(2015) 02 KAR CK 0113

In the Karnataka High Court

Case No : M.F.A. Nos. 3977 of 2011 and 4062 of 2012 (MV)

Shriram General Insurance Company Ltd. APPELLANT

Vs

Linganna and Others RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 02 KAR CK 0113

Hon'ble Judges : N.K. Patil, J.

Bench : Single Bench

Advocate : H.N. Keshava Prashanth, Advocate, for the Appellant

Judgement

N.K. Patil, J.—These two appeals by the same Insurer are directed against the two different judgments and awards dated 17th January 2011, passed in MVC No. 3998/2009, by the VIII Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-V, Bangalore City and dated 15th November 2011, passed in MVC No. 7171/2009, by the IX Additional Senior Civil Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-7, Bangalore, (for short, ''Tribunal''), but arising out of the same accident, awarding compensation of Rs. 77,000/- & Rs. 1,25,000/- respectively, on the ground that the Tribunal is not justified in fastening liability on the Insurer to satisfy the awards.

2. The facts in brief are that, the first respondent/injured claimant in M.V.C. No. 3998/2009 (MFA No. 3977/2011), had filed the claim petition under Section 166 of the Motor Vehicles Act, contending that at about 09:20 A.M. on 13-03-2009, he met with an accident, when he was proceeding from the left side of the road near Sumanhalli Bridge, Kamakshipalya, on account of rash and negligent driving by the driver of a Private Bus bearing Registration No. KA-16/D-9797. Due to the impact, the injured first claimant sustained grievous injuries and was shifted to the nearby Hospital for treatment of the said injuries.

3. The first and second respondents/injured minor claimant and his father and natural guardian in M.V.C. No. 7171/2009 (MFA No. 4062/2012), had filed the claim petition under Section 166 of the Motor Vehicles Act, contending that at about 09:20 A.M. on 13-03-2009, the first respondent/claimant met with an accident, when he was proceeding towards his School in School Bus bearing Registration No. KA-02/B-5286, near Pooja Convention Hall, on account of rash and negligent driving by the driver of a Private Bus bearing Registration No. KA-16/D-9797. Due to the impact, the injured claimant sustained grievous injuries and was shifted to the nearby Hospital for treatment of the said injuries.

4. On account of the grievous injuries sustained in the accident, the claimants filed their individual claim petitions before the Tribunal, seeking compensation of a sum of Rs. 06.00 lakhs and Rs. 07.75 lakhs respectively against the appellant and another. The said individual claim petitions had come up for consideration before different jurisdictional Tribunals on 17th January 2011 and 15th November 2011 respectively. The Tribunals, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the individual claim petitions in part, by separate orders, awarding a sum of Rs. 77,000/- and Rs. 1,25,000/- under different heads, with 6% interest per annum on Rs. 1,15,000/-, from the date of petition till the date of deposit and directed the appellant/Insurer to satisfy the awards. Being aggrieved by the said liability fastened on it, the Insurer has filed these two appeals before this Court, seeking to set aside the direction issued by the Tribunals in the impugned judgments and awards, to indemnify the amount awarded in these two claim petitions or at least to reserve liberty to the Insurer to recover the same from the owner of the offending vehicle.

5. I have gone through the grounds urged in both the memorandum of appeals and the impugned judgments and awards passed by Tribunals and heard the learned counsel appearing for the appellant/Insurer.

6. The principal submission canvassed by Shri H.N. Keshava Prashanth, learned counsel appearing for appellant/Insurer is that, both the Tribunals grossly erred in allowing the claim petitions filed by injured claimants, on account of the injuries sustained by them in the common road traffic accident and directing the appellant/Insurer to indemnify the award, when in fact, the owner of the offending vehicle did not possess the valid permit and there is clear violation of the permit conditions and also the fact that it is well established that, whenever there is violation of permit condition, one of the defences available to the Insurer is that the vehicle is used for a purpose not allowed by the permit and under such circumstances, the Insurer cannot be asked to pay the compensation. Therefore, he submitted that the reasoning given by both the Tribunals for holding that the Insurer is liable to indemnify the awards is liable to be set aside. He further submitted that the Tribunal is not justified in directing the Insurer to indemnify the award, only on the sole ground that the vehicle in question was duly insured with Insurer and the same was valid as on the date of accident. The

same is not sufficient to direct the Insurer to indemnify the awards and the Tribunals at least could have directed the Insurer to pay and thereafter recover the same from the owner of the offending vehicle, in the same proceedings. In the absence of such direction, he vehemently submitted that the impugned two judgments and awards passed by both the Tribunals are liable to be modified, directing the Insurer to recover the same from the owner of the offending vehicle.

