(2015) 03 KAR CK 0291

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30075 of 2011 (MV)

Subuash APPELLANT

Vs

Sidram and Others RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 163(A)

Citation : (2015) 03 KAR CK 0291

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : Ravi B. Patil, for the Appellant; Ganesh Naik, Advocates for the Respondent

Final Decision : Allowed

Judgement

Budihal R.B., J.—This appeal is preferred by the appellant/claimant being aggrieved by the judgment and order dated 01.10.2010 passed in M.V.C. No. 267/2006 by the II Addl. M.A.C.T. and Addl. Dist. Judge, Bidar, fastening the liability on the owner and not on the insurance company and also with regard to quantum of compensation awarded.

2. Brief facts leading to the petition before the Tribunal are that on 28.02.2003 claimant was travelling in a lorry bearing No. KA-39-6717 from Ahmedabad to Baroda as a cleaner and it was driven by respondent No. 1, who is the owner of the said lorry, it was empty and near Golden Chkadi, on NH No. 8, due to jump of the lorry while driving, the cleaner, who was on the left side door of the cabin fell down and sustained injuries on his body. Soon after the accident he was admitted to Baroda hospital for treatment. He has been treated and follow up treatment was also taken at Basvakalyan. Hence, claimed the compensation of Rs. 5,00,000/-.

3. Respondent Insurance company contended in the objection statement that respondent No. 1 has violated the terms and conditions of the policy. He did not

possess any valid and effective driving licence. Hence, the petition is not maintainable as there is no accident involving the vehicle in question and no case has been registered and the claimant himself fell down from the cabin when he was travelling as a gratuitous passenger in the goods lorry of his own fault and he was not working as a cleaner, colluding with respondent No. 1, claimant filed the false claim petition.

4. On the basis of these pleadings, Tribunal considered the matter and also on the basis of oral and documentary evidence produced in the case, ultimately, allowed the claim petition in part, awarding the compensation of Rs. 34,000/- with interest at the rate of 6% p.a.. The claim petition is dismissed as against the insurance company, holding that respondent No. 1/owner, as the person liable to pay the entire compensation amount.

5. Aggrieved by the same, appellant/claimant is before this Court.

6. Heard the arguments of the learned counsel appearing for the claimant/ appellant and the learned counsel appearing for respondent No. 2/insurance company.

7. Learned counsel for the appellant has submitted that with regard to claimant working as a cleaner under respondent No. 1, there is no evidence on the side of the claimant but respondent No. 1/owner admitted in his pleadings that claimant was working as a cleaner under him. He has submitted that panchanama was produced before the Tribunal and also the Medical Certificate regarding the claimant taking the treatment is also placed on record, even then, the Tribunal has wrongly rejected the claim petition as against the Insurance Company. He has submitted that non-production of the document i.e., complaint and FIR itself is not sufficient to reject the claim of the claimant and in that connection he has relied upon the decision reported in Meenakshamma Vs. Hanumanthappa, decision reported in Mutteppa Nagappa Karegar Vs. G.B. Attar and Others, . Hence, he has submitted that respondent/insurance company is also liable to pay compensation amount. Regarding the quantum of compensation it is submitted that though there is disability certificate produced and the doctor has stated that claimant was suffering from disability to the extent of 25-30% even then Tribunal has not considered this disability.

8. Learned counsel has further submitted that even with regard to the award of compensation under certain heads is on the lower side and same is to be enhanced, which is just and reasonable.

9. Per contra, learned counsel for the respondent No. 2/insurance company has submitted that with regard to the contention of the claimant that he was working as a cleaner under respondent No. 1, but there is no satisfactory material. The complaint and FIR is also not produced in this case, which raises doubt regarding the case of the claimant. He has submitted that materials show that the claimant was travelling in the said vehicle as a gratuitous passenger and it is because of his negligence he fell down and sustained injuries. There is no sort of negligence

on the driver of the vehicle and on that grounds also insurance company is not liable to pay any compensation in this case. He has submitted that Tribunal has properly considered each and every aspect of the matter and rightly dismissed the claim petition as against respondent No. 2/insurance company. In support of his contention learned counsel has relied upon the decision reported in Lachoo Ram and Others Vs. Himachal Road Transport Corpn. and Another,

10. Perusing the grounds urged in the appeal memorandum, judgment and award passed by the Tribunal, oral and documentary evidence produced in the case so far as the involvement of respondent No. 1 and the travel of the claimant as a cleaner in the said vehicle is concerned, there is a pleading in the petition presented before the Tribunal. The owner of the vehicle has also filed his objection statement admitting that the claimant was serving as cleaner in his vehicle.

