

(2017) 01 KAR CK 0085
In the Karnataka High Court
Case No : MFA No. 11062 of 2011

Oriental Insurance Company Limited

APPELLANT

Vs

Mahaboob Ali Khan

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), Section 166

Citation : (2017) AAC 683

Hon'ble Judges : Mr. B. Manohar, J.

Bench : Single Bench

Advocate : Sri R. Rajagopalan, Advocate, for the Appellant in MFA No. 11062 of 2011; Sri K.T. Gurudevaprasad, Advocate, for the Respondent No. 1 in MFA No. 11062 of 2011; Served, for the Respondent No. 2 in MFA No. 11062 of 2011; Sri K.T. Gurudevaprasad, Advocate, for the Appellant in MFA No. 393 of 2012; Sri R. Rajagopalan, Advocate, for the Respondent No. 1 in MFA No. 393 of 2012

Final Decision : Dismissed

Judgement

Mr. B. Manohar, J.—These two appeals are filed by the Insurance Company as well as the claimant being aggrieved by the judgment and award dated 29.6.2011 passed in MVC No. 5716/2008 on the file of the XXI Additional Judge & Motor Accident Claims Tribunal, Bengaluru (hereinafter referred to as "the Tribunal" for short).

2. The Insurance Company being aggrieved by the judgment and award fastening the liability on them to compensate the claimant, whereas the claimant being not satisfied with the quantum of compensation awarded by the Tribunal hied MFA No. 393/2012 seeking enhancement of compensation. Hence, both the appeals clubbed together and disposed of by this common order.

3. The parties are referred to as in the Tribunal.

4. The appellant in MFA No. 393/2012 filed claim petition contending that on 19.6.2008 while he was proceeding in a motor cycle bearing Reg. No. KA-03/

HA-389 on the left side of Murphy Road towards Kensington road and when he reached near Kensington road junction, a lorry bearing Reg. No. KA-19/1024 driven by its driver in a rash and negligent manner dashed against the claimant. Due to that, the claimant fell down and sustained grievous injuries. Immediately after the accident, the claimant was shifted to the Lake Side Hospital. Thereafter he was shifted to Hosmat Hospital, wherein he had taken treatment. During the course of treatment, the left leg above the knee has been amputated. At the time of accident, the claimant was studying in first year Pre-University Course and he was aged about 20 years. He filed a claim petition seeking compensation of Rs. 15,00,000/- .

5. In pursuance of the notice issued by the Tribunal, though the owner of the offending vehicle was served, he remained un-represented. The 1st respondent - Insurance Company filed written statement denying the entire averments made in the claim petition and also contended that though the offending vehicle was covered by the Insurance policy as on the date of the accident, the offending vehicle was not having valid permit and fitness certificate. Apart from that, the driver of the offending lorry does not possess the valid driving licence as on the date of accident. Hence, Insurance Company is not liable to compensate the claimant and sought for dismissal of the claim petition.

6. On the basis of the pleadings of the parties, the Tribunal framed necessary issues.

7. The claimant in order to prove his case himself got examined as PW1 and the Doctor who was treated was examined as PW-2 and got marked the documents as Ex.PI to P22. On behalf of the Insurance Company, the Administrative Officer was examined as RW1 and got marked two documents as Ex.R1 and R2.

8. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration the spot mahazar, copy of the complaint and charge sheet held that due to actionable negligence on the part of driver of the offending lorry, the accident occurred and claimant has sustained the grievous injuries. Hence, he is entitled for compensation. The Doctor who has treated the claimant has assessed the disability to an extent of 40% to the whole body. Though the claimant had furnished medical bills for Rs. 1,00,000/-, some of the medical bills are not supported by the prescription. In view of that, the Tribunal has awarded Rs. 90,000/- towards medical expenses; Rs. 1,00,000/- towards pain and suffering; Rs. 25,000/- towards nourishment, attendant and conveyance charges; Rs. 60,000/- towards loss of amenities; Rs. 75,000/- towards permanent disability; Rs. 25,000/- towards marriage prospects and Rs. 1,00,000/- towards future medication. In all, the Tribunal has awarded Rs. 4,75,000/- with 6% interest per annum. Since the offending vehicle is covered by the Insurance policy as on the date of accident, the liability was fastened on the Insurance Company to compensate the claimant. Being aggrieved by the judgment and award fastening the liability on the Insurance Company to compensate the claimant, the Insurance Company preferred MFA No.

11062/2011. Whereas the claimant being not satisfied with the quantum of compensation awarded by the Tribunal, filed MFA No. 393/2012 seeking enhancement of compensation.

9. Sri R. Rajagopalan, learned counsel appearing for the Insurance Company contended that the judgment and award is contrary to Law. The Insurance Company has taken a specific contention that the offending lorry was not having fitness certificate and without the fitness certificate the vehicle cannot be brought into the public road. Section 56 of the Motor Vehicle Act contemplates the fitness certificate to the transport vehicle. In violation of the Motor Vehicle Act the vehicle was brought into public place. If the vehicle does not have the fitness certificate, it is deemed to be unregistered under Section 39 of the Motor Vehicle Act. Hence, the Insurance Company cannot be made liable to compensate the claimant.

