(2011) 11 KAR CK 0055

In the Karnataka High Court

Case No : M.F.A. 1476 of 2006 (MV) C/W M.F.A. 1538 of 2006 (MV)

Sri. Subbarayappa APPELLANT

Vs

New India Assurance Co. Ltd. and K. Shashikumar
 The New India Assurance Co., Ltd. Vs S. Suhbarayappa and K. Shashikumar RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 11 KAR CK 0055

Hon'ble Judges : V. Suri Appa Rao, J;N.K. Patil, J

Bench : Division Bench

Advocate : K.R. Muralikrishna in M.F.A. 1476 of 2006 and Sri. A.K. Bhat in M.F.A. 1538 of 2006, for the Appellant; A.K. Bhat, Advocate for R1; Notice to R2 dispensed with V/o in M.F.A. 1476 of 2006 and By Sri. K.R. Muralikrishna, Advocate for R1; Sri. C.S. Patil, Advocate for R2 in M.F.A. 1538 of 2006, for the Respondent

Judgement

N.K. Patil, J.—These two appeals by the claimant and the Insurer are directed against The same judgment and award dated 17/08/2005 passed in MVC No. 179/2003 on the file of the 14th Additional Judge, Court of Small Causes and Member MACT, Metropolitan Area, Bangalore (SCCH-10). (hereinafter referred to as ''Tribunal'' for short).

2. By its judgment and award, the Tribunal has awarded a sum of Rs. 1,66,400/- with interest at 6% p.a.. from the date of petition till the date of deposit, on account of the injuries sustained by the claimant in the road traffic accident. Being aggrieved by the said judgment and award, the claimant has filed M.F.A.No. 1476/2006 contending that, the quantum of compensation awarded by the Tribunal is inadequate and it requires enhancement and the Insurer has filed M.F.A.No. 1538/2006 contending that, the liability fastened on it is not sustainable and is liable to be set aside on the ground that, owner of the offending vehicle has played fraud by manipulating the engine and chassis

numbers, including the Registration number.

3. In brief, the facts of the case are as under:

The claimant is aged about 45 years, sericulturist by profession and he was hale and healthy prior to the accident. That on 10.12.2002 at about 10.30 p.m., when he was travelling in the goods Tempo bearing No.KA.21.1162 for carrying his sericulture goods from Shidlaghatta to Chikkaballapura, at that time, the driver of the said tempo drove the same in high speed in a rash and negligent manner and turtled down the vehicle between Giddanahalli-Jhathavara on Chikkaballapura-Shidlaghatta road, due to which, he sustained injuries. On account of the injuries sustained by the claimant, he has taken treatment as inpatient for a period of 26 days, thereafter, follow up treatment and spent considerable amount towards his medical expenses, conveyance and other incidental charges. Due to the injuries, he has sustained permanent disability and the Doctor has assessed the disability at 30% to the whole body and now he is not in a position to do his work as he was doing earlier. Therefore, claimant has filed a claim petition u/s 166 of M.V. Act, before the Tribunal claiming compensation against the driver, owner and Insurer of the offending vehicle.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, in turn, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part, awarding the compensation of Rs. 1,66,400/- under different heads with interest at 6% p.a., from the date of petition till its deposit. Being aggrieved by the impugned judgment and award passed by the Tribunal, both the claimant and the Insurer have presented these appeals, seeking appropriate reliefs, as stated supra.

5. We have heard the learned counsel appearing for claimant and learned counsel appearing for Insurer.

6. The principal submission canvassed by learned counsel appearing for the claimant is that, Tribunal has erred in assessing the income of the claimant and also in assessing the disability a 20% to the whole body contrary to the evidence of the Doctor, who has stated that, there is a permanent: disability 30% to the whole body. Further, he submitted that the compensation awarded by the Tribunal towards conveyance, nourishing food and attendant charges, loss of income during the laid up period, loss of future unhappiness. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified by enhancing just and reasonable compensation.

