(2015) 07 KAR CK 0150

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 31428 of 2011(MV)

Sadanand APPELLANT

Vs

United India Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Citation : (2015) 07 KAR CK 0150

Hon'ble Judges : P.D. Waingankar, J

Bench : Single Bench

Advocate : Basavaraj R. Math, for the Appellant; J. Augustin, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

P.D. Waingankar, J—This appeal by the claimant is against the judgment and award dated 29.3.2011 in MVC No. 79/2010 on the file of Addl. MACT, Bidar, whereby the tribunal determined a total compensation of Rs. 95,800/- and ordered the owner of the motor cycle to satisfy the award holding that the pillion rider was not covered under the policy of insurance issued by the insurance company.

2. On account of rash and negligent riding of the motor cycle bearing No. MH-20/AH-0468, the claimant who was pillion rider fell down from the motor cycle and sustained grievous injuries all over his face, for which, he was initially treated at Aurad hospital followed by Government Hospital, Bidar and thereafter for special treatment, he was taken to Osmania hospital, Hyderabad. It is stated he has spent substantial amount for treatment, but inspite of best treatment, he lost his teeth, his face is disfigured. He lost his income during the period of treatment and therefore claiming compensation, he filed the claim petition. The respondent-insurance company opposed the claim petition, which came up for consideration before the tribunal. The tribunal upon going through the material on record awarded a total compensation of Rs. 95,800/- to the claimant.

Dissatisfied with the quantum of compensation by the tribunal, this appeal is preferred.

I have heard the learned counsel and perused the records and the policy of insurance issued in favour of the owner of the motor cycle. Ex-P4 is the wound certificate issued by General Hospital, Aurad in Bidar District, which reveals that the claimant was admitted to said hospital on 25.10.2005, the date of the accident. He had bleeding from both the ears and laceration on the upper limb, bilateral Sub-condlye fracture.

3. The Doctor who issued the wound certificate has opined that the injuries as grievous injuries. Exs-P8 and P9 are the x-rays. Ex-P7 is the discharge ticket issued by Osmania General hospital, Hyderabad, which reveals that the claimant was admitted in Osmania hospital on 28.10.2009 and discharged on 5.11.2009. It also discloses he had bilateral Sub-condyle fracture with Sumphysis of mandible The same was treated by reduction and fixation using closed method and intermaxillary fixation under general anesthesia. He was advised for regular follow up. It appears that thereafter he took treatment from a dentist by name Santosh Kale as could be seen Ex-P11 cash bill issued by him. Apart from documentary evidence, the claimant also examined Dr. Santosh Kale, Dental Surgeon from Balki as PW-2. His evidence would go to show that he examined the claimant and found he had difficulty in opening the mouth, tenderness over both sides of the jaw, malocclusion present, movements were painful and restricted jaw. X-ray reveal malunited both condyles of mandible, malunited condyles of both sides of the law, as a result of which, he is unable to masticate the food normally. Having regard to the nature of injuries, nature of treatment, the period of hospitalization, the claimant has been awarded a sum of Rs. 25,000/- under the head ''injury, pain and suffering'' as against Rs. 15,000/- awarded by the tribunal. Sofar as, medical expenses is concerned, the tribunal awarded a sum of Rs. 5,000/-. It is borne out from the records that the claimant did produce a bill for Rs. 47,000/- said to have been issued by Laxmi Dental Clinic by PW2-Dr.Santosh Kale, as could be seen from Ex-P11. These bills have been disbelieved by the tribunal. Dr. Santosh Kale was examined as PW-2, but nowhere in his chief-examination, he refers to Ex-P11, bill having been issued by him. If it was really a bill issued by Dr. Santosh Kale, nothing prevented the claimant to mention the same in his evidence. Even otherwise, the amount shown in the bill is exorbitant and not based on accepted norms. However, the fact remains that the claimant was treated in Aurad hospital, thereafter at Osmania hospital, Hyderabad followed by Dr. Santosh Kale, Balki. Having regard to the nature of injuries sustained by him and that he underwent surgery, he must have spent some amount towards his treatment. The bill at Ex-P11 for Rs. 47,000/- does not inspire the confidence of the Court. As such, I deem it just and proper to award a sum of Rs. 10,000/- towards ''medical expenses'' as against Rs. 5,000/- awarded by the tribunal. It is seen from the records he was treated as inpatient for 96 days in Osmania hospital and also he was also treated in two other hospitals. Since he had injuries all over his face, he was in need of

service of an attendant for a period of one month and thereby he is awarded a sum of Rs. 3,000/- under the head ''attendant charges'' at the rate of Rs. 100/- per day as against Rs. 1,000/- awarded by the tribunal. The claimant is resident of Aurad. He took treatment in Osmania hospital, Hyderabad and Bidar District Hospital and Laxmi Dental hospital, Balki. He must have spent some amount towards conveyance in order to hire a vehicle in order to go to the hospital. Hyderabad is at a distance of about 200 km from his native place. As such, an amount of Rs. 4,000/- is awarded under the head ''conveyance charges''. The claimant was working as coolie. On account of accidental injuries, he must have been incapacitated from attending to his work for a period of two months and thereby he lost his income. So an amount of Rs. 10,000/- is awarded under the head loss of earning during the period of treatment''.

4. Further, Rs. 64,200/- is awarded under the head loss of future income on account of disability''. The tribunal has rightly taken disability of 10% of the whole body. But the tribunal while assessing the compensation under the said head had taken income at the rate of Rs. 3,000/- per month. If it is taken as Rs. 5,000/- p.m., the total loss of future income on account of disability'' comes to Rs. 1,08,000/-. So an amount of Rs. 1,08,000/- is awarded under the head loss of future income on account of disability'' as against Rs. 64,800/- awarded by the tribunal.

Since the claimant had lost his teeth, he would find it difficult to chew the hard food. As such, he is awarded a sum of Rs. 15,000/- under the head loss of amenities''. Thus the claimant is awarded compensation under the following heads:--

Thus the appellant-claimant is awarded a total compensation of Rs. 1,75,000/- as against Rs. 95,800/-. Thus, there shall be enhancement of compensation of Rs. 79,200/- over the above the compensation awarded by the tribunal.

5. Coming to the liability to pay the compensation, the tribunal has held that the claimant being a pillion rider of the motor cycle was not covered under the policy issued in favour of the owner of the motor cycle. The copy of the policy has been produced by the counsel for the appellant-claimant. It was a package policy and the appellant-claimant being pillion rider is covered under the policy. As such, the tribunal is not right in exonerating the insurance company and fastening the liability on the owner of the motor cycle.

6. Accordingly, the appeal is allowed-in-part. The judgment and award passed by the tribunal stands modified. The appellant-claimant is awarded enhanced compensation of Rs. 79,000/- over and above the compensation awarded by the tribunal together with 6% interest thereon from the date of petition till the date of realisation.

The respondent-United Insurance Company Limited is directed to indemnify the owner of the motor cycle and to deposit the entire compensation amount together with interest within a period of two months from the date of receipt of a copy of this order.

In the event of deposit, 50% compensation with proportionate interest shall be invested in Fixed deposit for a period of five years in any Nationalised Bank of the choice of the claimant. Balance amount with proportionate interest shall be released to the claimant.

