

Hanumanthappa and Another Vs. B.V. Shivakumar and Others

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Court : Karnataka

Decided On : Mar-09-2015

Judge : A.V. Chandrashekara

Appeal No. : M.F.A.No. 8704 of 2009 (MV) c/w M.F.A.CROB.No. 106 of 2012 (MV)

Appellant : Hanumanthappa and Another

Respondent : B.V. Shivakumar and Others

Judgement :

(Prayer: MFA filed u/s 173(1) of MV Act against the Judgment and award dated: 3.11.2009 passed in MVC No. 1795/2008 on the file of the VIII Addl. Judge, Court of Small Causes, Member, MACT Bangalore, partly allowing the claim petition for compensation and seeking enhancement of compensation.

MFA Crob in MFA No. 8704/2009 filed U/o 41, Rule 22 of CPC, against the Judgment and award dated: 3.11.2009 passed in MVC No. 1795/2008 on the file of 8th Additional Judge, Court of Small Causes, Member, MACT-5, Bangalore, awarding a compensation of Rs. 3,24,400/-with interest @ 6% p.a excluding future medical expenses of Rs. 15,000/- from the date of petition till the date of deposit in court.)

1. The appeal and cross objection have arisen out of the judgment and award dated 3.11.2009 passed by the MACT-V, Court of Small Causes, Bangalore in

MVC 1795/2008. MFA 8704/2009 is filed by the claimant Hanumanthappa and MFA CROB 106 is filed by the insurer-M/s. Bajaj Allianz Gen. Ins. Co. Ltd. of the lorry bearing No. KA-40-1254. Appeal filed by the claimant is one for enhancement of the compensation.

2. The claimant had sustained injuries in a road traffic accident which occurred on 14.1.2008 at about 2.00 a.m. when he was traveling in the lorry bearing No. KA-40-1254 as a cleaner. Hence, he had filed a claim petition under Section 166 of MV Act before the Tribunal seeking compensation. The Tribunal has awarded compensation of Rs. 3,24,400/- with interest at 6% p.a. and directed the owner and insurer of the offending lorry bearing KA-40-1254 to pay compensation to the claimant jointly and severally. Aggrieved by the same, the present appeal and cross objection are filed.

3. According to the claimant, both the vehicles i.e., lorry bearing KA-40-1254 and tipper lorry bearing No. OR-02-B-4520 were involved in the accident and he is stated to have sustained injuries in the accident and suffered serious physical disability which has come in the way of his future earning. He is stated to have spent sufficient amount towards treatment. Mr. Shivakumar is the owner of the said lorry bearing KA-40-1254 and M/s. Bajaj Allianz Gen. Insurance Co. is the insurer of the said lorry. Govind Raj is the owner of the tipper lorry bearing OR-02-B-4520 and M/s. ICICI Lombard is the insurer of the said tipper lorry.

4. Before the Tribunal, respondent No. 2-Bajaj Allianz has filed detailed written statement denying all the material averments and has called upon the petitioner to prove that he sustained injuries in the said accident due to the involvement of the lorry. It is specifically averred that without prejudice to its right liability if any could be restricted. Respondent No. 3 owner of the tipper lorry has denied all the averments and negligence attributed to the driver of the said tipper lorry. Respondent No. 4 has also filed detailed written statement denying all the averments.

5. On the basis of the pleadings of the parties, following issues came to be framed by the Tribunal:

a) Whether the petitioner proves that on 14.1.2008 at about 2.00 a.m. in SRS bus stop, Bangalore to Tumkur road, he met with an accident and sustained injuries, was due to actionable negligence act on the part of the driver of lorry bearing registration No. KA-401254 and Tipper lorry bearing registration No. OR-02B-4520 as alleged?

b) Whether the petitioner is entitled to compensation? if so how much and from whom?

c) What order?

6. The claimant/petitioner has examined himself as PW-1 and doctor S. Rajanna has been examined as PW-2 and 14 documents have been marked as Ex.P-1 to 14 on behalf of the petitioner. Sri. Krishna Shreenali authorized representative of Bajaj Allianz has been examined as PW-1 and insurance policy has been marked as Ex.R-1.

7. The learned Judge of the Tribunal has held that accident occurred solely due to negligence on the part of the driver of the lorry in which the claimant was traveling as a cleaner and awarded compensation of Rs. 3,24,400/- with interest.

