

(2017) 01 KAR CK 0167

In the Karnataka High Court

Case No : 1459 of 2011 C of W MFA NO 4002 of 2011 (MV)

SRI RAME GOWDA S/O SRI YALLAKE GOWDA, & ANR.

APPELLANT

Vs

SRI H.C.GIRISH, S/O SRI CHANDRAPPA, & ORS.

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Citation : (2017) 01 KAR CK 0167

Hon'ble Judges : B.Manohar

Bench : SINGLE BENCH

Advocate : C.R.GOPALASWAMY, B.C.SEETHARAMA RAO, C.G.ASHADEVI,
E.S.NANJUNDAPPA

Final Decision : Dismissed

Judgement

1. These two appeals are directed against the judgment and award dated 8th October 2010 made in MVC No.8429/2008 passed by the Motor Accident Claims Tribunal at Bangalore (hereinafter referred to as "the Tribunal" for short).
2. The owner of the TATA Sumo vehicle being aggrieved by the judgment and award fastening the liability on him to compensate the claimant has filed MFA No.1459/2011 whereas the claimant being not satisfied with the quantum of compensation filed MFA No.4002/2011. Hence both the appeals are clubbed together and disposed of by this common judgment.
3. For the convenience and better understanding, the parties are referred to as arrayed before the Tribunal.
4. The claimant filed a claim petition contending that on 29-05-2008, while he was proceeding in a Hero Honda motorbike bearing Registration No.KA-06/W-6023 from Nagamangala to his native place Halathi village, on the left side of the road, near Chinnegowdan Koppalu gate, a TATA Sumo vehicle bearing Registration No.KA-05/N-4464 driven by its driver in a rash and negligent manner came from opposite side and dashed against the motorbike. Due to that the claimant fell down and sustained grievous injuries all over the body.

Immediately after the accident, he was admitted to Adichunchanagiri Research Center Hospital, wherein he had taken treatment as inpatient from 29-05-2008 to 04-07-2008. In the accident, he has sustained 5 lacerated wounds all over the body and fracture of clavicle bone and also right radius. He claimed that he has spent more than Rs.40,000/- towards treatment, nourishment, conveyance etc. Prior to the accident he was working as cleaner in the lorry earning Rs.4,000/- p.m., in view of the permanent disability he has suffered due to the accident, he cannot do the work of a cleaner and sought for compensation of Rs.6,00,000/-.

5. The first respondent-insurance company filed written statement denying the entire averments made in the claim petition and also contended that the insured vehicle was falsely implicated in order to claim compensation. No information has been sent to the insurance company regarding the involvement of the offending vehicle in the accident. Further the complaint has been lodged 38 days after the accident. Only thereafter, the police have taken action and charge sheet has been filed against the offending vehicle. Further while admitting in the hospital, the claimant has clearly mentioned that the injury sustained by him is due to fall from bike. In order to get compensation from the insurance company, it was stuck off and written as "injury due to RTA at about 11.04 hours near Nagamangala". Further, driver of the TATA Sumo was not having valid and effective driving license as on the date of accident, that the vehicle has been sold in favour of one Ramegowda. Hence, the insurance company is not liable to compensate the claimant.

6. Though the second respondent who was the earlier owner served with notice, he remained unrepresented. Subsequently, the 3rd respondent was impleaded as a party on 04-01-2010 and he filed written statement denying the entire averments made in the claim petition, occurrence of accident and also that the insurance policy was in force as on the date of accident. Hence, he is not liable to compensate the claimant and sought for dismissal of the claim petition.

7. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

8. The claimant got examined himself as P.W.1 and the doctor who treated him was examined as P.W.2 and got marked the documents as Ex.P1 to Ex.P11. On behalf of the respondent-insurance company, the Law Officer was examined as R.W.1 and got marked the documents as Ex.R1 to Ex.R3(a).

9. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration IMV report, copy of the mahazar and charge sheet, held that though claimant sustained injuries in the road traffic accident, he has failed to prove that due to actionable negligence on the part of the offending vehicle he has sustained injuries. Since the 3rd respondent who is the RC owner of the offending vehicle has not denied the claim of the claimant, the liability was fastened on the 3rd respondent therein to compensate the claimant. Taking into consideration the fracture of left clavicle bone, fracture of radius and five simple injuries awarded a sum of Rs.95,000/- with interest at the

rate of 6% p.a. directing the 3rd respondent to compensate the claimant. Being aggrieved by the judgment and award passed by the Tribunal fastening the liability to compensate the claimant for the injuries he has sustained, the owner has filed MFA No.1459/2011. Whereas, the claimant being not satisfied with the quantum of compensation awarded by the Tribunal filed MFA No.4002/2011 seeking for enhancement of compensation.

10. Sri.K.M.Somasekhar, learned counsel appearing for the appellant in MFA No.1459/2011 contended that the judgment and award passed by the Tribunal is contrary to law. Nowhere in the statement of objections, the appellant has contended that the offending vehicle has been involved in the accident. On the other hand, in the written statement the appellant-insurer has denied the entire averments made in the claim petition. In paragraph 6 of the judgment, it is been clearly contended that the insurance policy was in force as on the date of accident and the compensation claimed is exorbitant. Hence, this respondent is not liable to pay the compensation. Further in paragraph 7, the appellant has clearly stated that the insurance policy was in force as on the date of accident, without prejudice to the above contention, the first respondent-insurance company has to make good the compensation. Nowhere in the written statement, the appellant had admitted that due to the actionable negligence on the part of TATA Sumo, the accident occurred. No reasons have been assigned by the Tribunal for fastening liability on the appellant having held that the claimant has failed to prove that he has sustained injuries due to the actionable negligence on the part of the driver of the TATA Sumo vehicle. Hence sought for setting aside the judgment and award passed by the Tribunal fastening the liability on the owner of the offending vehicle to compensate the claimant.

