(2013) 12 KAR CK 0414

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8805 of 2009 (MV) and Miscellaneous CVL. No. 12618 of 2011, C/w. Miscellaneous First Appeal No. 951 of 2010 (MV)

Branch Manager, Oriental Insurance Co. Ltd. — APPELLANT

Vs

M.S. Lokesh @ Loknath and Achappa
 M.S. Lokesh @ Lokanath Vs Achappa and The Branch Manager, Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0414

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

Bench : Division Bench

Advocate : O. Mahesh, in M.F.A. No. 8805/2009 and Misc. CVL. No. 12618/2011 and Sri. T.C. Sathish Kumar, in M.F.A. No. 951/2010, for the Appellant; T.C. Sathish Kumar, for R-1 in M.F.A. No. 8805/2009 and Misc. CVL. No. 12618/2011, Sri. O. Mahesh, for R-2 in M.F.A. No. 951/2010, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—These two appeals by the insurance company and the claimant arise out of the same judgment and award dated 02.09.2009 passed in MVC No. 667/2007 on the file of the IX Additional Judge, Member, Motor Accident Claims Tribunal-7, Courts of Small Causes, Bangalore (hereinafter referred to as Tribunal for short). By its judgment and award, the Tribunal has awarded a sum of Rs. 7,79,700/- with interest at 6% p.a. from the date of petition till its realization as against the claim made by the claimant, on account of the injuries sustained by him in the road traffic accident.

2. It is the specific case of the Insurance Company that it is not liable to indemnify the award amount on the ground that the vehicle bearing registration No. KA-40-A-81 does not bear fitness certificate as on the date of the accident. It is the case of the claimant that the quantum of compensation awarded by the

Tribunal is inadequate and requires enhancement by modifying the impugned judgment and award passed by the Tribunal.

3. Brief facts of the case are that, the claimant was aged about 36 years as on the date of accident, hale and healthy prior to the accident. When things stood thus, he met with an accident on 26.6.2006 at about 10.00 a.m., when he was standing on the side of his scooter bearing registration No. KA-01-H-3944 on NH-7 road near Huvina Muniyappa''s land, at that time, a tempo bearing registration No. KA-40-A- 81 driven by its driver came in rash and negligent manner and dashed against his scooter. Due to the impact, he sustained fracture of mid shaft of left humerus, comminuted fracture of upper end of radius and ulna with loss of bone, fracture of right pubic bone and left iliac bone, fracture of left side ribs, diffused brain injury with tentorial hematoma, contusion over liver, abrasions over forehead, nose and left foot and swelling over left elbow and on other parts of body. It is the case of the claimant that owner of the offending tempo and the insurer of the offending vehicle are jointly and severally liable to pay compensation. Therefore, he filed a claim petition u/s 166 of the MV Act against the insurer and owner of the offending vehicle.

4. Upon service of notice, insurance company appeared through its Counsel and filed detailed statement of objections. In spite of service of notice to owner of the offending tempo, he did not appear before the Tribunal and was treated as ex-parte. The insurance company filed written statement admitting the issuance of insurance policy in respect of the vehicle bearing registration No. KA-40-A-81 in favour of owner of the offending vehicle. However, it has denied involvement of the offending vehicle in the alleged accident. It is stated in the written statement that the fitness certificate of the vehicle in question had expired on 13.2.2006 itself and the accident has occurred on 26.6.2006. Therefore, the insurance company is not liable to indemnify the award. It is further stated that driver of the offending tempo drove the same at reasonable speed by observing traffic norms, but the claimant himself obstructed the traffic and he is responsible for cause of the accident. It is further contended that the driver had no effective and valid licence to drive the same as on the date of accident. Therefore, insurance company is not liable to indemnify the award and the petition is liable to be dismissed on the ground of non joinder of necessary parties, since, the claimant has intentionally and deliberately not impleaded the insured and insurer of the scooter bearing registration No. KA-01-H-3944 who are also the necessary parties to the claim petition. Therefore, he sought for dismissal of the petition. The Tribunal, after framing the necessary issues for consideration, has proceeded to pass the impugned judgment and award allowing the claim petition filed by the claimant and awarded compensation of Rs. 7,79,700/- with interest at 6% p.a. from the date of petition till realisation. Being dissatisfied with the impugned judgment and award passed by the Tribunal, the insurance company and the claimant felt necessitated to file the present appeals.

