

(2015) 03 KAR CK 0391

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 24134/2011 (MV)

United India Insurance Co. Ltd.

APPELLANT

Vs

Shidram Hanamant Ramoji and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0391

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : Ravindra R. Mane, for the Appellant; Santosh S. Hattikatagi,
Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—The United India Insurance Company has filed this appeal challenging the judgment and award dated 12.10.2010 made in MVC No. 249/2008 by the MACT, Chikodi (for short the Tribunal") fastening the liability on the appellant to pay the compensation and also quantum of compensation.

2. The 1st respondent herein filed the claim petition contending that on 23.5.2007 at about 4.45 p.m. he was proceeding in a capacity of cleaner in a truck bearing Regn. No. KA-28/A-225. The driver of the said truck driven the same in rash and negligent manner and dashed against the on going truck bearing No. KA 22/B-1022 near Nesargi village on Belgaum- Bagalkot road. Due to the said impact, he has sustained grievous injuries. Initially he taken the treatment in a Government Hospital, Nesargi and thereafter he taken treatment in District Hospital, Belgaum. He was admitted to Sukha-Shanti Polyclinic at Gokak for further treatment. He was operated for four times. He was inpatient for a period eight months. He has spent Rs. 90,000/- towards medical expenses and other operation charges. In view of grievous injuries and fractures, he cannot do the work as cleaner. He is permanently disabled and sought for compensation of Rs. 10 lakhs.

3. The Insurance Company filed written statement inter alia denying the entire averments made in the claim petition and contending that the claimant petition itself is not maintainable as the owner of truck bearing Regn. No. KA 22/B-1022 was not made a party. The driver of the said vehicle was not having valid and effective driving license as on the date of accident. Hence, the insurer is not liable to compensate the claimant and the compensation sought for by the claimant is an exorbitant. Therefore, sought for dismissal of the claim petition as against the insurer.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues. The claimant got examined himself as P.W. 1 and got marked the documents as Exs. P1 to P20. The claimant in order to prove his disability examined the doctor, who treated him, as PW3. On behalf of respondents, the insurance policy of the vehicle was marked as Ex. R1 with the consent of the parties.

5. The Tribunal after considering the oral and documentary evidence let in by the parties and taking into consideration the MVI report, spot panchanama and rough sketch held that due to rash and negligent driving of the truck bearing Regn. No. KA-28/A-225, the accident had occurred. Hence, the claimant is entitled for compensation. Insofar as the quantum of compensation is concerned, in the accident, the claimant has sustained grievous injuries viz: segmental fracture of left tibia and fibula, fractures of right 3rd and 4th metatarsals, amputation of distal phalanx of 3 and 4th finger of right hand, fracture of superior and inferior pubic ramus on left side and other injuries. The wound certificate-Ex. P4 clearly discloses that he has taken treatment in the District Hospital and thereafter, in a private Nursing Home. The doctor, who treated the claimant, has deposed in his evidence that he has assessed the disability to an extent of 65% to the particular limb and in view of the accident, the claimant cannot do the work as cleaner. The Tribunal taking into consideration the income of the claimant as Rs. 3,000/- p.m, the age as 22 years and applying the multiplier "18" and disability to an extent of 100% awarded a sum of Rs. 6,48,000/- towards loss of income, Rs. 1,50,000/- towards pain and suffering, Rs. 2,00,000/- towards amenities, Rs. 2,66,000/- towards medical expenses and Rs. 50,000/- towards future medical expenses. In all, Rs. 13,14,000/- has been awarded. Since the claim is restricted to Rs. 10 lakhs, the Tribunal awarded a sum of Rs. 10 lakhs with interest at 9% p.a. The Insurance Company being aggrieved by the quantum of compensation awarded and also the liability fastening on it to compensate the claimant has filed this appeal.

6. Sri Ravindra R Mane, learned Advocate appearing for the appellant contended that the judgment and award passed by the Tribunal is contrary to law. The disability to an extent of 100% taken by the Tribunal, though the doctor assessed the disability to an extent of 65%, is contrary to law. The compensation awarded towards pain and suffering and loss of amenities is on the higher side. Further the policy issued by the insurance company is Act Liability only. The liability, if any, of the appellant is governed by the provisions of the Workmen's

Compensation Act and not by the general law of torts. The cleaner of the vehicle is not covered by the policy. Hence, the insurer is not Habile to pay the compensation. He also relied upon the judgment of the Hon'ble Supreme Court reported in National Insurance Co. Ltd. Vs. Prembai Patel and Others, (2005) 2 ACC 361 : (2005) ACJ 1323 : AIR 2005 SC 2337 : (2005) 125 CompCas 86 : (2005) 3 CTC 569 : (2005) 4 JT 399 : (2005) 2 LLJ 1109 : (2005) 6 SCC 172 : (2005) SCC(L&S) 819 : (2005) 3 SCR 655 : (2005) AIRSCW 2254 : (2005) 3 Supreme 587 and sought for allowing the appeal.

