(2013) 08 KAR CK 0109

In the Karnataka High Court

Case No : M.F.A. No. 10806 of 2007 (MV)

United India Insurance Co. Ltd. APPELLANT

Vs

Miss Savitha and Others RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2013) 08 KAR CK 0109

Hon'ble Judges : N.K. Patil, J;B. Manohar, J

Bench : Division Bench

Advocate : B.C. Seetharama Rao, for the Appellant; K.N. Jayaprakash, Advocate for R1, Shri. Kotra Basappa, Advocate for R2, Shri. G.D. Gangadhar, Advocate for R3, Shri. Raghavendra Kattimani, Advocate for R4 (i) and (ii) and Shri A.M. Venkatesh, Advocate for R5), for the Respondent

Judgement

N.K. Patil, J.—This appeal by the Insurer is directed against the common judgment and award dated 22nd February 2007, passed in MVC No. 29/2004 (old M.V.C. No. 53/2004), by the Additional Sessions Judge and Additional Motor Accident Claims Tribunal, Fast Track Court-I, Davangere, (for short, ''Tribunal''), on the ground that, the Tribunal is not justified in fixing the contributory negligence in the ratio of 60:40 on the part of the drivers of Car and Tractor-Trailer respectively and the same is liable to be modified. The facts of the case as stated in the claim petition are that, at about 11:00 P.M., on the ill-fated day, i.e. on 21-05-2003, in front of Nobel Tarpaulin company on Davangere Harihar Road/ P.B. Road, within the limits of Traffic P.S. Davangere, when the claimant, along with others was travelling in Car bearing Registration No. AP-17/MG-4050, she met with an accident on account of rash and negligent driving by the driver of Car as well as on account of negligent act of the driver of Tractor-Trailer, bearing Registration No. MEZ-5224 and 5226, which was parked in the centre of the said Road, without following traffic Rules and Regulations. Due to the impact, the claimant sustained grievous injuries to her chin, lip, forehead and the old scar remained on her face even after the injuries healed up and she also sustained fracture injury to her right hand which caused permanent disability.

2. It was the case of the claimant that she has sustained grievous injuries to her chin, lip, forehead and the old scar remained on her face even after the injuries healed up and she also sustained fracture injury to her right hand which caused permanent disability. On account of the said injuries, she has taken treatment in Bapuji Hospital and spent reasonable sum towards conveyance, nourishing food and attendant charges apart from medical expenses and therefore, she has to be compensated reasonably.

3. On account of the injuries sustained in the road traffic accident, the claimant filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 10,00,000/- against the owners and Insurers of both the offending Car as well as Tractor-Trailer and the same was numbered as M.V.C. No. 29/2004. The said claim petition had come up for consideration, along with other claim petitions arising out of the same accident, before the Tribunal on 22nd February, 2007. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition filed by claimant herein, in part, awarding compensation of a sum of Rs. 94,000/-, with 6% interest per annum, and directed the Insurers, i.e. United India Insurance company Limited -appellant herein and M/s. National Insurance Company Limited, to deposit the said sum in the ratio of 60:40 respectively. Being aggrieved by the contributory negligence fixed on the part of the driver of the Car at 60%, the United India Insurance Company is in appeal before this Court, seeking to re-fix the contributory negligence on the part of the drivers of both the vehicles, in accordance with law, to meet the ends of justice.

4. We have heard Shri. B.C. Seetharama Rao, learned counsel appearing for the appellant/United India Insurance Company Limited and Shri. A.M. Venkatesh, learned counsel appearing for M/s. National Insurance Company Limited, gone through the grounds urged in the memorandum of appeal filed by appellant carefully and perused the impugned judgment and award passed by Tribunal, including the original records placed before us.

5. After hearing the rival contentions of the learned counsel appearing for the parties, after perusal of the impugned judgment and award passed by Tribunal and after re-appreciation of the oral and documentary evidence available on file, the only point that arise for our consideration in this appeal is:

Whether the Tribunal is justified in fixing the contributory negligence in the ratio of 60:40, on the part of the drivers of the Car and Tractor-Trailer respectively?

This Court, after hearing learned counsel appearing for all the parties and after critical evaluation and re-appreciation of the oral and documentary evidence available on file, has passed a judgment today, in respect of three appeals filed by United India Insurance company, claimant in M.V.C. No. 32/2004 and M/s. National Insurance Company Limited, arising out of the same accident, wherein, we have set aside the contributory negligence fixed by Tribunal in the ratio of 60:40 on the part of the drivers of Car and Tractor-trailer respectively and re-fixed the contributory negligence in the ratio of 70:30, i.e. 70% on the part of the driver of Car and 30% on the part of the driver of Tractor-trailer, to meet the ends of justice. The same is applicable to the case on hand, as it is arising out of a common accident.

6. So far as quantum of compensation awarded by Tribunal is concerned, it can be seen that, the injured claimant- Miss. savitha has sustained grievous injuries to her chin, lip, forehead and the old scar remained on her face even after the injuries healed up and she also sustained fracture injury to her right hand which caused permanent disability and was treated at Bapuji Hospital Therefore, the Tribunal, after critical evaluation of the oral and documentary evidence available on file and after hearing both parties, has awarded compensation of a sum of Rs. 12,000/- towards injury, pain and sufferings, Rs. 5,944/- towards medical expenses as per the medical bills, Rs. 800/- towards conveyance, nourishing food and Rs. 75,000/- towards loss of prosperity, in all Rs. 94,000/- for the injuries sustained in the road traffic accident. The same, in our view is just and proper and does not call for interference, having regard to the facts and circumstances of the case.

7. However, in view of re-fixing the contributory negligence in the ratio of 70:30, i.e. 70% on the part of the driver of Car, insured with appellant/Insurer and 30% on the part of the driver of Tractor-trailer, as stated earlier, the said Insurers are liable to indemnify the compensation awarded by Tribunal in the ratio of 70:30 on the part of the drivers of Car and tractor-trailer, respectively. In the light of the facts and circumstances of the case, as stated above and following the judgment rendered by this Court in M.F.A. No. 10807/2007 and connected matters, disposed of on this day, the appeal filed by the Insurer is dismissed.

The impugned common judgment and award dated 22nd February 2007, passed in MVC No. 29/2004 (old M.V.C. No. 53/2004), by the Additional Sessions Judge and Additional Motor Accident Claims Tribunal, Fast Track Court-I, Davangere, is hereby modified, only in so far as it relates to fixing contributory negligence by Tribunal in the ratio of 60:40;.

The liability fastened by the Tribunal in the ratio of 60:40, i.e. 60% on the part of the driver of Car and 40% on the part of the driver of Tractor-trailer is hereby set aside and the same is re-fixed in the ratio of 70:30, on the part, of the drivers of Car and Tractor-trailer, respectively, to meet the ends of justice.

Accordingly, the appellant-United India Insurance Company Limited shall deposit 70% and M/s. National Insurance Company Limited shall deposit 30% of total compensation awarded by Tribunal with interest, within a period of three weeks from the date of receipt of a copy of this judgment;

Rest of the order passed by Tribunal remains undisturbed;

The statutory amount in deposit by the Insurer shall be transmitted to "the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

