(2013) 11 KAR CK 0204

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 803 of 2012 C/W MFA No. 11640 of 2012

National Insurance Co. Ltd. APPELLANT

Vs

Thyampanna Shetty and Sanjeev Poojary
 Sri Thyamapanna Shetty Vs Sanjeeva Poojary and The Manager, National Insurance Co. Ltd. RESPONDENT

Date of Decision : 26-11-2013

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

Citation : (2013) 11 KAR CK 0204

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : K. Dhiraj Kumar, in Miscellaneous First Appeal No. 803/2012 and Smt. P.V. Kalpana, in MFA No. 11640/2012, for the Appellant; P.V. Kalpana, for R1 in Miscellaneous First Appeal No. 803/2012 and Sri K. Dhiraj Kumar, for R2 in MFA No. 11640/2012, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Abdul Nazeer, J.—These appeals are directed against the judgment and award in MVC No. 1671/2009 dated 19.8.2011 on the file of the Senior Civil Judge & JMFC, Bantwal, D.K., whereby the Tribunal has awarded total compensation of Rs. 96,200/- with interest at 6% per annum from the date of the petition till the date of deposit in favour of the claimant. MFA No. 803/2012 has been filed by the insurer of the offending vehicle by contending that the insurer is not liable to pay compensation because of the violation of the permit conditions.

2. The claimant has filed MFA No. 11640/2012 seeking enhancement of compensation.

3. Sri Dhiraj Kumar, learned Counsel appearing for the insurer of the offending vehicle submits that the offending bus had permit to ply the vehicle on the route B.C. Road to Guruvayankere and back. The accident had taken place at

Belthangady. Since the bus had no permit to reach Belthangady, there is violation of the permit condition. Therefore, the insurer is not liable to pay the compensation.

4. Alternatively, it is argued that the claimant is not entitled for medical expenses in a sum of Rs. 46,475/-. The father of the claimant had sent a letter to the Insurance Company dated 22.6.2012 stating that his son has already received the medical expenses. The insurer has filed an application I.A. No. I/2013 under Order 41 Rule 27 of CPC seeking production of the aforesaid letter along with disbursement voucher and the med-claim application. Learned Counsel further submits that the application may be allowed.

5. On the other hand, Smt. P.V. Kalpana, learned Counsel appearing for the claimant submits that the compensation awarded is on a lower side. It is argued that the right arm above elbow of the claimant has been amputated because of the injury sustained by him in the accident. The Tribunal has taken 15% permanent disability to the whole body. It has taken his income at Rs. 4,500/- per month. The award of compensation under all other heads is on a lower side. It is further argued that the medical expenses awarded by the Tribunal is over and above the reimbursement made by the insurer.

6. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

7. It is evident from the permit at Ex. R1 that the bus in question had permit to ply vehicle on the route from B.C. Road to Guruvayankere and back. The said document has been marked in the evidence. There is a plea in the written statement that the liability, if any, is governed by the terms and conditions of the policy and the permit. Therefore, it cannot be said that there is no plea to that effect. The Tribunal ought to have examined this aspect.

8. As stated above, the insurer has produced several documents along with I.A. No. 1/2013 in relation to the reimbursement of medical expenses. The insurer has made out a case for production of additional documents. The documents are necessary for the just decision of the case. Accordingly, I.A. No. 1/2013 is allowed and the insurer is permitted to produce the documents.

9. It is for the Tribunal to examine as to whether the medical expenses has already been reimbursed by the claimants as per the letter produced along with I.A. No. I/2013. The contention of the appellant that the claimant has spent more than Rs. 46,000/- over and above the reimbursement made by him also needs to be examined. The Tribunal has to examine the percentage of permanent disability and the functional disability, if any, sustained by the claimant in order to determine, the compensation towards loss of future earning capacity. I am of the view that the Tribunal has to reconsider the matter. In the result, the appeals succeed and are accordingly allowed in part. The judgment and award passed by the Tribunal in MVC No 1671/2009 dated 19.8.2011 is hereby set aside. The matter is remitted back to the Tribunal for fresh disposal in accordance with law.

Liberty is reserved to the parties to lead further evidence or to produce additional documents, if they so desire. The insurer is permitted to produce the documents filed along with I.A. No. I/2013 before the Tribunal. All contentions on merit are kept open. Registry is directed to return the LCR to the Tribunal forthwith. The appellant-Insurer in MFA No. 803/2012 is permitted to withdraw the amount in deposit in this appeal. No costs.

