

(2014) 02 KAR CK 0128

In the Karnataka High Court

Case No : MFA Nos. 31888 C/W 31740 of 2010 (MV)

The Branch Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Basavaraj

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 133, 134, 181, 3, 4

Citation : (2015) ACJ 1018 : (2014) 3 AKR 7

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Manvendra Reddy, Advocate for the Appellant; B.C. Jaka, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.S. Pachhapure, J.—The insurer has filed the appeal challenging its liability to indemnify the owner. In the other case, the claimant has filed an appeal seeking enhancement of compensation for the injuries sustained in a motor vehicle accident. The facts reveal that on 04.11.2007 the claimant was travelling on the motorcycle bearing registration No. K.A. 28/L-1319 from Sindagi and at about 10.00 a.m. a jeep bearing registration No. MHG06/A-8870 driven in a rash and negligent manner came and hit the motorcycle and thereby the claimant fell down and sustained grievous injuries. He was treated at Sindagi and Miraj hospitals, incurred medical expenses and suffered disability. Therefore, made a claim for compensation for pain, suffering, mental agony, medical expenses, loss of income etc.

2. During the enquiry the claimant was examined as P.W. 1 and the doctor as P.W. 2. In their evidence Ex. P-1 to P-14 were marked. On behalf of the insurer RW 1 was examined and in his evidence Ex. R-1 to R-3 admitted in the evidence.

3. The Tribunal after appreciating the record granted compensation of Rs. 4,08,000/- with interest at 6%. Challenging its liability the insurer has filed MFA

No. 31888/2010, whereas other appeal is filed by the claimant seeking enhancement of compensation.

4. With the consent of both the counsel, the matter is taken up for final disposal.

5. Heard both sides. The following points that arise for consideration are:

(1) Whether the insurer is liable to indemnify the owner of the jeep?

(2) Whether the appellant is entitled for enhanced compensation? If so to what extent?

6. The learned counsel for the insurer would submit that the Tribunal did not held a driving licence and therefore, on the basis of evidence adduced he submitted that the Tribunal committed an error in imposing liability on the Insurance Company though the driver did not have a valid licence.

7. On the other hand the learned counsel for claimant seeks enhancement of compensation on the ground that the amount awarded on different heads is on the lower side.

8. The question of rash and negligence is not in dispute. The only contention that has been raised by the insurer is that the driver did not hold driving licence. He wants to place his claim on Ex. R1 the copy of the charge-sheet wherein the driver was charge-sheeted for the contravention of Sections 3 and 181 of the Motor Vehicles Act. The provisions of Section 3 requires that the driver must hold an effective driving licence and Section 181 is the penalty clause for contravention of Section 3 or Section 4.

9. It is no doubt that there is charge-sheet against the driver of the jeep under the aforesaid provision, but mere framing the charge itself is not proof of the allegations against the driver in the said charge-sheet. Accused has the opportunity to defend the case on the ground that he held a driving licence. Therefore, the mere fact that insurer has produced the copy of the charge-sheet Ex. R-1 itself is not sufficient to hold that he was not holding valid driving licence.

10. So also the learned counsel relying upon provisions of Section 134 of Motor Vehicles Act contends that it is the duty on the part of the driver to give information in case if it is so required. Section 133 of the Motor Vehicles Act deals with the duty of the owner of motor vehicle, the driver or conductor accused of any offence under this Act shall, on demand of any police officer furnish the information. The provision is not applicable to the insurer making a claim of breach of conditions of the policy on the ground that the driver not holding a valid driving licence. That apart no application is filed by the insurer either against the owner or the driver to produce driving licence and no particulars were obtained from the concerned Regional Transport Authority to prove that the driver had not held a valid driving licence. In the absence of any material on record to draw any inference that the driver did not hold licence, I think it is improper to hold that the insurer has been able to establish the breach

of the conditions of the policy. Therefore, the Tribunal was justified in imposing liability on the insurer. So far as the quantum of compensation is concerned, the claimant has suffered fracture of right femur, right tibia, fibula and head injury. A sum of Rs. 60,000/- was granted for pain, suffering and mental agony. It has granted a sum of Rs. 1,43,000/- towards medical expenses and incidental charges. A sum of Rs. 15,000/- has been granted towards loss of income during the period of treatment. A sum of Rs. 10,000/- was granted towards loss of amenities and future happiness. Accepting the permanent disability on the basis of evidence of P.W. 2 at 20% it has granted compensation of Rs. 1,80,000/- towards loss of future earnings. Looking to the quantum of compensation on different heads granted by the Tribunal I do not think that the compensation is on the lower side. The amount awarded is just and reasonable. Therefore, the appellant-claimant is not entitled to any enhanced compensation. Hence point No. 1 is answered in the affirmative and point No. 2 is answered in the negative.

Consequently, both the appeals fail and they are accordingly dismissed. No costs.

The amount in deposit is ordered to be transmitted to the jurisdictional Tribunal.