

(2017) 03 KAR CK 0292
In the Karnataka High Court
Case No : 5999 of 2011 (MV)

THE MANAGER, BAJAJ ALLIANZ GENERAL INSURANCE CO.
LTD. & ANR.

APPELLANT

Vs

N.MAYEDGOWDA, S/O LATE MAYEEGOWDA & ANR.

RESPONDENT

Date of Decision : 30-03-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 158(6), Section 158(6), Section 134(c), Section 134(c) - Production of certain certificates, licence and permit in

Citation : (2017) 03 KAR CK 0292

Hon'ble Judges : B.Manohar

Bench : SINGLE BENCH

Advocate : O.MAHESH, V.N.MADHAVA REDDY

Final Decision : Dismissed

Judgement

1. Bajaj Alliance General Insurance Company filed this appeal challenging the legality and correctness of judgment and award dated 25th January 2011 made in MVC No.834/2008 passed by the Motor Accident Claims Tribunal, Srirangapatna (hereinafter referred to as "the Tribunal" for short) fastening the liability on them to compensate the claimant.

2. The first respondent herein filed a claim petition contending that on 10-01-2008 at about 6.00 p.m., while he was proceeding on his bicycle to Kyathanahalli village on the left side of the road, near Kadathanalu Government Primary School, the rider of the motorcycle bearing Registration No.KA-11/R-1172 rode the same in a high speed, in a rash and negligent manner and dashed against the bicycle from the backside. Due to that the claimant fell down and sustained grievous injuries to his leg. Immediately after the accident, the rider of the offending motorcycle who is first respondent therein requested the claimant not to lodge any complaint and he would suitably compensate the claimant. On the next day itself, the first respondent paid a sum of Rs.2,500/-

and also executed an undertaking on the stamp paper that he will pay the compensation for the injuries sustained. On 11-01-2008, the claimant got admitted to the K.R.Hospital at Mysore and taken treatment therein as inpatient till 28-01-2008. In spite of the undertaking given by the first respondent, he did not pay any compensation amount for the injuries sustained. Accordingly, MLC register was sent to the jurisdictional police on 24-01-2008. Thereafter, a legal notice was issued on 22-02-2008 calling upon the first respondent to pay the compensation amount. In the accident, he has sustained the fracture of Myaliyalo bone of the left leg, he has undergone surgery on 14-01-2008 by fixing screw. Thereafter he has taken follow-up treatment for a period of six months. In view of mal-union of the fractured bone, he had become permanently disabled to do any work. Hence he filed the claim petition seeking compensation of Rs.4,50,000/-.

3. In response to the notice issued by the Tribunal, the first respondent entered appearance and filed written statement admitting the occurrence of the accident and also payment of Rs.2,500/- to the claimant, however he has disputed the rash and negligent riding of the motorcycle. Further the Insurance policy was in force as on the date of accident, he has got valid and effective driving license. Hence, the insurance company is liable to compensate the claimant and sought for dismissal of the claim petition as against him.

4. The insurance company in their written statement denied the entire averments made in the claim petition and also disputed the occurrence of the accident on 10-01-2008 and the injuries sustained by the claimant. In collusion with the first respondent, the claim petition has been filed and sought for dismissal of the same.

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

6. The claimant got examined himself as P.W.1, one of the eye-witnesses was examined as P.W.2 and Dr.C.Puttaswamy was examined as P.W.3 and got marked the documents as Ex.P1 to Ex.P36. On behalf of the respondents, an officer of the insurance company was examined as R.W.1 and got marked the documents as Ex.R1 to EX.R3.

7. The Tribunal, after appreciating the oral and documentary evidence let in by the parties held that due to the rash and negligent riding of the motorcycle the accident occurred and rider of the bicycle fell down and sustained grievous injuries. Further one of the eyewitness who was examined as P.W.2 has clearly stated that he has seen the occurrence of the accident and that the rider of the motorcycle agreed to pay the compensation amount. On paying a sum of Rs.2,500/- the first respondent took his motorcycle on 11-01-2008. Even though the claimant has not lodged the police complaint, the documents produced by the parties clearly disclose that he has sustained injuries in the road traffic accident occurred on 10-01-2008 and he has taken treatment in the K.R. Hospital at Mysore from 11-01-2008 to 28-01-2008, he has undergone surgery.

The documents clearly disclose that the claimant has sustained injuries and held that he is entitled for compensation of Rs.65,700/- with interest at the rate of 7% p.a. Since the Insurance policy was in force as on the date of accident, the liability was fastened on the insurance company to compensate the claimant. The insurance company being aggrieved by the judgment and award fastening the liability on them to compensate the claimant has filed this appeal.

8. Sri.O.Mahesh, learned counsel appearing for the appellant contended that the judgment and award passed by the Tribunal is contrary to law. Though the alleged accident occurred on 10-01-2008, the claimant got admitted to the K.R. Hospital at Mysore on 11-01-2008 at about 12.30 p.m. While admitting in the hospital he has stated that the injury is "due to fall from scooter". The claimant has also not lodged any complaint before the jurisdictional police. MLC register was sent to the jurisdictional police only on 24-01-2008, except self-asserted statements, no document has been produced to prove that the claimant has sustained injuries in the road traffic accident. The police have also not conducted any mahazar, IMV report has not been produced to prove that the claimant has sustained injuries in the road traffic

accident. In order to get compensation from the insurance company, a false case has been set up by the claimant in collusion with the first respondent and some of the records have been cooked up to suit their convenience and sought for setting aside the judgment and award passed by the Tribunal.

