

(2017) 03 KAR CK 0104
In the Karnataka High Court
Case No : 1097 of 2017 (MV)

MR.AYUB AHMED.K.S S/O LATE K.SHAIK AHMED	APPELLANT
Vs	
RELIANCE GENERAL INSURANCE CO. LTD. & ANR	RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Citation : (2017) 03 KAR CK 0104

Hon'ble Judges : B.Manohar

Bench : SINGLE BENCH

Advocate : PRASANNA.V.R.

Judgement

1. The appellant has filed this appeal challenging the legality and correctness of the judgment and award dated 09-12-2016 made in MVC No.2520/2015 passed by the Motor Accident Claims Tribunal, Bangalore City, (hereinafter referred to as "the Tribunal" for short) whereby the Tribunal has dismissed the claim petition filed by him.

2. The appellant herein filed a claim petition contending that on 19-12-2014, while he was proceeding in a motorcycle bearing Registration No.KA-02/EE-9090 along with Mohiddin Ahmed as a pillion rider by observing all traffic rules, when the vehicle reached Nandi Hills at about 3.00 p.m., a Bajaj Pulsar motorcycle bearing Registration No.KA-04/HW-0219 ridden by its rider in a rash and negligent manner, in violation of the traffic regulations dashed against the motorcycle of the claimant. Due to that, the claimant fell down and sustained grievous injuries all over the body, mouth and jaws. Immediately after the accident, he was shifted to Care Super Specialty Dental Clinic, Yeshwanthpur, thereafter he took treatment at K.C. General Hospital, Bangalore for a period of two days. Thereafter he had taken follow-up treatment for a period of 15 days. In view of the injuries sustained, there is severe pain and tenderness with the mobility of jaw fragments, inability to open and chew, bleeding from the fracture site. He has undergone surgery at K.C. General hospital and discharged on 21-12-2014. In view of negligent riding of the offending motorcycle which is

insured with the second respondent, the accident occurred. Hence, both respondents No.1 and 2 are liable to compensate the claimant to an extent of Rs.7,00,000/-.

3. In response to the notice issued by the Tribunal, though the first respondent owner of the offending motorcycle was served with notice, he remained unrepresented. The insurance company filed the written statement denying the entire averments made in the claim petition and also disputed the involvement of Bajaj Pulsar vehicle. In order to claim compensation from the insurance company, the insured Bajaj Pulsar vehicle has been falsely implicated in the claim petition. Apart from that, there is 12 days delay in lodging the complaint. The mandatory duties are not complied with, occurrence of the accident is not made known to the insurance company. Further, the rider of the Bajaj Pulsar was not having valid and effective driving license; there is no coverage of insurance in respect of the motorcycle of the claimant. Hence, the insurance company is not liable to compensate the claimant and sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. The claimant in order to prove his case got examined himself as P.W.1 and also examined two other witnesses as P.W.2 and P.W.3 and got marked the documents as Ex.P1 to Ex.P19. On behalf of the insurance company, one Mr.Santhosh B.L., an officer of the insurance company was examined as R.W.1 and got marked the insurance policy as Ex.R1.

6. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration the sketch, spot panchanama, copy of the complaint, charge sheet held that the claimant has sustained injuries on 19-12-2014 near Nandi Hills and he had taken treatment in K.C. General Hospital at Bangalore. Some of the documents marked before the Tribunal clearly disclose that there is inordinate delay of 12 days in lodging the complaint. Though the claimant had taken treatment for a period of 2 days as inpatient, nothing prevented him to lodge a complaint immediately after discharge. Further, the vehicle of the claimant was inspected on 08-01-2015 whereas the offending vehicle was seized on 18-06-2015. On inspection of the vehicles by the RTO, it was found that vehicle of the claimant was damaged extensively whereas the offending vehicle was not damaged, the panchanama was not conducted; and no eye-witness was examined to prove the manner of accident occurred on 19-12-2014. Though the claimant had sustained fracture of mandible, the other injuries are simple in nature. The MLC report has not been sent to the jurisdictional police. The Tribunal taking into consideration all these aspects of the matter held that the claimant has failed to prove the occurrence of the accident and dismissed the claim petition filed by the claimant. Being aggrieved by the judgment and award passed by the Tribunal, the claimant has preferred this appeal.

