(2014) 04 KAR CK 0076

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10124 of 2011 (MV) Connected with Miscellaneous First Appeal No. 4313 of 2012 (MV)

Channabasavaradhya — APPELLANT

Vs

The Oriental Insurance Company Limited — RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173(1)

Citation : (2014) 4 KarLJ 412

Hon'ble Judges : P.D. Waingankar, J;N.K. Patil, J

Bench : Division Bench

Advocate : Sriyuths Vishwanath S. Shettar, E.S. Indiresh and O. Mahesh, Advocate for the Appellant

Judgement

Pradeep D. Waingankar, J.—These two appeals u/s 173(1) of Motor Vehicles Act, 1988 are filed by the claimant and the insurer against a judgment and award dated 10-8-2011 in MVC No. 4282 of 2010 on the file of the Motor Accidents Claims Tribunal and Small Causes Court (SCCH-10), Bangalore. The brief facts which gave rise to these appeals are as under:

That on 18-6-2010, at about 1.45 p.m., the claimant Channabasavaradhya was proceeding by walk on the left side of the road near S.L.R. Kalyanamantapa towards Mathrushree Hospital. At that time, a Hero Honda Passion Plus Motorcycle bearing Reg. No. KA-52-E-75 came in a rash and negligent manner and dashed against the claimant causing severe injuries all over the body. He was shifted to Harsha Hospital, Nelamangala, where he was treated as an inpatient. He underwent surgeries. He spent an amount of Rs. 3,50,000/- towards treatment and such other incidental expenses. Therefore, claiming compensation of Rs. 25,00,000/-, he filed claim petition u/s 166 of M.V. Act before the Motor Accident Claims Tribunal against the insurer and the owner of the Motorcycle.

The claim petition was resisted by the Insurance Company. In its reply, the

Insurance Company denied all the material averments made out in the claim petition as to the manner of the accident, the nature of injury sustained by the claimant, the period of treatment, the expenditure incurred, the avocation of the claimant, his monthly income, loss of earnings, disability said to have been suffered by him etc., etc., apart from denying the negligence attributed to the rider of the Hero Honda Motorcycle and hence, sought for rejection of the claim.

The claim petition came up for consideration before the Tribunal. Based on the evidence placed on record, the Tribunal recorded a finding that the accident and resultant injuries sustained by the claimant are on account of rash and negligent riding of Motorcycle by its rider and thereby, by impugned judgment and award partly allowed the claim petition awarding compensation of Rs. 4,10,400/- with interest at 6% per annum from the date of petition till realisation.

2. Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant has preferred MFA No. 10124 of 2011 for enhancement of the compensation, whereas the insurer has filed MFA No. 4313 of 2012 to set aside the judgment and award passed by the Tribunal and to dismiss the claim petition.

3. Since both these appeals are arising out of the same judgment and award, they are disposed of by this common judgment.

4. We have heard both the learned Counsel appearing for the appellant/claimant and the respondent-Insurance Company. We also examined the records secured from the Tribunal.

5. The learned Counsel appearing for the appellant/claimant would submit that having regard to the gravity of the injuries sustained and the treatment undergone by the claimant, the compensation of Rs. 30,000/- awarded under the head pain and suffering, Rs. 10,000/- towards loss of amenities, Rs. 8,000/- towards loss of earning during the period of treatment, Rs. 62,400/- towards loss of future earning capacity is on the lower side and that it requires to be enhanced. It is further submitted that the Tribunal has not looked into and appreciated the evidence placed on record by the claimant in its proper perspective and thereby, the judgment and award passed by the Tribunal has led to miscarriage of justice and hence, learned Counsel sought for enhancement of compensation under all heads.

6. Per contra, learned Counsel appearing for the Insurance Company would submit that the vehicle in question was not at all involved in the accident apart from contending that the compensation awarded by the Tribunal on all heads including under the head medical expenses is exorbitant and not based on any accepted norms and therefore, it requires to be reduced considerably.

7. At this stage, it has to be stated that during pendency of these appeals, the Counsel for the appellant/claimant filed an application for production of additional documents, such as medical bills worth Rs. 1,50,434/- apart from other documents pertaining to medical treatment. The Counsel for the Insurance

Company has opposed for consideration of those documents by this Court at this stage without giving an opportunity to the Insurance Company to cross-examine the witness. Instead, both the learned Counsel have submitted that the impugned judgment and award may be set aside and the matter may be remanded back to the Tribunal with the direction to decide afresh after giving opportunities to both the parties to produce additional evidence. In view of the submission made by both the learned Counsel for the claimant and the Insurance Company, we pass the following order:

MFA Nos. 10124 of 2011 and 4313 of 2012 are allowed. The judgment and award dated 10-8-2011 in MVC No. 4282 of 2010 on the file of the Motor Accident Claims Tribunal and Small Causes Court (SCCH-10), Bengaluru City, is set aside. Matter stands remanded back to the Tribunal for fresh disposal.

The amount in deposit shall be transmitted to the Tribunal and the Tribunal shall deposit the amount in a Nationalised/Scheduled Bank.

In the event, the learned Counsel for the appellant/claimant files memo for the return of the document filed along with an application for additional evidence, the documents filed along with the application may be returned.

The claimant and the insurer are permitted to lead additional oral and documentary evidence through their Counsel within three weeks from the date of receipt of copy of this judgment.

The claimant and the insurer are permitted to appear personally or through their Counsel before the Tribunal on 28-4-2014 at 11.00 a.m. to collect the further date of hearing.