

(2012) 01 KAR CK 0020

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3375 of 2010 MV

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Lakshmmamma and D. Raghava

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 01 KAR CK 0020

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : B. Pradeep, for Sri. A.N. Krishna Swamy, for the Appellant; T.K. Nagesh Kumar, for R1-absent. R2 is Served, for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure

1. Though the matter is posted for admission, with the consent of the counsel, it is taken up for final disposal. The insurer has approached this Court challenging the Award passed by the Tribunal granting compensation to the 1st respondent herein for the injuries said to have been sustained by her in a motor vehicle accident.

2. The facts relevant for the purpose of this appeal are as under:

The 1st respondent herein is the petitioner, whereas the 2nd respondent and the appellant are the 1st and 2nd respondents respectively before the Tribunal. The petitioner filed a claim petition alleging that on 16.01.2008 at about 3.30 p.m. when she was waiting for a bus near pattasomanahalli gate, the motorcycle bearing reg. No.KA 11-N-872 came from Pandavapura side in rash and negligent manner and hit the petitioner. She fell down and sustained grievous injuries. She was taken to JSS Hospital, Mysore and was in-patient for 20 days. She claims to have suffered disability and therefore filed a petition u/s 166 of the Motor Vehicles Act, seeking compensation on all the heads. The respondents contested

the claim made by the petitioner.

In the enquiry, she was examined as P.W. 1, the doctor as P.W. 2 and in their evidence documents Exs. P1 to 110 were marked. The 2nd respondent examined its Area Manager, Legal, as R.W. 1 and in his evidence got marked the documents Exs. R1 to 6. The Tribunal after hearing the learned counsel for the parties and on appreciation of the material on record held actionable negligence on the part of the rider of the scooter and granted compensation of ` 1,89,100-00. Aggrieved by the Judgment and Award, the insurer has approached this Court in appeal.

3. I have heard the learned counsel for the appellant. The learned counsel for the 1st respondent is absent.

4. The points that arise for my consideration are;

1) whether the material placed on record is sufficient to prove the occurrence of the accident and rash and negligent riding of the vehicle by its rider?

2) What order?

5. The 2nd respondent though served has not put his appearance. The appellant has disputed the occurrence of the accident. As the owner did not file written statement to contest the petition, it is the appellant/insurer, who contested the claim and has filed this appeal. Now so far as the facts alleged by the petitioner/1st respondent are concerned, the accident occurred on 16.01.2008 and according to her, when she was standing by the side of the road, the motorcycle bearing reg. No. KA 11-N-872 hit her and caused injury. As could be seen from the FIR-Ex. P2, though the accident is said to have occurred on 16.01.2008, the complaint-Ex. P3 came to be filed by the petitioner/1st respondent on 04.02.2008. As could be seen from the allegations in the complaint, she states that on 16.01.2008 in the noon hours, she was standing near Puttasomanahalli Gate and at that time, the offending vehicle was driven in rash and negligent manner, hit her and she sustained injuries. She was shifted to JSS Hospital and took treatment and it is on 01.02.2008 that she was discharged from the hospital. Thereafter, she was taking rest and ultimately on 04.02.2008, she claims to have gone to the Police Station and submitted the complaint on these facts. It is relevant to note that in case if a vehicle accident had occurred and on that ground she was admitted in the hospital, the authorities have to intimate the Police about the Medico Legal Case [MLC] registered by them. There is no such intimation by the hospital authorities to the Police. Furthermore, the insurer has produced Ex. R6-case sheet maintained by the JSS Hospital, Mysore, on 15.02.2008 when Dr. Shivananda examined her and at that time recorded the history of the incident. It is mentioned in Ex. R6 that she sustained injuries due to fall from two-wheeler at 4.00 p.m. At page 10 of the case sheet, even the history is mentioned as RTA fall from scooter at 4.00 p.m. So, this is the earliest information that has been given by the complainant, who was conscious when she was admitted in the hospital that she fall from the two-wheeler [scooter] and said to have sustained the injuries. It is under these circumstances that the

hospital authorities did not register a MLC and did not send the intimation to the Police.

6. To prove the occurrence of the accident due to rash and negligent driving by the rider of the offending vehicle, except the oral evidence of P.W. 1, there is no material placed on record. Even in the cross-examination, she states that she does not know as to who lodged complaint to the Police in respect of this accident. Though she has denied fall from the scooter, it is relevant to note that except her interested version, the petitioner has not taken care to examine any other witness to prove the occurrence of the accident. On this aspect of the matter, the learned counsel for the appellant has placed reliance on an unreported decision of the Apex Court in Civil Appeal No. 3171/2009 [North West Karnataka Rd. Transport Corp. Vs. Gourabai & Ors.], wherein it has been held:

The effect of the evidence of the doctor and exhibit R1 does not appear to have been looked into by the MACT and the High Court. MACT did not place reliance on the document R-1 or the ground that the brother of the injured stated that he did not know what was written in the document and his signature was taken on one page. This conclusion overlooks from the fact that a doctor will not make a signature on a piece of paper mentioning something which is not correct. Exhibit R-1 establishes beyond the shadow of doubt that the injuries sustained were not on account of any vehicular accident.

So, though the accident occurred on 16.01.2008, the complaint of the incident came to be filed on 04.02.2008 and there is abnormal delay. It has not been satisfactorily explained and in such circumstances, the contents of the FIR cannot be considered as substantial piece of evidence. In addition, except interested version of the petitioner, as there is no other material on record to prove the occurrence of the accident, it has to be held that the petitioner has failed to prove the accident and also the rash and negligent riding. The other documents that has been produced is spot mahazar-Ex. P4. There is no incriminating material in the said document. Ex. P5 is the Motor Vehicle Inspector's report and there is no damage to the vehicle. Ex. P6 is the injury certificate, which has been issued by the Chief Casualty Medical Officer of JSS Hospital, Mysore. But, when the case sheet has been produced and it discloses that the accident was due to fall from the scooter, the contents of the injury certificate was with regard to the history of the accident having occurred due to hit by the motorcycle cannot be accepted as it is inconsistent with the contents of the case sheet maintained by the JSS Hospital. So, taking into consideration these all circumstances, I am of the opinion that the petitioner has failed to prove the accident and also the rash and negligent riding. So far as the quantum of compensation is concerned, though it appears to be reasonable, in view of the fact that the petitioner has not proved the occurrence of the accident, she is not entitled to claim any compensation. The Tribunal has not given careful consideration to the contents of Ex. R6 and the inconsistent version of Ex. P6 and so also the inordinate delay in lodging the FIR. It has also not taken into consideration the fact that the delay

has not been explained. In that view of the matter, the finding of the Tribunal about the rash and negligent driving and occurrence of the accident has to be set aside by dismissing the claim of the petitioner. In that view of the matter, I answer point No. 1 in negative and proceed to pass the following:

ORDER

The appeal is allowed. The Judgment and Award passed by the Tribunal granting compensation to the petitioner is set aside and the petition filed u/s 166 of the M.V. Act is dismissed with no order as to costs. The amount in deposit shall be refunded to the insurer.