(2015) 08 KAR CK 0271

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5016 of 2015 (MV)

The Oriental Insurance Co. Ltd. and Others — APPELLANT

Vs

Manjunath V. and Others — RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2015) 08 KAR CK 0271

Hon'ble Judges : C.R. Kumaraswamy, J

Bench : Single Bench

Advocate : S. Indiresh, for the Appellant; C. Puttaswamy, Advocates for the Respondent

Final Decision : Allowed

Judgement

C.R. Kumaraswamy, J—This Miscellaneous First Appeal is filed under Section 173(1) of MV Act against the judgment and award dated 16.04.2015 passed in MVC No. 2418/2014 on the file of the I Additional Small Causes Judge, 27th ACMM, MACT, Bengaluru, partly allowing the claim petition for compensation and seeking enhancement of compensation.

2. With the consent of the learned counsel for the appellant as well as the learned counsel for the respondents, this matter was heard on merits. The materials placed before this Court is sufficient to dispose of this case at this stage.

3. Learned counsel for the appellant has produced the depositions of the claimant, Dr. Kiran, Dr. Ramesh, respondent No. 2, FIR, statement of Manjunath, sketch of the scene of offence, spot panchanama, Motor Vehicle Accident report, Wound Certificate, Chargesheet, Discharge Summary, Medical Bills, Inpatient card of Victoria Hospital, Insurance Policy. I have perused the same.

4. The case of the claimant in the Claims Tribunal is as under:-

That on 13.5.2014 at about 00.45 a.m., the claimant was riding his motor cycle on the extreme left side on Bengaluru-Bellary road, at that time the driver of the Lorry bearing No. KA-51-A-2015 came with high speed and in a rash and negligent manner and hit against the motor cyclist, as a result of which, he sustained injuries. He was shifted to Shushrusha Nursing Home. He was admitted as inpatient from 13.5.2014 to 23.5.2014. X-rays were taken which revealed fracture of left leg lateral malleolus, fracture base of 2nd M.T. fracture base of P.P. etc.

5. In the Claims Tribunal, respondent Nos. 1 and 2 have filed the objection statements. It is stated in the objection statement of respondent No. 2 that it has issued insurance policy bearing No. 421600/31/2014/3354 valid from 27.6.2013 to 26.6.2014 in respect of Lorry bearing No. KA-51-A-2015, but the liability of the respondent No. 2 is subject to the terms and conditions of insurance policy and provisions of Motor Vehicle Act. Respondent No. 1 has not informed about the accident.

6. The Claims Tribunal has framed the following issues:

"1. Whether the petitioner proves that, on 13.5.2014 at about 12.45 am in the night, when he was riding his motor cycle slowly and cautiously on the left side on Bangalore-Bellary Road near Raithara Sante Bridge, at that time, driver of lorry bearing No. KA-51-A-2015 driven the said lorry in rash and negligent manner with high speed and dashed to the motor cycle by which petitioner sustained grievous injuries?

2. Whether petitioner proves that he is entitled for compensation? If so, to what amount and from whom?

3. What order or award?"

The finding recorded by the Claims Tribunal on the above issues are as under:

"Issue No. 1 in the affirmative.

Issue No. 2 in the affirmative: the petitioner is entitled to global compensation of Rs. 5,89,287/- with simple interest @ 6% p.a. from the date of petition till complete realisation, from respondent No. 2.

Issue No. 3 as per final order."

7. The Claims Tribunal relying on the evidence of the claimant and also police papers namely, Ex. P1 - C.C. of FIR, Ex. P2 - C.C. of complaint, Ex. P3 - C.C. of hand sketch map, Ex. P4 - C.C. of panchanama, Exs. P5 and P6 - Certified copies of IMV reports, Ex. P8 - Chargesheet, came to a conclusion that the driver of the lorry was driving the same in a rash and negligent manner.

8. I have carefully examined the finding recorded by the Claims Tribunal. In my view, the finding recorded by the Claims Tribunal is sound and proper.

