

(2002) 11 KAR CK 0019

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5368 of 1999

Rangappadas alias Ranganath

APPELLANT

Vs

K. Srinivasa Rao and Others

RESPONDENT

Date of Decision : 28-11-2002

Acts Referred:

Citation : (2004) ACJ 198 : (2003) 4 KarLJ 36

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : N. Veerabhadraiah, for Kaleemulla Shariff, for the Appellant; Y. Lakshmikantha Reddy, for Respondent-1 and R. Jayaprakash, for Respondent-3, for the Respondent

Final Decision : Partly Allowed

Judgement

Tirath S. Thakur, J.—This appeal arises out of an order made by the Motor Accidents Claims Tribunal at Bellary whereby M.V.C. No. 347 of 1996 has been allowed in part and a sum of Rs. 1,39,0007- with interest at 9% p.a. awarded as compensation for the injuries sustained by the claimant in a motor accident. The claimant has sought a suitable enhancement of the said amount apart from a direction that the amount so awarded may be recovered from the respondent-Insurance Company with whom the offending vehicle was insured at the relevant time.

2. On 20-6-1995 at about 4 p.m., the claimant while walking near Ramanagara railway gate was knocked down by a jeep bearing registration No. MYT 8855 coming from the opposite direction and being driven in a rash and negligent manner by its driver. The accident resulted in severe injuries to the claimant who was shifted to the hospital at Davanagere for treatment where he remained as an in-patient for nearly 4 months. A claim petition was in due course filed by him before the Tribunal at Bellary for compensation of an amount of Rs. 2,50,000/- which was opposed by the respondents on several grounds giving rise to four issues which the Tribunal framed and has decided in favour of the claimant in

terms of the impugned judgment. The Tribunal held that the accident in question had occurred due to the rash and negligent driving of the jeep by its driver and that the claimant had sustained bodily injuries as a result of the same. The Tribunal also held that the claimant was entitled to compensation for the injuries sustained by him and determined a sum of Rs. 1,39,000/- as the amount due to him under the following heads:

(i) towards pain and suffering

Rs. 20,000/-

(ii) towards medical expenses

Rs. 40,000/-

(iii) towards loss of income during the treatment period

Rs. 9,000/-

(iv) towards loss of future income

Rs. 60,000/-

(v) towards loss of amenities

Rs. 10,000/-

Total

Rs. 1,39,000/-

3. Interest at 9% p.a. was awarded on the above amount. Having done so the Tribunal held that the driver who was driving the offending vehicle at the time of the accident did not possess a valid driving licence which constituted a violation of the terms of the Insurance Policy and absolved the Insurance Company of the responsibility to pay the amount of compensation determined by it. The amount of compensation was consequently made recoverable jointly from the driver and the owner of the vehicle. The present appeal filed by the claimant not only questions the amount of compensation determined by the Tribunal and seeks a suitable enhancement in the same but challenges the finding of the Tribunal insofar as the liability of the Insurance Company to pay the awarded amount is concerned.

4. Mr. Veerabhadraiah, learned Counsel for the claimant argued that the Tribunal was in error in awarding a sum of Rs. 20,000/- only towards pain and suffering and that the said amount deserved to be enhanced further having regard to the nature of the injuries suffered by the claimant and the prolonged hospitalisation that had become necessary on account of the same. He submitted that the claimant had already undergone 3 surgeries and that one of the injuries was still not healed causing pain and discomfort to the claimant. He submitted that the nature of the injury was also severe and had practically crippled the claimant

denying to him the ordinary comforts and amenities of life.

5. The accident in question had caused a fracture of the right femur and a compound fracture of the right tibia as per the statement of P.W. 3, the Doctor examined by the claimant. The claimant had remained admitted to the hospital as an in-patient for a period of nearly 4 months from 21-6-1995 to 17-10-1995. During this period the claimant had suffered 3 surgeries one after the other despite which the claimant had not regained his health or fitness as he had lost all sensation in the right leg because of a severe damage to the nerve and the cutting of the blood vessels. The injury had not fully healed till the date his statement was recorded by the Tribunal. Having regard to these circumstances, therefore and the fact that the pain and suffering resulting from the injury will continue for a long time even after medical treatment and surgeries are over, I deem it just and proper to enhance the compensation awarded by the Tribunal on account of pain and suffering from Rs. 20,000/- to Rs. 25,000/-.

6. Mr. Veerabhadraiah next argued that the Tribunal had fallen in error in determining the future loss of income at Rs. 1,02,000/- but awarding only Rs. 60,000/- of the said amount. He submitted that the Tribunal had conservatively assessed the loss of future income on account of the disability suffered by him at Rs. 500/- per month or Rs. 6,000/- p.a. Keeping in view the young age of the claimant, it had adopted a multiplier of 17 and rightly come to the conclusion that the loss of future earning would work out to Rs. 1,02,000/-. Instead of awarding that amount, the Tribunal had erroneously reduced the same to Rs. 60,000/- which he urged was not justified.

