(2015) 09 KAR CK 0077

In the Karnataka High Court

Case No : MFA No. 24571/2010 (MV) and MFA Crob. No. 790/2011

United India Insurance Co. Ltd. and Others APPELLANT

Vs

Uma and Others RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0077

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : N.R. Kuppelur, Advocate, for the Appellant; S.M. Kalwad, Advocate, for the Respondent

Judgement

S. Sujatha, J.—Heard the learned counsel appearing for the parties.

2. The facts leading to this appeal and cross objections are that, on 11.10.2006 at about 10.30. p.m., it is alleged by the claimants that Car bearing No. KA-26/ Z-444 being driven by its driver in a rash and negligent manner collided with the motorcycle bearing No. KA-26/Z-4316 from the back side. Due to the said impact, the rider of the motorcycle fell down and sustained grievous injuries. Based on these facts, claim petition was filed before the Claims Tribunal which was resisted by the insurance company, particularly, taking a defence that the offending vehicle as alleged by the claimants was not involved in the accident, it is only an after thought to make a false claim colluding with the owner of the offending vehicle. The Tribunal after analyzing the evidence extensively, awarded compensation of Rs. 3,51,000/- together with costs and interest at the rate of 6% p.a. from the date of petition till realization. Aggrieved by the said judgment and award, the insurance company is before this Court challenging the liability, whereas the claimants are before this Court seeking enhancement of compensation.

3. The learned counsel appearing for the insurance company vehemently contended that though a defence was raised by the insurance company that the

offending vehicle was implicated by the claimants to make a false claim contrary to the facts and circumstances of the case, the Tribunal ignoring the same, awarded compensation fastening the liability on the insurance company to indemnify the owner. It is further contended that the complaint lodged by the complainant and the evidence tendered by the parties discloses certain inconsistencies in the occurrence of the accident involving the offending vehicle in question. The variance between the complaint and the evidence apparently indicates a brought up claim, more particularly, the alleged eyewitness P.W.2 has adduced the evidence contrary to the statement made before the Tribunal in the criminal proceedings pending before the JMFC. The evidence led by the parties in a criminal case has a direct bearing and nexus to the present case. In view of the different stand taken by the eye-witness before the criminal Court, the evidence now adduced by the same party, with a different version before the claims Tribunal cannot be accepted. The evidence adduced before the criminal Court itself is a piece of evidence to discard the evidentiary value of the claimants in the claim petition. The Tribunal not appreciating the said facts in the proper perspective allowed the claim petition in part fastening the liability on the insurance company. The learned counsel in support of his contention placed reliance on the following judgments.

"i) Veerappa and Another v. Siddappa and Another in MFA No. 8488/2004 dated 02.11.2008.

ii) Savitribai and Another Vs. Doddappa and Another, .

iii) Oriental Insurance Co. Ltd., v. Premlata Shukla and Others reported in 2007 SAR (Civil) 713."

4. Per contra, learned counsel appearing for the claimants argued that the Tribunal has considered the facts and circumstances of the case to award compensation and fastened the liability on the insurance company. The standard and degree of proof to be established in a criminal court is different from that of the evidence that is required to be adduced or the proof to be established before the Claims Tribunal. It is contended by the learned counsel for the claimants that the quantum of compensation awarded by the Tribunal is too meager, contrary to the evidence placed on record. The Tribunal has determined the monthly income of the deceased at Rs. 3,000/- p.m. against the principles of law laid down by this Court. It is also contended that the compensation awarded under different conventional heads is on a lower side and requires interference by this Court. The learned counsel placed reliance on the following judgments in support of his contention.

"i) United India Insurance Company Limited v. Santro Devi and Others reported in (2009) 1 Supreme Court Cases 558.

ii) Kusum Lata and Others v. Satbir and Others reported in AIR 2011 Supreme Court 1234.

iii) Bajaj Allianz General Insurance Co. Ltd. v. Smt. Lakshmamma and Others reported in [2008 Kant. M.A.C. 145(Kant)].

iv) MFA Nos. 24972/2012 and connected matters disposed of on 02.04.2014.

v) MFA No. 20547/2012 disposed of on 05.12.2012.

vi) MFA No. 20699/2010 disposed of on 20.08.2015."

5. It is also contended that the insurer making a vague defence in his written statement without adducing any evidence in support of his defence would not be suffice, moreover insurer has satisfied the award passed by the Tribunal. In such circumstances, it is not a case for the insurer to challenge the award passed by the Tribunal.

