

(2013) 09 KAR CK 0104
In the Karnataka High Court
Case No : M.F.A. No. 2966 of 2012

Kengegowda C.S.

APPELLANT

Vs

A.R. Shankar, The Manager, Bajaj Allianz General Insurance Co. Ltd., Boregowda and The Manager, The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 09 KAR CK 0104

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Chethan. B, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimant-appellant is directed against the impugned judgment and award dated 09/01/2012 passed in MVC No. 1608/2008, by the Principal Senior Civil Judge and Member, Additional Motor Accident Claims Tribunal, Hassan, (hereinafter referred to as "Tribunal" for short). The Tribunal by its impugned judgment and award has dismissed the petition filed by the appellant on account of the injuries sustained by him in the road traffic accident.

2. In brief, the facts of the case are:

Appellant claims to be aged about 40 years, hale and healthy prior to the accident, working as PE Teacher and "also" doing agriculture and earning Rs. 15,000/- per month. That on 24.4.2008 at about 7.00 p.m. when the appellant was going along with one Vijayakumar in a Motor cycle bearing Reg. No. KA.13.K.2844 as pillion rider on Bidare-Gandasi hand post road at Bagivalu village Bare, at that time, the driver of autorickshaw bearing Reg. No. KA.13.A.2957 drove his vehicle in a rash and negligent manner and dashed

against their motor cycle. Due to which, both the appellant and rider fell down and appellant sustained injuries on his right leg, right hands, knee and other parts of the body. Immediately, he was shifted to Government Hospital, Hassan, where, he took treatment as inpatient for about 2 months, undergone surgery, implants were inserted and thereafter, on the advise of the doctor, he has taken bed rest and follow up treatment.

3. It is the further case of the appellant that he spent considerable amount towards medical expenses, conveyance and other incidental charges. Due to the injuries sustained by the appellant, he has suffered permanent disability at 35% to right lower limb as assessed by the Doctor. Therefore, appellant has filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation against the respondents.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has dismissed the petition.

Being aggrieved by the same, the appellant has presented this appeal.

5. I have heard the learned counsel appearing for appellant.

6. The submission of Sri. Chethan, B., learned counsel appearing for the appellant, is that, the Tribunal has erred in dismissing the claim petition on hyper technical ground. Further he submits that, in fact, appellant has stated at the time of admission in the hospital that he fell own from two wheeler and sustained injuries. The Tribunal has believed the said statement and proceeded to dismiss the petition, without appreciating the oral and documentary evidence available on file. Further he submits that in the accident, appellant has sustained grievous injures and to prove the same, he has examined the Doctor as PW2, who has assessed the permanent disability at 35% to the right lower limb. Further he submits that, the reliance placed by the Tribunal on the decision of the Apex Court reported in ACJ 2007 2570 is not applicable to the facts of the case. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified by awarding just and reasonable compensation having regard to his age, occupation and nature of injuries sustained and nature and duration of the treatment taken by him.

7. After hearing the learned counsel for the appellant and after perusal of the impugned judgment and award passed by the Tribunal, it is manifest on the face of the judgment that, the reasoning recorded by the Tribunal in paras 14, 15 and 16 of its judgment for dismissing the petition is just and reasonable and after due appreciation of the oral and documentary evidence and other materials available on record and it does not call for interference. Further it is significant to note as rightly observed by the Tribunal in para-14 of its judgment that, there is a correction in the name of patient in the case sheet maintained by the hospital. The corrections if any in the case sheet has to be done with prior permission of CMO and there is no signature in respect of correction in Ex. P18-case sheet.

Further, the Tribunal has observed that as per Ex. C1, MLC register maintained by the Government hospital, Hassan, entry marked therein as per Ex. C1(a), it can be seen that the appellant has said to have sustained injuries due to fall from two wheeler. In Ex. P18, case sheet in the outpatient card also, appellant is said to have sustained injuries due to fall from two wheeler. During cross examination of RW1, a suggestion was made to the effect that appellant was admitted to hospital by his brother's son and in Ex. P18 case sheet, his brother's son has signed. If the entry made by Medical Officer in the MLC register or in the outpatient card was due to mistake on appellant's brother's son, appellant would have examined said person to show that due to his mistake wrong entry is entered in the medical documents. But PW1 has not offered any explanation regarding entry in MLC register or outpatient card. Further, the Tribunal has observed that there is a delay in lodging the complaint and appellant has not examined the complainant of this case in order to explain the discrepancy in respect of vehicle. Taking all these factors into consideration, I am of the view that, the Tribunal has justified in dismissing the petition. The reasoning assigned by the Tribunal for dismissing the petition is just and proper and it does not call for interference. Nor the appellant has made out any good grounds or justification to entertain the relief sought in this appeal. Hence, the appeal filed by the appellant is dismissed as devoid of merits. Ordered accordingly.