
(2014) 03 KAR CK 0122

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8663 of 2007 (MV)

Lingaraja

APPELLANT

Vs

Dyamangouda Ayyangouda Paul

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2014) 3 KarLJ 310

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : V.S. Kalasurmash, Advocate for M/s. Space Law Associates, Advocate for the Appellant; S.V. Yaji, Advocate for the Respondent

Judgement

B. Sreenivas Gowda, J.—This appeal is by the claimant challenging the judgment and award passed by the Tribunal regarding quantum and liability. Learned Counsel for the claimant submits, although the claimant in his claim petition as well as in his evidence has specifically contended that the offending vehicle was insured with the 2nd respondent and the policy was in force as on the date of accident, the insurer of the offending vehicle without verifying as to whether the offending vehicle was insured with them or not simply denied the case of the claimant contending that the offending vehicle was not insured with them, however their liability is subject to proof of accident and terms and conditions of driving licence and policy. The Tribunal without considering this material aspect of the matter has committed an error in allowing the claim petition against the owner and dismissing it against the Insurance Company. He further submits, in this appeal the claimant has produced the insurance policy with an application under Order 41, Rule 27 of Civil Procedure Code, 1908 praying permission of this Court to produce the same by way of an additional evidence. He also submits, the quantum of compensation awarded by the Tribunal is also on lower side and prays for remanding the matter to the Tribunal for reconsideration both on liability as well as quantum.

2. Learned Counsel for the Insurance Company submits, admittedly the claimant had not furnished the particulars of insurance policy either in the claim petition or in his evidence. It is in this appeal he has filed an application under Order 41, Rule 27 of C.P.C. seeking permission of the Court to produce an insurance policy by way of additional evidence to show that the offending vehicle was insured with them and they are liable to pay compensation. In the insurance policy which is sought to be produced by way of an additional evidence, the vehicle number is not mentioned. Therefore, it is difficult for him to concede whether the offending vehicle was insured with their Insurance Company and whether the said policy was in force as on the date of accident or not. But he submits, in the event of this Court allowing the appeal and remanding the matter to the Tribunal for reconsideration in order to give an opportunity to the claimant to lead additional evidence, the Insurance Company may be given an opportunity of cross-examining on such additional evidence and also lead additional evidence from their side. He submits, quantum of compensation awarded by the Tribunal is just and reasonable and there is no scope for enhancement and he prays for dismissal of the claim petition.

3. The appellant has filed a claim petition in MVC No. 21 of 2003 seeking compensation from the owner and the insurer of the offending vehicle for the injuries sustained by him in the road traffic accident occurred on 3-6-2002 due to the rash and negligent driving of the offending motorcycle by its rider. The owner of the vehicle though was served with the notice of the claim petition, he did not choose to appear before the Tribunal and consequently he was placed ex parte. Either in the claim petition or in the evidence of the claimant examined as P.W. 1 particulars of insurance policy were not furnished. In the absence of production of insurance policy, the Tribunal is justified in dismissing the claim petition against the Insurance Company and awarding the compensation by saddling the liability on the owner of the vehicle. Now the insurance policy is sought to be produced by the claimant along with an application by way of an additional evidence. Since the vehicle number is not mentioned in the said policy, learned Counsel for the insurer could not concede for taking the document on record and fastening the liability on the Insurance Company. As per Ex. P. 5 wound certificate, the claimant has sustained six simple injuries and one grievous injury i.e., fracture of lower third of right tibia. Considering the same, Rs. 12,000/- awarded by the Tribunal towards pain and suffering and Rs. 1,000/- awarded towards miscellaneous expenses and not awarding any compensation towards loss of income during the laid up period and other heads is not proper. At this juncture the learned Counsel for the claimant submits, he may be given an opportunity to examine the doctor who treated him.

4. In the facts and circumstances of the case I deem it just and proper to allow the appeal and set aside the impugned judgment and award of the Tribunal and remit the matter to the Tribunal with a direction to reconsider the same by giving an opportunity to the claimant to lead additional evidence regarding quantum as well as liability.

5. Since the owner and rider of the offending motorcycle have not challenged the finding of the Tribunal regarding occurrence of accident, it would be sufficient if the matter is remitted to the Tribunal for reconsideration of its finding on liability and quantum without disturbing its finding on occurrence of accident.

6. Accordingly the appeal is allowed. The impugned judgment and award of the Tribunal is set aside only insofar as dismissing the claim petition against the Insurance Company. It is made clear that the finding of the Tribunal regarding occurrence of accident due to the rash and negligent driving of the offending motorcycle is undisturbed. The matter is remitted back to the Tribunal for reconsideration only with regard to quantum and liability after giving opportunity to both the parties to lead additional evidence with regard to liability and quantum. Since the claimant and the insurer have entered appearance in this appeal through their respective Counsels, they are directed to appear before the Tribunal on 7-4-2014 without expecting any notice from the Tribunal, on which day the claimant is directed to take steps to issue notice to the owner of the vehicle.