

(2012) 11 KAR CK 0073

In the Karnataka High Court

Case No : M.F.A. No. 6013, 8971 and 5878 of 2009 (MV)

Puttarajegowda and Others

APPELLANT

Vs

The Manager, Bajaj Alienz Insurance Co and M. Manjunatha

 Bajaj Allianz General Insurance Co., Ltd., Vs
Puttarajegowda and Others
 Mallikarjuna and Smt.
Nagamani @ Sharada Vs M. Manjunatha and The Manager,
Bajaj Allianz Limited, Bangalore. Policy No. 100001802876,
Valid From 10.02.2006 to 09.02.2006, Present address: The
Manager, Bajaj Allianz General Insurance Co

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 11 KAR CK 0073

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

Bench : Single Bench

Advocate : Girish. B. Baladare in M.F.A. No. 6013 of 2009 MV, Shri. O. Mahesh in M.F.A. No. 8971 and 8972 of 2009 MV and Shri. Chetan. B in M.F.A. No. 5878 of 2009 MV, for the Appellant; O. Mahesh, Advocate for R1 in M.F.A. No. 6013 of 2009 (MV), Shri. Girish. B. Baladare, Advocate for R1 to R7 in M.F.A. No. 8971 of 2009 (MV), Shri. Chetan. B, Advocate for R1 and R2 in M.F.A. No. 8972 of 2009 (MV) and Shri. O. Mahesh, Advocate for R2 in M.F.A. No. 5878 of 2009 (MV), for the Respondent

Judgement

N.K. Patil

1. The first two appeals, i.e. M.F.A. No. 6013/2009 & M.F.A. No. 8971/2009 are respectively filed by the claimants and the Insurer against the same judgment and award dated 9th June 2009, passed in MVC No. 221/2008, by the Civil Judge (Sr.Dn) and Motor Accident Claims Tribunal, Arkalgud, (for short, "Tribunal") and the last two appeals, viz. M.F.A. No. 8972/ 2009 & M.F.A. No. 5878/2009 are respectively filed by the Insurer and the claimants against the same judgment and award dated 5th May 2009, passed in M.V.C. No. 1296/2006, by the Additional Civil Judge (Sr.Dn) and Member, Additional Motor Accident Claims

Tribunal, Hassan, (for short, "Tribunal"). While the claimants have filed the respective appeals seeking enhancement of compensation on the ground that the compensation awarded by Tribunal is on the lower side, the Insurer has filed the respective appeals seeking to set aside the impugned judgment and award passed by Tribunal, fastening liability on it, on the ground that the driver of the offending vehicle did not possess the valid and effective Driving Licence, as on the date of accident.

2. The undisputed facts of the case are that, the deceased persons, viz. Kamala @ Jyothi and Hema in the aforesaid Motor vehicle Cases met with an accident at about 10:30 P.M. on 20-05-2006, when they were traveling in Vehicle bearing No. KA-41/940, on Bangalore-Mangalore Road, NH-48, near Thalikere hand post, on account of rash and negligent driving by the driver of the said vehicle and immediately, they were shifted to the Hospital, but unfortunately, they succumbed to the injuries sustained in the road traffic accident.

3. On account of the death of the deceased persons, the claimants of both the deceased persons filed their individual claim petitions u/s 166 of the Motor Vehicles Act, in M.V.C. No. 221/2008 and M.V.C. No. 1296/2006 respectively, before the Tribunal.

4. The said claim petitions had come up for consideration before the Tribunal on 9th June, 2009 and 5th May 2009 respectively. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petitions in part, awarding a sum of Rs. 3,13,000/- and Rs. 2,80,000/- under different heads, respectively with 6% interest per annum, from the date of petition till the date of deposit, and directed the Insurer to satisfy the award amount with interest.

