(2016) 02 KAR CK 0335

In the Karnataka High Court

Case No : M.F.A. No. 20623/2012 (MV)

United India Insurance Co. Ltd. APPELLANT

Vs

Shivanand RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 173(1)

Citation : (2016) 02 KAR CK 0335

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : S.S. Koliwad, Advocate, for the Appellant; V.S. Kalasurmath for G.N. Narasammanavar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. The appellant-Insurance Company filed this appeal against the judgment and award dated 13.10.2011, passed in MVC No. 213/2004 on the file of the MACT, Gadag, granting compensation of Rs. 4,80,279/- together with costs and interest at 6% p.a. from the date of petition till the date of realisation.

2. The respondent-claimant filed the claim petition under Section 166 of the Motor Vehicles Act, against the appellant-Insurance Company and another, claiming compensation of Rs. 5,00,000/- together with interest at 18% p.a. contending that on 15.09.1999 at about 6.30 am, the claimant was travelling as a conductor on K.S.R.T.C. bus bearing registration No. KA-26/F-276 from Gadag to Bangalore and at that time, a lorry bearing No. KA-01/B-2646 being driven by its driver in a rash and negligent manner so as to endanger human life coming towards Bangalore from Nelamangala near Glob Transport office, dashed against the bus of the claimant and later dashed to another parked lorry and as a result of the accident, the petitioner sustained grievous injuries and he was shifted for treatment in Government Hospital, Nelamangala and thereafter to the K.C. General Hospital, Bangalore and NIMHANS, Bangalore and again shifted to Manipal Hospital, Bangalore. The claimants states that the respondents 1 and 2

being owner and insurer of the offending lorry, are jointly and severally liable to pay compensation.

3. In response to the notice, the respondent No. 1 did not appear before the Tribunal and placed ex-parte. The 2nd respondent - Insurance Company appeared and filed written statement denying the alleged accident, age, occupation, income of the claimant and medical expenses and contended that the driver of the lorry was not holding driving licence to drive his vehicle and therefore, respondent No. 1 alone is liable to pay compensation etc.

4. Based on the pleadings, the Tribunal framed the following issues:

"i. Does the claimant that he has sustained the injuries in the accident dated 15.09.1999 at 7.00 a.m. on N.H. 4 near Globe Transport Office, due to the rash and negligent driving of lorry No. KA-01/B-2646 driven by its driver?

ii. Does the respondent No. 2 proves that the petition is not maintainable as it has been filed after 5 years from the date of accident as contended in para No. 1 of the written statement?

iii. Does the respondent No. 2 proves that the accident has happened due to the rash and negligent driving of the KSRTC bus by its driver and hence respondent No. 2 is not liable to pay the compensation as contended in para No. 4 of the written statement?

iv. Does the respondent No. 2 proves that driver of the truck was not holding valid D.L. at the time of the accident and hence respondent No. 2 is not liable to pay the compensation as contended in para No. 6 of the written statement?

v. What compensation the claimant is entitled for?"

5. In order to establish his case, the claimant examined himself as P.W. 1, the Medical Officer, who has issued the permanent disability certificate, was examined as PW2 and produced documents at Exs. P1 to P34. The respondent - Insurance Company has not adduced any evidence, except marking the insurance policy as Ex. R1, which was in force.

6. The Tribunal, considering the entire material on record, allowed the claim petition in part and awarded a global compensation of Rs. 4,80,279/- together with interest at 6% p.a. from the date of petition till the date of realization. Against the said judgment and award, the present appeal is filed by the Insurance Company.