9. The Claims Tribunal has awarded the compensation as under:

10. Feeling aggrieved by the same, the Insurance Company has preferred this appeal.

11. The learned counsel for the appellant urges on two grounds. One ground is that the Claims Tribunal has failed to consider the fact that the Lorry involved in the alleged accident does not having fitness certificate as on the date of the accident i.e. on 13.5.2014. The said fitness certificate was valid from 01.04.2013 to 31.03.2014 and therefore, the finding of the Tribunal fastening the liability on the appellant - Insurance Company is bad in law.

12. The another ground in which the learned counsel for the appellant urges is that the Claims Tribunal has failed to consider that respondent No. 1 is working as Inspector in BBMP Bengaluru and has produced Exs. P11 to P14 - the salary certificate issued by the BBMP. Since the claimant is in continuous service in BBMP, the award of Rs. 2,92,258/- towards loss of future income is bad in law. Therefore, the learned counsel for the appellant seeks to reduce the compensation awarded under the head of loss of earning capacity. He further submits that the liability to pay the compensation by the Insurance Company may be exonerated.

13. Learned counsel for respondent No. 1 submits as under:

The judgment and award passed by the Claims Tribunal is based on legal evidence. He supports the impugned judgment and award.

14. The first question that arises for my consideration is that "Whether the Insurance Company is liable to pay the compensation or not?"

In this regard, it is an undisputed fact that the Insurance Company has issued policy in favour of lorry bearing No. KA-51-A-2051. The policy is covered from 27.6.2013 to 26.6.2014. The driver of the lorry was also having an effective Driving Licence as on the date of the accident. Policy was issued on 21.6.2013. As on the issuance of insurance policy, there was fitness certificate in so far as the lorry in question. The fitness certificate was about to expire on 31.3.2014. But however knowing fully well that the fitness certificate expires on 31.3.2014, the Insurance Company by taking risk, issued the policy in favour of the lorry covered from 27.6.2013 to 26.6.2014. At least the Insurance Company would have written the letter to the owner of the lorry somewhere in the month of March to renew the fitness certificate or otherwise they would have terminate the policy itself for non-renewal of fitness certificate. This has not been done by the Insurance Company. The owner of the lorry also slept over the matter. Even in the objection statement filed by the Insurance Company, no contention has been taken that the Insurance Company is not liable to pay the compensation since the fitness certificate expires on 31.3.2014. Since the Insurance Company has issued policy covering from 27.6.2013 to 26.6.2014 and the accident occurred on 13.5.2014, in my view, the Insurance Company cannot go back and say it cannot be liable to pay compensation.

15. The next question that arises for my consideration is that "Whether the compensation awarded by the Claims Tribunal under the head of future income i.e. Rs. 2,92,258/- is sustainable in law?"

Learned counsel for the respondent submits that the claimant has sustained five fractures and the Doctor has stated in his evidence that there is a disability to the extent of 11% to the whole body. Taking into consideration of all these the Claims Tribunal has calculated the loss of earning capacity at Rs. 2,92,258/-. It is an undisputed fact that respondent No. 1 continued in the job.

The Claims Tribunal taking the income of Rs. 14,738/- and 50% added towards future prospects, has awarded Rs. 2,92,258/- under the head of loss of future income, may not be based on the sound legal principles. In this case, the injured is in a position to work physically after the accident as before, the after effects of the accident may make it more difficult for him to find work or to retain his work. There would be some degree of physical handicap. In this case, the court may have to add a suitable sum by way of damages having regard to this aspect. In other cases, the chances of a better employment or better prospects in the same employment may be reduced after the accident. This aspect also should not be lost sight of while awarding general damages. For the reasons mentioned hereinabove, I am inclined to award Rs. 1,25,000/- under the head "reduced capacity of work" in place of Rs. 2,92,258/- awarded by the Claims Tribunal under the head "loss of future income".

16. In view of the above discussion, I pass the following:

1. This Miscellaneous First Appeal is allowed in part.

2. A sum of Rs. 1,25,000/- is awarded the head "reduced capacity of work" as against Rs. 2,92,258/- awarded by the Claims Tribunal under the head "loss of future income".

3. The amount in deposit shall be transmitted to the concerned Claims Tribunal.

4. Rest of the judgment and award is accepted.