(2015) 03 KAR CK 0292

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 32410 and 30358/2010 (MV)

National Insurance Co. Ltd. and Others APPELLANT

Vs

Malasiddayya and Others RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0292

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : S.S. Aspalli, for the Appellant; Rachanna B. Kurkoti, Advocates for the Respondent

Judgement

Budihal R.B., J.—These two appeals are arising out of the common judgment passed by the tribunal and since the common question of law and facts are involved in both the matters, they have been taken up together to dispose off them by common judgment.

2. M.F.A. No. 32410/2010 is the appeal preferred by the appellant - Insurance Company, aggrieved by the judgment of the tribunal, fastening the liability on it to pay the compensation awarded and so also with regard to the quantum of compensation awarded by the tribunal.

3. M.F.A. No. 30358/2010 is the appeal preferred by appellant/claimant being aggrieved by the judgment and award of the tribunal regarding quantum of compensation and seeking enhancement of the compensation amount.

4. The brief facts of the claimant''s case before the Tribunal is that on 14-04-2009 at about 8-30 p.m., petitioner was riding his two wheeler along with his pillion rider, slowly on the left side of the road and when the petitioner was near Choudapur Bus Stand, one Goods Tempo vehicle bearing Regn. No. KA-32-4339 came in rash and negligent manner from Chowdapur side and that due to high beem of the head-light of the tempo, the petitioner was not able to see the front side of the road and that therefore he took the vehicle to the

extreme left side of the road, respondent No. 1 came driving the said goods tempo and dashed against the vehicle of the petitioner and caused the accident. Petitioner sustained injuries and he became semi conscious and he was taken to the hospital. It is his further case that he has spent Rs. 2.50 lacs for his treatment. He was doing lemon plantation in his lands and was earning Rs. 50,000/- per month and hence he claimed the compensation.

5. The respondent Nos. 2 and 3 have filed their written statement. Respondent No. 3 insurance company denied the allegation that the accident has occurred on account of rash and negligent driving of the said vehicle by the respondent No. 1 and further denied allegations regarding age, income and avocation of the petitioner. The accident has occurred on account of fault on the part of the petitioner himself as he dashed his motor cycle against the said truck. The respondent No. 3 has further stated that respondent No. 1 was not holding valid and effective driving license as on the date of the accident to drive the said class of vehicle. The compensation claimed is on the higher side.

6. On the basis of the said pleadings by both the parties and also considering the oral and documentary evidence adduced in this case, ultimately the tribunal has allowed the petition in part and awarded compensation of Rs. 1,24,600/- with interest at 6% p.a., The respondents are jointly and severally held liable to pay the amount and insurance company was directed to deposit the amount within 30-days.

7. Being aggrieved by the said judgment and award, these two cross appeals are filed by the insurance company as well as the claimant.

8. Heard the learned counsel appearing for the appellant - insurance company in M.F.A. No. 32410/2010. Learned counsel made the submission that, in the complaint, there is no mention of involvement of the vehicle. It is also his submission that after the lapse of six months, though the claimant filed the private complaint, even in the private complaint also, the vehicle said to have been involved in the accident is not at all mentioned. It is his submission that, looking to Ex. P-6 the seizure panchanama of the said vehicle, it clearly goes to show that only tyre and tube were in damaged condition but rest of the vehicle parts were not damaged and there was no damage caused. Hence he submits that all these goes to show that the vehicle is not involved in the accident. The learned counsel also made the submission that, looking to Ex. P-8, the certificate with respect to the two wheeler said to have been used by the appellant/ claimant, the damages caused to the said vehicle mentioned at Sl. Nos. 1 to 7. This also goes to show that the appellant claimant himself sustained injuries and there is no material to show the involvement of the vehicle as claimed by the claimant. Hence he submitted that tribunal has wrongly came to the conclusion to fasten the liability on the part of the insurance company. Counsel submitted to allow the appeal and dismiss the claim petition as against the insurance company.

9. In support of his contention, learned counsel relied upon the decision reported

in Ravi Vs. Govindappa and Another,   .

10. Per contra, learned counsel for the appellant/claimant in another connected appeal, during the course of his argument, made the submission that, in the Objection Statement filed by the insurance company, there is no specific allegation that the said vehicle was not at all involved in the accident, but, it is the contention that the driver of the said vehicle was not holding effective and valid driving license as on the date of the accident. Learned counsel submitted that immediately after the accident, as the appellant/claimant was in a semi conscious state, he was not able to furnish all the details at that moment of time and subsequently he filed the private complaint, which was referred to the police for investigation and after making thorough investigation, police have filed charge sheet stating that the said vehicle was involved in the accident. Hence the learned counsel submits that during the investigation it was ascertained about the involvement of the vehicle, then that itself is sufficient to say that the accident has been caused to the appellant/claimant from the said vehicle itself. Hence he submitted that tribunal has correctly assessed the evidence and rightly came to the conclusion about the involvement of the said vehicle. Hence he submitted that it does not call for any interference by this court.