7. Sri.V.R.Prasanna, learned counsel appearing for the appellant contended that

the judgment and award passed by the Tribunal dismissing the claim petition filed by the appellant is contrary to law. In view of the grievous injuries he has sustained in the accident he had taken treatment in K.C. General Hospital for a period of 2 days, thereafter he took follow-up treatment. Since the owner of the offending vehicle assured that he will take care of the medical expenditure, he did not lodge the complaint immediately after the accident or after discharge from the hospital. The wound certificate clearly disclose that he has sustained grievous injuries. Strict rules of evidence is not applicable in the Motor Vehicle case. The case has to be decided on the preponderance of probabilities of the case. If the concerned hospital has not sent the MLC report to the jurisdictional police, the claimant cannot be held responsible and hence sought for setting aside the judgment and award passed by the Tribunal by allowing this appeal.

8. I have carefully considered the arguments addressed by the learned counsel for the appellant and perused the judgment and award, oral and documentary evidence and other relevant records.

9. The injuries sustained by the claimant on 19-12-2014 is not in dispute. Immediately after the accident, the claimant took treatment at Care Super Specialty Dental Clinic, thereafter he took treatment in K.C. General Hospital and undergone operation for the jaws and discharged on 21-12-2014. It is the case of the claimant that due to the actionable negligence on the part of rider of the offending Bajaj Pulsar motorcycle, the accident had occurred and he had lodged the complaint on 31-12-2014.

10. The records clearly disclose that he was admitted to the K.C. General hospital on 19-12-2014, thereafter the he was discharged on 21-12-2014. If the owner of the offending vehicle has not paid the amount as agreed between the parties, nothing prevented the claimant to lodge a complaint immediately after his discharge. He need not wait for another ten days to lodge a complaint with the jurisdictional police. Only after lodging of the complaint, claimant's vehicle was inspected on 08-01-2015 and the offending motorcycle was seized only on 18-06-2015. The RTO officer who was examined found that there is no damage caused to the offending vehicle. If there is any head-on collision between two vehicles, both the vehicles must have damaged. In the instant case, there is no damage caused to the offending motorcycle, whereas the claimant's motorcycle has been extensively damaged. The accident occurred near Nandi Hills, the claimant got admitted to the Care Super Specialty Dental Clinic at Yeshwanthpur, thereafter he took treatment in K.C. General Hospital. Reason for the delay in filing the complaint before the jurisdictional police cannot be acceptable. Under the Motor Vehicles Act, every hospital has to send the MLC report to the jurisdictional police immediately on giving treatment to the injured person in the road traffic accident. In the instant case, the MLC report has not been sent to the jurisdictional police at the instance of the claimant. The case set up by the claimant that due to actionable negligence on the part of rider of the offending Bajaj Pulsar motorcycle the accident occurred is not proved in accordance with

law. Except his oral assertion that the offending motorcycle dashed against his motorcycle, no document has been produced to substantiate the same. In the complaint, nowhere he had mentioned that on the date of accident he was proceeding along with the pillion rider, however during the course of evidence he has stated that he was proceeding in the said motorcycle along with a pillion rider and the pillion rider had also sustained minor injuries. The pillion rider being the eye-witness to the accident has not been examined to prove the occurrence of the accident. Further, P.W.3 Dr.Nirmala in her evidence has clearly stated that she has given treatment to the claimant only after 06-10-2015, prior to that, she has not treated him. All these documents clearly establish that in order to get compensation from the insurance company, the insured Bajaj Pulsar motorcycle has been falsely implicated in the accident. The delay in filing the complaint, non-examining the pillion rider is fatal to the case.

11. I find no infirmity or irregularity in the judgment and award passed by the Tribunal dismissing the claim petition. Accordingly, the appeal is dismissed.