(2013) 08 KAR CK 0195

In the Karnataka High Court

Case No : M.F.A. No. 9408 of 2010 C/W M.F.A. No. 2142 of 2011 and Miscellaneous CVL. 13017 of 2011 (MV)

B.Y. Mohan APPELLANT

Vs

Mr. Allahbaksh K., Smt. Gulabjaan and The Oriental Insurance Co. Ltd.
 The Oriental Insurance Company Ltd. Vs B.Y. Mohan, Allah Bhaksh K. and Gulab Jan RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 08 KAR CK 0195

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

Bench : Division Bench

Advocate : R.V. Jayaprakash in MFA No. 9408/2010 and Sri. S.N. Aswathanarayan in MFA No. 2142/2011 and Misc. CVL. 13017/2011, for the Appellant; S.N. Aswathanarayan, Advocate for R3 and Sri. R.V. Jayaprakash, Advocate for R1, R2 and R3 - Served in MFA No. 2142/2011 and Misc. CVL. 13017/2011, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—These two appeals are filed by the claimant and Insurer, being aggrieved by the impugned judgment and award dated 28-08-2010 in MVC No. 1169/2010 on the file of the II Additional District and Sessions Judge, Mysore. The Tribunal by its impugned judgment and award, awarded a sum of Rs. 6,57,000/- with interest at 6% p.a. from the date of petition till the date of payment, on account of injuries sustained by the claimant in the road traffic accident.

2. It is the case of the claimant that the quantum of compensation awarded by the Tribunal is inadequate and it requires to be enhanced substantially by modifying the impugned judgment and award passed by the Tribunal.

3. It is the case of the appellant-Insurer that the Tribunal has erred in not fixing any contributory negligence on the part of the driver of the Maruthi Omni Car

and the quantum of compensation awarded by the Tribunal is a bit on the higher side and the same is liable to be reduced by modifying the impugned judgment and award passed by the Tribunal.

4. The brief facts of the case are:

The claimant contended that he was aged about 37 years, a businessman by profession and hale and healthy prior to the accident. He met with an accident on 20-07-2005 and sustained grievous injuries. He was admitted in various hospitals and taken treatment and he has also undergone three surgeries, the right leg was amputated above the knee, as a result of which, the doctor has assessed the functional disability at 80%. He has spent huge amount towards medical expenses, conveyance, nourishing food and attendant charges. He was advised follow up treatment for a period of six months. He further contended that no compensation has been awarded towards loss of future income and future medical expenses, amenities.. discomfort, unhappiness and also to purchase artificial limb. These aspects have not been properly appreciated by the Tribunal while awarding compensation.

5. It is the case of the appellant-Insurer that the Tribunal has erred in answering issue No. 3 in the negative regarding negligence on the part of the driver of the Omni Car. The Tribunal, after considering the FIR, Mahazar, IMV report, which were very much available on record, ought to have fixed reasonable contributory negligence on the part of drivers of both Omni Car and the lorry involved in the accident. These aspects of the matter have not been looked into nor appreciated by the Tribunal.

6. It is the submission of the learned counsel appearing for the Insurer Sri. S.N. Aswathanarayan that the Tribunal committed a grave error which resulted in miscarriage of justice. He has also taken us through the contents of FIR, Mahazar and sketch. It emerges that there is contributory negligence on the part of the driver of the lorry and on the part of the driver of Maruthi Omni Van and the same has not been considered by the Tribunal. When a specific issue has been framed regarding the contributory negligence on the part of the driver, of both the vehicles, the same has not been properly considered nor answered by recording a specific finding of fact. Mere acquittal in the criminal proceedings does not take away the contributory negligence on the part of the driver of the Maruthi Omni Van. Further he vehemently submitted that the claimant has not impleaded the Insurer of the Maruthi Omni Van nor examined the driver of the said vehicle. Further, he has pointed out that as per the medical bills at Ex. P2 booklet, the entire bills have not been marked, only a portion of the same has been marked. The learned counsel for claimant has contended that he has spent huge sum of Rs. 7,71,998.55, but there is no consolidated statement as such, filed by the claimant before the Tribunal. When these clinching materials were available on record, the Tribunal ought to have considered the same. Therefore, he submits that the impugned judgment and award is liable to be set aside and the matter requires reconsideration. Hence, prayed that the matter may be

remanded to the jurisdictional Tribunal, for reconsideration afresh.