7. As against this, learned counsel for the Insurer vehemently submitted that, the Tribunal has erred in allowing the claim petition filed by the claimant without considering the specific ground taken by the insurer that, the owner of the offending vehicle has played fraud on the Insurance. Company as he has owned two vehicles, as the offending vehicle was not insured as on the date of the accident and the another vehicle was insured, he has manipulated the same by changing the engine and chassis numbers of the vehicle, including the

registration number and to that effect the officer of the Insurer one Sri. K. Chidambaram, Senior Assistant, has specifically stated in para- 4 of the affidavit filed by way of evidence that, the detailed verification of the Surveyor/ investigator reveals that vehicle actually involved in accident was vehicle No.KA.07.2148. but as the said vehicle had no insurance, the vehicle bearing No. KA.21.1162 was brought into picture as the one involved in accident by changing the number plates of the vehicle and punching the engine and chassis numbers. Further, he submitted that as per detailed report submitted by the Surveyor, the registered mark of vehicle on the rear panel and two side panels had been removed or erased. But this evidence available on record has not been looked into or considered or appreciated by the Tribunal. The report of the Investigator/ Surveyor is marked as Ex.R1, but there is no consideration of the same by the Tribunal. Therefore, he submitted that the impugned judgment and award is liable to be set aside and the matters require reconsideration by the Tribunal, as the additional evidence is to be adduced by the parties and after conducting through enquiry the matter has to be decided on merits.

8. After hearing the learned counsel for both the parties and after evaluation of the entire original records at threadbare, including the impugned judgment and award passed by the Tribunal, it emerges that, the Tribunal has not accepted the defence taken by the Insurer soiely on the ground that, the charge-sheet has been filed against the tempo driver and the number of the offending vehicle is mentioned as KA.21.1162 and the same has not been challenged by the Insurer before the competent authority. Further, the Tribunal has observed that the Insurer has not taken such a stand in the written statement and at belated stage, taking such a defence by way of giving evidence cannot be accepted. The said reasoning given in para-8 of the Judgment by the Tribunal cannot be accepted for the reason that, the Investigator/Surveyor has submitted his detailed report as per Ex.R1 and RW1 who was working as Senior Assistant in the Insurance Company has specifically stated in this regard in para 4 of the affidavit filed by way evidence and nothing worthwhile has been elicited by the claimant counsel in that regard. When these clinching evidence are available on record, the Tribunal ought not to have proceeded and concluded the ease on hyper technical ground that charge-sheet has been filed against the tempo driver showing the vehicle number as KA.21.1162 and the same has not been challenged by the Insurer and also that, Insurer has not taken such a stand in the written statement. It is significant to note as rightly submitted by the learned counsel Sri. A.K. Bhat for Insurer that there is a fraud committed by the owner of the offending vehicle and it came to the knowledge of the Insurer only after seeing the Investigation Report submitted by Investigator as per Ex.R1. After going through the Ex.Rl, RW1 has given his evidence that the owner of the offending vehicle has played fraud on the Insurance Company by changing the engine an chassis number including the registration number of the vehicle. When these clinching evidence are available on record, the same has not been considered or looked into by the Tribunal. The Tribunal without assigning any

valid reasons, has proceeded to conclude the proceedings. Therefore, we are of the, considered view that the impugned judgment and award passed by the Tribunal cannot be sustained and is liable to be set aside and matters require reconsideration afresh by the Tribunal. Further, it is pertinent to note that it is duty cast or the insurer to examine the investigator/surveyor and other independent witnesses to substantiate its defence. In the event, if the Insurer examines the Investigator before the Tribunal, the Tribunal is bound to give an opportunity to the claimant to cross examinee him. Only the Tribunal can do these exercise.Therefore, taking all these factors into consideration, without going further into the merits and demerits of this case and if any views are expressed on merits, it would prejudice the defence of both the parties we are of the considered view that the impugned judgment and award is liable to be set side and matter requires reconsideration afresh by the Tribunal.

9. For the foregoing reasons, these two appeals tiled by the claimant and Insurer are disposed of.

The impugned judgment and award dated 17/08/2005 passed in MVC No. 179/2003 on the file of the 14th Additional Judge, Court of Small Causes and Member MACT, Metropolitan Area, Bangalore (SCCH-10), is hereby set aside and matters stand remitted back to the Tribunal for reconsideration afresh and to decide the same on merits after giving opportunity to both the parties, expeditiously, giving top priority keeping in view that the accident was occurred in the year 2002 within a period of four months from the date of appearance of both the parties before the Tribunal..

The Registry is directed to return the original records to the jurisdictional Tribunal forthwith.

Both the parties are directed to appear before the Tribunal on 28th November 2011 to take further dates of hearing.

The amount deposited by the insurer in M.F.A.No. 1538/2006 shall be returned to the Insurer personally or through its counsel immediately. Ordered accordingly.

