(2015) 01 KAR CK 0051

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 32224 and 31585/2012(MV)

The Manager Shriram General Insurance Co. Ltd. and Others APPELLANT

Vs

Shantayya Swamy Hiremath and Others RESPONDENT

Date of Decision : 31-01-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 164, 3

Citation : (2015) 01 KAR CK 0051

Hon'ble Judges : L. Narayana Swamy and A.S. Pachhapure, JJ.

Bench : Division Bench

Advocate : Bhadrashetty Sangeeta C., Advocate, for the Appellant

Final Decision : Dismissed

Judgement

A.S. Pachhapure, J.—While the insurer has challenged the liability and quantum of compensation granted to the 1st respondent in the main appeal for the injuries sustained in a motor vehicle accident, the claimant has filed the other appeal, seeking enhancement of compensation.

2. The facts relevant for the purpose of these appeals are as under:

"It is on 29.08.2009 at about 7.30 p.m., the injured 1st respondent in the main appeal who is the appellant in the other appeal was going on his Hero Honda motorcycle bearing registration No. KA-32/V-2128 towards Afzalpur. At that time, a Turn Turn bearing registration No. KA-32/A-7850, came from opposite direction, driven in a rash and negligent manner and hit the motorcycle. Thereby, the claimant suffered grievous injuries. He was admitted in the hospital. He suffered the disability and therefore, made a claim for compensation for pain, suffering and mental agony, medical expenses etc."

3. He was examined as PW. 1 and two witnesses were examined as PWs.2 and 3 and in their evidence Exs. P1 to P34 were marked. On behalf of the respondents, a witness was examined as RW. 1 and in his evidence Ex. R1 was marked.

4. The tribunal on appreciation of the evidence on record held that the driver of Turn Turn vehicle was rash and negligent and ultimately directed the insurer to indemnify the owner and awarded a sum of Rs. 9,43,000/- as compensation with interest at 6% per annum. Aggrieved by the liability and quantum, the insurer has filed MFA No. 32224/2012 whereas the injured has filed other appeal in MFA No. 31585/2012 seeking enhancement of compensation.

5. We heard learned counsel for the parties.

6. The points that arise for our consideration are:

"1. Whether the insurer is liable to indemnify the owner?

2. Whether the compensation awarded needs any variation?"

7. Learned counsel for the insurer submits that there was a charge sheet against the driver of Turn Turn vehicle for contravention of Section 3 of the Motor Vehicles Act (for short ''Act''). Neither the owner nor the claimant or the driver made any efforts to secure the driving licence before the tribunal. Therefore, she submits that as the driver had no licence to drive Turn Turn vehicle, the insurance company cannot be made liable to indemnify the owner by paying the amount of compensation. She also submits that the quantum of compensation granted is on the higher side and it needs reduction.

8. On the other hand, learned counsel for the injured submits that the tribunal has not considered agricultural income and the compensation awarded is meager. It is also his submission that it is the insurer who has to establish the breach of policy conditions to seek exemption from liability and has to produce the positive evidence before the tribunal.

9. Learned counsel for the insurer has placed reliance on two decisions of this Court in MFA No. 21079/2009 connected with MFA Crob. No. 745/2009 (Oriental Insurance Company Ltd., v. Smt. Ruksana Begum @ Aashabee) dated 08.11.2013 and MFA No. 30738/2008 (National Insurance Company Ltd., v. Basavaraj) dated 05.03.2014 rendered by us. Placing reliance on these two decisions, it is her contention that there is no evidence placed on record to prove existence of licence and the driver or the owner have not appeared before the tribunal. Therefore, she seeks exemption from liability to pay the compensation.

10. On this aspect of the matter, perusal of copy of charge sheet produced at Ex. P2, would reveal that the driver was charge sheeted for contravention of Section 3 of the M.V. Act, on the ground that he had no licence to drive Turn Turn vehicle. Though the learned counsel for insurer submits that a notice was issued to the owner calling upon him to produce the licence, the said notice has not been produced before the tribunal. Except the oral version of RW. 1 and submission in this regard, there is no material to prove that the notice was issued to the owner. That apart, the owner of the vehicle was placed ex-parte. Anyhow, it is for the insurer to establish the breach of policy conditions and when it is its contention that the driver had no licence, some material has to be placed on record. Though

to prove that there was no licence but to prove the breach of policy conditions. It is only when the breach of policy conditions is proved, the insurer is exempted from the liability. Though the insurer need not place any evidence to prove the fact that the driver had no licence but at the same time it is necessary for the insurer to place some evidence on record to establish that there was breach of conditions of policy. For this, it is for the insurer to place some evidence on record to seek exemption from the liability.

