

(2014) 12 KAR CK 0152

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 695 of 2008

Tirakappa

APPELLANT

Vs

Mahadevappa Adivappa Kattimani

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0152

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : F.S. Dabali, Advocate for the Appellant; R.M. Javed and M.Y. Katagi, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—The present appeal is filed by the owner of a car which was involved in a motor accident. The appellant has died during the pendency of the appeal and is now represented by his legal representatives, who are brought on record.

2. The facts of the case are as follows:

"On 31.03.1994, at about 4.00 a.m. near Kurimeth Bridge on Shiggaon-Haveri Road, it transpires that Respondent No. 1 Mahadevappa Adivappa Kattimani was proceeding as a passenger in a car bearing No. MEK-482 and when it was near the Varadahalli Bridge, it is stated that a lorry bearing No. KA-02/2439, had dashed against the car, as a result of which Respondent No. 1 who was the occupant of the car, was injured. It is claimed that he had sustained a head injury and fracture of the hip joint and other parts of the body. He was shifted to the Government Hospital, Savanur and he had also obtained further treatment at KMC Hospital, Hubli as an in-patient from 31.03.1994 to 9.4.1994. He was thereafter said to have been admitted to Baligar Nursing Home, Hubli for further treatment. It was claimed that as a result of the accident and injuries, he had lost his memory power and had incurred expenses exceeding Rs. 75,000/- for treatment. He being an ex-serviceman, it was claimed that he was earning Rs.

5,000/- per month while in service and on account of the accident, he had lost his employment, as he was removed from service on that count and the owner of the car, the owner of the truck as well as the insurer of the truck were made parties to the claim petition before the Motor Accident Claims Tribunal."

3. The claim petition was contested and it was denied that the Respondent No. 1 - claimant had suffered any serious injuries and that the claim for compensation was exaggerated. It was contended by the insurer of the truck that the accident had occurred as a result of the negligence on the part of the driver of the car and it was evident that it was entirely the fault of the car driver which resulted in an accident and therefore, there was no obligation on the part of the insurer of the truck to meet any liability insofar as the claim for compensation was concerned.

4. While the present appellant had also contended that it was the driver of the truck who was at fault and that there was no fault on his part. It is on these rival contentions that the Tribunal had framed the following points for consideration:

"1. Whether petitioner proves that, he sustained grievous injuries and permanent disability due to rash and negligent driving of the car bearing No. MEK/482 and Truck bearing No. KA-02/2439 by both drivers on 31.3.1994 at about 4.00 a.m. near Kurimeth Bridge?

2. Whether he further proves that, he was aged 50 years and earning Rs. 2,500/- per month as a chokidar of warehouse?

3. Whether Respondent No. 3 proves that, the petition is bad for non-joinder of necessary parties, i.e., driver, owner and insurer of the car bearing No. MEK/482 involved in the accident?

4. Whether he further proves that drivers of both offending vehicles were not possessing valid and effective driving licences on the date of accident?

5. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?

6. What award or decree?"

The Tribunal had held Points 1 to 3 in the affirmative and Issue No. 4 in the negative and had held that the respondent -claimant was entitled to Rs. 50,000/- from the respondents jointly and severally. Incidentally, since there was a dispute as between the appellant herein and the insurer of the truck as to the contributory negligence or that the entire negligence was to be attributed to the one, as against the other, as contended by them, the Tribunal has addressed the said controversy as to the degree of negligence if at all on the part of the appellant or on the part of the truck driver, in the following manner:

"The material on record does not rule out the possibility of the accident happening as a result of contributory negligence on the part of the drivers of both the vehicles. Respondent No. 3 has also not pleaded that the accident had occurred entirely due to the rashness and negligence on the part of the driver of

the car. On the contrary, respondent No. 3 has pleaded in para 9 of the written statement that, if this Court were to come to the conclusion that the accident had occurred as a result of contributory negligence on the part of the drivers of both the vehicles, then, the extent of contributory negligence of the driver of the lorry may be fixed at 10%. This goes to show that even respondent No. 3 also does not rule out the possibility of the accident happening as a result of the contributory negligence on the part of the drivers of both the vehicles. In view of the discussion made above, I have held that the driver of the car had contributed to the extent of 80% and driver of the truck had contributed to the extent of 20% in the happening of the accident in question. This I have done because, the car had swerved on the wrong side and then hit the lorry coming in opposite direction. There is no material on record regarding the attempts made by the lorry driver to avoid the accident. The accident had therefore occurred on account of the major contribution of the driver of the car. It seems that the offending car was not insured with any Insurance Company at the time of accident. Therefore, petitioner has made the owner of the car party to this petition. The insurer of the car has not been made a party to this petition. In view of the discussion made above, respondent No. 1 would be liable to pay 80% of the quantum of compensation payable to the petitioner. Balance of the 20% of compensation would be paid by respondent No. 3. Issue Nos. 1 to 4 answered accordingly."

The Tribunal has proceeded to hold that since the car was not insured, the owner of the car and the insurer of the truck were jointly and severally liable, in the operative portion of the judgment. However, since there was a finding as aforesaid as to the degree or percentage of negligence on the part of the driver of the truck to an extent of 20%, the insurer had promptly deposited 20% of the amount of compensation with interest thereon and it is the liability that is fastened on the owner of the car that is sought to be questioned in the present appeal. The appellant also questions the quantum of compensation awarded to the claimant.

