

(2015) 09 KAR CK 0284

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30488/2008 (MV)

National Insurance Co. Ltd.

APPELLANT

Vs

Bagawwa Dundappa Reddy and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0284

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : Sanjay M. Joshi, for the Appellant; Ratna Shivayogimath, Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivas Gowda, J—Appeal by the Insurer of offending jeep challenging the Judgment and Award passed by the Tribunal on the ground that there is no nexus between the injuries sustained by the deceased in the road traffic accident occurred and his death.

2. As there is no dispute regarding certain injuries sustained by the deceased in the road traffic accident occurred on 19.12.2000 due to rash and negligent driving by the driver of Mahendra Jeep bearing Regn. No. MH-13/F-9428 (hereinafter referred to as "offending jeep" and liability of the insurer of the said vehicle insurer, the points that remain for consideration are:

"1. Whether the finding of the Tribunal that death of Chandrashekhar Reddy is on account of injuries sustained by him in the road traffic accident occurred on 19.12.2000 is sustainable in law?

2. Whether compensation awarded by the Tribunal is sustainable in law?"

3. Sri Sanjay M. Joshi, learned counsel appearing for the insurer of offending jeep by referring to the averments made in the claim petition, wound certificate produced at Ex. P6 and medical certificate at Ex. P7 issued from District Hospital,

Bijapur and Ex. P9, discharge summary issued by Basaveshwara Hospital submits, finding of the Tribunal that death of Chandrashekhar Reddy is on account of injuries sustained by him in the road traffic accident occurred on 19.12.2000 is contrary to the evidence on record and therefore is not sustainable in law consequently, compensation awarded by the Tribunal is liable to be set aside. Therefore, he prays for allowing the appeal as prayed for.

4. Smt. Rathna R. Shivayogimath, learned counsel for claimants submits, occurrence of accident due to rash and negligent driving of the offending vehicle by its driver is not in dispute and amputation of right leg of deceased Chandrashekhar Reddy on account of injuries sustained by him in the said accident is also not in dispute. She submits, the Tribunal based on the oral and documentary evidence on record was justified in holding that death of Chandrashekhar Reddy is on account of injuries sustained by him in the road traffic accident occurred on 19.12.2000 and awarding compensation. As such, there is no illegality or infirmity in the judgment and award of the Tribunal warranting interference of this Court and therefore, she prays for dismissal of the appeal.

5. Deceased Chandrashekhar Reddy immediately after sustaining injuries in the accident that occurred on 19.12.2000 was admitted to the Govt. General Hospital, Jamkhandi as evident from Ex. P6. As per Ex. P6, wound certificate issued by the said Hospital, the deceased had sustained the following injuries:

- "a) Femur Right leg
- b) Cut lacerated wound 3" x 4" on right leg
- c) Fracture of both tibia and fibula right leg."

6. As per x-ray report of the District Hospital, Bijapur as mentioned in Ex. p6, he had sustained the following injuries:

- "a) Multiple comminuted fracture of shaft of right tibia and fibula & displacement
- b) Fracture of shaft upper 3rd of right femur
- c) Soft tissue swelling"

7. According to the averments made in the claim petition, immediately after the accident, deceased was taken to Jamkhandi Government General Hospital for treatment and then shifted to the District Hospital, Bijapur and treated there for few days from there he was taken to the Hospitals at Sangli and Miraj for higher treatment and thereafter, he was shifted to Basaveshwara Hospital, Jamkhandi and treated there for two months as he was not cured completely and from there he was shifted to Dr. Shettar Hospital at Jamkhandi where looking to the seriousness of injuries his leg was amputated.

8. Ex. P9 Discharge summary issued by Dr. Thamagond of Basaveshwara Hospital would show, his right leg was amputated in Basaveshwara Hospital and

there was no reference in Ex. P9 regarding deceased having taken treatment in the Hospitals at Bijapur, Sangli, Miraj and in Dr. Shettar's Hospital at Jamkhandi. After his death his dead body was not subjected to Post Mortem.

9. It is also to be noted that the accident occurred on 19.12.2000 and his right leg was amputated in June 2001 in Dr. Shettar Hospital as per averments made in the claim petition. As per Ex. P9, his leg was amputated in Basaveshwara Hospital, Jamkhandi and his death took place on 27.12.2003 i.e. three years after the accident and two years six months after the amputation of right leg. The claim petition filed in MVC 781/01 by deceased Chandrashekhar Reddy was dismissed as not pressed as submitted by the learned counsel for the claimants. In that petition itself it was pleaded that his right leg was amputated. Claimants who have filed the present claim petition seeking compensation for the death of deceased Chandrashekhar Reddy have not produced the medical records relating to treatment taken by the deceased in the District Hospital, Bijapur, in the Hospitals at Sangli, Miraj and at Dr. Shettar Hospital in Jamkhandi. Dr. G.R. Tamagond examined as PW.3 in his evidence has deposed regarding treatment taken by the deceased in their Basaveshwara Hospital and as narrated in x.P9 but he has not produced documents relating to treatment undergone by the deceased in their hospital.

10. As per the averments made in the claim petition, right leg of deceased was amputated at Dr. Shettar Hospital in Jamkhandi. As per Ex. P. 9 and evidence of PW.3, his leg was amputated at Basaveshwar Hospital, Jamkhandi. Medical records regarding treatment taken by the deceased at different hospitals were not produced and further dead body of deceased was not subjected to post-mortem. Under the above circumstances, Tribunal was not justified in holding death of deceased is on account of injuries sustained by him in the accident. At this stage, learned counsel appearing for the claimants prays for remanding the matter to the Tribunal in order to give opportunity to the claimants to lead additional evidence and establish their case that death of deceased Chandrashekar Reddy was on account of injuries sustained by him in the road traffic accident occurred on 19.12.2000.

11. In response to her request, learned counsel for the insurer submits, in the event of Court remanding the matter to the Tribunal and giving opportunity to the claimants to lead additional evidence, insurer may be given an opportunity to cross-examine the claimants on such additional evidence.

12. In the instant case, I deem it just and proper to allow the appeal and set aside the judgment and award of the Tribunal and remit the matter to the Tribunal for reconsideration of the issue as to whether death of deceased is on account of injuries sustained by him in the accident or not after giving opportunities to the claimant to lead additional evidence without disturbing its finding on negligence and liability as they are not in dispute.

13. Hence, the following order:

"The appeal is allowed. Judgment and Award dated 20.6.2008 passed by the II Addl. District Judge and Member, MACT-IV, Bijapur (now Vijayapura) in MVC No. 643/2004 is hereby set aside insofar as issue relating to as to whether death of deceased Chandrashekhar Reddy is on account of injuries sustained by him in the accident occurred on 19.12.2000 or not and Tribunal is directed to reconsider the said issue afresh after giving opportunity to the claimants to lead additional evidence and in accordance with law and without disturbing the finding of the Tribunal on negligence and liability of the insurer of the offending vehicle. In the event of claimants leading additional evidence insurer of offending vehicle have right to cross-examine the claimant on such additional evidence and also lead additional evidence if any on their behalf also."

Since the claimants and insurer are represented in this appeal through their respective counsels, they are directed to appear before the Tribunal on 23.11.2015 without expecting further notice from the Tribunal. The Tribunal shall dispose of the matter within six months from the date of receipt of the copy of this judgment.

No order as to costs.