8. The claimant had sustained multiple fractures i.e. of left femur with left posterior, dislocation of hip with fracture of right tibia with fracture superior pubic rami and fracture of left inferior pubic rami with fracture of left acetabulum. Immediately he was taken to Bowring Hospital wherein he was inpatient from 14.1.2008 to 11.2.2008. Ex.P-5 is the wound certificate which discloses that he sustained 1) swelling deformity, mobility present over the left thigh 2) swelling, mobility, deformity present over right thigh and right leg. PW-2 doctor has assessed the disability caused to whole body at 48%.

9. Considering the number of injuries and gravity of injuries, Rs. 40,000/- awarded by the Tribunal towards pain and sufferings is inadequate and therefore, Rs. 60,000/- is awarded under this head.

10. No interference is called for in regard to Rs. 50,000/- awarded by the Tribunal towards medical expenses.

11. The claimant was inpatient for almost a month. Considering the same, some amount is required to be awarded for food, nourishment and attendant charges. Therefore, a sum of Rs. 15,000/- is awarded towards incidental expenses.

12. Considering the nature of injuries, Rs. 15,000/- awarded by the Tribunal towards loss of amenities is inadequate. Therefore, a sum of Rs. 45,000/- is awarded under this head.

13. The Tribunal has assessed the income of the claimant at Rs. 3,500/- per month and considering the period of treatment as 8 months has awarded Rs. 28,000/- towards loss of income during laid up period. The claimant was a cleaner in the lorry. The accident is of the year 2008. The income of the claimant will have assessed on broad preponderance of probabilities. Considering that he was a coolie, year of accident as 2008 and that he was working as cleaner in Bangalore, his income could be assessed at Rs. 4,000/- per month. Accordingly, a sum of Rs. 32,000/- is awarded under this head.

14. The doctor has assessed the disability caused to whole body at 48%. Considering the nature of injuries, the Tribunal has taken disability at 28% for calculating the loss of future earning and the same appears to be correct. Multiplier of 16 has to be applied based on the age group of the. Therefore, the loss of future earning works out to Rs. 2,15,040/- ($4000 \times 28\% \times 12 \times 16$).

15. No amount is awarded under the head future medical expenses. Considering the fact that the claimant has undergone internal fixation, a sum of Rs. 30,000/- is awarded under this head to undergo another operation of the implants.

16. Thus, the claimant is entitled for the following compensation:-

HEADS	Rs.
Pain and sufferings	60,000
Medical Expenses	50,000
Incidental expenses	15,000
Loss of amenities	45,000
Loss of income during laid up period	32,000

Loss of future income	2,15,040
Future medical expenses	30,000
TOTAL	4,47,040
LESS: Compensation awarded by the Tribunal	3,24,400
BALANCE	1,22,640

17. Sri. A.N. Krishnaswamy learned counsel for the insurer-M/s. Bajaj Allianz Gen. Ins. Co. has argued that the liability of the insurance company is restricted to the liability as found in proviso to Section 147 of MV Act. He has also drawn the attention of this Court to the amendment carried out in paragraph 14 of the Tribunal i.e., amendment in regard to the restricted liability of the insurer as per proviso to Section 147 of MV Act. The amendment carried out on 9.4.2009 in paragraph 14 of the written statement of respondent No. 2. The same reads as under:

14. Without prejudice to the above contentions, this respondent submits that the amount of Rs. 1,00,000/- with interest and costs claimed by the petitioner is excessive, exorbitant and exaggerated and this respondent is not liable to pay the said sum or any part thereof. The petitioner is not entitled to any compensation much less interest on non-pecuniary damages. Again without prejudice to the aforesaid contentions it is submitted that the liability if any of the respondent is as per the Workmen Compensation Act.

18. As per the insurer, the insurer is liable to pay a sum of Rs. 1,15,871.28/- in view of Sections 3 and 4 of WC Act and the same is calculated as follows:

Income of the claimant is taken at Rs. 3,500/- p.m.

60% of Rs. 3,500/- = 2100

28% of Rs. 2100 = 588

588 x 197.0 (factor) = Rs. 1,15,871.28/-

19. Since, this Court has assessed the income of the claimant at Rs. 4,000/- per month, then the insurer is liable to pay a sum of Rs. 1,32,424/- in view of Section 3 and 4 of WC Act and the same is calculated as follows:

Income of the claimant is taken at Rs. 4,000/- p.m.

