(2016) 11 KAR CK 0024

In the Karnataka High Court

Case No : M.F.A. No. 10832 of 2011

Branch Manager United India Insurance Company Limited — APPELLANT

Vs

Madhusudana — RESPONDENT

Date of Decision : 07-11-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2017) AAC 527

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri O. Mahesh, Advocate, for the Appellant in M.F.A. Nos. 10832 & 10833/2011; Sri M.Y. Sreenivasan, Advocate, for the Respondent No. 1 in M.F.A. Nos. 10832 & 10833/2011; Vide Court Order Dated 06.10.2015 notice to R-2 is held sufficient, for the Responden

Final Decision : Disposed Off

Judgement

Mrs. S. Sujatha, J.—The insurer as well as claimants are in appeal challenging the Judgment and Order passed by the Motor Accident Claims Tribunal, Srirangapatna, [the Tribunal'', for short] in MVC Nos. 764/2009 and 768/2009.

2. Since these cases arise out of the common Judgment involving the same accident, the same are heard together and disposed of by this common Judgment.

3. The facts in brief are:

That the claimants instituted the petition before the Tribunal seeking compensation for the injuries sustained in the motor vehicle accident which occurred on 5.4.2009 contending that the accident occurred due to the actionable negligence of the driver of lorry bearing registration No. KA-09-A-6490 (offending vehicle) duly insured with the appellant/insurer herein. The Insurer contested the claim. The Tribunal, after analysing the evidence on record, awarded total compensation of Rs. 1,92,320/- in MVC No. 764/2009 and a sum of Rs. 2,05,500/- in MVC No. 768/2009 with interest at 6% per annum, fastening the liability on the appellant/insurer to satisfy the Award. Being aggrieved, the Insurer is in appeal challenging the liability whereas the claimants are challenging the quantum of compensation awarded as being inadequate.

4. Tire learned Counsel appearing for the insurer assailing the impugned Judgment and Award, would contend mat the Tribunal grossly erred in fastening the liability on the insurer holding that the injured were third parties ignoring the fact and also Exhibit.Pl, FIR which was produced and marked in the evidence of the injured which clearly established that the injured were travelling unauthorisedly for the purpose of attending Nanjundeshwara jathra and were pleaded to be third parties with sole purpose of making insurer liable.

5. It is further contended that the reasoning of the Tribunal to hold that the insurer is liable, is perverse besides being contrary to law and material evidence placed on record.

6. The Tribunal failed to appreciate that claim was in connivance with the insured who though entered appearance, failed to contest in order to defeat the right and interest of the appellant/insurer.

7. Per contra, learned Counsel appearing for the claimants would contend that the Tribunal after extensively considering the material evidence on record, awarded the compensation and fastened the liability on the insurer since the offending vehicle was duly insured with the insurer. The factum of the claimants claiming the compensation as pedestrians is well appreciated by the Tribunal which does not require to be disturbed in the appeal proceedings merely on the plea raised by the insurer not substantiated by any material evidence. In support of his contentions, the learned counsel placed reliance on the Judgment of M/s Oriental Insurance Co. Ltd. v. Kenchamma reported in 2012 (2) KCCR 1260. It is further submitted that the quantum of compensation awarded by the Tribunal is inadequate. Accordingly, seeks for enhancement of compensation.

8. Heard the learned Counsel for the parties and perused the material on record.

9. It is evident that Annexure-P1, FIR, at the first instance, discloses the complaint lodged by one Shivakumar who was one of the injured in the accident in question. Further, 31 persons are made as witnesses to the charge sheet Nos. 18 and 19 being the claimants herein, are stated to have been pedestrians who sustained bodily injuries due to the turtling of the vehicle. Exhibit.P5 is the wound certificate which indicates the injuries caused to the claimants due to the road traffic accident on 5.4.2009 around 12.15 p.m. on B.M. Road. Though MLC Book No. 64 page No. 6 is mentioned in Exhibit.P5, the same is not furnished by the claimants to establish that the claimants were the pedestrians who sustained injuries due to the accident. The nature of the injuries sustained by the claimant in MVC No. 764/2009 as per Exhibit. P5, tenderness on both side of lumber spine, tenderness over left side of pelvic region. As regards the claimant in MVC

No. 768/2009, the claimant sustained the injuries such as tenderness over the Thoraso lumbar spine, MRI of LS spine showed diffused disc bulge L3-4, L4-5 with neural formica compression. The Insured/owner though entered appearance did not lead any evidence to support the claim of the claimant. However, the insurance company has examined RW. 1 in support of the defence that the claimants were travelling as an unauthorized passengers in the goods vehicle along with the other unauthorized passengers, only in order to extract unlawful gain, these two passengers who were grievously injured compared to the other passengers twisted the incident so as to project themselves as pedestrians walking on the road. This plea reiterated by the insurer in this appeal proceedings, appears to have some force since no explanation is forthcoming for the inconsistencies, very well apparent in the complaint vis-a-vis the charge sheet registered by the police authorities. In reality if the claimants were pedestrians and had suffered injuries due to the offending vehicle being capsized, the same would have been figured in the complaint lodged by one of the injured Shivakumar. It is trite that the complaint lodged at the first instance always speaks the truth i.e., less scope for any manipulation or improvement in the narration of the incident. The subsequent statements recorded would be an improved version after due application of mind. The claimants in order to extract the accidental claim knowing well that they being unauthorized passengers not legally entitled to claim the compensation under the insurance policy ingeniously twisted their claim as pedestrians walking on the road. It is hard to accept the version of the claimants as pedestrians, since the lorry being a heavy vehicle if fallen on the claimants, rather difficult for the claimants to survive. The nature of the injuries sustained by the claimants do not indicate the injuries sustained due to the vehicle being capsized and fallen on the pedestrians. The appellant/ insurance company has tendered evidence in support of their defence and the same cannot be ignored unless the contrary is proved. The Judgment relied upon by the learned Counsel for the appellant in the case of Kenchamma''s case (supra), is not applicable to the facts of the present case. The said judgment was rendered in the context of no evidence led by the insurer in support of their defence that the claimant was not a road side person, a general stereo typed defence was filed in series of claims, Tribunal after examining each claimant''s case on merits, had made a clear distinction between those persons who were roadside persons who got injured due to the goods vehicle running into them and persons who themselves have stated that they were travelling inside the vehicle. Whereas the situation is different in the case on hand No claims are made by the persons stated to have been travelling as passengers in the vehicle. It is only in the charge sheet the claimants herein, were figured as pedestrians which is hard to believe.

10. In the circumstances, this Court is of the opinion that claimants were travelling as an unauthorized passengers in the goods vehicle and the insurance company/appellant is not liable to make the payment of compensation quantified by the Tribunal.

11. As regards the appeals filed by the claimants, it is manifestly clear that the Tribunal after extensively analysing the material evidence on record awarded just and equitable compensation which do not warrant any interference by this Court.

12. Appeals of the Insurance Company are allowed and the appeals of the claimants are dismissed. The impugned Judgment and orders are set aside in much as fastening the liability on the insurer. However, the claimants are at liberty to recover the compensation amount quantified, from the registered owner of the offending vehicle.

The Award amount in deposit shall be refunded to the Insurance company forthwith.