

(2013) 09 KAR CK 0116
In the Karnataka High Court
Case No : M.F.A. No. 1961 of 2013 (MV)

The Manager, Oriental Insurance Co. Ltd.	APPELLANT
Vs	
Sri. Prasannakumar S., Sri. Abdul Ghani and Sri. Mahaswamy B.B.	RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) ILR (Kar) 5822

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : M. Narayanappa, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the Insurer is directed against the judgment and award dated 17th December 2012, passed in MVC No. 94/2011, by the I Additional Senior Civil Judge, Motor Accident Claims Tribunal-V, Davangere, (for short, "Tribunal"), awarding compensation of Rs. 1,27,000/- with interest at 7% per annum, in favour of the first respondent/claimant, on the ground that the compensation awarded by Tribunal is on the higher side and is liable to be reduced. The facts in brief are that, the first respondent/injured claimant had filed the claim petition u/s 166 of the Motor Vehicles Act, contending that, at about 3:30 P.M., on 18-03-2010, near Kolahal village on NH-4 in Chitradurga, when he was proceeding towards Davangere on his vehicle bearing Registration No. KA-17/M-9570, he met with an accident and sustained grievous injuries on account of rash and negligent riding by the driver of vehicle bearing Registration No. KA-16/A-2286. Immediately he was shifted to Bharamasagara Government Hospital for first-aid treatment and thereafter shifted to Bapuji Hospital, Davangere and thereafter to Gurushree Hi-tech Multi Speciality Hospital, Bangalore, where he took treatment as in-patient for a period of ten days.

2. On account of the injuries sustained in the accident, the claimant filed the

claim petition before the Tribunal, seeking compensation of a sum of Rs. 20,00,000/- against the appellant/Insurer and two others. The said claim petition had come up for consideration before the Tribunal on 17th December, 2012. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 1,27,000/- with 7% interest per annum, from the date of petition till the date of deposit and directed the Insurer to satisfy the entire award. Being aggrieved by the quantum of compensation awarded and also the liability fastened on it, the Insurer is in appeal before this Court, seeking to reduce the compensation and also to set aside the direction issued to the Insurer to indemnify the award amount.

3. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant/Insurer.

4. Shri. M. Narayanappa, learned counsel appearing for appellant/Insurer, vehemently submits that, the Insurer is not liable to indemnify the award and that the direction issued by Tribunal to deposit the award amount is liable to be set aside for the reason that there is no endorsement by the jurisdictional RTO and that the driver had no driving licence to drive the Luxury Taxi at the time of accident and badge to drive the passenger carrying commercial vehicle, Luxury Taxi. Therefore, he submitted that the liability fastened on the Insurer is liable to be set aside. Further, so far as the quantum of compensation awarded is concerned, he submitted that the compensation awarded by Tribunal is on the higher side considering the nature of injuries sustained and therefore, the same is liable to be reduced substantially and the impugned judgment and award passed by Tribunal is liable to be modified.

5. After perusal of the impugned judgment and award passed by Tribunal and after hearing the learned counsel for Insurer, it is seen that occurrence of accident and resultant injuries sustained by claimant are not in dispute. Further, it can be seen that the Tribunal, after critical evaluation of the oral and documentary evidence available on file, has framed as many as six issues and answered issue Nos. 1 and 5 in the "affirmative" and issue Nos. 2 to 4 in the "negative" and issue No. 6 as per the final order and recorded a specific finding of fact that it is no longer open to the Insurer to take up a plea of discharge from the liability as the policy pertaining to the offending vehicle was proved to be in force as on the date of accident.

6. Further, it is observed by Tribunal at paragraph 10 of the judgment that, the Insurer having settled the OD claim of the owner with respect to the accident in question before the Consumer Forum, Chitradurga is now estopped from avoiding its liability to compensate PW1. To substantiate the said aspect, he relied upon the judgment passed in CC No. 155/2010 by the Consumer Forum, Chitradurga which was a complaint lodged by the owner of the offending vehicle against the Insurer of the offending vehicle, where the Insurer was directed to settle his OD

claim and accordingly they have settled the same vide receipt produced and marked as Ex. P28. From Ex. P28, it reveals that the Insurer has settled the OD claim of the owner to the tune of Rs. 28,191/-. However, the Insurer sought to justify the same, stating that they have settled the said claim on non-standard basis, i.e. without accepting their liability and in compliance of the order of the Court. This explanation offered by the Insurer was rejected by Tribunal, on the ground that the said judgment has not been challenged by them till date and more over the Hon''ble Consumer Forum has also discussed about the validity of the DL of the driver of the offending vehicle and therefore, now it is no longer open to the insurer to take up a plea of discharge from the liability as the policy pertaining to the offending vehicle was proved to be in force as on the date of the accident. Therefore, it is not now open for the Insurer to get away from the liability to indemnify the award.

7. Therefore, it can be seen that the Tribunal, after proper evaluation of the entire material available on file, has recorded a specific finding of fact, holding that the appellant Insurer is liable to indemnify the award and accordingly directed the Insurer to satisfy the award. The said finding recorded by Tribunal is just and proper and I do not find any justification or good ground to interfere with the same.

8. So far as quantum of compensation awarded by Tribunal is concerned, it can be seen that the Tribunal, considering the age, avocation, year of accident, nature of injuries sustained, nature and duration of treatment undergone, evidence of Doctor, disability, etc. has awarded just and reasonable compensation of Rs. 25,000/- towards injury, pain and sufferings, Rs. 5,000/- towards medical expenses including conveyance, nourishing food and attendant charges, Rs. 10,000/- towards loss of income during laid up period, Rs. 76,800/- towards loss of future income on account of permanent physical disability and Rs. 10,000/- towards loss of amenities and enjoyment of life, in all Rs. 1,27,000/- with 7% interest from the date of claim petition till the date of actual realization of the amount. Hence, interference in the same is also uncalled for. For the foregoing reasons, the appeal filed by the Insurer is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

Office is directed to transmit the amount in deposit by the Insurer to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

In view of disposal of appeal, LA. 1/2013 filed for stay does not survive for consideration and is accordingly, dismissed as having become infructuous.