

(2013) 08 KAR CK 0176

In the Karnataka High Court

Case No : M.F.A. No. 8045 of 2009 (MV) and Miscellaneous Cvl. 20915 of 2009
C/W M.F.A. CROB No. 82 of 2010

National Insurance Co. Ltd.

APPELLANT

Vs

Puttaraju, K.M. Thotappa and M.K. Guruswamy

Puttaraju Vs K.M. Thotappa, M.K. Guruswamy and The
National Ins. Co. Ltd.

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 08 KAR CK 0176

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

Bench : Single Bench

Advocate : A.N. Krishna Swamy in M.F.A. No. 8045 of 2009 MV and Misc. Cvl. 20915 of 2009 and Shri. Pruthvi Wodeyar in M.F.A. CROB No. 82 of 2010, for the Appellant; Pruthvi Wodeyar, Advocate for R1 and Shri. K.S. Ganesh, Advocate for R2 and R3 in M.F.A. No. 8045 of 2009 (MV) and Misc. Cvl. 20915 of 2009 and by Shri. A.N. Krishna Swamy, Advocate for R3, Notice to R1 dispensed with v/o. dated 12/08/2011 and Notice to R2 held sufficient v/o. dated 26/07/2012 in M.F.A. CROB No. 82 of 2010, for the Respondent

Judgement

N.K. Patil, J.—The appeal by the Insurer and the Cross Objection by the claimant/cross objector are directed against the same judgment and award dated 11th June 2009, passed in MVC No. 373/2006, by the Additional District Judge and Motor Accident Claims Tribunal, Chikmagalur, (for short, "Tribunal"). While the Insurer has filed the appeal seeking substantial reduction of compensation awarded by Tribunal, the injured claimant has filed the cross objection, seeking enhancement of compensation on the ground that the compensation of Rs. 3,04,800/- awarded in his favour as against his claim for Rs. 6,25,000/- is inadequate.

2. On account of the grievous injuries sustained in the road traffic accident, the claimant filed the claim petition u/s 166 of the Motor Vehicles Act, before the

Tribunal, seeking compensation of a sum of Rs. 06.25 lakhs against the driver, owner and Insurer of the offending vehicle. The said claim petition had come up for consideration before the Tribunal on 11 June, 2009. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 3,04,800/- under different heads, with 6% interest per annum, from the date of petition till the date of deposit and directed the Insurer to satisfy the award. Being aggrieved by the quantum of compensation awarded, the Insurer has filed the appeal, seeking reduction and being dissatisfied with the quantum of compensation, the claimant has filed cross objection, seeking enhancement of compensation.

3. I have gone through the grounds urged in the memorandum of appeal and also the cross objection filed by both Insurer as well as the injured claimant respectively and also the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the Insurer and the learned counsel appearing for injured claimant.

4. During the pendency of the appeal filed by Insurer and the cross objection filed by injured claimant/cross objector, learned counsel appearing for cross objector has filed I.A.I/2012, seeking permission to produce additional documents such as, medical bills, prescriptions and Doctor's Certificate, etc. and submitted that the cross objector has spent nearly a sum of Rs. 2.00 lakhs towards medical expenses including conveyance, nourishing food and attendant charges and the same is liable to be awarded.

5. After hearing the learned counsel appearing for both parties, the said application, I.A.I/2012 is allowed by a separate order, permitting the injured claimant/cross objector to produce additional documents.

6. Therefore, in the light of the same, learned counsel appearing for Insurer and learned counsel appearing for cross objector fairly submitted that since the application seeking permission to produce additional documents is allowed, the matter requires re-consideration by Tribunal and that can be done only after adducing oral and documentary evidence and cross examination by the parties and after verification and authenticity of the additional documents produced by the cross objector. Therefore, they submitted that the appeal and also the cross objection may be allowed and the impugned judgment and award passed by Tribunal may be set aside and the matter be remanded back to the Tribunal for reconsideration and reserving liberty to the Insurer and the cross objector to adduce oral and documentary evidence and also for examination of the same.

7. After careful consideration of the submission of the learned counsel appearing for the parties and after perusal of the impugned judgment and award passed by Tribunal, I am of the considered view that the matter requires reconsideration by the Tribunal, after permitting the parties to adduce additional oral and documentary evidence.

8. Therefore, without expressing any opinion on the merits or demerits of the case, it would suffice for this Court if the impugned judgment and award passed by Tribunal is set aside and the matter is remanded for re-consideration afresh, to safeguard the interest of both parties and also to meet the ends of justice. In the light of the facts and circumstances of the case and the discussion made above, the appeal filed by the Insurer and the cross objection filed by injured claimant are allowed.

The impugned judgment and award dated 11th June 2009, passed in MVC No. 373/2006, by the Additional District Judge and Motor Accident Claims Tribunal, Chikmagalur, is hereby set aside;

The matter stands remitted back to the Tribunal to reconsider the matter afresh and to pass appropriate orders in accordance with law, after affording reasonable opportunity of hearing to both parties, within a period of six months from the date of receipt of application/s to be filed by the parties;

The Insurer and the injured claimant/cross objector are permitted to file application/s for adducing additional oral and documentary evidence within two weeks from the date of receipt of a copy of this judgment;

In case such application/s is/are filed, the Tribunal is directed to receive the same and pass appropriate orders, and dispose of the same in compliance of the direction issued by this Court, expeditiously.

The Insurer and injured claimant are directed to appear before the jurisdictional Tribunal, either personally or through its authorized representative/counsel for injured claimant, on 26-08-2013 at 11:00 AM and collect the necessary date of further hearing;

Registry is directed to return the entire original records to the jurisdictional Tribunal, forthwith;

The amount in deposit by the Insurer shall be refunded to it, forthwith.

Office to draw award, accordingly.

In view of disposal of matter, Misc. Cvl. No. 20915/2009 filed by Insurer seeking stay, does not survive for consideration and is accordingly, disposed of as having become infructuous.