(2016) 07 KAR CK 0090

In the Karnataka High Court

Case No : MFA No. 250 of 2014 (MV)

Regional Manager, National Insurance, Company Limited, Bangalore — APPELLANT

Vs

Sundaresh — RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 168, Section 173

Citation : (2016) AAC 2393

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

Bench : Single Bench

Advocate : Served and unrepresented, for the Respondent No. 4; Sri. O. Mahesh, Advocate, for the Appellant; Sri. M.Y. Sreenivasan, Advocate, for the Respondent No. 1; Notices Dispensed V.C.O, for the Respondent Nos. 2 and 3

Final Decision : Partly Allowed

Judgement

U.B. Manohar, J. - The National Insurance Company Limited tiled this appeal challenging the legality and correctness of the judgment and award dated 13th August, 2013 made in MVC No.4486/2012 passed by the Motor Accident Claims Tribunal, Bangalore (hereinafter referred to as ''the Tribunal'' for short) fastening the liability on them to compensate the claimants.

2. The first respondent herein tiled a claim petition contending that on 18-02-2012 while he was proceeding in a CT-100 Bajaj Motor cycle bearing Registration No. KA-02/EP-7806 as a pillion rider, which was ridden by Respondent No.3 on Bagauru-Nuggehalli Road, at about 6.45 p.m., near Chowdenahalli village, a Hero Honda motorbike bearing Registration No. KA-13/S-3839 ridden by its rider in a rash and negligent manner came to extreme right side and dashed against the motorbike in which the claimant was travelling as a pillion rider. Due to the said impact, the claimant fell down and sustained grievous injuries to all over the body. Immediately he was shifted to SSM hospital at Hassan, thereafter he was shifted to Vikram hospital at Mysore and

thereafter he was shifted to Sapthagiri Super Specialty Hospital at Bangalore. The claimant claims that he has spent more than Rs.3,00,000/- towards the medical expenditure. At the time of accident, he was aged about 28 years. He was a driver-cum-owner of the Toyoto Qualis vehicle and earning a sum of Rs.30,000/- p.m. Due to the rash and negligent riding of the Hero Honda, the accident occurred. It was insured with the second respondent. Both respondents 1 and 2 are jointly and severally had to compensate the claimant to an extent of Rs.25.00,000/-.

3. In pursuance of the notice issued by the Tribunal, the first respondent entered appearance and filed written statement denying the rash and negligent riding of the Hero Honda motorbike. The Police have charge-sheeted the riders of both Bajaj motor cycle and Hero Honda motorbike for the offences punishable under Section 279, 338 of IPC. The Hero Honda motorbike is covered by the Insurance policy. Hence sought l or dismissal of the claim petition as against the first respondent.

4. The second respondent-insurance company in the written statement admitted the Insurance policy in respect of Hero Honda motor cycle and the said liability is subject to the terms and conditions of the policy. Further, both the riders of Hero Honda as well as Bajaj Motor cycle did not possess the valid and effective driving license as on the date and sought for dismissal of the claim petition.

5. On the basis of pleadings of the parties, the Tribunal framed necessary issues. The claimant, in order to prove his case got examined himself as P.W.1 and also examined two witnesses as P.W.2 and P.W.3, the doctor who treated the claimant was examined as P.W.4 and got marked the documents as Exs. P1 to Ex.P33. On behalf of the respondents, none of the witnesses were examined nor has any document been marked.

6. The Tribunal, alter appreciating the oral and documentary evidence let in by the parties and taking into consideration spot mahazar, IMV report, copy of the complaint and charge-sheet held that both the riders of the motor cycles were equally negligent and responsible for the accident. Accordingly, the Tribunal held that there is contributory negligence on the part of riders of both the motor cycles to an extent of 50% each. With regard to quantum of compensation is concerned, the claimant has sustained following injuries:

(a) Grade III B compound fracture; middle ?rd shaft (R) tibia and fibulacommunition:

(b) (R) foot displaced fracture midshaft of 4th and 5th metatarsal bone:

(c) Soft tissue injury to right shoulder;

(d) vascular injury (venous plexus) right calf at fracture side.

