(2014) 12 KAR CK 0034

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1049/2009 and M.F.A. Crob. 36/2013

Jayakumar N.K. APPELLANT

Vs

Ramegowda RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0034

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : M.M. Swamy, Advocate for the Appellant; D. Manmohan, Advocate for the Respondent

Judgement

Aravind Kumar, J.—Owner of the offending vehicle and claimants have filed this appeal and cross objection calling in question judgment and award passed by MACT, Nagamangala in MVC No. 75/2006 dated 08.09.2008.

2. I have heard the arguments of Sri M.M. Swamy, learned Advocate appearing for appellant - owner, Sri D. Manmohan, learned Advocate appearing for claimant, Sri O. Mahesh, learned Advocate appearing for insurer. Perused the judgment and award in question as also records secured from the Tribunal.

3. It is the contention of Sri M.M. Swamy, learned Advocate appearing for the owner of the offending vehicle that Tribunal committed a serious error in fastening liability on the owner without considering the evidence of the claimant which was to the effect that accident in question had occurred while claimant was proceeding by the side of the road as a pedestrian and was hit by the offending vehicle and as such claimant was a third party and thereby insurer would be liable to indemnify third party claim and this evidence having been ignored has resulted in Tribunal erroneously fastening the liability on the owner of the offending vehicle. Hence, he prays for allowing appeal by setting aside judgment and award passed by Tribunal.

4. Sri Manmohan, learned Advocate appearing for the claimant would not only

support contention raised by Sri M.M. Swamy, but would also contend that insurer had failed to establish before Tribunal that accident in question had not occurred in the manner pleaded by the claimant. Hence, he prays for allowing cross objections fastening the liability on Insurer. He would elaborate his submission by contending that compensation awarded by Tribunal is abysmally on the lower side and as such, he prays for enhancement of compensation. He would draw the attention of Court to disability certificate issued by District Medical Board -Ex. P-4 which according to him would indicate that there is loss of vision and as such he prays for suitable enhancement of compensation.

5. Per contra, Sri O. Mahesh, learned Advocate appearing for insurer would support the judgment and award passed by the Tribunal and prays for dismissal of the appeal and cross objections.

6. Having heard the learned Advocates appearing for parties, I am of the considered view that following points would arise for my consideration:

"(1) Whether Tribunal was correct in absolving the insurer from indemnifying the claim?

(2) Whether compensation awarded by Tribunal is just and reasonable or requires to be enhanced? and, if so, to what extent?

(3) What order?"

RE: POINT No. (1):

7. The manner in which accident in question had occurred was questioned before Tribunal by the insurer. It is not in dispute that owner as well as claimant have relied upon FIR - Ex. P-1 and Mahazar -Ex. P-2 to establish that accident in question had occurred. It was contended by the claimant before tribunal that he was proceeding on 29.01.2001 by walk as a pedestrian and at that time, offending vehicle had dashed against the claimant while trying to avoid a pit on the road and in the process, it had turned turtle and as such, said vehicle had capsized and fallen on the claimant due to which he had sustained injuries. Copy of the FIR as per Ex. P-1, mahazar - Ex. P-2 and charge sheet filed against driver of the offending vehicle as per Ex. R-1 would clearly indicate the manner in which accident in question had occurred namely, it had capsized due to rash and negligent driving and claimant was an inmate of said vehicle.

8. Complainant in FIR- Ex. P.1 has stated that while he was returning to his native place after attending a wedding ceremony had boarded the offending vehicle namely, a goods auto and said vehicle was driven in a rash and negligent manner. He has also stated that on account of the speed in which said vehicle was proceeding had resulted in driver loosing balance and as such it turned turtle on account of which, inmates of the vehicle were injured.

9. Though Mr. Manmohan would contend that complainant has not specifically stated name of the claimant in the FIR namely, claimant was also an inmate of

Auto and as such, version propounded by claimant in the claim petition was required to be accepted by the Tribunal, I am not inclined to accept said submission for reasons more than one. Firstly, when claimant himself has relied upon FIR - Ex. P-1 and mahazar Ex. P-2 for claiming compensation, it cannot be gain said by the claimant that those documents have to be read to the extent it is favourable to claimant and the other contents of the documents which is not in favour of claimant is to be discarded. Hon''ble Apex Court in the case of Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others, has held that when the documents relied upon by the claimant would indicate as to how accident in question had occurred, said documents cannot be read disjunctively and it has to be read as a whole. In the light of the dicta laid down by Hon''ble Apex Court in the above mentioned case, I am of the considered view that contention of Mr. M.M. Swamy, learned Advocate appearing for owner as well as Mr. Manmohan, learned Advocate appearing for claimant cannot be accepted to hold that claimant was injured while proceeding as a pedestrian. Overwhelming evidence available on record would clearly indicate that accident in question had occurred while claimant was proceeding in a goods vehicle as a gratuitous passenger. Secondly, claimant has failed to establish through independent evidence to rebut the contents of Exs.P-1 and P-2 and as such, their contention cannot be accepted. Accordingly, point No. 1 deserves to be answered against the owner as well as the claimant.