11. Smt.C.G.Ashadevi, learned counsel appearing for the appellant in MFA No.4002/2011 contended that the compensation awarded by the Tribunal is lower side. Apart from fracture of left clavicle bone and the right wrist, the claimant has sustained other grievous injuries. No compensation has been awarded for the other injuries, the compensation is too meager and hence sought for enhancement of compensation of the same.

12. Sri.B.C.Seetharama Rao, learned counsel appearing for the insurance company relying upon the judgment reported in ILR 2009 KAR 3562 (VEERAPPA AND ANOTHER v/s SIDDAPPA AND ANOTHER) contended that the owner of the vehicle tried to implicate the insured vehicle so as to enable the claimant to get the compensation by playing fraud. In those circumstances, the liability has to be fastened on the owner of the vehicle. There is no infirmity or irregularity in the impugned judgment and award passed by the Tribunal. The compensation awarded is just and fair compensation and sought for dismissal of both the appeals.

13. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award, oral and documentary evidence adduced by the parties.

14. The case of the claimant is that on 29-05-2008, while he was proceeding in the Hero Honda motorcycle towards his village, a TATA Sumo vehicle dashed against him. Immediately after the accident he was admitted to the Adichunchanagiri Hospital at Nagamangala. While admitting to the hospital, in the case sheet, the cause for injury was mentioned as "fall from bike". Even in discharge summary also it was mentioned as injury due to "fall from bike". The said documents were produced as Ex.P9 and Ex.P6 respectively. However, in the case sheet, the words "fall from bike" were struck off and written as "RTA at 11.04 a.m. near Nagamangala". However, the entry made in the discharge summary which was issued on 04-07-2008, it is clearly mentioned the history of injury is fall from bike. 38 days after the accident, the complaint was lodged by the mother of the claimant. Further in the IMV report submitted by the Motor Vehicle Inspector, he has clearly mentioned that "there is no visible damage to the TATA sumo vehicle". The doctor who was examined as P.W.2 in his evidence has clearly mentioned that the CMO of the hospital had entered the case registry. Sometimes, the PG students also write the history of accident in the case registry. P.W.2 clearly admitted that the entry made in the case sheet was struck off and written as RTA at about 11.04 a.m. near Nagamangala. He do not know as to who struck off the earlier entry. Further, even in the out-patient registry maintained in the Hospital, it is found that the history of injury is "fall from bike". The claimant in order to claim the compensation from the insurance company, TATA sumo vehicle was falsely implicated. Initially while filing the claim petition, this appellant was not made party. The earlier owner-second respondent was made as party. After filing the written statement by the insurance company, the appellant herein was impleaded as party on 04-01-2010. In the written statement, this appellant-owner has denied the averments made in the claim petition. However, in paragraphs 6 and 7 he has stated that the insurance policy was in force as on the date of accident. If the claimant proves that he has sustained injuries due to the accident, the insurance company is liable to compensate the claimant. Nowhere in the written statement he has admitted that the accident occurred involving his vehicle and claimant sustained injuries. The documents produced by the claimant clearly disclose that he might have sustained injuries somewhere else and after 38 days of the accident, the mother of the claimant filed a complaint before the jurisdictional police stating that the TATA sumo dashed against the claimant and without stopping the vehicle he ran away. Mother of the claimant was not been examined, and it is also not made known why she has taken 38 days to file the complaint before the police, and who has given the vehicle number to her. The hospital records clearly disclose that while admitting in the hospital, in the case sheet, the history of injury was mentioned as "fall from bike". Further in the discharge summary also history of injury was mentioned as "fall from bike". However, in order to get compensation from the insurance company, in the case sheet the words fall from bike were struck off and RTA was inserted. However, no correction has been made in the discharge summary. The Tribunal, after appreciating the oral and documentary evidence held that the claimant has failed to prove that he has sustained injuries

due to the actionable negligence on the part of the driver of the offending TATA Sumo vehicle. I find that there is no infirmity or irregularity in the said finding. The Tribunal having come to the conclusion that the claimant has failed to prove that he has sustained injuries in the alleged road traffic accident, ought not to have awarded compensation and fastened the liability on the owner of the vehicle. Even though the owner of the vehicle admitted that his vehicle was involved, the claimant has failed to prove that he has sustained injuries due to the actionable negligence on the part of driver of the TATA Sumo. Hence, the question of awarding compensation to the claimant does not arise. As per the judgment of this Court, the appellant-owner of the vehicle has not colluded with the claimant in order to get compensation to the claimant. The documents Ex.P6 and Ex.P9 and also complaint lodged by the mother of the claimant after lapse of 38 days clearly disclose that the claimant has not sustained injury due to the rash and negligent driving of the TATA Sumo. Hence, the judgment and award passed by the Tribunal cannot be sustained. In view of the above finding, the appeal filed by the claimant is liable to be dismissed.

15. Accordingly, I pass the following:

ORDER

MFA No.1459/2011 filed by the owner of the vehicle is allowed. The judgment and award dated 8th October 2010 made in MVC No.8429/2008 passed by the Motor Accident Claims Tribunal, Bangalore is set aside. The claim petition filed by the claimant is dismissed.

MFA No.4002/2011 filed by the claimant is dismissed. The amount in deposit before this Court shall be refunded to the appellant in MFA No.1459/2011.