

(2013) 04 KAR CK 0067

In the Karnataka High Court

Case No : M.F.A. No. 5110 of 2009 C/w M.F.A. No. 2989 of 2009 (MV)

K. Ramesh

APPELLANT

Vs

B. Amarnatha and The Manager, The United India Insurance
Co. Ltd.
 United India Insurance Co. Ltd. Vs K. Ramesh
and B. Amarnatha

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(24), 2(34)

Citation : (2014) 2 ACC 692 : (2014) ACJ 576 : (2013) 3 AKR 666 : (2013) ILR
(Kar) 3973

Hon'ble Judges : B.S. Indrakala, J

Bench : Single Bench

Advocate : H.C. Shivaramu in M.F.A. No. 5110/2009 and Sri. A.N. Krishna
Swamy in M.F.A. No. 2989/2009, for the Appellant; A.N. Krishna Swamy, for R-2
in M.F.A. No. 5110/2009 and Sri. H.C. Shivaramu, for R-1 in M.F.A. No.
2989/2009, for the Respondent

Judgement

B.S. Indrakala, J.—Though these matters have listed for Admission with the consent of the learned Counsel for both the parties it is taken up for final hearing. M.F.A. No. 5110/2009 and M.F.A. No. 2989/2009 are preferred by the claimants and the Insurer respectively against the Judgment and Award dated 17.11.2008 passed in M.V.C. No. 549/2005 (Old No. 267/2002) on the file of the Sessions Judge, Fast Track Court-I, Mandya.

It is the case of the claimant that on 26.08.2001 at about 10.00 p.m. while he was working as Watchman in Lakshminarasimha Swamy Lorry Parking Shed at Bhadravathi and he was sitting inside the shed the Driver of the Lorry bearing Registration No. KA-04/1664 took the said lorry in reverse in a rash manner and dashed against him and caused the accident and in the said accident he suffered grievous injuries to his both lower limbs, abrasion over left eyebrow, tenderness over left shoulder, pelvis, both hip joint and other injuries. Immediately he was shifted to Government Hospital, Macgan, Shimoga, and from there shifted to

Victoria Hospital, Bangalore and X-Ray taken revealed fracture of right femur and left femur and also fracture of shoulder, POP was applied and he was inpatient from 27.08.2001 to 17.11.2001 and even on the date of filing the claim petition, he was under treatment and had incurred about Rs. 60,000/- towards medical expenses and Rs. 40,000/- towards food, diet, transport, etc. Further, it is the case of the claimant that he was getting salary of Rs. 3,000/- per month from the lorry office and he was also doing agricultural work by growing mulberry crops and getting additional income of Rs. 3,000/- p.m. In the circumstances, on account of the injuries suffered, the expenditure incurred, disability to which he is exposed, loss suffered, he filed he claim petition seeking compensation of Rs. 5,00,000/-. 2. In the statement of objections filed by the Insurer while denying the place of accident, nature of injury suffered, age, income of the injured and occupation, etc. It is specifically pleaded that though the vehicle is covered with valid Insurance, the Insurance Company is not liable to indemnify the owner as the alleged accident has not occurred in a public place. The petitioner got himself examined as PW-1 besides examining the Medical Officer to assess the disability as PW-2 and got marked Ex.P1 to P16 and on behalf of the respondents, copy of the Policy of Insurance was marked as Ex.R1.

3. On appreciation of the evidence so placed on record, the Tribunal deemed it fit to award compensation of Rs. 1,78,000/- with interest @ 6% p.a. from the date of petition till the date of realisation holding both respondent Nos. 1 and 2 jointly and severally liable to pay the same.

4. Aggrieved by the said passing of the judgment and award, the claimant is in appeal inter-alia contending amongst other grounds that the amount of compensation so awarded is inadequate in the circumstances of the case while the Insurer is in appeal contending that the Tribunal erred in fixing the liability on the Insurance Company; as the accident has taken place in a private place and not in a public place the Insurance Company is entitled to be exonerated from indemnifying the Owner.

5. On perusal of the wound certificate marked as Ex.P4, it is seen that the claimant is said to have suffered the following injuries:

- a) Both lower limbs bandaged;
- b) Abrasion 1 cm x 0.2 cm below left eyebrow, blockish brown in colour;
- c) Tenderness present over left shoulder.

On perusal of Ex.P6 - Discharge Summary issued by Victoria Hospital, it is seen that the same shows Diagnosis as under:

- a) Bilateral femur fracture with fracture of tibia (type-I compound);
- b) Right femur middle 1/3rd and left femur;
- c) Left tibia fracture at junction of middle and lower 1/3rd.