RE: POINT No. (2):

10. Award in question would indicate that Tribunal has awarded compensation of Rs. 5,000/- towards ''pain and suffering'' and Rs. 5,000/- towards loss of amenities in life''. Except producing wound certificate - Ex. P-3 and disability certificate - Ex. P-4, there is no other material produced to establish number of days of hospitalization and nature of treatment obtained or the disability suffered. In fact, claimant has not examined the Doctor who had treated him or who had assessed the disability of claimant. However, Tribunal on the basis of material evidence available on record namely, wound certificate- Ex. P.3 has accepted the same to assess the disability at 20% and has awarded compensation towards loss of future income''. On account of the injury sustained to right knee and also blunt injury sustained to his face and chest together with fracture at pelvic region as reflected in the wound certificate- Ex. P-3, this Court is of the considered view that claimant would be entitled for additional compensation of Rs. 15,000/- towards ''pain and suffering'' and accordingly, it is hereby awarded.

11. Evidence available on record would indicate that claimant contended before Tribunal that he had lost vision in his left eye. For reasons best known, he has not examined the Doctor. He has produced disability certificate issued by the District Medical Board who have assessed his disability as under:

"Vision-6/36

Disability - 20%"

For reasons best known, claimant did not examine the Doctor who had treated him for loss of vision on left eye. On the other hand, when claimant had entered witness box and while being cross examined on 26.06.2007, Tribunal has noticed that claimant had lost vision in left eye. Tribunal has physically seen the claimant and has found that claimant does not have vision in his left eye. It has been recorded by the tribunal as under:

"2. I used to earn xxx left eye. Witness volunteers that doctors have treated only external injuries found on the left eye brow, they never care to treat the injured left eye even though there is injuries on the left eye. So he lost the left eye vision. So it is noticed by the court that witness cannot open his left eye."

(emphasis supplied)

Thus, when the evidence of claimant when read along with finding recorded by Tribunal as well as assessment made in the disability certificate Ex. P-4 it has to be necessarily inferred that claimant had suffered loss of vision of one eye and on account of there being no specific medical evidence available on record, extent of disability cannot be ascertained. Even otherwise, Tribunal has considered whole body disability at 20% and accordingly, awarded compensation. However, on account of the loss of vision, claimant would lose various comforts in life and as such, additional compensation of Rs. 20,000/- if awarded towards loss of amenities'', it would meet ends of justice. Accordingly, it is hereby awarded.

12. Claimant has tendered evidence before Tribunal stating that he was hospitalized at Mandya Government Hospital for 20 days. It is no doubt true that claimant has not produced any document in this regard. Tribunal having accepted that he has spent amount towards medical expenses has awarded Rs. 3,000/- without considering his prayer for compensation towards food, nourishment and conveyance expenses. This Court is of the considered view that additional sum of Rs. 5,000/- if awarded towards ''food, nourishment and conveyance'', it would meet ends of justice. Accordingly it is hereby awarded.

Thus, in all, claimant would be entitled to Rs. 40,000/- by way additional compensation. Accordingly, point No. 2 is answered in favour of claimant.

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

JUDGMENT

"(1) MFA No. 1049/2009 is hereby dismissed.

(2) MFA Crob No. 36/2013 is hereby allowed in part. Judgment and award passed by MACT, Nagamangala in MVC No. 75/2006 dated 08.09.2008 insofar as awarding compensation is modified and additional compensation of Rs. 40,000/- is hereby awarded which shall carry interest @ 6% p.a. from the date of petition till date of deposit or payment whichever is earlier. Insofar as liability fastened on the owner of the offending vehicle is concerned, same stands affirmed.

(3) Enhanced compensation with proportionate interest shall be kept in Fixed Deposit in any nationalised Bank or Scheduled Bank of claimant''s choice for a period of three years and he would be entitled to draw periodical interest.

(4) Insured- owner shall deposit the enhanced compensation with proportionate interest before jurisdictional Tribunal within six weeks from the date of receipt of certified copy of this order.

(5) Registry is directed to re-transmit the records to the jurisdictional Tribunal forthwith."