5. Being aggrieved by the quantum of compensation awarded by Tribunal, the claimants have filed the appeals, seeking enhancement of compensation and being aggrieved by the liability saddled on the Insurer, the Insurer has filed the appeals, seeking to set aside the same, on the ground that the driver of the offending vehicle did not possess the valid and effective Driving Licence as on the date of accident.

6. It is the specific contention of the learned counsel appearing for claimants that, in fact, the driver of the offending vehicle did possess an effective and valid Driving Licence, as on the date of the accident, but the same was in respect of the Light Motor Vehicle (LMV) and not in respect of a goods vehicle. In support of the said contention, he relies upon the judgment of the Division Bench of this Court, reported in ILR 2010 KAR. 4733 (National Insurance Co.Ltd. represented by its Administrative Officer Vs. Yalgurdappa, since deceased by his L.Rs. and another), wherein it is held that, at the relevant point of time, a person who was competent to drive a Light Motor Vehicle was also competent to drive a auto-rickshaw if its gross vehicle weight was less than 7,500 kgs. Therefore, he submits that in the instant case, the gross vehicle weight is 2,160 kgs as per the

R.C. Book and due to unavoidable circumstances, the claimants could not produce the said R.C. Book nor it has been marked before the Tribunal to establish that the gross weight of the vehicle was less than 7,500 kgs. Therefore, he submits that the impugned judgment and award passed by Tribunal is liable to be set aside and the matter is required to be remanded back to Tribunal and the parties may be permitted to file/adduce additional oral/documentary evidence to substantiate their respective case regarding the liability to indemnify the award amount.

7. In the light of the submission of the learned counsel appearing for claimants and after perusal of the impugned judgment and award passed by Tribunal, coupled with the judgment of the Division Bench of this Court, cited above, regarding the gross weight of the offending vehicle, I am of the view that, the matter requires reconsideration by Tribunal, after leading evidence by both the parties in that regard. In my view, the matter could be disposed off only after permitting the parties to adduce additional oral and documentary evidence in order to determine just and reasonable compensation and to decide the issue as to who is liable to indemnify the compensation to be awarded by the Tribunal.

8. Therefore, without expressing any opinion on merits of the case, it would suffice for this Court if appropriate direction is issued to the Tribunal, to meet the ends of justice and to safeguard the interest of both parties. In the light of the discussion made above, all the four appeals filed by the claimants as well as the Insurer are allowed.

The impugned judgment and award dated 9th June 2009, passed in MVC No. 221/2008 by the Civil Judge (Sr.Dn) and Motor Accident Claims Tribunal, Arkalgud, in M.F.A. No. 6013/2009 & M.F.A. No. 8971/2009 and the impugned judgment and award dated 5th May 2009, passed in MVC No. 1296/2006, by the Additional Civil Judge (Sr.Dn) and Member, Additional Motor Accident Claims Tribunal, Hassan, in M.F.A. No. 8972/2009 & M.F.A. No. 5878/2009, are hereby set aside;

The matter stands remanded back to the Tribunal for reconsideration and re-determination of compensation afresh and to pass appropriate order, in accordance with law, after affording reasonable opportunity of hearing to claimants as well as Insurer, personally or through their counsel and dispose of the same, as expeditiously as possible, not later than six months from the date of receipt of filing of application by the claimants and Insurer, as the case may be; Claimants and Insurer are permitted to file necessary application/s, for adducing additional evidence, both oral/documentary, to substantiate their respective cases, within four weeks from the date of receipt of a copy of this judgment;.

In case such application/s is/are filed by the learned counsel for the parties, within the time stipulated above, the Tribunal is directed to receive the same and proceed further, as directed above;.

The amount, if any, in deposit by the Insurer, in the appeals filed by it, shall be refunded to the Insurer, through its authorized Officer or its counsel, as the case may be, forthwith;

Office to draw award, accordingly.

Shri. O. Mahesh, learned counsel is permitted to file Vakalath on behalf of second respondent in M.F.A. No. 5878/2009, within four weeks from today.