(2015) 08 KAR CK 0155

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 23007 and 23316/2013 (MV)

Satish and Others APPELLANT

Vs

Umesh Laxman Kaddegal and Others RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2015) 08 KAR CK 0155

Hon'ble Judges : Anand Byrareddy and S. Sujatha, JJ.

Bench : Division Bench

Advocate : Geetha K.M., Advocate, for the Appellant; Santosh B. Rawoot, Advocate, for the Respondent

Judgement

Anand Byrareddy, J.—These appeals are considered and disposed of by a common judgment.

2. The appeal in M.F.A. No. 23007/2013 is filed by the claimants, who are seeking enhancement of compensation in respect of an award towards a claim for compensation under the provision of Section 147 of the Motor Vehicles Act, 1988 (hereinafter referred to as ''the M.V. Act'', for brevity) in respect of a motor accident.

3. The facts are that, on 16.02.2012 the appellant was said to be travelling in a Mahindra jeep bearing Registration No. KA-23/M-5286, proceeding from Honnihal to Balekundri. It transpires that the vehicle was being driven at a high speed and when the vehicle reached near Balekundn Khurd on Belgaum Bagalkot road, the driver is said to have lost control of the vehicle and it had dashed against a pole and it is said to have turned turtle, as a result of which the appellant is said to have sustained injuries including the fracture of his spinal cord and a crush injury to his left hand and a crush injury to his left leg, resulting in paraplegia. He was hospitalised and it transpires that more than Rs. 5,00,000/- was spent for his treatment and was under follow up treatment. The appellant was said to be 20 at the time of the accident and that he was hale and healthy. He was a student and

was also doing a part time job and earning more than Rs. 9,000/- per month and was assisting his parents in maintaining their family. As a result of the accident, he is permanently disabled and is bed ridden and has no mobility and his career is in jeopardy and there are no future prospects of a better life including the prospects of marriage, and therefore, he is dependent on others and he would continue to be so for the rest of his life. The incident occurred only on account of the rash and negligent driving of the vehicle, and therefore, the claim for compensation was made against the owner of the vehicle and respondent No. 2 being the insurer was also made a party to the claim petition.

4. The claim was contested by the insurer primarily on the ground that the policy of insurance in respect of the vehicle was what was known as an "Act policy" which was issued in terms of Section 147 of the M.V. Act, and therefore, the liability to pay compensation in respect of bodily injury caused to a passenger in a car did not arise as no such liability was covered under an Act Policy and only if an additional premium towards bodily injury to a passenger in a car was paid, then the liability would arise.

5. It is not in dispute that there was no such additional payment made, and hence, denied the liability. Notwithstanding the same, the Tribunal had awarded compensation under various heads in a total sum of Rs. 11,24,149/- with costs and interest at the rate of 9% per annum from the date of petition till realisation. The claimant appellant is before this Court in the appeal.

6. While the insurer is before this Court in the connected Appeal in M.F.A. No. 23316/2013 questioning the liability fastened on the Insurance Company. Therefore, the primary question that arises for consideration is -

"Whether the liability of the insurer is attracted in respect of an Act Policy towards the claim of a passenger in a private car? "

7. In this regard, the learned counsel, Shri Raveendra R Mane, would submit that the law is well settled that insofar as the liability of the insurer in respect of a claim by a passenger in a private car under an Act Policy is not attracted and that it is only in respect of a Comprehensive Policy, also known as a Package Policy, that it has been clarified by the Insurance Regulatory and Development Authority (hereinafter referred to as ''IRDA, for brevity), which is the Apex Body that formulates the policy terms and conditions, that in respect of injuries to a pillion rider or the passenger in a car in respect of a Package Policy or a Comprehensive Policy, the liability of the Insurance Company is attracted.

8. But the law insofar as the liability under an Act Policy is concerned, it continues to be the same and no such liability is attracted. In this regard, he places reliance on line of cases and he would submit that there is no change in the law and would contend that the appeal filed by the Insurance Company be allowed and insofar as the appeal filed by the claimants for enhancement is concerned, he would have no say in the matter and he would leave it to the Court to impose any such liability on the owner of the vehicle.

9. On the other hand, this Court having called upon Shri V.P. Kulkarni, to appear, amicus curiae, to address the Court on the point involved. Shri V.P. Kularni, while placing reliance on the judgments of the Supreme Court in the case of Bhagyalakshmi and Others Vs. United Insurance Co. Ltd. and Another etc., , would submit that the point for consideration has been referred to a Larger Bench, and also the decision in National Insurance Company Ltd. Vs. Balakrishnan and Another, seeks to develop an argument to contend that an Act Policy is on par with the Comprehensive Policy or a Package Policy.