Injury Nos. (a) (b) and (d) are grievous in nature. He has undergone surgery. Internal fixation has been made. He was discharged from the hospital on

24-2-2012. The doctor who treated the claimant had assessed the disability to an extent of 12% to the whole body. There was mal-union of fractured tibia. The claimant has produced the medical bills to an extent of Rs.2,80,346/-. Taking into consideration injuries sustained, surgery and suffering undergone, awarded a sum of Rs. 1,00,000/- towards pain and suffering; Rs. 2,80,346/- towards medical expenditure; Rs. 40,000/- towards loss of income during the laid up period. Taking into consideration income of the claimant as Rs.20,000/- p.m., at the time of accident, the claimant was aged about 28 years, applying the disability to an extent of 12% applying the multiplier 17, awarded a sum of Rs. 4,89,600/- towards loss of income due to disability and Rs. 45,000/- towards incidental expenditure. In all, the Tribunal has awarded a sum of Rs. 9,54,946/- which was rounded off to Rs. 9,55,000/- with interest at the rate of 6% p.a. Since there is contributory negligence on the part of the riders of both the motor cycles, the liability to an extent of 50% each was fastened on the National Insurance Company as well as the owner of the Bajaj CT-100 motor cycle. The appellant-insurance company being aggrieved by the judgment and award passed by the Tribunal filed this appeal.

7. Sri. O. Mahesh, learned counsel appearing for the appellant-insurance company contended that the judgment and award passed by the Tribunal fastening the liability to an extent of 50% on the appellant is contrary to law. The claimant is not the owner of the Toyota Qualis vehicle. No document has been produced to substantiate the same. Except producing the driving license, he has not produced RC and FC of the vehicle. Even after the accident, he continued to work as driver. The question of granting future loss of income does not arise. The monthly income of Rs.20,000/- taken by the Tribunal is higher side. The claimant himself admitted that he had given the vehicle to P.V. Tours and Travels and in the said vehicle he was working as a driver. The said vehicle is being used to pickup and drop the employees of a Company in two shifts. As per Ex.P16, he was getting Rs. 45,000/- p.m. towards Cab service. However no document has been produced to that effect. Further, no document has been produced to show that he was getting salary of Rs.20,000/- p.m. The owner of P.V. Tours and Travels has not been examined. The percentage of disability is only to the extent of 12% and it will not come in the way of discharging his duty as a driver. Awarding a sum of Rs.4,89,600/- towards the future loss of earning capacity is contrary to law. The compensation awarded is exorbitant and sought for setting aside the judgment and award passed by the Tribunal by allowing this appeal.

8. On the other hand, Sri. M.Y. Sreenivas, learned counsel appearing for the first respondent argued in support of the judgment and award passed by the Tribunal and contended that the claimant is a driver by profession. He owns a Toyota Qualis Cab, which was attached with P.V. Tours and Travels. He was driving the said vehicle for picking and dropping the employees of a company in two shifts. He earns more than Rs. 45,000/- p.m. The insurance company has not taken any such contention with regard to ownership of the vehicle before the Tribunal and even in the appeal. Hence it is not open to the appellant to dispute the ownership

of the vehicle. The claimant has undergone three operations. There is mal-union of fractured portion. He cannot work as a driver. Taking into consideration all these aspects of the matter, the Tribunal has awarded just and fair compensation fixing the contributory negligence to an extent of 50% on the rider/owner of both the motorbikes and sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award, oral and documentary evidence adduced by the parties and other relevant records.

10. The occurrence of accident, injuries sustained by the claimant on 18-02-2012 and that he has undergone three operations in various hospitals spending huge money is not in dispute. The dispute is with regard to negligence as well as the quantum of compensation is concerned. Though the appellant has taken various contentions in the written statement, they have not stepped into the witness box to prove their contentions by leading evidence. Hence it is not open to the appellant to contend that the claimant is not the owner of Toyota Qualis vehicle and there is no disability as assessed by the doctor. The records clearly disclose that while the claimant was proceeding as a pillion rider in his motorbike, the Hero Honda motorbike ridden by the second respondent herein dashed against the motorbike of the claimant. Due to that the claimant fell down and sustained grievous in-juries. Immediately after the accident, the claimant was shifted to the Hospital. However, rider of the offending vehicle lodged the complaint before the jurisdictional police and on the basis of said complaint, a case was registered against the rider of CT-100 Bajaj Motor cycle. The Tribunal, after taking into consideration spot mahazar, IMV report, copy of the complaint and charge-sheet held that both the riders of the motorbikes were equally negligent and contributed for the accident to an extent of 50% each. I find there is no infirmity or irregularity in the said finding. Even though the rider of CT-100 Bajaj motorbike was not having insurance coverage, the riders of both the motorbikes were negligent in driving the motorbike. Hence, the Tribunal has rightly fastened the liability to an extent of 50% each. The contention of the appellant/insurance company with regard to contributory negligence has to be rejected.

