
(2016) 08 KAR CK 0077

In the Karnataka High Court

Case No : M.F.A No. 20280 of 2012 (MV) C/w. M.F.A No. 25549 of 2011

Satish @ Satalingappa Madivalappa Murgod

APPELLANT

Vs

Gouseahamad Gorisab Vatnal

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 167, Section 173(1)

Citation : (2016) 2 AnWR 631

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Mr. Prashant S. Kadadevar, for Mr. Ravi V. Hosamani, Counsel, for the Appellant in M.F.A No. 20280 of 2012 (MV); Mr. Nagaraj C. Kolloori, Advocate, for the Respondent No. 2 in M.F.A No. 20280 of 2012 (MV); Served, for the Respondent No. 1 in M.F.A No. 202

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha, J. - The Insurer as well as the Claimant are before this Court challenging the Judgment and Order passed by the Motor Accident Claims Tribunal, Bailhongal, ["Tribunal", for short], in MVC No.766/2010.

2. Briefly stated the facts are:

that the claimant/injured instituted a claim petition before the Tribunal seeking compensation for the accidental injuries sustained by him in the road traffic accident on 28.09.2009 alleging actionable negligence of the driver of the truck bearing registration No.KA-25/B 666 insured with the appellant/insurer herein. On notice, the insurer contested the claim. The Tribunal, after appreciating the evidence on record, awarded the total compensation of Rs.10,33,400/- with interest at 6% per annum. Being aggrieved, the Insurer is before this Court contending that the injured is an employee of the insured, the injured claimant ought to have approached the Workmen's Compensation Court for compensation and the claim before the Tribunal was not maintainable. The Tribunal, without appreciating the well settled principles of law on this point; erroneously

entertained the claim petition and awarded the compensation and the quantum of compensation awarded by the Tribunal is excessive.

3. Per Contra, learned Counsel for the claimant/appellant in MFA No.20280/2012 would contend that the insurer has not led any evidence in the claim proceedings. The ground now raised by the insurer at the appellate stage cannot be entertained, not being advanced before the Tribunal. It is contended that the claimant is at liberty to opt for compensation either under the provisions of the Motor Vehicles Act, 1988 ["MV Act", for short] or under the Workmen's Compensation Act, 1923 [WC Act", for short]. In support of his contention, learned Counsel placed reliance on the Judgment of this Court in the case of "Shanthamma v. Divisional Controller, KSRTC, Kolar Division, Kolar" reported in LLJ-2014 [1] 4.

4. It is further contended that the compensation awarded by the Tribunal is disproportionate to the nature and gravity of injuries sustained by the claimant. The claimant had suffered multiple grievous injuries and his right leg was amputated above knee. In such circumstances, the Tribunal assessing 100% physical functional disability is justifiable. However, learned Counsel contends that the compensate awarded under different heads is inadequate.

5. In support of his contention, learned Counsel placed reliance on the Judgment of this Court in the case of "Royal Sundaram Alliance Insurance Co., Ltd., v. Gangadhar Varma B.R. and others reported in Laws (Kar)2015 (8) 210.

6. Heard the learned Counsel for the parties and perused the material on record.

7. The points that arise for consideration in these appeals are:

[i] Whether the claimant is entitled for compensation under Section 166 of the MV Act?

[ii] Whether the, quantum of compensation awarded by the Tribunal is just and reasonable?

8. As regards the first point, it is beneficial to refer to Section 167 of the MV Act which contemplates that notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under the MV Act and also under the WC Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. The option regarding claims for compensation has to be exercised, by the claimant. The only rider is the claimant cannot claim compensation under both the enactments. The claimant in the present case has opted the provisions of Section 166 of the MV Act to claim compensation. The Hon'ble Supreme Court in the in the case of Oriental Insurance Company Ltd., v. Dyamavva and others" reported in AIR 2013 SC 1853 has held thus:

"Claim for compensation under Section 166 of the MIT Act by the dependents of

workman dying during the course of employment - Employer of the deceased/ employee/ workman "suo-motu " deposited compensation with the Workmen's Compensation Commission in pursuance of sub-sections [1] to [3] of Section 8 of the Act of 1923 - Payment of the amount of compensation so deposited disbursed by the Workmen's Compensation Commission to the dependants of the deceased workman for which such dependants did not lay any claim before him - Acceptance of the amount of compensation so deposited by the Employer with the Workmen's Compensation Commission, by the deceased workman's dependants -Not amount to either exercise of option/choice to seek compensation under 1923 Act and as such would not preclude the claimants/ dependants of the workman from making claim under the provisions of the Motor Vehicles Act, in view of Section 167 thereof - Procedure under Section 8 of 1923 Act, having been initiated by the employer "suo-motu", would not operate as a bar against the claimants/ dependants of the deceased workman for making claim under Section 166 of the Motor Vehicles Act, 1988. "

9. The Division Bench of this Court in Shanthamma's case (supra) has held that option was available to the claimant to seek compensation either under the WC Act or under the MV Act. The Hon"ble. Apex Court in the case of Ramachandra v. Regional Manager, United India Insurance Co. Ltd.," reported in AIR 2013 SC 2561 has held that the compensation payable to the employee of owner of vehicle that caused the accident cannot be restricted merely to one under the WC Act and it can be expanded provided the contractual document which is the policy of insurance incorporates such clause regarding the premium to be paid taking into account the nature of policy. Admittedly, in the present case, the insurance coverage of the vehicle was for six persons including the driver which is manifest from Exhibit.R1. In such circumstances, the entitlement of the claimant-driver of the vehicle is concerned, the same cannot be restricted to the compensation under the WC Act and is entitled to compensation even under the MV Act. Thus, the contention of the Insurer that the Tribunal ought to have restricted the compensation under the provisions of the WC Act deserves to be negated, applying the principles of law enunciated by the Apex Court in the case of Ramchandra [supra].

10. As regards the second point, the learned Counsel for the Insurer vehemently contended that the Tribunal grossly erred in assessing the permanent physical disability of the claimant at 100%. Even assuming the said contention of the insurer is justifiable, the amputation below hip with stump exceeding 12.70 cms in length measured from tip of great trechanter described under Sl. No. 17 of Part-II to Schedule-I of the WC Act prescribes the percentage, of loss of earning capacity at 80%. If the same is adopted, obviously the claimant is entitled for compensation towards future medical expenses, more particularly, for the artificial limbs/crutches and the periodical change of the same coupled with the follow up medical treatment. The monthly income determined the Tribunal at Rs. 3,000/- would be on a lower side compared to the normal mode of determination now adopted by this Court which would be at Rs. 5,000/- per month. If the said

modifications are made, the total compensation reckoned would be more or less the same as awarded by the Tribunal.

11. The Division Bench of this Court in Royal Sundarmi Alliance Insurance Co., Ltd., 's case (supra) while considering the identical issue of above knee amputation of right lower limb, had assessed the disability at 100% to the whole body and awarded Rs. 2 lakhs towards pain and suffering. Compared to this, the compensation awarded by the Tribunal in the present case cannot be considered as excessive or exorbitant. Thus, this Court is of the considered opinion that 100% permanent physical functional disability assessed by the Tribunal cannot be found fault with.

12. Considering the totality of the circumstances of the case, the compensation awarded under the different heads is just, fair and equitable, No further enhancement nor reduction is called for. Accordingly, both the appeals stand dismissed.

The amount in deposit shall be transferred to the jurisdictional Tribunal for disbursement.