(2015) 02 KAR CK 0367

In the Karnataka High Court

Case No : MFA Nos. 7021 and 8236/2010 (MV)

Revanna APPELLANT

Vs

Rajesh and Others RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0367

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : V.N. Jagadeesh, for the Appellant

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J.—These appeals have arisen out of the judgment and award dated 27.3.2010 passed by the Prl. Civil Judge (Sr.Dn) and MACT, Srirangapatna, in MVC. No. 1173/2007. MFA. No. 7021/2010 is filed by the claimant and MFA. No. 8236/2010 is filed by the insurer-Oriental Insurance Co. Ltd.

2. The claimant-Revanna was traveling as a pillion rider on a motor cycle bearing Registration No. KA-02-S-9774 which was driven by one R. Krishna. When the said motor cycle was proceeding from M. Shettihalli -Srirangapatna towards Mysore at about 9.00 am, on 17.1.2007, the rider of the said vehicle drove the same in a rash and negligent manner and dashed against the car, as a result of which, the claimant fell down and sustained injuries. He was immediately shifted to K.R. Hospital, Mysore and treated as inpatient from 17.1.2007 to 15.2.2007 and again he was admitted to the hospital on 21.2.2007 as inpatient till 7.3.2007. In the light of the injuries sustained in the said accident, the claimant filed a claim petition seeking compensation of Rs. 10,70,000/-. The said petition was contested by the insurer and the following issues came to be framed by the Tribunal.

"1. Whether the petitioner proves that he was going on a Hero Honda Scooter bearing No. KA-02-S-9774, as a pillion under, with R. Krishna, the rider of the vehicle, on 17/01/2007 at about 9.00 a.m., from S.R. Patna side towards Mysore side, ridden by its rider in a rash and negligent manner, so as to endanger human being, and when he came near Lokapavani bride, dashed against one car and caused the accident, and in the accident, the petitioner sustained grievous injuries as pleaded in the petition?

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

3. What order or award?"

3. The claimant is examined himself as P.W. 1 and one Dr. Kiran Kumar is examined as P.W. 2 and as many as 68 documents have been got marked as Exs. P.1 to P.68. On behalf of the respondent, Ex. R1-Policy is got marked. Accordingly, the Tribunal awarded a sum of Rs. 1,53,800/- and with interest at 6% p.a. on Rs. 1,48,800/-. The liability has been fixed on the insurer as well as on the owner jointly and severally.

4. According to the learned counsel for the appellant/claimant, the compensation awarded by the Tribunal is grossly inadequate. According to the insurer the trial Court could not have mulcted with the insurance policy issued in favour of the 1st respondent as the offending vehicle in question did not cover the risk of the pillion rider.

5. Perused the original records of MVC. No. 1173/2007 and heard the learned counsel appearing for the parties.

6. The fact is that the motor cycle bearing Reg. No. KA-02-S-9774 met with an accident on 17.1.2007 while proceeding from M. Shettihalli-Srirangapatna towards Mysore which is not in dispute. The said motor cycle was riding by one R. Krishna and the claimant was traveling as a pillion rider. Ex. P.1 is the FIR lodged on the basis of the first information given by one Sri Kubera an eye witness to the said incident. Ex. P.2 is the copy of the final report submitted by the police. Exs. P.4 and P.5 are the seizure mahazars, P.6 and P.7 are the IMV reports and P.8 is the wound certificate issued by the Government Hospital, Srirangapatna, where he was initially treated. Ex. P.9 is the charge sheet filed against R. Krishna who was the rider of the motor cycle in question.

7. Exs. P.61 and P.62 are the discharge cards issued by the KR Hospital, Mysore and the claimant was initially admitted as inpatient and treated from 17.1.2007 to 15.2.2007. Again, he was admitted and treated from 21.2.2007 to 7.3.2007. In all he was in the hospital for a period of 35 days. Ex. P.63 and P.64 is the entire medical case sheets of the claimant and Exs. P.65 to P.68 are the X-rays.

8. Admittedly, the claimant had sustained wound in right thigh, right knee joint and after taking X-ray, it revealed the fracture of right thigh bone. The claimant was in hospital for a period of 35 days. Only a sum of Rs. 25,000/- has been awarded towards ''pain and suffering''. Awarding a sum of Rs. 40,000/- would be

the reasonable amount under the said head. A sum of Rs. 14,000/- is awarded under the head ''medical expenses'', since the claimant was treated in the Government Hospital, no interference is called for in regard to the compensation awarded under the said head.

9. Only a sum of Rs. 5,000/- is awarded under the head ''incidental charges such as food, diet, attendant, transportation charges etc.,'' which is quite inadequate. In view of his staying in the hospital for a period of 35 days he was in need of an attendant to look after him. Hence, awarding a sum of Rs. 15,000/- would meet the ends of justice. Only a sum of Rs. 10,000/- is awarded under the head ''loss of amenities and future happiness''. Awarding a sum of Rs. 30,000/- would meet the ends of justice in the present case.