11. So far as quantum of compensation is concerned, learned counsel made submission that income taken at Rs. 4,500/- per month is on the lower side and even under other heads also, the tribunal has awarded meager compensation and the percentage of disability taken is also on the lower side. Hence learned counsel submits to award just and reasonable compensation by enhancing the amount awarded by the tribunal.

12. I have perused the grounds urged in the appeal memorandums, the judgment and award passed by the tribunal in the case and so also the documents produced by parties and the oral evidence produced before the tribunal.

13. Firstly, with regard to the involvement of the Tata 407 vehicle bearing Regn. No. KA-32-4339 is concerned, it is no doubt true at the first instance, crime was registered in Crime No. 35/2006 but after the investigation police have filed the C-final report in the said case. Subsequently, the complainant filed the private complaint before the JMFC Court Afzalpur in P.C. No. 7/2006, which was referred to the police for investigation and to submit the report. Here the police conducted the investigation and filed the charge sheet against the driver of the said vehicle and perusing the materials on record, the said charge sheet has not been challenged by the insurance company by initiating appropriate action contending that it is not in accordance with the true facts of the case. So the charge sheet remained as it is and looking to the objection statement also, the contention taken by the insurance company that the accident has occurred on account of rash and negligent riding on the part of petitioner himself as he dashed his motor cycle against the said truck. This also goes to show the involvement of the said vehicle in the said accident. It is no doubt true as

submitted by the learned counsel for the insurance company that except the tyre and tube, no damage was noticed to the said vehicle. But, only on the basis of that, it cannot be said that the vehicle was not at all involved in the accident. Looking to the reasons assigned, the tribunal correctly appreciated oral as well as documentary evidence placed before it and rightly came to the conclusion about the involvement of the said vehicle in causing the accident. Therefore, the contention of the appellant insurance company that there is no material to show the involvement of the said vehicle in the accident, cannot be accepted at all. I have also perused the decision relied upon by the learned counsel for insurance company, but, looking to the facts and circumstances in the case on hand and in that reported decision, they are not one and the same. Therefore, it will not come to the aid and assistance of the insurance company.

14. Coming to the quantum of compensation awarded by the tribunal, the monthly income of the claimant is taken at Rs. 4,500/- per month. The accident was of the year 2006. Therefore, looking to the income taken by the tribunal, the tribunal has correctly assessed the monthly income at the rate of Rs. 4,500/- per month. With regard to the disability concerned, the claimant deposed in his evidence about the injuries that he has sustained and he has also examined two doctors to support his contention. Looking to the disability certificate produced, it is as per Ex. P-24. Looking to the oral evidence of the Doctor and also the evidence of the claimant, it goes to show that the disability to the whole body is at 20% but the tribunal observed with regard to the infirmities in the evidence of the Doctor, it has taken the disability at 10%, which is on the lower side and the disability to the whole body is to be taken at 15% which is just and reasonable. Looking to the judgment of the trial court, the age of the petitioner is assessed at 57 years as on the date of the accident. Therefore, proper multiplier applicable is 9 and the compensation towards loss of future earning capacity comes to (4,500 x 12 x 9 x 15%) Rs. 72,900/-. The tribunal has awarded Rs. 48,600/- under that head. Therefore, there is a enhancement of Rs. 24,300/- under the head of loss of future earnings.

With regard to the award of the compensation amount under the head pain and suffering, tribunal has awarded Rs. 10,000/- and the claimant is entitled to another sum of Rs. 15,000/- under that head.

For loss of amenities in the life, Rs. 10,000/- is awarded and claimant is entitled for another sum of Rs. 15,000/- under that head.

During the laid up period, the tribunal awarded only Rs. 3,000/-, claimant is entitled to another Rs. 6,000/- under that head.

Towards food, nourishment and conveyance Rs. 12,000/- awarded and claimant is entitled to another Rs. 10,000/- under that head.

Medical expenses awarded at Rs. 25,000/- considering the bills produced. Therefore, it does not call for any interference by this court under that particular head.

Towards future medical expenses, claimant is entitled to another sum of Rs. 10,000/- under that head.

The tribunal awarded under the head of loss of amenities of life and happiness so also towards loss of expectation of life. Therefore, Rs. 10,000/- is to be deducted.

Hence, in all appellant claimant is entitled to Rs. 70,300/-.

15. The claimant is entitled to enhanced amount of Rs. 70,300/-. The respondent insurance company is liable to pay the enhanced amount with interest at 9% p.a. from the date of the petition and the same is to be deposited before the concerned tribunal within 30-days from the date of receipt of copy of this judgment.

16. Accordingly, appeal preferred by the insurance company is dismissed and appeal preferred by the claimant is allowed accordingly.