7. After careful perusal of the two judgments and awards passed by Tribunals and after hearing the learned counsel appearing for appellant/Insurer, the only point that arises for my consideration in these two appeals is:

Whether the Tribunal is justified in directing the Insurer to indemnify the award when there is violation of the permit conditions?

8. After perusal of the entire material available on file, it emerges that, occurrence of common accident and the resultant injuries sustained by both the claimants are not in dispute. It is further not in dispute that the offending vehicle was duly insured with the Insurer and the insurance policy was valid and in force as on the date of accident. It further emerges that, both the Tribunals, after critical evaluation of the oral and documentary evidence available on file and also considering the age, avocation, nature of injuries sustained, nature and duration of treatment undergone, by both the claimants, etc. have rightly allowed both the claim petitions, awarding just and reasonable compensation of Rs. 77,000/- and Rs. 1,25,000/- to the injured claimants, in both the claim petitions, respectively. Hence, interference in the impugned judgments and awards passed by both the Tribunals, so far as quantum of compensation awarded, is uncalled for.

9. Regarding the specific submission of the learned counsel appearing for appellant/Insurer that, the Tribunals are not justified in fastening the liability on the Insurer, when there is clear violation of the permit conditions, it can be seen that the Tribunals, after critical evaluation of the oral and documentary evidence, have observed that the jurisdictional Traffic Police, after due investigation, have filed the charge sheet against the driver of the offending Bus and nothing was elicited from the injured claimant, P.W. 1, who was cross examined at length. Further, it was observed by the Tribunals that the appellant/Insurer has not challenged the contents of the charge sheet before proper forum and in the cross examination, RW 1, the officer of the Insurance Company has clearly admitted that, except the defence regarding violation of permit condition, their Company has not taken any other defences.

10. Further, it can be seen that, the main contention of the Insurer is that the owner of the offending Bus has not got the permit renewed and had entrusted his bus to ply on road without permit, thereby violated the terms and conditions of the policy and therefore, the Insurer is not liable to indemnify the awards. But, it can be seen that the Insurer has not produced any document, other than admitting the fact that the vehicle was duly insured and the policy was in force

as on the date of accident.

11. It is further seen from the observation made by the Tribunals that, the Insurer has not proved that the vehicle was not having permit as on the date of accident and have not called upon the Investigating Officer to give evidence before the Court and also have not produced any extract from the RTO to substantiate that the vehicle was not having permit as on the date of accident. Except the oral say of the Officer of the Insurance Company, there is no corroborative and convincing document to say that the vehicle was not having permit. Accordingly, the Tribunals came to the conclusion that the Insurer has failed to establish that the vehicle was not having permit and thus held that the appellant/Insurer is liable to indemnify the award amount.

12. Further, on careful perusal of the reasoning given by Tribunal in M.V.C. No. 3998/2009, at internal page 19 of its judgment, it is seen that RW 1, Officer of the appellant/Insurance Company has deposed that they are verifying about the permit and they will produce the documents in due course, which shows that as on this day, they have not produced any documents to substantiate that the offending vehicle was not having permit and only on the basis of the charge sheet, they have taken the contention that the offending vehicle was not having permit to ply on road. Further, after perusal of the entire material on record, it is seen that, the appellant/Insurer has not substantiated its case by producing any supportive documentary evidence, even before this Court, at this stage of the proceedings. Therefore, I am of the considered view that, in the light of the law laid down by the Hon''ble Apex Court and this Court in catena of decisions, the impugned judgments and awards passed by Tribunals are liable to be modified, by directing the Insurer to indemnify the awards and thereafter to recover the same from the owner of the offending vehicle, if there is violation of the terms and conditions of permit.

13. Therefore, for the foregoing reasons, the appeals filed by Insurer are disposed of.

The impugned two judgments and awards dated 17th January 2011, passed in MVC No. 3998/2009, by the VIII Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-V, Bangalore City and dated 15th November 2011, passed in MVC No. 7171/2009, by the IX Additional Senior Civil Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-7, Bangalore, are hereby modified, directing the appellant/Insurer to indemnify the awards passed by both the Tribunals and reserving liberty to the Insurer to recover the same from the owner of the offending bus, in accordance with law, if there is violation of the terms and conditions of permit.

Quantum of compensation of awarded by both the Tribunals in both the claim petitions remains unaltered.

Office is directed to transmit the amount in deposit in both the appeals to the jurisdictional Tribunal, forthwith.

Office to draw the award, accordingly.

