(2013) 03 KAR CK 0158

In the Karnataka High Court

Case No : MFA No. 1912 of 2010 C/W MFA No. 2885 of 2010 (MV)

New India Assurance Co. Ltd. APPELLANT

Vs

Sri Kareem and Sri K.M. Manjunath
 Kareem Vs The Manager, The New India Assurance Co. Ltd. and Sri K.M. Manjunath RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Citation : (2013) 03 KAR CK 0158

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : M. Muniraju, for Sri R. Jaiprakash in MFA No. 1912/2010 and Sri P. Mahadeva Swamy, in MFA No. 2885/2010, for the Appellant; P. Mahadeva Swamy, for R1 in MFA No. 1912/2010, Sri C.G. Shashivardhan, for R2 in MFA No. 1912/2010, MFA No. 2885/2010 and Sri M. Muniraju, for Sri R. Jaiprakash, Advocate for R1 in MFA No. 2885/2010, for the Respondent

Judgement

N. Ananda, J.—The other facts not being in dispute, the questions that would arise in this appeal are:-

(1) Whether Tribunal was justified in fastening liability on Insurance Company as driver of insured vehicle did not possess a valid and effective driving licence to drive a light goods vehicle as on the date of accident?

(2) Whether claimant is entitled to enhancement of compensation?

The driver of insured vehicle was holding driving licence to drive light motor vehicle (non-transport) on the date of accident and vehicle involved in the accident is a light goods vehicle (transport vehicle).

2. I have heard learned counsel for parties and perused driving licence extract (Ex. R. 2) of driver of insured vehicle.

3. The driving licence extract of driver of insured vehicle would disclose that he was holding driving licence to drive a light motor vehicle (non transport) from

15.12.1997 to 11.06.2012. The accident took place on 31.07.2008.

4. In a decision reported in National Insurance Co Ltd. Vs. Yalgurdappa since deceased by his L.Rs. and Another, a. Division Bench of this court has held that Central Motor Vehicle Rules providing separate driving licences to drive light motor vehicle (non-transport) and light goods vehicle (transport) were amended with effect from 28.03.2001. These rules have no retrospective application. Therefore, licence held by driver of insured vehicle was valid as on the date of accident. In the circumstances, Tribunal was justified in fastening liability on Insurance Company.

5. As a result of accident, claimant had suffered following injuries:-

I. Degloving injury over anterior surface of right elbow joint, total skin loss over anterior surface of right elbow and forearm measuring 20 x 15 cms, muscles and tendons exposed.

II. Skin loss over dorsum of right forearm measuring 10 cms x 8 cms underlying muscles, tendons exposed.

III. Multiple abrasions over face and left side of forehead.

IV. Multiple abrasions over left forearm.

6. The claimant was treated in M.S. Ramaiah Hospital at Bangalore. The doctor has conducted plastic surgery as follows:-

I. Debridement and fasciotomy on 31.07.2008

II. Debridement and skin grafting on 05.08.2008 under general anaesthesia

III. Regular dressing in O.T.

As could be seen from photographs of claimant marked as Ex. P.7, claimant suffers from following disabilities:-

I. Strictures of skin and fascia on right elbow joint anteriorly

II. Skin loss over right fore arm

III. The right forearm is in a deformed state

IV. Loss of grip in right hand

7. The Tribunal, has awarded compensation of Rs. 1,03,500/- under following heads:-

8. On hearing learned counsel for parties and after going through evidence and the impugned award, I am of the opinion that compensation awarded by Tribunal needs modification.

9. The claimant had suffered a degloving injury of right forearm. He was under treatment for a considerable period. Therefore, having regard to nature of

injuries and consequent pain and suffering, I award additional compensation of Rs. 20,000/- towards "pain & suffering". The claimant had spent a sum of Rs. 53,500/- towards medical expenses. Therefore, I award compensation of Rs. 54,000/- towards "medical expenses". The claimant was aged about 20 years at the time of accident. Having regard to injuries and residual effects of injuries, I assess permanent physical disability vis-?-vis loss of earning capacity at 10%. The multiplier appropriate to the age of claimant is ''18''. There is no satisfactory evidence to prove avocation of claimant. Therefore, a sum of Rs. 3,000/- per month is determined as the income of claimant. The claimant is entitled to compensation of Rs. 64,800/- (Rs. 3000/- x 18 x 12 x 10%) towards "loss of future earnings". The compensation of Rs. 10,000/- awarded by Tribunal towards "loss of earnings during laid up period" does not call for interference. I award compensation of Rs. 30,000/- towards "loss of amenities & enjoyment of life". The compensation of Rs. 10,000/- awarded by Tribunal towards "attendant charges, conveyance and nourishment charges" does not call for interference.

10. The compensation awarded by Tribunal is modified as follows:-

In the result, I pass the following:-

ORDER

MFA No. 1912/2010 is dismissed. MFA No. 2885/2010 is accepted in part. The impugned award is modified, compensation of Rs. 1,03,500/- awarded by Tribunal is enhanced to Rs. 2,08,800/-. The liability of insured and Insurance Company is joint and several. The rest of the impugned award as it relates to rate of interest, period of accrual of interest, payment and investment is confirmed. The amount deposited by Insurance Company shall be transferred to Tribunal.