5. The submission of the learned Counsel for the insurance company at the

outset is that the direction issued by the Tribunal to the insurer to indemnify the award amount cannot be sustained at any stretch of imagination and it is liable to be set aside. He is quick to the point out that the insurer had taken specific stand in the written statement, firstly, vehicle was not involved in the accident and secondly, there was no fitness certificate for the offending vehicle as it had expired on 13.2.2006 itself and the driver of the offending vehicle was not entitled to drive the vehicle on the road since he had no valid driving licence. No proper issue has been framed by Tribunal to that effect. Therefore, the insurance company is not liable to indemnify the owner. The question of directing insurance company to indemnify the award amount cannot be sustained and liable to be set aside and the matter be remitted to the Tribunal for reconsideration of the same after framing necessary issues for consideration and dispose of the same in accordance with law.

6. As against this, learned Counsel appearing for the claimant, inter alia, contended and substantiated that, the impugned judgment and award passed by the Tribunal is on the lower side and the claimant is entitled to higher compensation on all the heads. Further, he is quick to point out that the insurance company has not produced any document to show that the offending vehicle had not possessed fitness certificate as on the date of accident and the said aspect has been considered and discussed elaborately by the Tribunal in paragraph 13 of the judgment. Therefore, the submission of the learned Counsel for the insurance company that there was no fitness certificate as on the date of the accident has got no substance.

7. On the basis of the material available on record and the reasoning given by the Tribunal at paragraph 13 of the judgment, if it is not in dispute that no appropriate issue has been framed by the Tribunal in this regard. Therefore, he submitted that an appropriate direction may be issued to the Tribunal as permissible under law.

8. After careful consideration of arguments of the learned Counsel appearing for both the parties, perusal of the judgment and award passed by the Tribunal, it is clear that age, avocation of the claimant and the date of accident are not in dispute. However, it is the specific case of the insurance company in the written statement that the fitness certificate of the offending vehicle had expired on 13.2.2006 and the accident occurred on 26.6.2006, nearly after lapse of four months. No fitness certificate has been produced by owner of the offending vehicle and he remained absent in spite of service of notice. The insurance company had also taken a specific ground that driver of the offending vehicle had no valid licence. Therefore, the insurance company is not entitled to indemnify the award. It is contended by the insurance company that the claimant has not impleaded owner and insurer of the scooter since the said vehicle was also involved in the accident. Therefore, the claim petition was liable to be dismissed on the ground of non joinder of necessary party. When this fact has been specifically stated in the written statement by the insurance company, the

Tribunal ought to have framed necessary issues for consideration and without framing such issues, it has concluded the proceedings and allowed the claim petition awarding compensation. We do not want to express any opinion on the merits of the matter. Since no proper issue has been framed by the Tribunal with regard to the fitness certificate of the offending vehicle, we are of the view that the impugned judgment and award cannot be sustained and liable to be set aside. Therefore, without expressing any opinion on the merits and demerits of the case, it would suffice if an appropriate direction is issued to the Tribunal to reconsider the matter afresh, to meet ends of justice. In the result, the appeals are allowed. The judgment and award dated 02.09.2009 passed in MVC No. 667/2007 on the file of the IX Additional Judge, Member, Motor Accident Claims Tribunal-7, Courts of Small Causes, Bangalore is hereby set aside and the matter is remitted to Tribunal for reconsideration. The Tribunal is directed to dispose of the matter after framing necessary issues and after affording reasonable opportunity to both the parties in accordance with law, as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment.

Both the parties are permission to file necessary applications for adducing oral and documentary evidence within two weeks from the date of receipt of the copy of this Judgment. In case such applications are filed the Tribunal shall consider the same and disposed of the same in accordance of law as stated above. Both the claimant and the Insurance Company or their respective Advocates are directed to appear before the jurisdictional Tribunal on 04.01.2014 at 11. a.m. to enable them to take necessary further dates.

The amount in deposit by the Insurance Company shall be transferred to the jurisdictional Tribunal immediately. The Tribunal in turn, shall invest the said amount in the Fixed Deposit in any Nationalized or Scheduled Bank until the judgment is passed by Tribunal after remand.

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

Since M.F.A. No. 8805/2009 is allowed as above, Misc. Cvl. No. 12618/2011 for vacation of the stay order does not survive for consideration. It is accordingly disposed of as having become infructuous.