6. Having heard the learned counsel appearing for the parties and perusing the records, it is clear that the accident said to have been occurred on 11.10.2006 at about 10.30 p.m., due to which, the deceased sustained grievous injuries and succumbed to the injuries on the spot. It is noticed that, on the information given by the brother of the deceased over telephone complaint was lodged before the jurisdictional police by the Complainant. Though the complaint was lodged on 11.10.2006, further statement of the complainant was recorded on 16.10.2006, which fortifies the contention of the claimants regarding involvement of the offending vehicle in question. No doubt there is minor inconsistency in the primary complaint lodged by the complainant vis-?-vis the evidence tendered by the parties, the same cannot be fatal to the case on hand. The sequence of events to be narrated in a criminal case and that of the claim petition before the Claims Tribunal cannot be equated.

7. If there is any gap in the chain of events, in presenting the case before the police authorities and the Tribunal which may lead to certain inconsistencies or variance, it would not discard the evidence led by the claimants to sustain the evidence recorded in the criminal proceedings. In the present case PW.2, eyewitness has turned hostile in the criminal proceedings before the JMFC. The acquittal of the driver of the offending vehicle would not defeat the claim of the claimants and do not absolve the insurance company to indemnify the owner from the statutory liability which it is required to do. Ex. P.1 to P.7 copies of FIR, complaint, additional statement of complainant, MV inspection report, spot mahazar, P.M. report of deceased Channappa, charge sheet etc., indicates the involvement of the offending vehicle in the accident.

8. If the contention of the insurance company has to be accepted that the acquittal of the driver would have a direct nexus to the claims Tribunal, the purport of the object of the Motor Vehicles Act would be defeated wherein the avowed object is to give a social security to the third parties or to cover the third party risks. The contention of the learned counsel that the entire case is a false claim, does not hold any water in view of the charge sheet filed against the driver of the offending vehicle. If the entire case was false, there was no

necessity for the police authorities to proceed with the case, it would have been a case for filing a ''B'' report to close the case as a false claim. In the criminal proceedings initiated by the prosecution if the witnesses have turned hostile, due to the defect in the prosecution case, on the benefit of doubt, if there is any suspicion, the driver is acquitted, it would not come in the way for the Motor Accident Claims Tribunal to accept the evidence placed on record before the Tribunal dehors the criminal proceedings. The case before the claims Tribunal is only a summary proceeding, it need not be proved beyond all reasonable doubt like a criminal case nor on probabilities of preponderance as in the civil cases.

9. In a summary proceeding moreover at the time of accident when the kith and kin of the deceased are in a traumatic condition, it would be very difficult to expect a person to rush to a police station to lodge a complaint with all promptitude instead of attending to the injured/victim to provide treatment to save the life. In such accidental cases the delay caused in filing the complaint, would not be considered as a false claim. In these circumstances, the judgments relied on by the learned counsel for the insurance company are not applicable to the facts of the present case.

10. The judgments relied on by the learned counsel for the claimants supports the view that the proceedings in a motor accident case cannot be considered on par with the proceedings in a criminal case to prove the case beyond all reasonable doubt.

11. Yet another point which makes me to lean towards the claimant is non availability of any evidence tendered by the Insurer in support of the defence taken in the written statement. Any plea raised by the appellant in the appeal stage without there being a foundation would not qualify the insurer to build up new case. Moreover, the Insurer has satisfied the Award.

12. As regards the next contention that is the enhancement sought by the claimants the Tribunal has considered the income of the deceased at Rs. 3,000/- per month in the absence of any income established by cogent evidence. However, this Court and the Lok Adalath is determining the monthly income of the deceased in the absence of any evidence to prove the same for the accident that occurred in the year 2006 at Rs. 3,750/-.

13. It is also noticed that the Tribunal has not awarded the compensation towards future prospects. Considering the age of the deceased being 40 years, following the decision of the Apex Court in Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others , I am of the view that it would be appropriate to award 30% of the income towards future prospects, to compute the total loss of dependency. Applying the same, the loss of dependency works out to Rs. 5,46,000/-. Accordingly the total compensation awarded by the Tribunal is modified and enhanced by Rs. 2,10,000/-.

14. In all other respects the compensation awarded by the Tribunal stands undisturbed. The enhanced amount with interest shall be deposited by the

insurer within a period of six weeks from the date of receipt of the judgment. The claimants are at liberty to withdraw the same.

15. The amount in deposit, if any, shall be transmitted to the Tribunal for disbursement.