11. Perusing the cross-examination of RW-1, Officer, from the insurance company, he has deposed and admitted as true that the incident took place while Sidram and Subhash going from Ahmedabad to Borada. So this admission on the part of respondent No. 1 shows the involvement of the vehicle and the travelling of respondent No. 1/owner as well as claimant Subash in the said vehicle on the date of accident. Looking to the discharge card and the disability certificate regarding the injuries sustained, all these materials shows that as on the date of accident the claimant was travelling in the said vehicle as a cleaner as admitted by respondent No. 1 owner.

12. Regarding the contention of insurance company that because of negligence on the part of claimant himself, he fell down and there is no fault on the part of owner of the vehicle is concerned, insurance company has not placed acceptable and satisfactory material, because the proper person to say about these things is persons, who traveled in the said vehicle, i.e., owner as well as cleaner. Looking to the pleadings submitted by the owner of the said vehicle it is an admitted fact that when there was a jump this cleaner fell down and sustained injuries.

13. I have perused the principles enunciated in the decisions relied upon by the learned counsel for the appellant/claimant, which are referred above.

14. Considering all these aspects of the matter, the insurance company is also held responsible and liable to pay compensation amount to the claimant. With regards to the contention of the insurance company that the driver was not having the valid and effective driving licence, the insurance company is not disputing the said fact now as it is admitted by the insurance company, the owner of the vehicle, who was the driver was holding the effective and valid driving licence.

15. The original driving licence has been seen and confirmed by the learned counsel appearing for respondent No. 2 - insurance company that as on the date of the accident, the driver was holding the effective and valid driving licence. Therefore, on that contention, now the insurance company again cannot contend

that the driver of the vehicle was not holding the effective driving licence.

16. With regard to the quantum of compensation, the Tribunal has taken the monthly income of the injured at Rs. 3,000/-. The accident is of the year 2003. Hence, it is just and reasonable to consider the income of the appellant at Rs. 3,250/- per month. With regard to the disability aspect is concerned, the appellant has produced the disability certificate as per Ex. P4 and he has examined the doctor as PW.2. PW.2 has mentioned in the disability certificate about what is the disability on the particular limb and ultimately, he has mentioned the disability to the extent of 35% to the whole body. But however, the doctor - PW.2 is not the treated doctor and he was brought by the claimant for the purpose of issuing the disability certificate. Therefore, the Tribunal has not taken this aspect into consideration and no separate amount is awarded by the Tribunal under that particular head.

17. Looking to the materials placed on record, with regard to the disability, there is evidence on the side of the appellant both oral as well as the documentary, but in the cross-examination of PW.2 - the doctor, there are some infirmities. Therefore, 35% cannot be accepted as a disability suffered by the appellant. The reasonable percentage of disability to the whole body is 10%. Calculating the same with Rs. 3,250/- the amount comes to Rs. 325/-. If it is multiplied by 12, the annual income comes to Rs. 3,900/-. The proper multiplier applicable is 16. Therefore the total compensation payable towards loss of future earning would be Rs. 3,900 x 16 = Rs. 62,400/-.

18. Towards pain and suffering, the Tribunal has awarded only a sum of Rs. 15,000/- and the appellant has suffered the fracture injury. Therefore, he is entitled to another sum of Rs. 20,000/- under this head.

19. Towards the medical expenses, the Tribunal has awarded a sum of Rs. 4,000/- and the appellant is also not able to produce the document t show that he has incurred the medical expenses more than what is awarded by the Tribunal. Hence, it does not call for any interference by this Court.

20. Towards loss of income during the laid period, the appellant is entitled to a sum of Rs. 5,000/-.

21. Towards food, nourishment and conveyance charges, the appellant is entitled to a sum of Rs. 10,000/-.

Hence, in all the appellant is entitled to a sum of Rs. 1,16,400/-. However, the claim petition is under Section 163(A) of the Motor Vehicles Act. Therefore, the claim is limited to Rs. 1,00,000/-. Out of which, the Tribunal has awarded a sum of Rs. 34,000/-. Deducting the same, the remaining amount will be Rs. 66,000/-. Thereby, the appellant is entitled to the same with interest.

Accordingly, the appeal is allowed. The appellant is entitled to the enhanced compensation of Rs. 66,000/- with interest at 9% p.a. from the date of the petition till realization.

Respondent No. 2 - insurance company to pay the said enhanced amount with interest before the concerned Tribunal, within 30 days from the date of receipt of a copy of this judgment.