

(2016) 03 KAR CK 0101

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4249/2013 (MV)

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Wazid Anwar and Others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 252

Motor Vehicles Act, 1988 — Section 134, Section 134(b), Section 166, Section 184

Penal Code, 1860 (IPC) — Section 279, Section 337

Citation : (2016) 03 KAR CK 0101

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : O. Mahesh, Advocate, for the Appellant; Kavitha H.C., Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—1. The insurer of the offending motor cycle aggrieved by the judgment and award dated 13.02.2012 in MVC 2063/2008 of the Fast Track Court II and MACT, Hassan, (for short "MACT"), has presented this appeal.

2. Briefly stated facts are: the first respondent along with his friends on 09.09.2008, at about 7.00 am, while returning by walk from tuition in Mathematics, near Sujala College cross, Aralikatte Circle, Hassan, it was alleged that a rider of motor bike bearing certificate of registration KA-13/K-7290 belonging to 2nd respondent and insured by the appellant came from the hind side, in a rash and negligent manner and dashed against 1st respondent causing grievous injuries, whence the injured was shifted to Mangala hospital, Hassan, and as an inpatient for 20 days underwent treatment for broken bones. The injured, it was claimed, was a student of II PUC in Venkateshwara Junior College, aged 20 was earning Rs. 6,000/- per month from business and studies. Hence the claim petition registered as MVC 2063/2008, invoking Section 166 of the Motor Vehicles Act, 1988 for compensation of Rs. 3,00,000/-. Appellant was

arraigned as 2nd respondent, while owner/insured as 1st respondent. The owner/insured, though served with notice before the MACT, when absent and unrepresented was placed ex-parte while the appellant resisted the claim petition by filing statement of objections denying the allegations and assertions including the accident and involvement of the motor cycle. In addition, it was asserted that compensation claimed was excessive and exorbitant and that owner of the offending vehicle violated the terms and conditions of the policy by allowing the rider to ride the motor bike without a valid and effective licence, hence not liable to pay compensation, although admitted that the motor cycle was insured and had an effective and valid policy of insurance as on the date of alleged accident.

3. In the premise of pleadings of parties MACT framed the following issues:

1. "Whether the petitioner proves that he has sustained injuries in a motor vehicle accident that was taken place on 9.9.2008 at about 7.00 am near Sujala College Cross, Aralikatte Road, Hassan, due to rash and negligent riding of motor cycle bearing registration No. KA-13/K-7290 being driven by its rider in an actionable negligence?

2. Whether the petitioner is entitled to compensation? If so, for what amount and from whom?

3. What order or award?"

4. Claimant/injured was examined as P.W.1 and marked documents Exs.P.1 to P.9 and Dr. Abdul Basheer, an Orthopedic doctor employed in Mangala Hospital, Hassan, was examined as P.W.2, marked documents Exs.P.11 and 12. For the insurer, neither oral nor documentary evidence was let in.

5. The MACT having regard to the material on record and evidence, both oral and documentary, noticed that the accident occurred on 09.09.2008 at about 7.00 am. The oral testimony of P.W.1 as well as that of P.W.2/doctor, MACT was accepted as credible evidence. Exs.P.1 to 10, none other than the police notice; copy of FIR; copy of complaint; copy of charge sheet; copy of wound certificate; copy of spot mahazar; copy of spot sketch; copy of seizure mahazar; IMV report; medical bills and prescriptions, respectively, useful to notice that in Ex. P.2 copy of FIR, it is stated that Hassan traffic police registered a case in Crime No. 299/2008 on 02.11.2008 accusing the rider of the motor cycle bearing certificate of registration KA-13/K-7290 of commission of offences punishable under Section 279, 337 of IPC r/w Section 134(b) and 184 of the IMV Act. Ex. P. 3 copy of the complaint lodged by the claimant with the jurisdictional police, resulted in Ex. P.2/ FIR while Ex. P.4 is the charge sheet, consequent upon the investigation by the jurisdictional police bringing to book the rider of the offending motor cycle. Ex. P.5, copy of the wound certificate discloses the injuries suffered by the claimant of which injuries 1 and 2 i.e., fracture of medial condyle of right knee and fracture of tibia of right leg, were said to be grievous. Ex. P.6, spot mahazar, it is stated was drawn in the presence of panchas on 02.11.2008, while Ex. P.7, spot sketch and Ex. P.8 seizure mahazar of the offending motor cycle was in the

presence of panch witnesses. Ex. P.9 is the report of the Inspector of Motor Vehicles. On appreciation of evidence, both oral and documentary, the MACT, answered issue No. 1, in the affirmative, attributing actionable negligence to the rider of the offending motor cycle. The MACT having regard to the fact that the policy of insurance was in force as on the date of accident and injuries, fastened liability to pay compensation on the appellant/insurer and regard being had to the medical documents and the testimony of P.W.2/Doctor who treated the claimant injured, accepted the opinion over disability suffered by the claimant, to award Rs. 1,54,400/- with interest at 6% per annum as compensation by the judgment and award impugned.

