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(2015) 09 KAR CK 0113

In the Karnataka High Court

Case No : MFA Nos. 5365 and 6972 of 2012(MV)

The Manager United India Insurance Co. Ltd. and Others — APPELLANT

Vs

Kotreshi and Others — RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0113

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : A.N. Krishnaswamy, Advocate, for the Appellant; M.R. Hiremathad, Advocate, for the Respondent

Judgement

S.N. Satyanarayana, J.—The third respondent insurer and claimant in MVC. No. 311/08 on the file of the MACT, Davanagere, have come up in these two appeals.

2. The appeal in MFA. No. 5365/12 is by the third respondent-insurer challenging the liability fastened on it to pay the compensation to claimant who is first respondent herein. The claimant before the Tribunal has come up in appeal in MFA. No. 6972/12 seeking enhancement of compensation. Both appeals are at the stage of admission. Lower Court records are secured and these two appeals are taken up for final disposal.

3. Brief facts leading to these appeals are as under:--

"The claimant in MVC. No. 311/08 is stated to have suffered injuries in a road traffic accident dated 1.12.2007 which was caused at about 5.00 P.M. While he was walking on the road in Marikunte village in Jagalur taluk of Davanagere District. According to him rider of motor cycle bearing Regn. No. KA-17-V-1285 came in a rash and negligent manner and dashed against him from the opposite side resulting in grievous injuries. He was admitted to Apoorva Hospital at Davanagere. He has stated that he got treatment to the injuries suffered in the accident and subsequently filed claim petition seeking compensation against the driver, owner and insurer of motor cycle bearing No. KA-17-W-1285."

4. In the said proceedings on service of notice, the third respondent entered appearance and filed written statement denying all the averments to the claim petition and in paragraph 6 a clear stand was taken that the driver of the motor cycle bearing Regn. No. KA-17-V-1285 has not caused the accident. However admitted that the aforesaid motor cycle is insured with them and liability is fastened on the Insurance Company which was subject to the terms and conditions of the policy. It is seen that subsequently the matter went into trial wherein first of the issue is as to whether the accident causing injury to the claimant is caused by rider of the motor cycle bearing No. KA-17-V-1285. In the said proceedings, evidence was recorded, the claimant himself adduced evidence as P.W.1. At the time of cross-examination a specific question was put by the third respondent-insurer to the effect that immediately after the accident, in the complaint that was filed by the claimant, it was stated that the accident is caused by the rider of the motor cycle bearing Regn. No. KA-17-W-8471. Subsequently, by giving a further statement, the number of the vehicle is changed to KA-17-V-1285 and it is further seen that many of the questions were posed to him in the cross-examination to the effect since the motor cycle which caused the accident was not insured, with the assistance of owner and other friends and relatives to ensure that the compensation is secured to him, changed the number of the vehicle.

5. An attempt is also made by the claimant to implead the insurer-owner of vehicle bearing No. KA-17-W-8471 who are respondents No. 4 and 5 in the Court below wherein an attempt was made to demonstrate that the complaint which was filed immediately after the accident was erroneous for the reason that the number of the vehicle which was stated by him was given to him by one of his well wisher as claimant was unconscious immediately after the accident and has got it rectified by giving further statement and because of that respondents 1 to 3 are arrayed as driver, owner and insurer of the vehicle. The Court below has accepted the pleadings as well as the evidence of the claimant and also that of the doctor who treated him and has adduced evidence as P.W.2 and proceeded to allow the claim petition and awarded compensation to the claimant in a sum of Rs. 2,29,000/- with interest at 6% from the petition till the date of payment of entire compensation.

6. Being aggrieved by the quantum of compensation, the claimant has come up in MFA. No. 6972/12 and being aggrieved by the liability saddled on respondent No. 3 it has come up in another appeal is MFA 5365/12 as stated supra. In these two appeals, respondents No. 4 and 5 before the Tribunal i.e. owner and insurer of the vehicle, the number of which was furnished to the police at the time of filing complaint are also present before this Court as respondents No. 4 and 5 in both the appeals. It is seen that these respondents No. 4 and 5 were impleaded in the Court below after the entire evidence is recorded and however, they have given statement denying their involvement and involvement of the vehicle and also their liability to pay compensation.