7. The Tribunal has on the basis of the material on record, nature of the injuries and the resultant disability, broadly taken the loss in the income of the claimant at Rs. 500 per month only. It had then capitalised the loss by applying a multiplier of 17 and determined a sum of Rs. 1,02,000/-. That amount should have been awarded to the claimant instead of the reduced amount of Rs. 60,000/- which the Tribunal appears to have granted on the assumption that the extent of disablement reported by the doctor was only 60% in the right lower limb. Having assessed the monthly loss on account of the disability at Rs. 500/- and having capitalised the same by applying a correct multiplier, the question of reducing the said loss or making the same proportionate to the extent of disability did not arise. Had the Tribunal worked out the gross income of the claimant and on that basis determined the loss proportionate to the extent of disability suffered by him, the matter would have been different. That is not however the method which the Tribunal adopted. It had assessed the loss at Rs. 500/- per month on account of the disability and capitalised the same by applying an appropriate multiple. That being so, the question of reducing the amount thus determined to Rs. 60,000/- did not arise. I have therefore no hesitation in awarding a further amount of Rs. 42,000/- in addition to Rs. 60,000/- already awarded by the Tribunal under the head "loss of future income".

8. It was lastly argued by Mr. Veerabhadraiah that the Tribunal had made a

measly award by granting only Rs. 10,000/- towards loss of amenities which the claimant had suffered on account of the disability. He urged that the nature of the injuries and in particular the fact that the right leg of the claimant had been rendered totally dysfunctional and useless deserved to be suitably compensated.

9. Having regard to the nature of the injuries and the fact that the claimant has suffered a severe disablement as a result of the injuries sustained by him which will deny to him the ordinary amenities of life, I deem it just and proper to award a further amount of Rs. 10,000/- under the head "loss of amenities". The total amount that the claimant would thus be entitled to in addition to that awarded by the Tribunal works out to Rs. 57,000/- which amount shall be recoverable with interest at the rate of 9% p.a. from the date of the claim petition till deposit.

10. The next question then is as to whether the Insurance Company is liable to pay the award amount to the claimant as argued by Mr. Veerabhadraiah or the same can be recovered only from the driver and the owner of the offending vehicle. According to learned Counsel for the appellant, the legal position in regard to the liability of the Insurance Company in cases where there is an allegation of a violation of the conditions of the Insurance Policy, stands authoritatively determined by the decision of the Supreme Court in *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, , The Court was in that case also dealing with a defence which the Insurance Company had set up on the basis of an alleged breach of the condition of the policy. The licence which the driver of the offending vehicle in that case claimed to be possessing at the time of the accident was found to have been a forged document. Reliance before the Supreme Court was placed upon a decision of the Punjab and Haryana High Court in *National Insurance Co. Ltd. Vs. Sucha Singh and Others*, , according to which if a licence was renewed, the same would stand validated and the Insurance Company would be liable to reimburse to the insured the compensation amount paid to the victim. It was argued that if a fake licence was renewed by the Licensing Authority, the renewed licence would no longer remain fake. The Court however repelled that contention and declared that a fake document remained fake even after it was renewed. The Court went on to examine whether the violation of the terms of the Insurance Policy could qua the claimant absolve the Insurance Company from paying the amount of compensation determined in his favour. It held that once the insurer has issued an Insurance Policy, it became statutorily liable to pay the amount of compensation to third parties by reason of the certificate of insurance. The Insurance Company could in the event of a breach of the policy conditions including absence of a valid driving licence with the driver recover the amount paid to the third party from the insured. The following passages from the said decision are in this regard apposite:

"21. A reading of the proviso to Sub-section (4) as well as the language employed in Sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the

insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured".

(emphasis supplied)

11. In the light of the above pronouncement, there is no gainsaid that just because there is an allegation or even a finding that the insured had committed a violation of the terms of the Insurance Policy the same will not by itself absolve the Insurance Company vis-a-vis third parties who may have suffered on account of the motor accident. The Insurance Company shall have to pay the amount of compensation determined in favour of the third party and on proof of the violation of the policy conditions recover the amount so paid from the insured. In the case before the Supreme Court, the Court did not apart from shifting the initial liability to the Insurance Company direct recovery of the said amount from the insured on account of the fact that the Insurance Company had not been given an opportunity to prove the breach of the policy conditions. The matter was therefore remanded to the Claims Tribunal with the direction that if a breach of condition is proved, the insurer shall be directed to pay the amount which the Insurance Company has paid to the claimant.

12. In the instant case, the Tribunal has clearly recorded a finding that the driver of the offending vehicle did not possess a valid driving licence on the date of the accident. The Tribunal has on that basis held the driver and the owner of the vehicle to be entirely responsible to pay the amount of compensation determined by it. That finding of the Tribunal has not been assailed by the owner or the driver. No one appeared for the driver at the hearing although he has engaged a Counsel while the owner has remained absent despite service. In the circumstances, there is no room for interference with the finding recorded by the Tribunal to the effect that the driver of the offending vehicle did not have on the date of the accident a valid driving licence. The net effect then is that there was a clear breach of the terms of the Insurance Policy which would entitle the Insurance Company to recover from the insured the amount being paid by it to the claimant. A remand to the Tribunal for determination of the liability of the insured qua the Insurance Company for reimbursement of the award amount is in the facts and circumstances of the case unnecessary. In the result, this appeal

succeeds and is hereby allowed in part and to the following extent:

(i) the claimant shall be entitled to a sum of Rs. 57,000/- with interest at the rate of 9% p. a. from the date of the claim petition till payment over and above the amount awarded by the Tribunal in his favour.

(ii) the entire amount held payable to the claimant shall be paid by the respondent-Insurance Company within a period of 6 weeks from today to avoid coercive proceedings for recovery of the same;

(iii) upon payment of the said amount, the respondent-Insurance Company shall be entitled to recover the same from the second respondent-owner of the offending vehicle by execution of this award in accordance with law before the Motor Accidents Claims Tribunal;

(iv) the parties are left to bear their own costs.