7. I have heard the learned Counsel for the parties to the lis.

8. Sri. N.R. Kuppellur, learned Counsel for the appellant contended that the Tribunal committed an error in awarding the compensation of Rs. 4,28,488/- under the head ''loss of future income'' by taking the disability to the whole body at 21.6%, while considering the disability assessed by PW2 - doctor. He contended that the Tribunal failed to notice that the disability in respect of the

head injury was assessed by the consultant surgeon and not neurosurgeon. Therefore, the impugned judgment and award passed in respect of loss of future income is required to be modified. He further contended that the income of the claimant is taken at Rs. 11,808/- and the same is without any basis and the compensation awarded by the Tribunal is excessive and contrary to law. Therefore, he sought to allow the appeal.

9. Per contra, Sri. V.S. Kalasurmath, learned Counsel representing Sri. G.N. Narasammanavar, sought to justify the impugned judgment and award.

10. I have given my anxious consideration to the arguments advanced by the learned Counsel for the parties and perused the material on record.

11. It is an admitted fact that claimant had sustained grievous injuries in an accident that occurred on 15.9.1999 on account of rash and negligent driving by the driver of the lorry bearing Reg. No. KA.01/B-2646 and appellant - Insurance Company failed to prove that the petition filed by the claimant is not maintainable and also failed to prove that the accident occurred on account of rash and negligent driving by the driver of KSRTC Bus by its driver. The claimant himself was examined as P.W. 1 and produced material documents Ex. P5, the FIR, complaint, charge sheet, M.V. I report, spot panchanama and wound certificate. The evidence of P.W. 1 was corroborated with the documentary evidence. On the other hand, no evidence was adduced by the respondents to disprove the evidence of P.W. 1 and Exs. P.1 to P.5. The wound certificate Ex. P.5 issued by the Medical Officer of NIMHANS Hospital indicates the claimant sustained the following injuries:--

"1. Head injury, Anterior cranial fossa fracture with le-fort 3rd cranial facial injury;

2. ACLW on right eye brow 2 cms and 4 cms

3. Blunt injury chest wall and nose

4. Injury to right ear

5. Injury to left cheek

6. Disfigurement of face."

12. The claimant was examined by P.W. 2 - Doctor who has issued the permanent disability certificate as per Ex. P.33 and who stated on oath that the claimant has sustained head injury, loss of consciousness and bilateral bleeding of nostrils and right ear. Ex. P-33 - Permanent Disability Certificate clearly indicates 65 -68% disability to the limb. The Tribunal has taken into consideration 1/3rd of 65% disability to the whole body, which comes to 21.6%. Ex. P.34 - salary certificate of the claimant for February 2009 clearly indicates that he was getting a salary of Rs. 11,808/- excluding professional tax. Compensation towards loss of salary would be Rs. 11,808 x 12 x 14 x 21.6% = Rs. 4,28,488/-. Taking into consideration the entire material evidence on record, the Tribunal awarded Rs. 2,000/- towards travelling and other expenses, Rs.

1,000/- towards nourishment charges, Rs. 45,991/- towards medical expenses in terms of Exs. P.12 to 32 medical bills and medical prescriptions Rs. 2,800/- towards attendant charges at the rate of Rs. 200/- per day, where the claimant was admitted in the NIMHANS Hospital from 15.9.1999 to 29.9.1999. In all the Tribunal awarded compensation of Rs. 4,80,279/- by way of global compensation with 6% interest from the date of petition till the date of realization.

13. The Insurance Company has not adduced any independent evidence to disprove the evidence of PWs. 1 and 2 and not produced any contra material documents to Exs. P1 to P34, except Ex. R1 - the copy of the Insurance Policy, which was in force. Taking into consideration the oral documentary evidence and the wound certificate Ex. P.5 and disability certificate - Ex. P.33, the Tribunal awarded compensation of Rs. 4,80,279/- which is just and proper. The appellant has not made out any grounds to interfere in the present appeal exercising powers under the provisions of Section 173(1) of the Motor Vehicles Act, 1988.

Accordingly, the appeal filed by the Insurance Company is dismissed.

The amount in deposit before this Court be transmitted to the jurisdictional Tribunal forthwith. LCRs may be returned to the Tribunal.

