

(2015) 04 KAR CK 0119
In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 7341/2011 and 7487/2011 (MV)

H.N. Yogananda and Others

APPELLANT

Vs

G. Kumar and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2015) 04 KAR CK 0119

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : Vijetha R. Naik for Ravi B. Naik, Associates, for the Appellant; A.S. Girish, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivas Gowda, J.

1. MFA. No. 7341/2011 is filed by the owner of the offending vehicle challenging the judgment and award passed by the Tribunal on the ground of liability whereas MFA. No. 7487/2011 is filed by the claimant challenging the judgment and award passed by the Tribunal on the ground of negligence and quantum of compensation awarded.

2. As these two appeals are raising out of a common road traffic accident and a common judgment and award of the Tribunal, they are heard together and disposed of finally by this common judgment with the consent of the learned counsel appearing for the parties.

3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. Smt. Vijetha R. Naik, learned counsel appearing for the appellant in MFA No. 7341/2011 who is the owner of the offending vehicle submits that the offending vehicle was insured with the second respondent - National Insurance Company

Ltd., and policy was in force as on the date of the accident and due to inadvertence, the appellant could not produce the policy before the Tribunal. The insurer who was arrayed as second respondent in the claim petition before the Tribunal though owe a duty to produce the policy and indemnify the owner from liability neither produced the policy nor made a statement to that effect. Consequently, the Tribunal has fastened the liability on the owner of the offending vehicle. She submits that in the appeal, the appellant has produced a copy of the insurance policy by way of additional evidence along with an application under Order 41 Rule 27 of CPC. Hence she prays for allowing the application and consequently the appeal filed by the owner and modify the judgment and award passed by the Tribunal by exonerating the owner from liability and by fastening the liability on the insurer.

5. Sri. A.S. Girish, learned counsel appearing for the claimant submits that the accident has occurred due to rash and negligent riding of the rider of a motor cycle, the FIR was registered against him and the rider of the offending vehicle has pleaded guilty of negligence before the Criminal Court. The Tribunal without considering this material aspect of the matter has committed an error in holding that accident has occurred due to contributory negligence of 80% on the part of the rider of two wheeler and 20% on the claimant solely on the ground that the claimant did not cross the road at Zebra crossing.

Regarding quantum, he submits, quantum of compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore it is required to be enhanced. Hence, he prays for allowing the appeal filed by the claimant both on negligence as well as on quantum.

Regarding liability, supporting the argument advanced by the learned counsel for the owner of the vehicle, he prays for allowing the appeal filed by the owner by fastening the liability on the insurer.

6. Sri. O. Mahesh, learned counsel for the insurer of the offending vehicle fairly submits that the Insurance Company has verified the insurance policy produced by the owner of the vehicle and has found that the vehicle was insured with their insurance company and the policy was in force as on the date of the accident and that he has no objection for modifying judgment and award passed by the Tribunal on liability by fastening it on the insurer. Regarding negligence, he submits that guilty pleaded by the rider of two wheeler before the criminal court cannot be a ground to hold that the accident has occurred due to the rash and negligent riding of the two wheeler by its rider. He submits that in a claim petition filed before the Tribunal under the provisions of the Motor Vehicles Act the Tribunal has to decide the issue relating to negligence independently based on the material placed before it notwithstanding guilty pleaded by the rider/driver of a vehicle in a criminal case before Criminal Court. He submits that the sketch and other material produced before the Tribunal would show that the claimant had also contributed for the accident and therefore the Tribunal was justified in holding that the accident has occurred due to contributory negligence

of 20% on the part of the claimant in not crossing the road at Zebra crossing and 80% on the rider of the offending vehicle. Regarding quantum, he submits that there is no scope for enhancement as the compensation already awarded by the Tribunal is just and proper and hence he prays for dismissing the appeal both on the ground of negligence and quantum.

7. After hearing the learned counsel for the parties and perusing the judgment and award of the Tribunal, the following points arise for consideration:

"(1) Whether the finding of the Tribunal on liability in fastening it on the owner of the vehicle is required to be modified?

(2) Whether the finding of the Tribunal on negligence is sustainable in law?

(3) Whether the compensation of Rs. 1,60,000/-awarded by the Tribunal is just and reasonable or does it call for enhancement?"

8. Re -Point No. 1:

In view of the submissions made by the learned counsel appearing for the insurer that the second respondent insurance company after verifying the policy produced by the owner of the vehicle in the appeal has found that the vehicle was insured with the second respondent Insurance Company and it was in force as on the date of accident, the finding of the Tribunal on liability is required to be modified holding that the insurer is liable to indemnify the owner and pay the compensation as awarded to the claimant.