10. On the other hand Sri K.T. Gurudevaprasad, learned counsel appearing for the claimant contended that the quantum of compensation awarded by the Tribunal is on the lower side. In the accident, there is amputation of left leg. Though the Doctor has assessed 40% permanent disability the Tribunal has not awarded any compensation towards future loss of income. At the young age he has lost the left leg. In view of the amputation of left leg above the knee, he has difficult to use the artificial leg and he has to lead his remaining life along with the disability. Hence, the claimant is entitled to compensation under the head of future loss of income. As on the date of accident the claimant was studying pre-university course, the Tribunal ought to have taken the income of the claimant as Rs. 5,000/- per month since the accident occurred in the year 2008. The requirement of the fitness certificate is not one of the conditions of the Insurance policy and it is not the difference available under Section 149(2) of the Motor Vehicle Act. Hence, the Insurance Company cannot take such a defence which is not available under the Act and sought for enhancement of compensation.

11. I have carefully considered the arguments addressed by the learned counsel appearing for the parties and perused the judgment and award and oral and documentary evidence.

12. The occurrence of the accident due to actionable negligence on the part of the driver of the offending lorry on 19.6.008 and also injury sustained by the claimant are not in dispute. The dispute is with regard to the quantum of compensation and liability of the Insurance Company to compensate the claimant. In the accident the claimant has lost the left leg above the knee. The counsel appearing for the Insurance Company submits that as on the date of accident though there is coverage of Insurance Policy from 5.2.2008 to 4.2.2009, the offending vehicle was not having the fitness certificate. Unless the vehicle possess the fitness certificate, it cannot be brought on public road. Hence, the Insurance Company is not liable to compensate the claimant. Whereas the claimant contended that such a defence is not available under Section 149(2) of the Motor Vehicle Act. However, the fitness certificate is not one of the conditions

of the Insurance policy. Hence, the Insurance company cannot take such a defence,. I find some substance in the contention of the claimant. In the Insurance policy no such condition is imposed. This Hon''ble Court in an unreported decision in MFA No. 9625/2008 disposed of on 24.8.2012 at para 13 has held as under:

"What is relevant to be noted here is, if the contention of the insurer that the fitness certificate of the offending vehicle is valid from 20-3-2002 to 19-03-2003 as stated in Ex.R.3-letter addressed by the Investigator to Insurance Co. were to be true, they could not have issued the Insurance Policy -Ex.R.1 on 17-12-2006 valid from 26-12-2005 upto 25-12-2006. Non-possessioning of fitness certificate by the owner of offending vehicle as on the date of accident is not one of the grounds on which the insurer can defend their action and oppose saddling 01 liability against them and it is not. the defence under which they can claim exemption from liability. Even in the Insurance Policy - Ex.R. 1 issued by the insurer in favour of the offending vehicle possessing fitness certificate is not one of the conditions of breach of policy."

13. Further, one more unreported judgment passed in MFA No. 7822/2009 disposed of on 17.7.2014 at paragraphs 4 and 5, this Court has held as under:

"4. The learned counsel for the insurance company submitted that at the time of issuance of policy, fitness certificate was there, but as on the date of accident, there was no fitness certificate and as such, the liability cannot be saddled on the insurer.

5. It appears, in the policy, there were no restrictions with regard to fitness certificate. If at all there is a restriction to the effect that insurer is not liable to indemnity till the expiry of fitness certificate issued, then he could have raised a plea that insurer is not liable to indemnify the insured/claimants. However, policy was there as on the date of accident and the insurance company cannot disown its liability."

14. In view of the law laid down by this Court, the contention taken by the Insurance company cannot be accepted With regard to the quantum of compensation concerned, or perusal of the judgment and award, it is clear that the Tribunal has not awarded any compensation towards future loss of income. The record clearly discloses that during the course of treatment, his left leg was amputated above the knee. The claimant has to lead his remaining life with that disability. Though the Tribunal awarded the compensation under the head of permanent disability as well as loss of amenities, the Tribunal has not awarded any compensation towards future loss of income. Hence, the claimant is entitled to compensation under the head of future loss of income. The accident occurred on 19.06.2008. As on the date of accident he was a student of PUC. Hence taking into consideration his income notionally as Rs. 5,000/- per month, taking the disability to an extent of 40% as assessed by the doctor and applying the multiplier 18, the claimant is entitled a sum of Rs. 4,32,000/- towards future loss

of income in addition to Rs. 4,75,000/- awarded by the Tribunal. Accordingly, I pass the following:

ORDER

1. MFA No. 11062/2011 filed by the Insurance Company is dismissed.

MA No. 393/2012 filed by the claimant is allowed. The Judgment and a ward dated 29.06.2011 made in MVC No. 5716/2008 passed by the Motor Accident Claims Tribunal, Bangalore is modified. The claimant is entitled for an enhanced compensation of Rs. 4,32,000/- in addition to Rs. 4,75,000/- awarded by the Tribunal with interest at 6% p.a.

2. The amount in deposit shall be transferred to the MACT forthwith.