(2014) 11 KAR CK 0116

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1997/2009 (MVC)

H.S. Manjunath APPELLANT

Vs

Dadapeer RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (2014) 11 KAR CK 0116

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Nagarajappa S.H, Advocate for the Appellant; R. Kothwal, Adv., Anoop Seetharama Rao for B.C. Seetharama Rao, Advocate for the Respondent

Judgement

Aravind Kumar, J.—This is a claimant''s appeal questioning the correctness and legality of judgment and award passed by MACT, Fast Track Court-I, Davanagere, dated 06.08.2008 in MVC No. 944/2006, whereunder claim petition came to be allowed in part and a total compensation of Rs. 2,23,000/- with interest @ 6% p.a. on Rs. 1,90,000/- from the date of petition till date of realization and 40% of total compensation awarded has been ordered to be foregone by claimant on account of his negligence in causing the accident and reserving him liberty to approach the fourth respondent -insurance company or proper forum for redressal of his grievance i.e., to claim compensation under heading "personal accident cover to the insured".

2. I have heard the arguments of Sri. Nagarajappa S.H., learned counsel appearing for appellant/claimant, Sri. R. Kothwal, learned counsel appearing for respondent Nos. 1 and 2 and notice to respondent No. 3 has been held sufficient vide order dated 22.07.2013 and Sri. Anoop Seetharama Rao, learned counsel appearing on behalf of Sri. Seetharama Rao. B.C., for respondent No. 4. Perused the judgment and award in question as also records secured from the Tribunal.

3. Claimant sought for payment of compensation of Rs. 12,00,000/- contending inter alia that on 01.02.2005 while he was returning from Kondajji to Davanagere

on his Kinetic Honda when he had approached near Avaragolla Village and at that point of time a motorcycle driven by first respondent in a high speed and in a rash and negligent manner, dashed against his vehicle and on account of the impact, he fell down sustained grievous injuries and was admitted to Bapuji Hospital at Davanagere for treatment and on account of said injuries sustained in the accident, he had suffered disability. Hence, he sought for payment of compensation.

4. Respondent Nos. 1 and 3 though entered appearance did not file written statement. Second respondent before the Tribunal who is stated to be the owner of motorcycle, appeared and filed his written statement; it was contended by second respondent that he is not liable to pay any compensation and he is not the owner of motorcycle involved in the accident and criminal case filed against petitioner/claimant himself though had ended in acquittal, does not absolve him of holding responsible for the cause of accident; it was also pleaded that charge sheet has been filed against claimant and driver of motorcycle and it is the claimant and jurisdictional police, who persuaded him to plead guilty and accordingly, he had pleaded guilty though there was no negligence on his part. Other averments made in the claim petition came to be denied.

5. Fourth respondent - insurance company denied the averments made in the claim petition and also contended that it had not issued insurance policy to the motorcycle bearing registration No. KA-27/E-4370. Tribunal on appreciation of evidence, allowed the claim petition in-part as noticed hereinabove by judgment and award dated 06.08.2008, which is under challenge in the present appeal.

6. At the outset, it requires to be noticed that undisputedly Kinetic Honda bearing registration No. KA-17/K-6461 driven by claimant was insured with fourth respondent as evidenced from the policy issued to said Kinetic Honda, which came to be marked as Ex. R-1. Perusal of the said policy would indicate that a premium of Rs. 50/- had been collected for personal accident of owner cum driver subject to the upper limit to be indemnified being Rs. 1,00,000/-. It was a contract between the insurer and insured to cover the risk of owner cum driver to an extent of Rs. 1,00,000/- and as per the policy condition it was a personal accident policy issued to the insured and the conditions stipulated therein at I.M.T 15 would clearly indicate that such compensation would be payable only with the approval of insured, named in the policy and directly to the insured person or his/her legal representative(s) whose receipt will be a full discharge in respect of injury to such person. It also indicate that if it is death, it is 100%, if loss of two limbs or sight of two eyes or one limb and sight of one eye it would be 100% and if it is loss of one limb or sight of one eye it would be 50%. It is because of this precise reason Tribunal has reserved liberty to the claimant to redress his grievance before fourth respondent - insurance company or before any other proper forum for redressal of his grievance to claim compensation under the heading ''personal accident''. At the stage, when this Court was examining as to whether claimant/appellant should be driven to another forum or