6. Sri O. Mahesh, learned counsel for appellant/insurer submits that even according to the claimant accident occurred on 09.09.2008 at about 7.00 am while he was walking along with two others viz., Anush and Pavan, his colleagues and one of his colleagues, after the accident, took him to Mangala Hospital, Hassan, where he was admitted as an inpatient. Failure to examine the person who took the claimant to the hospital gives reasons for doubt over the involvement of the motor cycle in question. It is further submitted that admittedly complaint was lodged on 02.11.2008 as is noticeable from Ex. P.3/ complaint and Ex. P.2/FIR, almost two months from the date of accident i.e., 09.09.2008. That hiatus between the date of accident and date of registering complaint when not explained by the claimant, lends support to suspicion over involvement of the vehicle in question. It is further submitted that the medical records Exs.P.11 and 12 do not support the case of the claimant that the injuries suffered were due to road traffic accident or that the doctor/P.W.2 informed the police of a medico legal case, contrary to ethics and the Criminal Procedure Code on coming to know of occurrence of a cognizable offence punishable under IPC. It is lastly submitted that accused, said to be the rider of the offending motor cycle was charge sheeted on 29.11.2008 in Crime No. 299/2008 and when pleaded guilty on 24.09.2012 under Section 252 of Cr.P.C. before the I Addl. Civil Judge and JMFC, Hassan, the irresistible conclusion is that the accused/owner of the motor vehicle and the claimant injured colluded with each other so as to fasten liability on the appellant to pay compensation under the policy of insurance, although no accident had occurred and the motor cycle was not involved.

7. Regard being had to the material on record and the evidence both oral and documentary, it is no doubt true that none of the persons who accompanied the complainant on the date of accident and injuries were examined in support of the case of the claimant. Ex. P.11, discharge slip dated 11.09.2008 issued by Mangala Hospital with the words "MLC imprinted by use of rubber stamp, discloses that the claimant was admitted on 09.09.2008 and discharged on 11.09.2008 while its enclosures disclose the medical treatment extended to the injured. P.W.2 spoke to the contents of Exs.P.11 and P. 12, as also, wound certificate Ex. P.5 describing the nature of injuries suffered. Yet again, it is true that the wound certificate Ex. P. 5 is dated 05.11.2008. In the enclosure to Ex.

P.11 discharge slip, there is admission order which also refers to "MLC meaning "Medico Legal Case". This witness when cross examined by the appellant, nothing incriminating is elicited over either the fact that there was no compliance with the ethics of doctors or reference to the case by way of medico legal case to the jurisdictional police. In the cross-examination of P.W. 1 too, except for suggestions over non involvement of motor cycle which was denied, the suggestion that claimant fell down in the centre of street and suffered injuries is denied, nothing incriminating is elicited to discredit the oral testimony of P.W.1.

8. Section 134 of the Motor Vehicles Act, 1988, (for short "Act") reads thus:

"134. Duty of driver in case of accident and injury to a person. -

When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall -

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, [by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities], unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty -four hours of the occurrence;

[(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:--

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons injured or killed in the accident;

(iv) name of the driver and the particulars of his driving licence.

Explanation. -

For the purposes of this section, the expression "driver" includes the owner of the vehicle.] "

while, Section 184 of the Act reads thus:

"184. Driving dangerously - Whoever drives a motor vehicle at a speed or in a

manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of the previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both."

9. Without any dispute, the factum of the rider of the motor cycle after investigation when found to have committed offences under the IPC and for not complying with the statutory duty under Section 134 of the "Act" and having caused injuries by riding dangerously as set out in Section 184 of the Act, pleaded guilty of the offence, which evidence is not shown to be collusive, by any independent witnesses of the appellant. Hence the submission of the learned counsel for appellant pales into insignificance.

10. A young man aged 20 having suffered grievous injuries to his right leg by way of fractures, is not expected to walk to the jurisdictional police, with impairment to inform the police about the accident. Suffice it to notice that such a report was made in Mangala Hospital as is recorded in the discharge slip, Ex. P.11 and also wound certificate, Ex. P.5, treating the case as medico legal case, to justifiably conclude that the injuries were in cause of a road traffic accident due to rash and negligent riding of the motor cycle. The question as to which was the motor cycle and who was the rider of the motor cycle is answered on investigation by the jurisdictional police, hence, it is too farfetched for the insurer to advance a theory of collusion between the injured, rider of motor cycle and police, to secure an unlawful gain by way of compensation invoking the indemnity clause in the policy of insurance covering the motor cycle in question. In the absence of relevant material constituting substantial legal evidence of the fact that the claimant did not suffer any injuries nor that the accident occurred involving the motor cycle insured by the appellant, the submission of the learned counsel for appellant is unacceptable.

11. Merely because the complaint was lodged more than a month after the occurrence of accident and that the wound certificate, Ex. P.5 was issued on 05.11.2008 by themselves and nothing more cannot permit an inference that the accident involving the motor cycle had infact not occurred.

12. Learned counsel is candid in his submission that on the quantum of compensation awarded, there is no ground to question the same.

13. In the result, this appeal hopelessly meritless, is dismissed with cost quantified at Rs. 5,000/-. The amount in deposit is directed to be transmitted to the MACT, forthwith.