9. Re-Point No. 2:

It is the specific case of the claimant that the accident has occurred due to the rash and negligent riding of the offending vehicle by its rider. The police after investigating the complaint, have filed charge sheet against the rider of two wheeler. The rider of the two wheeler appeared before the Criminal Court and pleaded guilty. It is no doubt true that notwithstanding the fact of guilt pleaded by the rider or driver of a vehicle before criminal court, the Tribunal has to decide the issue relating to negligence independently on the basis of the material placed before it. The claimant, in support of his contention that though he was crossing the road slowly and carefully by observing the movements of vehicles passing on the road inspite of that, the accident has occurred since the rider of offending two wheeler rode the same with high speed in a rash and negligent manner and dashed against him and caused the accident, has examined himself as PW.1 and has produced the certified copy of FIR, complaint, sketch, Mahazar, IMV report at Ex. P1 to P5 and the charge sheet at Ex. P6. Even sketch produced at Ex. P.3 and the Mahazar at Ex. P.4 would show that the claimant had not contributed anything towards negligence. Even RW.1 has not stated that the claimant was negligent in crossing the road. The Police after investigating the complaint have filed charge sheet against the rider of two wheeler. The rider of two wheeler appeared before the criminal court and pleaded guilty of negligence. He was not examined by the insurer of the vehicle to the effect that he pleaded guilty for

extraneous consideration. Further it was not pointed out by the insurer of two wheeler that there was provision for zebra crossing at the spot of the accident and inspite of that the claimant had crossed the road elsewhere. The Tribunal without considering this material aspect of the matter has committed an error in holding that the accident has occurred due to contributory negligence of 20% on the claimant and 80% on the rider of two wheeler. Thus, the findings of the Tribunal on negligence is modified and it is held that the accident has occurred due to the sole rash and negligent riding of two wheeler by its rider and point NO.2 is answered accordingly.

Re: Quantum:

10. As per Ex. P.6-wound certificate, the claimant had suffered compound fracture of upper 3rd of tibia. Injuries sustained and treatment taken by the claimant are also evident from another wound certificate at Ex. P.8, X-ray at Ex. P.12, inpatient card at Ex. P.13, out patient record at Ex. P.14 and supported by oral evidence of claimant and Doctor who were examined as PWs. 1 and 2 respectively. PW.2-Dr.Mohan N.S. in his evidence has stated that the claimant has suffered disability at 44.4 % to the particular limb and 14.8% to the whole body.

11. Considering the nature of injuries sustained by the claimant, Rs. 30,000/- awarded by the Tribunal towards pain and suffering is just and proper and it does not call for interference.

12. As Rs. 23,000/- awarded by the Tribunal towards medical expenses is as per the medical bills and prescriptions produced by the claimant, it is just and proper and it does not require any enhancement.

13. The claimant was treated as inpatient for 14 days in D.J. Hospital and S.G. Hospital. Considering the nature of injuries sustained by the claimant and duration of treatment undergone by him, a sum of Rs. 18,000/- awarded by the Tribunal towards incidental charges such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement.

14. The claimant claims to be earning Rs. 6,000/- per month by doing mason work, but it is not substantiated by producing evidence. In the absence proof of income, considering the age of the claimant as 31 years as per medical records, year of accident as 2009 and his avocation as daily wager, his income could be assessed at Rs. 4,500/- per month. The nature of injuries sustained by the claimant would suggest that he must have taken rest atleast for 3 months. Therefore loss of income during laid up period works out to Rs. 13,500/- (Rs. 4,500/- x 3) and the same is awarded.

15. Considering nature of injuries sustained by the claimant, disability stated by the doctor at 14.4% to the whole body and 44.4% to the particular limb, Rs. 30,000/- awarded by the Tribunal towards loss of amenities is just and proper and there is no scope for enhancement.

16. As per the disability stated by the Doctor at 14% to the particular limb and since now the income of the claimant is assessed at Rs. 4,500/- per month and appropriate multiplier applicable according to the age of the claimant being "16", loss of future earning works out to Rs. $4,500/- \times 14/100 \times 12 \times 16 =$ Rs. 1,20,960/- and it is awarded.

17. Considering nature of injuries suffered by the claimant, Rs. 10,000/- awarded by the Tribunal towards future medical expenses is just and proper and there is no scope for enhancement.

18. Thus, the claimant is entitled for the following compensation:--

19. Accordingly, the above appeals are allowed in part. The judgment and award dated 6.6.2011 passed in MVC. No. 3938/2009 on the file of I Additional SCJ and MACT, Bengaluru, is modified to the extent stated hereinabove. The Owner - appellant in MFA.NO.7341/11 is exonerated from liability and liability is fastened on the insurer both in respect of the compensation already awarded by the Tribunal and additional compensation awarded in the appeal.

The respondent- Insurance Company is directed to deposit the entire compensation awarded by the Tribunal and the additional compensation amount awarded by this Court together with interest at 6% p.a. within two months from the date of receipt of a copy of this judgment. From which, 70% with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised Bank/Scheduled Bank/Grameen Bank for a period of 3 years with a right of option to the claimant to withdraw interest periodically. Remaining 30% of the compensation amount with proportionate interest is ordered to be released in favour of the claimant.

The amount deposited in the appeal filed by the owner viz., MFA.NO.7341/11 is ordered to be refunded to the appellant -owner.

The Tribunal while releasing remaining amount is also directed to issue the fixed deposit slips, so as to enable the claimant to withdraw the deposit amount on its maturity without approaching the Tribunal once again and the Bank is directed to release the fixed deposit amount without insisting for any further order from the Tribunal.

No order as to costs.