7. As against this, the learned counsel Sri. R.V. Jayaprakash, appearing for the appellant/claimant inter alia contended that the impugned judgment and award fixing 100% contributory negligence on the part of the driver of the lorry is after due consideration and critical evaluation of the materials available on record. Regarding quantum of compensation, the Tribunal has erred in awarding only a sum of Rs. 3,81,411/- towards medical expenses, infact, he has spent a sum of Rs. 7,71,998.55. To substantiate the same, he has produced about 65 bills. Further, he submitted that he has filed an application, I.A. No. II/2013 for production of additional evidence to claim additional amount towards medical bills for his treatment. Further he contended that the Tribunal has failed to award reasonable compensation towards conveyance, nourishing food and attendant charges, loss of amenities, discomfort and unhappiness and also no compensation is awarded towards future loss of income and future medical expenses for purchase of artificial limb once in five years. These aspects of the matter ought to have been considered by the Tribunal while awarding compensation. However, he also fairly submitted that the impugned judgment and award may be set aside and the matter be remitted back to the jurisdictional Tribunal for reconsideration afresh to enable the parties to adduce additional oral and documentary evidence to substantiate their case.

8. After careful consideration of the submissions made by the learned counsel appearing for the claimant and the learned counsel appearing for the Insurer and after perusal of the impugned judgment and award passed by the Tribunal and other relevant materials available on file, it emerges that, the occurrence of the accident and the resultant injuries sustained by the claimant in the road traffic accident are not in dispute. It is also not in dispute that the claimant was hospitalized for 29 days in different hospitals and undergone three surgeries, and also sustained amputation of right leg above the knee. As rightly pointed out by the learned counsel appearing for the claimant, the Tribunal has not awarded reasonable compensation towards conveyance, nourishing food, attendant charges, loss of amenities, discomfort and unhappiness, future loss of income and future medical expenses. Further, during the pendency of the appeal, he has filed I.A. No. II/2013 seeking production of additional documents such as medical bills, showing the amount spent towards medical expenses and the said application has been allowed.

9. Taking into consideration the submissions made by the learned counsel appearing for both the parties and after evaluation of the materials available on file, it emerges that it is the specific case of the claimant that he has spent a huge sum of Rs. 7,71,998.55 towards medical expenses, thereafter also he has spent substantial amount towards his treatment when the matter was pending before this court. He has also produced about 65 medical bills by way of additional documents, by way of an application and the same has been allowed. Therefore, he prays that the matter may be remanded back to the jurisdictional

Tribunal for reconsideration of the matter. Learned counsel for the Insurer also contends that the contents of FIR, Mahazar, IMV report and sketch have not been properly appreciated by the Tribunal and the same can be done only by Tribunal after due appreciation of the materials available on record after adducing the oral and documentary evidence by the parties. Therefore, taking into consideration these factors, we do not propose to express any opinion on merits and demerits of the case as it may affect the stand to be taken by both the parties before the Tribunal. In the light of the facts and circumstances of the cases as referred above, these two appeals filed by the claimant and the Insurer are allowed. The impugned judgment and award dated 28-08-2010 passed in MVC No. 1169/2010 on the file of the II Additional District and Sessions Judge, Mysore is hereby set aside. The matter stands remitted back to the jurisdictional Tribunal to reconsider the same afresh and pass appropriate order in accordance with law after affording reasonable opportunity to both the parties and dispose of the matter expeditiously.

The claimant and the Insurer are permitted to file necessary application to adduce additional evidence oral/documentary within a period of four weeks from the date of receipt of a copy of this judgment. All the grounds urged in both the appeals are left open.

In the event such application is filed, the Tribunal is directed to receive the same and pass appropriate order, in accordance with law, in compliance of the directions issued by this Court.

During the pendency of these appeals, the appellant-Insurer had deposited a sum of Rs. 8,30,898/- before the II Additional District and Sessions Judge, Mysore in MVC No. 1169/2010, and out of the said amount, 75% of the amount with proportionate interest shall be released in favour of the claimant subject to result of the judgment and award to be passed by tribunal in MVC No. 1169/2010. The remaining 25% of the amount with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, till the disposal of the matter.

The statutory deposit before this court shall be transferred to the jurisdictional Tribunal, forthwith.

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

The Insurer and the claimant are directed to appear before the jurisdictional Tribunal personally or through their counsel on 26-08-2013 at 11.00 a.m.

In view of disposal of the above appeals, Misc. Cvl. 13017/2011 filed in MFA. No. 2142/2011 for stay does not survive for consideration. Accordingly, the same is dismissed as having become infructuous.