10. A sum of Rs. 3,000/- is awarded by the Tribunal under the head ''loss of earning during hospitalization'' which is inadequate. The loss of earning should be considered for a period during which he was unable to move alone and attend to work with the gravity of the injuries he was not able to work for at least for a period of 6 months. Hence Rs. 18,000/- is awarded under this head. In view of two fractures and implant being fixed, awarding a sum of Rs. 15,000/- would meet the ends of justice as against Rs. 5,000/- awarded by the Tribunal.

11. A sum of Rs. 91,800/- is awarded by the Tribunal under the head ''loss of future earning capacity''. The doctor has assessed the disability at 15%, since the injured was 28 years and hale and healthy prior to the accident. Rs. 91,800/- awarded by the Tribunal cannot be considered as inadequate. Hence, no interference is called for.

12. Thus, the claimant would be entitled for a total compensation under different heads as follows:--

13. Thus the claimant is entitled for enhanced compensation of Rs. 70,000/- with interest at 9% per annum from the date of petition till the date of realization. Insofar as mulcting of liability on the Insurance Company is concerned, they have to see whether the insurance policy issued by the 2nd respondent-Insurance Company would really cover the risk of the pillion rider. Admittedly, the pillion rider will not be a third party to claim compensation. Sri V. Muralidhar, Asst. Manager is examined as R.W. 1. He has deposed about the coverage of the insurance policy. Ex. R1 is the insurance policy issued in favour of the owner of the offending vehicle. Rs. 415 has been received from the insured. Ex. R1 discloses the liability premium as Rs. 160/-, additional loading charges as Rs. 160 and personal accident cover as Rs. 50 and a sum of Rs. 45 is noted as service tax. In all a sum of Rs. 415 has been received.

14. What is argued before this Court by the learned counsel for the claimant is that Rs. 160 is received from the insured covers the liability of the pillion rider. In para 5 of the examination in chief, Sri V. Muralidhar has deposed that the policy issued to the 1st respondent was the liability only policy for Zone ''B''. It is specifically deposed by him that there is no provision for covering the risk of any

person other than the rider of the motor cycle. He has further deposed that a sum of Rs. 50 received from the insured covered the risk of the owner cum rider and not third party.

15. Per contra, the learned counsel for the claimant has vehemently relied upon the cross-examination of R.W. 1 who has admitted that a sum of Rs. 160 received from the insured is towards extra loading charges which is based on the age of the rider and his experience. What is argued before this Court is that though in Ex. R1 there is no mention about the risk of the pillion rider, Rs. 160 received from the insured has to be considered as one to cover the risk of pillion rider. The policy in question is only a "liability only policy" and not a package policy to cover the risk of any person other then the rider cum owner of the vehicle. If really the risk of any other person other than the rider cum owner of the vehicle was covered, then the package policy would have been issued under IMT (India Motor Tariff).

16. There are two types of policies: (i) Liability Only Policy: this covers the risk of third party liability for bodily injury and/or death and property damage. Personal accident cover for owner-driver is also included and (11) Package Policy: this covers loss or damage to the vehicle insured (O.D) in addition to (i) above. In view of the circular being issued by the IRDA (Indian Regulatory Development Authority) the risk of a person other than the rider cum owner would also be covered.

17. Suffice to state that the policy at Ex. R1 is the "liability only policy" that is the first type of policy found in general regulations of IMT. By no stretch of imagination, Ex. R1 could be considered as one which covered the risk of any person other than the rider cum owner. A sum of Rs. 160 paid by the insured to the Insurance Company is on the basis of the adverse claims experience of the vehicle insured and individual risk perception as per the insurer''s assessment which is found under the aspect "Rating" in Section 1 of the IMT policy. This is called as general regulation "B".

18. Viewed from any angle, the risk of the claimant as a pillion rider is not covered under Ex. R1. Therefore, the approach adopted by the trial Court in mulcting the liability on the Insurance Company is incorrect and improper. Consequently the appeal filed by the insurer has to be allowed in its entirety.

19. Both the appeals are allowed. The judgment and award passed by the Tribunal is modified. The claimant is entitled for a total compensation of Rs. 2,23,800/- as against Rs. 1,53,800/- awarded by the Tribunal. The enhanced compensation of Rs. 70,000/- (Rupees Seventy Thousand only) shall carry interest at 9% p.a. from the date of claim petition till the date of realization and the same is liable to be paid by the owner only. Both the parties shall pay their own costs. The amount deposited by the Insurance Company in MFA. No. 8236/2010 be returned to the Insurance company.

Parties to bear their own costs.