11. With regard to quantum of compensation is concerned, though the claimant claims that he was earning Rs.30,000/- p.m., as a driver-cum-owner of the Toyota Qualis, no document has been produced to establish the same. It was contended before the Tribunal that he is the owner of the Toyota Qualis and it was lent to P.V. Tours and Travels and in that vehicle he was working as a driver. The said vehicle was used for picking up and dropping the employees of a company, for which he was getting Rs. 45,000/- p.m., as cab services. Except production of Ex. P 16, a letter issued by the P.V. Tours and Travels, the author of the said letter has not been examined and proved in accordance with law. No document has been produced to show that he was getting income of Rs.20,000/- p.m. Hence, the income of Rs.20,000/- p.m., taken by the Tribunal is contrary to law. Since the Toyota Qualis vehicle was under the control of P.V. Tours and

Travels, the claimant continues to get the income from the said vehicle. In the absence of necessary documents regarding proof of income, since the accident occurred in the year 2012, the driver would earn Rs.7,000/- p.m. Hence, it would be appropriate to take the income of the claimant as Rs.7,000/- p.m. In the accident, the claimant has sustained three fractures and he has undergone three surgeries. Initially he had taken treatment at SSM Hospital at Hassan, thereafter he was shilled to Vikram Hospital at Mysore and undergone surgery there. Thereafter he was shifted to Sapthagiri Super Specialty Hospital at Bangalore. He has spent Rs.1,43,486/- at Vikram Hospital at Mysore and Rs. 1,36,860/- at Sapthagiri Hospital. The Tribunal after examining the medical bills produced by the claimant and deducting some of the bills which was not supported by prescriptions, awarded a sum of Rs.2,80,346/- which is in accordance with law. Further a sum of Rs. 1,00,000/- awarded towards pain and suffering is also in accordance with law. He was admitted to the hospital on 18-2-2012 and thereafter he was discharged on 24-02-2012. He was once again admitted to the hospital on 29-02-2012 and discharged on 3-3-2012. In view of the mal-union, he has once again undergone operation and re-admitted on 20-08-2012 and discharged on 25-08-2012. In view of infection and mal-union, once again he was admitted on 21-09-2012 and discharged on 29-09-2012 and once again under gone operation by using interlocking nails to the tibia. He was under continuous treatment till 29-09-2012. Thereafter follow-up treatment has been taken. The doctor who has treated the claimant has assessed the disability to an extent of 36% to the particular limb. A sum of Rs.40,000/- awarded taking into consideration Rs.20,000/- as income towards laid up period is contrary to law. Taking into consideration the income of the claimant as Rs.7,000/- p.m., he is entitled to a sum of Rs. 14,000/- towards loss of income during the laid up period. Hence, the compensation has to be reassessed, taking into consideration income of the claimant as Rs.7,000/- p.m. Taking the monthly income of Rs.7,000/-, applying the multiplier 17, as he was aged about 28 years at the time of accident, taking into consideration disability to the whole body to an extent of 12%, the claimant is entitled for compensation of Rs.1,71,360/- towards the loss of future earning capacity and sum of Rs. 14,000/- towards loss of income during the laid up period, Rs. 1,00,000/- towards pain and suffering; Rs.2,80,346/- towards medical expenditure; a sum of Rs.45,000/- towards incidental expenditure. In all, the claimant is entitled for Rs.6,10,706/- as against Rs.9,55,000/- awarded by the Tribunal. Accordingly, I pass the following:

ORDER

1. The appeal is allowed in part. The judgment and award dated 13-08-2013 made in MVC No.4486/2012 passed by the Motor Accident Claims Tribunal, Bengaluru is modified. The claimant is entitled for compensation of Rs.6,10,706/- as against Rs.9,55,000/- awarded by the Tribunal.

2. The amount in deposit is directed to be transferred to Motor Accident Claims Tribunal, Bengaluru.