11. The provisions of Section 164 of the Act relate to production of licence and particulars of the insurance policy, wherever any person needs such information. If really, the insurer had no information about the driver not holding a licence, under clause (c) of Section 164 of the Act, the notice could have been issued calling upon the driver or the owner to furnish the particulars relating to the driving licence or any other information relating to the accident. Though it is contended that the notice was issued, copy of licence has not been produced before the tribunal.

12. That apart, under the provisions of Civil Procedure Code, there are provisions to call upon the persons in custody of the documents to produce before the tribunal. When the insurer had responsibility to prove the breach of conditions of policy, an application could have been filed by the insurer before the tribunal calling upon the owner or the driver to produce the licence. These steps have to be taken by the insurer not to establish that the driver was not holding licence but to establish the breach of conditions of policy.

13. Even if the owner or the driver has not appeared before the tribunal, summons could have been sought directly to the owner/driver and if he fails to comply the request for production of the licence, it could have even taken steps to secure the licence by obtaining bailable or non-bailable warrant. These steps could have been taken by the insurer before the tribunal atleast to establish that there was a breach of conditions of policy to say it is not liable to indemnify the owner who has not produced the licence.

14. In the absence of any steps being taken by the insurer, it cannot said that the insurer has discharged the burden to establish the breach of conditions of policy. In the decisions rendered supra referred by us, this point was cannot taken into consideration. Therefore, we are of the opinion that the principles laid therein are not applicable to the facts on hand.

15. That apart, though the charge sheet was filed against the driver for contravention of Section 3 of M.V. Act. Mere production of charge sheet not the proof that the driver had no licence. The charge is for contravention of Section 3 of the Act. filing of charge sheet is not the proof of the offence. On appreciation of the material placed on record, we are of the considered opinion that the tribunal was justified in imposing the liability on the insurer to indemnify the owner.

16. So far as the quantum of compensation is concerned, the injured was a Class-

I Contractor and he was a income tax payee. His notional income shown in the records produced at Ex. P34 reveals that he was earning Rs. 2,03,272/- and the tribunal has considered his income at Rs. 2,00,000/- per annum. Scrutinizing the evidence of doctor (PW.3) and other materials placed on record, the tribunal has come to the conclusion that there was 70% disability in the particular limb and if 1/3rd is taken, it comes to 23.33% for the whole body.

17. On perusal of the materials placed on record, we are of the opinion that the assessment of disability by the tribunal is just and proper and it needs no variation. The tribunal has granted a sum of Rs. 6,06,580/- towards loss of future income on the basis of income as shown in income tax returns. A sum of Rs. 50,000/- has been granted towards pain, suffering and mental agony, considering the number and nature of fractures, the same is just and reasonable. On the basis of bills produced, a sum of Rs. 1,29,321/- has been granted towards medical expenses and the same appears to be reasonable. There were implants inserted at the site of the fractures and for removal the same a sum of Rs. 30,000/- has been granted towards future medical expenses and it appears to be reasonable. Under the head loss of prospects in life, a sum of Rs. 40,000/- has been granted, Rs. 20,000/- towards diet, nourishment, conveyance and attendant charges and a sum of Rs. 66,668/- has been granted towards loss of earning during laid off period. On scrutiny of the material placed on record, the compensation granted on different heads appears to be just and proper.

18. Learned counsel for the injured submits about the loss suffered by the injured under Exs. P18 to 21. It is relevant to note that he has not produced any record of rights subsequent to the period of accident which would have reflected the crops in the said lands. He cannot be said that he has sustained any loss subsequent to the accident. That apart, having scrutinized the compensation granted towards loss of future earnings on the basis of the income returns, the tribunal has taken liberal approach in assessing the loss of income at Rs. 2,00,000/- per annum. Despite the fact that the income tax returns, subsequent to the accident were not produced. So taking on over all view relating to the compensation granted towards loss of future earnings, we do not find any good grounds to call for interference in the impugned judgment and award. Hence, we answer point No. 1 in the affirmative and point No. 2 in the negative.

Consequently, the appeals fail and they are accordingly dismissed.

The amount in deposit be transmitted to the tribunal.