in view of the evidence having already been tendered by both the parties, it would be feasible to resolve the issue in this appeal itself, this Court had directed the learned counsel appearing for fourth respondent - insurer to examine the claim and make submission before this Court. Sri. Anoop Seetharama Rao, learned counsel appearing for fourth respondent submits, on instructions from fourth respondent - insurer that it would in full and final settlement and by way of global compensation ready and willing to settle the claim of claimant to the compensation apportioned to an extent of 40% by paying a sum of Rs. 40,000/- and this offer made by learned counsel for insurer has been accepted by learned counsel appearing for appellant/claimant - Sri Nagarajappa S.H. namely, insofar as, apportionment of 40% liability fastened on appellant/claimant. In the light of submissions made by learned Advocates appearing for both the parties, apportionment of liability on appellant/claimant by Tribunal to the extent of 40% is affirmed with modification of the award to that extent by directing fourth respondent - insurance company to indemnify appellant/claimant to an extent of Rs. 40,000/- in full and final settlement.

7. Insofar as, compensation awarded by Tribunal to the extent of 60% and fastening the said liability on respondent Nos. 1 to 3 are concerned, records would indicate that motorcycle bearing No. KA-27/E-4370 was not insured and as such, tribunal has proceeded to examine on whom the liability is to be fixed and found that as on the date of accident respondent No. 2 was the owner of offending vehicle. Though, Sri. R. Kothwal, learned counsel appearing for respondent Nos. 1 and 2 would vehemently contend before this Court that said finding is liable to be set aside, I am not inclined to accept his submissions for reasons more than one; firstly, there is neither an appeal filed by respondent Nos. 1 and 2 challenging the said finding nor cross objections have been filed under Order 41 Rule 22 CPC; secondly, even on merits records would indicate that third respondent who was the earlier owner of said offending vehicle, though served did not appear and contest the matter. It is the second respondent, who contested the matter and he denied his liability on the ground that he had purchased the said motorcycle involved in the accident after the accident and also had contended that he was not in possession of said vehicle as on the date of accident. However, claimant to prove that respondent No. 2 was the owner of vehicle, had confronted second respondent when he was in the witness box, the indemnity bond executed by him before the jurisdictional police, which he had executed to obtain release of said vehicle and second respondent admitted the signature found on the indemnity bond, which came to be marked as Ex. C-2 as that of his signature. Though second respondent contended that he had signed on a blank white paper it was not accepted by Tribunal. In order to prove that it was not so, claimant also examined the Police Sub Inspector attached to rural Police Station, Davanagere, as P.W.3. namely, Mr. M.B. Golasangi and has stated that Ex. C-2 was executed by respondent No. 2 in his presence and it was written on a stamp paper and not on the white paper as contended by respondent No. 2 and it was P.W.3, who obtained the indemnity bond -Ex. C.2 from second

respondent he also spoken about it.

8. In view of said evidence available on record and also in view of the fact that second respondent had given a statement before the jurisdictional investigating authorities admitting that it was his vehicle and said statement having been marked as Ex. P-96 and same had also been confronted to respondent No. 2 in his cross-examination, whereunder he admitted that he had given such statement it would only indicate that plea put forward by second respondent before trial Court that he did not purchase the vehicle prior to accident, falls to the ground and it is this evidence, which came to be appreciated by Tribunal to hold that respondent Nos. 1 to 3 are jointly and severely liable to indemnify the claim. I do not find any infirmity in the said finding recorded by Tribunal and same deserves to be affirmed and accordingly, it is hereby affirmed.

9. Tribunal on appreciation of entire evidence has awarded a total compensation of Rs. 2,23,000/- under the following heads:

10. Though claimant would contend that compensation awarded by Tribunal is on the lower side after having perused the records available on record and particularly medical records Exs.P-10, P-11, P-12, P-13, P-20, P-23, P-24 to P-95, I am of the considered view that compensation awarded by Tribunal is just and reasonable and it does not call for any enhancement. Hence, compensation awarded by Tribunal is hereby affirmed.

11. For the reasons aforestated, I proceed to pass the following:

JUDGMENT

(i) Appeal is hereby allowed in-part.

(ii) Judgment and award passed by MACT, Fast Track Court-I, Davanagere, dated 06.08.2008 in MVC No. 944/2006, insofar as absolving respondent No. 4 - insurer, is hereby set aside in view of submission made by learned counsel for respondent No. 4 agreeing and willing to pay a sum of Rs. 40,000/- by way of global compensation and by placing the said submission on record and directing respondent No. 4 to deposit the same before jurisdictional Tribunal within four (4) weeks from the date of receipt of copy of this order. In all other respects, judgment and award passed by Tribunal is hereby affirmed including the contributory negligence apportioned except to the extent of modification made hereinabove.

(iii) Registry to retransmit the records to the jurisdictional Tribunal forthwith.

(iv) No costs."

