary of Rs. 1,600/- per month apart from Rs. 40/- per day as batta.

10. In these circumstances, we are of the view that Tribunal committed a serious error in not awarding any compensation under the head of loss of future income. Therefore, by taking the income of the claimant at Rs. 3,000/- per month and disability of 5%, applying the multiplier of 16, he would be entitled to compensation of Rs. 28,800/- under the head ''loss of future income''. The amount of Rs. 1,250/- awarded under the head of food, conveyance and attendant charges'' is very meagre and we award additional sum of Rs. 5,000/- under the said head. The amount of Rs. 5,000/- awarded under the head ''loss of future amenities'' is very low and we award additional sum of Rs. 10,000/- under the said head. We also award a sum of Rs. 3,000/- towards loss of income during the period of treatment Thus, in all, claimant is entitled to additional compensation of Rs. 46,800/- which is rounded off to Rs. 47,000/ -.

11. In so far as liability of the insurance company is concerned, Ex.R-1 is the insurance policy - commercial vehicle - passenger carrying ''B'' policy. Owner of the vehicle has paid additional premium of Rs. 30/- to cover the liability for paid driver/conductor. The policy makes it clear that the said policy is subject to terms and conditions specified therein i.e., IMT 10, 11, 12 18, 19, 21 and etc. IMT 18 deals with legal liability to paid driver and/or conductor or employed in connection with the operation of motor vehicle which reads thus:

Imt 18 - Legal Liability To Paid Driver And/Or Conductor Employed In Connection With The Operation Of Motor Vehicle: In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the Company shall indemnify the insured against his legal liability under,

The Workmen''s Compensation Act, 1923 and subsequent amendments of act prior to the date of this Endorsement, the Fatal accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the services of the insured in such occupation in connection with the and not exceeding six in number (excluding driver) and will in addition be responsible for all costs and expenses incurred with its written consent).

The premium having been calculated at the rate of Rs. 15/- per driver (and/or cleaner or conductor and or person employed in loading and/or unloading but not exceeding seven in number including driver and cleaner)

A perusal of the aforesaid clause makes it clear that additional premium of Rs. 30/- paid covers the risk in respect of both driver or cleaner or conductor or person employed in loading or unloading but not exceeding seven in number including driver and cleaner. Learned Counsel for the insurance company submitted that permitted capacity of a passenger bus is 48+2 i.e., driver, conductor and 48 passenger. There is no scope for covering the risk of a cleaner who is not expected to be in the vehicle at all.

12. The vehicle in question is passenger bus. The policy is issued in respect of commercial vehicle - passenger carrying ''B'' policy. From the aforesaid clause in the policy, separately risk of the cleaner is not covered under the Act. When the injured pays additional premium and in terms of the insurance policy, risk covered is that of driver, conductor or cleaner, notwithstanding statutory liability, there is contractual liability on the part of insurance company to indemnify the injured in terms of the insurance policy. The Tribunal has not looked into the policy, especially the aforesaid clause in the policy which is not in dispute. Admittedly the additional premium of Rs. 30/- is paid covering the risk of a cleaner and conductor. Therefore, the Tribunal was not justified in exonerating the insurance policy from including the injured and consequently not paying the victim of the accident. To that extent, finding requires interference.

13. Hence, the appeal is allowed in part. In addition to what has been awarded by the Tribunal, we award a sum of Rs. 47,000/- as additional compensation which is payable with interest at 6% p.a. The entire amount of compensation awarded shall be borne by the insurance company. Parties to bear their own costs.