9. On the other hand, Sri.V.N.Madhava Reddy, learned counsel appearing for the first respondent argued in support of the judgment and award passed by the Tribunal and contended that the voluminous documents have been produced to show that road traffic accident occurred on 10-01-2008 and the claimant has sustained injuries. In view of the request made by the rider of the motorcycle, the claimant has not lodged the complaint immediately. Further, except paying Rs.2,500/-, the rider of the motorcycle has not paid any compensation for the injuries he has sustained inspite of the legal notice issued on 22-02-2008. In view of that, MLC report has been sent to the jurisdictional police on 24-01-2008. The police have not registered any case. Non- registering of the criminal case, no adverse inference can be drawn since other materials have been produced to show that the accident occurred and claimant has sustained injuries and taken treatment in the K.R. Hospital at Mysore. In support of his contention, he relied upon a judgment of this Court reported in ILR 1996 KAR 161 (MEENAKSHAMMA v/s HANUMANTHAPPA) and another judgment reported in 2003 KCCR 1762 (DB) (MUTTEPPA NAGAPPA KAREGAR v/s G.B. ATTAR AND OTHERS).

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

11. The main contention of the appellant is that no complaint has been lodged regarding occurrence of the road traffic accident on 10-01-2008 and also injuries

sustained by the claimant. The occurrence of the accident is not made known to the appellant as required under Section 134(c) and 158(6) of the Motor Vehicles Act. In collusion with the claimant as well as the owner of the vehicle, a false case has been set up in order to claim the compensation. On the other hand, the learned counsel appearing for the claimant contended that in view of the request made by the owner of the vehicle, that he will take care of the medical expenditure and pay compensation, the claimant has not lodged any complaint. On the next day, the first respondent executed a letter of undertaking and paid a sum of Rs.2,500/- and taken his scooter. However, he has not paid the compensation amount. In view of that, the claimant was prevented from lodging any complaint before the jurisdictional police. The claimant was inpatient in the K.R. Hospital from 11-01-2008 to 28-01-2008. He has undergone surgery for the injuries he has sustained.

12. The records produced by the parties clearly disclose that the claimant has sustained injuries on 10-01-2008 and the very next day he got admitted to the K.R. Hospital and he

was discharged from the hospital on 28-01-2008. While admitting in the hospital, the claimant has stated that the injury is due to fall from motorcycle, in order to avoid the criminal proceedings against the first respondent. Since the first respondent rider of the motorcycle failed to pay the compensation amount as agreed, the MLC Report was sent to the jurisdictional police on 24-01-2008. P.W.2 in his evidence has clearly stated that he has seen occurrence of the accident and he had taken the injured person to his house. Further deposed that rider of the motorcycle also agreed to pay compensation and by executing an undertaking, he paid Rs.2,500/- on the next date of the accident. P.W.3 doctor who treated the claimant in the cross-examination has stated that while the claimant was admitted in the hospital he has stated that the injury is due to fall from the motorcycle. Except the evidence of doctor, there is no other material to show that the claimant has not sustained injuries in the road traffic accident occurred on 10-01-2008. Even though the claimant had fallen down from the motorcycle, then also the claimant is entitled for compensation from the insurance company since the rider of the motorcycle was having valid and effective driving license and the insurance policy was in force as on the date of accident. There is no reason to collude with the owner of the vehicle. The claimant set up a straight forward case stating that while he was proceeding in his bicycle, rider of the scooter dashed against him from hind side and he has sustained injuries. In order to avoid the police case against the first respondent, on the consent letter executed by the first respondent he has not lodged any complaint. This Court, in a judgment reported in ILR 1996 KAR 161 (supra) held that "the claim petition is a summary civil proceeding wherein the claimant is required to prove the rash and negligent driving of the vehicle by independent evidence. Hence, non-registration of a police case regarding the accident does not give rise to any adverse inference that no such motor accident occurred. Further, this Court held that failure on the part of Medical Officer to send the

Medico Legal Cases to the Police is also no circumstances to deny the

claim of the claimant if the evidence on record establishes the claim from other acceptable evidence." Further, the DB of this Court, in a Judgment reported in 2003 (3) KCCR 1762 (supra) in para 13 held as under:

13. It is no doubt true that a complaint with regard to the occurrence of the accident had not been filed; that no record is available with reference to the accident in any public office or police station, but the fact remains that the very respondent having admitted the involvement of the vehicle in the accident, nothing more is required to be proved about the accident being one involving a motor vehicle bearing No.BMF 4618.

13. In the instant case, the documents produced by the claimant clearly disclose that he has sustained injuries in the road traffic accident occurred on 10-01-2008 and taken treatment in K.R. Hospital at Mysore. The statement made before the treated doctor cannot be held against the claimant. Even if the claimant has fallen down from the scooter while traveling as a pillion rider, then also he is entitled for compensation. The eye-witness examined as P.W.2 in his evidence has clearly stated that he has seen the occurrence of

the accident and he took the injured person to his house. Even though the claimant has not lodged the police complaint, the other documents produced by the claimant clearly disclose that the claimant has sustained injuries in the road traffic accident occurred on 10-01-2008. I find no infirmity or irregularity in the judgment and award passed by the Tribunal and also quantum of compensation awarded by the Tribunal. The appellant has not made out a case to interfere with the judgment and award passed by the Tribunal. Accordingly, the appeal is dismissed.