The Doctor who is examined as FW-2 has deposed that he examined the claimant on various occasions and on 30.08.2001 when he examined him, he noticed the following:

- a) Type I compound fracture shaft of tibia, fibula mid third;
- b) Fracture upper third shaft of right femur;
- c) Fracture of upper 3rd shaft of right femur.

Further, he has deposed that the patient underwent surgery on two occasions i.e. on 12.09.2001 and 26.09.2001. He was discharged from the Hospital on 18.11.2001 and he was advised bed rest, physiotherapy. Further, he has deposed that he examined the claimant on 13.11.2007 and the fractures were united with implants and he advised for removal of implants. Further he has deposed that the patient had suffered 20% functional disability. The Tribunal appreciating the aforesaid evidence so placed on record has deemed it fit to consider 10% of the functional disability.

6. In the circumstances of the case, awarding of Rs. 50,000/- under the head Pain and Suffering is proper and the same need not be interfered with.

7. The claimant has also filed medical bills amounting Rs. 37,214/- to which he is entitled for reimbursement. In the circumstances, the claimant is entitled to be compensated at Rs. 37,214/- towards the head medical expenses.

8. Considering the fact that the claimant underwent two surgeries on 12.09.2001 and 26.09.2001 and he was hospitalized till 18.11.2001, it is also necessary to award compensation under the head attendant charges, conveyance, food and nourishment and it is reasonable to award Rs. 15,000/-.

9. The claimant has stated that he was earning about Rs. 3,000/- p.m. as watchman in the Shed where he was working and another sum of Rs. 3,000/- by doing agriculture by growing mulberry crop, etc. However, the Tribunal considering the notional income only at Rs. 3,000/- as the claimant has not substantiated his contention that he was earning Rs. 6,000/- p.m. which assessment of income at Rs. 3,000/- is proper. The claimant is entitled for laid up period of four months and accordingly, a sum of Rs. 12,000/- is awarded towards loss of income during the laid up period.

10. PW-2 has specifically deposed that the implants have to be removed and the cost of future medical expenses will be around Rs. 10,000/-. Accordingly, the Tribunal awarded Rs. 10,000/- towards future medical expenditure is just and proper and does not call for any interference.

11. With regard to the disability, considering the age of the claimant as on the date of accident as 32 years, by applying the multiplier of 16 Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and taking the income at Rs. 3,000/-, the percentage of disability at 10%, the claimant is entitled to be compensated at Rs. $3,000 \times 10 \times 12 \times 16/100 = \text{Rs. } 57,600/-$ rounded off to Rs.

58,000/-. Thus, the claimant is entitled to be compensated as hereunder:

12. Learned Counsel appearing for the Insurer contended that, admittedly accident occurred in a lorry parking shed (yard) which is not a public place as contemplated u/s 2(34) of the Motor Vehicles Act and as such, the Company is not liable to indemnify the owner of the vehicle.

13. Per contra, learned Counsel appearing for the claimant further contended that the place where the accident occurred is also a public place as such the Company is liable to indemnify the owner of the vehicle.

14. For the sake of convenience, Section 2(34) of the Motor Vehicles Act, 1988, it is excerpted hereunder:

"Public Place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

15. Thus by simple reading of the said definition, it is seen that emphasis with regard to public place is on the right of access to the public to the said place. In other words, the place to which the public has a right of access can be termed as public premises.

16. The learned Counsel for the insurer relied upon a judgment of the learned Single Judge in the case of Rajammal Vs. Associated Transport Company and Another, wherein it is held that the public had no right of access and as such the insurance company would not be liable for compensation.

17. The learned Counsel for the claimant relied upon the Full Bench judgment of the Bombay High Court in the case of Pandurang Chimaji Agale Vs. New India Life Insurance Company Ltd., wherein the said decision relied upon by the insurer is descended.

18. Further as observed in the said decision, the said definition is inclusive one and the only condition is that the public should have a right of access to it. In the said decision, it is further observed as hereunder:

The expression used in the definition is "a right of access" and not "access as of right". Lastly, when it states that any place or stand at which passengers are picked up or set down by a stage carriage, is a public place, it shows that it is not so much concerned with the ownership of the place as with its user. The definition of "public place" under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purpose. Hence, all places where the members of public have an access, for whatever reasons, whether as

of right or controlled in any manner whatsoever, would be covered by the definition of "public place".

