

(2016) 02 KAR CK 0300

In the Karnataka High Court

Case No : Misc. First Appeal No. 7615 of 2013 (MV).

Girish

APPELLANT

Vs

Manager, United India Insurance Co. Ltd. and another

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) AAC 1029

Hon'ble Judges : N. K. Patil; Mrs. Rathnakala, JJ.

Bench : Division Bench

Advocate : M. Rajesh and H. Maregowda, Advocates, for the Appellant; Y. P. Venkatapathy, Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. K. Patil, J. - This appeal by the claimant is directed against the impugned judgment and award dated 11th July, 2013 passed in M.V.C. No.547/2009, on the file of the XASCJ and 35th ACMM, MACT, Bangalore City (SCCH-16) (the Tribunal? for brevity).

2. The Tribunal by its impugned judgment and award, dismissed the claim petition filed by the appellant under Section 166 of the Motor Vehicles Act. Being aggrieved by the impugned judgment and award, the appellant/claimant has presented this appeal for awarding reasonable compensation.

3. Briefly stated the facts are :

The appellant had filed a claim petition under Section 166 of the Motor Vehicles Act, contending that he met with an accident that occurred on 9-10-2007 at about 11.00 hrs. and sustained injuries. Immediately, he was shifted to the Vydehi Institute of Medical Sciences for treatment and thereafter to Hosmat Hospital, where he was treated as an in-patient for more than two months. The appellant had spent Rs. 2,26,922/- towards medical expenses, conveyance and attendant charges. He was hale and healthy and working at Avia Company,

earning a salary of Rs. 20,000/- p.m. Due to the injuries sustained in the accident, he could not do his work and he is the only earning member of this family. Due to the accident, he and his family members are put to great hardship and financial difficulties for livelihood.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal in turn after due consideration of the oral and documentary evidence and other material available has dismissed the claim petition on the ground that, the appellant has failed to establish that the alleged accident has occurred due to the negligence of the offending lorry driver.

5. We have heard the learned counsel for the appellant and learned Counsel for Respondent No. 1/Insurance Company.

6. Learned counsel appearing for the appellant Sri. M. Rajesh, at the outset submits that inadvertently without knowing the consequences, they have not impleaded the rider as well as insurer of the motorcycle bearing Reg. No. KA-53-E-2159, because he was a pillion rider on the said motorcycle. If one more opportunity is given to him to implead the rider as well as insurer of the said motorcycle, he would be in a better position to establish his case that he sustained injuries on account of the road traffic accident. Due to lack of communication and not taking appropriate steps in the matter, they could not safeguard the interest of the claimant. Therefore, he submitted that the impugned judgment and award passed by the Tribunal may be set aside and the matter may be remitted back to the jurisdictional Tribunal to re-consider the matter afresh in accordance with law after affording an opportunity of hearing to both parties, reserving liberty to the appellant to file necessary application to implead the rider and insurer of the motorcycle in the interest of justice.

7. In reply, learned Counsel appearing for the first respondent/insurance Company inter alia contended that, the said submission made by the learned counsel for appellant may be placed on record and the instant appeal may be disposed of, reserving liberty to the first respondent/insurer to file necessary application to adduce additional oral/documentary evidence and all the contentions of both parties may be left open.

8. In the light of the above submission made by both parties, without expressing any opinion on the merits of the case, we deem it fit to remand the matter to the Tribunal to safeguard the interest of the parties and to meet the ends of justice.

9. Having regard to the facts and circumstances of the case referred to above, the appeal is allowed.

10. The impugned judgment and award dated 11th July, 2013 passed in M.V.C. No. 547/2009 on the file of the X ASCJ and 35th ACMM, MACT, Bangalore City (SCCH-16), is hereby set aside.

11. The matter stands remanded back to the jurisdictional Tribunal for reconsideration afresh and to pass appropriate order, in accordance with law,

after affording reasonable opportunity of hearing to the parties and dispose of the same at any rate within a period of 6 months from the date of appearance of the parties.

12. Parties are permitted to file necessary application/s, for adducing additional evidence, oral/documentary, to substantiate their respective cases, within four weeks from the date of receipt of a copy of this judgment.

13. In case such application/s is/are filed by the learned counsel for the parties, within the time stipulated above, the Tribunal is directed to reconsider the same and proceed further and dispose of the same as expeditiously as possible, in compliance of the direction given by this Court, as above.

14. The parties are directed to appear before the jurisdictional Tribunal on 21-3-2016 at 11:00 a.m.. personally or through their counsel, to enable them to take further dates of hearing.

15. Office is directed to return the entire original records to the jurisdictional Tribunal, forthwith.

16. All the contentious of the parties are left open.