7. Heard learned counsel Sri. Krishnaswamy, appearing for respondent No. 3 insurer before the Court below and Sri. Hiremath, counsel appearing for claimant in appeal filed seeking enhancement of compensation and also learned counsel Sri. D. Vijayakumar, appearing for respondent No. 5-insurer of the vehicle bearing Regn. No. Ka-17-W-8471. Perused the pleadings, oral and documentary evidence available on record. It is clearly seen that the claimant is making a herculean effort to get the compensation for the injuries suffered in a road traffic accident. The accident is not in dispute so also the injury suffered by the claimant and treatment taken in the hospital. However, with reference to the involvement of the vehicle serious doubts are raised as seen from the records. As could be seen, the accident is said to have taken place on 01.12.2007 at about 5.00 p.m. Immediately after the accident, the claimant was admitted to Apporva Hospital, Davanagere. The medical records would show that the claimant has suffered injuries in a road traffic accident. There is no reference as to what is the type of vehicle which caused the accident and what is the registration number of that vehicle.

8. In the proceedings before the Tribunal, the claimant has not bothered to secure the Admission register to demonstrate that immediately after the accident he informed the hospital authorities of the injuries being suffered in the road traffic accident with specific type of motor cycle with specific registration number. No material is produced in support of that, What is seen in the records is that the complaint is lodged by the claimant on 3.12.2007 with Bilichodu police stating that he was hit by rider of motor cycle bearing Regn. No. KA-17-W-8471. Based on which FIR is registered reflecting the number of the said vehicle. However, subsequently, it is seen that further statement is given by him stating that vehicle involved is not KA-17-W-8471 and it is KA-17-V-1285 which is also a splendor vehicle. Incidentally, the rider of the motor cycle remained same and it is only the number of the vehicle which is changed. The first vehicle shown in the complaint is insured with Respondent No. 5-Reliance General Insurance Company.

9. The vehicle which was subsequently changed and against which the claim petition was filed is insured with respondent No. 3-United India Insurance Company Limited. In the proceedings before the Tribunal the first issue is framed in calling upon the claimant to demonstrate whether the injuries suffered in the road traffic accident dated 1.12.2007 is caused by the rider of the motor cycle bearing Regn. No. KA-17-V-1285. In the proceedings, the claimant is examined as P.W.1. Though in the examination-in-chief he has reiterated the petition averments and involvement of vehicle insured with respondent No. 3, in cross-examination he admits that because the vehicle which was stated to have caused the accident as stated in the complaint was not having insurance cover he has changed the number of the vehicle. The said statement is given by him in the cross-examination. In the said cross-examination he has also gone to the extent of saying that because the owner of both the vehicles were known to him and persons who have witnessed the accident being his relatives and friends, by taking their assistance he has given the particulars of the said vehicle and the

particulars of their insurance to secure compensation.

10. When such an evidence was given by the claimant he was given one more opportunity to implead the owner and the insurer of the first vehicle which is shown in the complaint. After they came on record, it is seen that additional issues 1 and 3 were recasted wherein the third respondent was called upon to establish whether it was not liable to pay compensation for the reasons stated in the objection statement and one more additional issue was framed placing burden on respondent No. 5 to prove that it was not liable to answer the claim on the grounds which was stated in the written statement.

11. In the judgment which was rendered issue No. 1 and additional issue framed on 23.3.2010 are answered in favour of the claimant and additional issue No. 1 framed on 28.11.2011 with reference to respondent No. 5 was answered in favour of respondent No. 5 and consequently saddling the liability to pay compensation on the third respondent-insurer. From the entire judgment and record, it is clearly seen that there is nothing on record to demonstrate that the rider of the vehicle insured with respondent No. 3 has caused the accident resulting in injuries to the claimant. In fact, from the cross-examination of first claimant as P.W. 1 it is clear that an attempt is made by him to implicate these two vehicles for the purpose of securing compensation for the injuries suffered in the accident.

12. The fact that accident has taken place on 1.12.2007 and complaint is given on 3.12.2007 and number of the vehicle is changed by giving further statement would indicate that the accident being caused by any of these two vehicles itself is doubtful. In that view of the matter, the Tribunal has not properly appreciated the evidence available on record and consequently given an erroneous finding on Issue No. 1 framed initially and additional issue framed on 23.3.2010 in saddling the liability to pay compensation on respondent No. 3-insurer. In that view of the matter, the appeal filed by the insurer-respondent No. 3 in the Court below is allowed by setting aside the judgment and award passed by the Tribunal.

13. In that view of the matter this Court feel that when the involvement of any of the vehicles not having been properly established by the claimant, the question of considering the appeal filed in MFA. No. 6972/12 seeking enhancement of compensation does not survive for consideration. Accordingly, the same is dismissed.

14. In view of the appeal filed by the United Insurance Company being allowed in MFA. No. 5365/12, the amount in deposit is ordered to be released in its favour.