This judgment is followed by the Full Bench of Bombay High Court in the case of Forbes Forbes Campbell and Co. Ltd. and another Vs. Vilasrao Deshmukh The Hon'ble Minister for Revenue and Transport, State of Maharashtra and others,

19. He has also relied upon another decision rendered by the Full Bench of Madras High Court in a reference case which was referred by the Division Bench of that Court in the case of United India Insurance Co. Ltd. Vs. Parvathi Devi and Others, following the Full Bench of the Bombay High Court (cited supra) in which it held as hereunder:

It will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of "public place" in Section 2(24) of the Act.

20. Besides reading of those citations relied upon by the learned Counsel for the appellant read with definition clause enumerated in Section 2(34) of the Motor Vehicles Act, 1939, it is clear that a public place is not necessarily the place should be a public property, but, it can also be a private property. Likewise it is also clear that a public place need not have free access; the access can also be a restricted access. What is emphasized is only with regard to the user of the premises by public. In other words the public should have right of access to the said place where it is permissive or otherwise.

21. Thus in the case on hand, it is seen that though it is not a place under the ownership of public and it is a private property, the use is for a public purpose. In other words on perusal of the mahazar got marked as Ex.P.2, it is seen that one of the boundary to the said property is double road and right from FIR i.e., which is marked as Ex.P.1, it is seen that the place where the accident has occurred is defined as the lorry parking yard and the claimant in his first statement given by him for the first time, has stated giving the description as Sri Lakshmi Narasimhaswamy Lorry Parking Shed area which means the area is not confined to any individual and the said area is a parking yard meant for parking of lorries of different persons. As submitted by the learned Counsel for the claimant, further it is seen that claimant No. 1 during the course of his evidence has deposed that he was working at Sri Lakshmi Narasimhaswamy Lorry Parking Shed, Bhadravathi Town and if at all it was shed meant for individual persons, he would have clearly stated that it was a shed belonging to a particular person, on the other hand, the word used by him is that it is meant for parking of lorries and it is not permanently meant for any specific vehicle.

22. The learned Counsel for the insurer at this juncture contended that during the course of his cross-examination, P.W. 1 has conceded the suggestion that it was a public place.

23. On perusal of such cross-examination, it is seen that the same reads as hereunder:

But, merely by getting such positive answer to a suggestion, that by itself, is not sufficient to hold that it is not a public place. In other words as already discussed supra, even if the entry is restricted, that by itself, will not take away the characteristic of public place.

24. Further it is seen that, the witness examined by the respondent/insurer as R.W.1, during the course of his evidence has deposed that the accident has occurred in a private lorry shed and as such the company is not liable to indemnify the owner. However, in the course of his cross-examination, he has conceded to the suggestion that the terms and conditions of the policy does not stipulate that if any accident occurs in a private place, the company is not liable to indemnify the owner. In this regard, it is to be seen that even though there is no such stipulation mentioned in the policy, as the policy is governed by the statute, the same cannot run contrary to the statute.

25. In the circumstances as discussed supra, it is nobody's case that the said yard where the accident occurred was meant only for the use of private individual and as it was meant for parking of lorries of different persons who pass on the said road for a limited time and it was not a permanent garage of any vehicle and also for the reasons as discussed supra, it is held that the said place is a public place. In the circumstances, the contention of the learned Counsel for the insurer that it is not a public place cannot be accepted. Thus it is held that the place in question is a public place. Accordingly, the insurance company is liable to indemnify the owner of the vehicle. Hence the following:

ORDER

The appeal filed by the claimant in MFA NO. 5110/2009 is allowed awarding compensation of a sum of Rs. 1,92,214/- with interest at 6% p.a. from the date of petition till realisation as against Rs. 1,78,000/- as awarded by the Tribunal vide its impugned judgment and award dated 17.11.2008 and respondent Nos. 1 and 2 are jointly and severally liable to pay the same. However, respondent No. 2 shall indemnify the amount to respondent No. 1 therein and shall deposit the amount awarded within 4 weeks from the date of receipt of copy of this judgment.

The order regarding deposit of Rs. 1,50,000/- by the Tribunal remains unaltered.

The enhanced amount with proportionate interest shall be released in favour of the claimant for his immediate necessity.

Consequently, the appeal filed by the insurance company in MFA 2989/2009 is hereby dismissed.

However, it is made clear that awarding of compensation of Rs. 10,000/- towards future medical expenses shall not carry any interest.

Office to draw the award accordingly.