10. However, from a reading of these two judgments what was involved in Bhagyalakshmi''s case is a Comprehensive Policy and the Court having referred the matter to a Larger Bench was only to consider whether the gratuitous passengers travelling in a private car or a pillion rider in a two wheeler are automatically covered under Package Policy or Comprehensive Policy. In this regard, the Supreme Court has, in Balakrishnan''s case supra, noticed that the question was no longer res integra and has been settled by virtue of the Insurance Regulatory Development Authority having generally clarified that the liability of the Insurance Company in respect of a pillion rider on a two wheeler or a passenger in a private car covered under a Comprehensive Policy or a Package Policy is automatically attracted and that circumstance not having been noticed in Bhagyalakshmi''s case, the reference to a Larger Bench was unnecessary and has again reiterated the law to hold that there is no cavil that the Act Policy is totally on a different footing from a Comprehensive Policy or a Package Policy. This clarification of the legal position would certainly indicate that the liability of the Insurance Company in the present case on hand was not attracted. Hence, the appeal in M.F.A. No. 23316/2013 is allowed.

11. The liability fastened on the Insurance Company is set at naught. It is held that the Insurance Company is not liable to pay any compensation in respect of the claim, as the policy in the present case on hand was an Act Policy, and consequently, the amount in deposit be refunded to the appellant.

12. Insofar as the claim for enhancement of compensation is concerned, it is on the footing that the appellant claimant was an able bodied young man and is immobilised for the rest of his life and there was material produced to indicate that he was earning atleast Rs. 8,000/- per month, whereas the Tribunal has unjustly taken a sum of Rs. 150/- as the daily income of the claimant. This is without any basis and on speculation. Whereas, the claimant had produced certificate to indicate that he was earning Rs. 8,000/- per month. There is no contest to the petition.

13. Though counsel had entered appearance for respondent No. 1, he is not present. Therefore, on an overall consideration and having regard to the circumstance of permanent disability, whereby the claimant is completely immobilised and bed ridden for the rest of his life, the Tribunal was not justified in restricting the income of the appellant claimant to a sum of Rs. 150/- per month. In our opinion, a reasonable sum of Rs. 200/- per day irrespective of the

employment in which the claimant was engaged in at the time of the accident would be reasonable. As the accident was of the year 2012 and minimum earning of an able bodied young man could not be less than Rs. 200/- per day. Therefore, if Rs. 200/- is taken as the daily income of the appellant, he would be entitled to a partial enhancement of the compensation.

14. The appellant would be entitled to a sum of Rs. 7,77,600/- (Rs. 200/- x 30 x 12 x 60% x ''18'') towards loss of future earnings due to permanent disability, instead of Rs. 5,83,200/-. Under the head ''pain and suffering'' the appellant has been awarded a sum of Rs. 80,000/-, since he suffers a permanent disability and is immobilised, his pain and suffering would continue throughout his life. Therefore, it would be necessary to enhance the amount of compensation twofold, he is entitled to another sum of Rs. 80,000/-. Admittedly, the appellant is totally immobilised and requires the assistance of other people even to be fed and clothed. It is a continuous suffering since he would require the assistance of others for the rest of his life. An amount of Rs. 20,000/- awarded towards future attendant and diet charges is a paltry sum and requires to be enhanced substantially and is enhanced to Rs. 50,000/- instead of Rs. 20,000/-. The appellant is no longer capable of getting married as no bride would be ready to take him as her husband, and therefore, the loss towards marriage prospects is quantified at Rs. 25,000/-, which is abysmally low. However, any large amount of compensation awarded would again be futile if the respondent No. 1 is incapable of meeting such liability. Therefore, in our discretion, we restrict it to Rs. 50,000/- instead of Rs. 25,000/-. There was a claim towards future medical treatment which he obviously requires, but there was no quantification and no categorical claim in respect of the same. Hence, the Tribunal having granted Rs. 20,000/- is on the lesser side and by any standard it requires to be enhanced atleast to Rs. 40,000/-. Since he is crippled for life and he would possibly grow weaker by the day on account of his total immobility, the Tribunal having granted Rs. 25,000/- under the head of ''loss of expectancy'' is also on the lower side and requires to be doubled atleast. Therefore, he is held entitled to Rs. 50,000/- instead of Rs. 25,000/-. Towards conveyance and other incidental expenses a sum of Rs. 3,000/- is awarded, which is on the lower side. Admittedly, he was hospitalised for a long period of time, which would have entailed his near and dear ones to attend upon him and provide aid. Therefore, the amount requires to be enhanced substantially, and hence, a sum of Rs. 30,000/- is awarded instead of Rs. 3,000/-. Accordingly, the appellant would be entitled to a sum of ''Rs. 15,25,549/- '' instead of ''Rs. 11,24,149/- ''. The enhanced compensation can certainly be recovered from the owner of the vehicle as the liability of the insurer is not attracted.

15. Though the Tribunal has not held that the liability is joint and several in law it would go without saying that it is always joint and several. Accordingly, if the insurance cover was there, it was joint and several. Therefore, the insurer is not independently liable, it is only on account of a contractual relationship between respondent No. 1 and between the insured and the insurer. It is the insurer or

the owner of the vehicle would become squarely liable. Hence, the claimant is entitled to recover the enhanced compensation from the owner of the vehicle. The enhanced compensation along with the compensation already awarded by the Tribunal would carry interest at the rate of 6% per annum from the date of claim petition till the date of realisation.