7. On the other hand, Sri Santosh S Hattikatagi, learned Advocate appearing for the claimant argued in support of the judgment passed by the Tribunal and contended that the owner of the vehicle had paid additional premium of Rs. 75/- covering the cleaner of the vehicle also. Hence, the insurer is liable to compensate the claimant. The judgment relied upon the learned counsel for the appellant is not applicable to the facts of the case. In that case, the additional premium covering the cleaner of the vehicle was not paid. The Tribunal has awarded fair and just compensation and sought for dismissal of the appeal.

8. I have carefully considered the arguments addressed by the learned counsel appearing for the parties and perused the oral and documents adduced by the parties.

9. Due to the rash and negligent driving of the truck bearing Regn. No. KA 28/A 225, the claimant has sustained grievous injuries in the road traffic accident occurred on 23.5.2007. He was inpatient initially for a period of 54 days and he was operated for four times. The Tribunal after considering the oral and documentary evidence held that due to the actionable negligence on the part of the driver of the offending vehicle, the accident had occurred. The claimant is entitled for compensation. In the accident, the claimant has sustained grievous injuries viz: segmental fracture of left tibia and fibula, fractures of right 3rd and 4th metatarsals, amputation of distal phalanx of 3 and 4th finger of right hand, fracture of superior and inferior pubic ramus on left side and other injuries. The doctor, who treated the claimant, in his evidence deposed that in view of the injuries sustained, the claimant cannot stand, sit and squat, bend the left leg and sit crossed leg and unable to walk without walker.

10. In view of fracture and operation, he undergone and mul-union of the same, leg is shorted by 6 cms. The claimant suffered infection due to the implants. He was operated for four times and implants like steel plates, nail were fixed to the fractured bone. The doctor assessed the functional disability to an extent of 100% and the total disability to the whole body to an extent of 65%. Further, the claimant cannot do the work as cleaner. The Tribunal taking into consideration the injuries sustained and suffering undergone, though the doctor assessed the disability to an extent of 65% to the whole body, the disability to an extent of 100% is contrary to law. Further a sum of Rs. 1,50,000/- awarded towards pain and suffering is on the higher side. Further, a sum of Rs. 2,00,000/- towards loss of amenities is also on the higher side. Except the injury to the leg and other

healed injuries, there is no disability to the upper part of the body. I am of the opinion that the judgment and award passed by the Tribunal requires to be modified. Taking into consideration the disability to an extent of 65% to the whole body, the claimant is entitled for a sum of Rs. 4,21,200/- towards loss of future income as against Rs. 6,48,000/- awarded by the Tribunal. Further, the claimant is entitled for Rs. 1,00,000/- as against Rs. 1,50,000/- towards pain and suffering. Insofar as the amenities is concerned, the claimant is entitled for Rs. 1,00,000/- instead of Rs. 2,00,000/-. The Tribunal has not awarded any amount towards attendant charges and nourishment. Hence, the claimant is entitled for a sum of Rs. 20,000/-. In all other respects, the impugned judgment and award passed by the Tribunal is upheld. Hence, the claimant is entitled for a compensation Rs. 9,57,200/- as against Rs. 13,14,800/- awarded by the Tribunal, which was restricted to Rs. 10,00,000/-. With regard to liability to pay the compensation, though the liability of the appellant is governed by the provisions of the Workmens" Compensation Act, the owner of the vehicle had paid the additional premium of Rs. 75/- which covers cleaner of the vehicle. Hence, the Insurance Company is liable to pay the compensation. The judgment relied upon the learned Advocate appearing for the appellant is not applicable to the facts of the present case. Accordingly, I pass the following:

ORDER

The appeal is allowed in part. The judgment and award dated 12.10.2010 passed in MVC No. 249/2008 by the MACT, Chikodi is modified.

The claimant is entitled for compensation of Rs. 9,57,200/- as against Rs. 13,14,000/- awarded by the Tribunal with interest at 6% p.a. from the date of claim petition till the date of deposit.

50% of the amount with accrued interest shall be deposited in the name of the claimant in any nationalised bank for a period of 5 years.

The amount in deposit be transferred to the concerned Tribunal.