It is also contended that the accident was of the year 1994 and though the claim petition was filed within the period of limitation, it was dismissed for default in the year 2003 and was restored to file in the year 2006, but evidence was tendered by the claimant only in the year 2007 and therefore, there was want of diligence on the part of the claimant in not having prosecuted his claim with due diligence and the appellants being burdened with the payment of interest even for the period when the petition itself was not pending and since the default was on the part of the claimant, there is no liability to pay interest in respect of the said period. It is these and other contentions which are urged in the present appeal.

5. After having heard the learned counsel for the appellant as well as the learned counsel for the insurer, significantly it is noticed that the learned counsel for Respondent No. 1, has consistently remained absent. It is Respondent No. 1

himself who has appeared before the Court in person, over the past several days and has made fervent pleas to this Court to consider his case. The Respondent No. 1 is apparently handicapped and is unable to walk without support and is moving around with the help of a walker, and appears to have aged prematurely. Therefore, this appeal was taken up out of turn, having regard to the plight of the claimant.

In any event, insofar as the merits of the case is concerned, on the face of it, the claim is laid on the ground of composite negligence. As the claimant was an innocent occupant of a car and notwithstanding the negligence that could be attributed to either the driver of the vehicle occupied by the claimant or the driver of the truck which was involved in the accident, the claimant - Respondent No. 1 is entitled to claim compensation at his option against one or the other or both the owners of the vehicle, jointly. Insofar as the attribution of negligence or the quantum of negligence that could be attributed to anyone of the drivers of the vehicle of the accident of contribution towards the liability, would have to be adjudicated by the Tribunal itself. The manner in which the Tribunal has proceeded to adjudicate this aspect of the matter is found wanting, which is the reason the entire reasoning of the Tribunal as disclosed in its judgment, is extracted hereinabove.

It may be noticed that apparently, there would have been a criminal case in respect of the accident and it is not on record as to the driver who was charge-sheeted as being the driver of the offending vehicle and whether the said proceedings had resulted in his acquittal. Further, the manner in which the accident had occurred is vaguely recounted. It is observed that the car had "swerved" and was on the wrong side of the road. This is a vague observation which does not disclose the manner in which the accident had occurred. Therefore, in the absence of a proper adjudication as to the negligence that could be attributed to the one or the other driver of the vehicle, it cannot be said that there is a satisfactory finding as to the percentage or degree of negligence that has been attributed to the appellant and the driver of the other vehicle. Therefore, since there is a finding that the liability is joint and several, there is no injustice caused if the insurer is directed to pay the entire amount of compensation, as the claimant would have the option of recovering the same either from the owner of the car or the insurer of the lorry, in the present circumstances.

Since it is possible for the claimant to readily obtain relief at the hands of the insurer, this Court deems it just and fair to direct the Insurance Company to pay the entire amount of compensation with interest, less the interest that would accrue on the said amount for the period between 19.12.2003 and 27.03.2006, namely, the date on which it was dismissed for default on the part of the Respondent No. 1 - claimant and restored by the Tribunal, on his application.

The said amount shall be paid by the Insurance Company within two weeks from the date of receipt of a copy of this judgment and the amount shall be deposited

before the Tribunal, less the amount already deposited by the Insurance Company and if interest has been paid for the period between 19.12.2003 and 27.03.2006, the Insurance Company is entitled to deduct such amount from the balance to be deposited now, in terms of this judgment.

The matter is remanded to the Tribunal for the purpose of adjudication as to the percentage of negligence that could be attributed to the respective drivers of the vehicles involved in the accident and to thereafter apportion the liability as between the insurer of the lorry and the appellant herein, who was the owner of the car. With that observation, the appeal is disposed of.

Insofar as the contention as to the quantum of compensation is concerned, it is noticed that though the claimant had asserted that he had suffered serious injuries to his head and other parts of his body including fracture to his ribs, he has not filed any appeal for enhancement of compensation. This is unfortunate and it is not evident as to whether there was an accurate finding and whether the claimant had produced the necessary evidence to establish his actual injuries.

From the looks of the claimant who is present before the Court, he has obviously suffered serious injuries. However, since the claimant has not filed any appeal questioning the quantum or the findings as to the injuries that he had suffered, this Court is helpless in granting any relief insofar as the quantum of compensation is concerned. In any event, the challenge as to the quantum of compensation or to the entitlement thereof does not merit consideration and is accordingly, rejected.

The appeal is remanded to the Tribunal as aforesaid, to be adjudicated and decided in terms as above, within a period of three months if not earlier, from the date of receipt of a copy of this judgment.

The Registry is directed to return the records to the Tribunal, forthwith.

The statutory deposit before this Court be remitted to the Tribunal for the benefit of the claimant.

Insofar as the amount in deposit is concerned, the amount shall be remitted to the Tribunal, as the contribution of the appellant, which shall be subject to the determination pursuant to the adjudication which is now to be conducted by the Tribunal.