60% of Rs. 4,000/- = 2400

28% of Rs. 2400 = 672

672 x 197.06 (factor) = 1,32,424/-

20. The learned counsel for the insurer has vehemently argued that at the best the insurer is liable to pay a sum of Rs. 1,32,424/- and not beyond that. He has placed reliance upon Ex.R-1 insurance policy. Admittedly, the policy of insurance was valid as on the date of accident. Further, the learned counsel for the insurer has argued that the insurer is liable to pay Rs. 1,32,424/- as per proviso to Section 147 of MV Act and if any amount is paid in excess, insurer is entitled to recover the same from the owner of the offending vehicle.

21. Relying on the decision of the Honble apex court rendered by a Bench consisting of three Honble Judges in the case of *NATIONAL INSURANCE COMPANY LIMITED .v. PREMABAI PATEL AND OTHERS (2005 6 SUPREME COURT CASES 172)*, Mr. A.N. Krishnaswamy has argued that no extra premium has been collected from the insured to cover the wider legal liability of the employee and therefore liability will have to be restricted in terms of the W.C. Act. Paragraph 15 of the said decision is relevant and is extracted below:

15. Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939 but the principle underlying therein will fully applicable here also. It is thus clear that in clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmens Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However,

where the policy mentions a policy of Act Liability or Act liability, the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmens Act.

22. Per contra, learned counsel, Mr. Gopalakrishna who appears for the claimant has argued that the said decision is not applicable to the facts of the present case and it is distinguishable on facts. He has argued that on a clear reading of Section 149(5) of the M.V. Act, it is clear that the insurer is initially liable to indemnify the claimant to the fullest extent and later on recover the same from the owner compensation awarded in excess of the liability under the W.C. Act.

23. Mr. Krishnaswamy representing the insurer has brought to the notice of this court the insurance policy relating to the offending vehicle in question and connected standard form attached to the same. On perusal of the schedule of premium, it is evident that a sum of Rs. 6,090/- has been collected as basic third party liability and Rs. 100/- for covering personal accident coverage of the owner/driver to an extent of Rs. 2,00,000/- only. Thus Rs. 6,190/- has been recovered as premium.

24. On reading the contents of Ex.R1 in the light of paragraph 15 of the decision rendered in the case of PREMABAI, it appears no wider legal liability is covered in the insurance premium. What is argued before this court by the learned counsel for the claimant, Mr. Gopalakrishna is that in the decision rendered in the case of PREMABAI, the policy that was issued was: (a) policy for Act liability, or (b) Act liability, and therefore the said decision is distinguishable. This court is unable to accept the argument of Mr. Gopalakrishna.

25. In the beginning of paragraph 15 of the decision in the case of PREMABAI, the Honble Judges of the Supreme Court have made it clear that though Section 95(2) of the repealed Act of 1939 has been considered, the same principle is applicable to the MV Act of 1988 also. Sub-sections (a), (b) and (c) of Section 147(1) of the M.V. Act have been dealt with at length in the light of the provisions of the Workmens Compensation Act. What is ultimately held is that if the owner of the vehicle claims liability of the insurance company in respect of the death of or bodily injury to such employee as described in clauses (a), (b) and (c) of Section 147(1)

of the M.V. Act 1988, he must take such policy by making payment of extra premium and the policy must also contain the clauses to that effect.

26. It is useful to refer to the Full Bench decision of this court rendered in the case of SMT. BHEEMAVVA AND OTHERS .v. SHANKAR @ ADYA AND OTHERS (ILR 2003 KAR 3538). What is ultimately held in the said decision is that proviso makes it clear that

Apart from the fact that Section 167 of Motor Vehicles Act 1988, Starts with a non-obstante Clause and gives a person to claim compensation under WC Act or MV Act 1988. The proviso makes it clear that the insurer shall be liable to indemnify the persons or classes of persons. Specified in the policy in respect of the liability, the liability of the Insurance Company shall be limited to the liability, arising under the WC Act, but such liability would be enforceable. Under the Motor Vehicles Act even without an adjudication under the Workmen Compensation Act.

Therefore on reading the decisions rendered by the Full Bench of this Court and of the Honble Apex Court in the case of PREMABAI and in the light of no extra premium being collected for wider legal liability coverage of the insured, the liability of the insurance company, i.e. cross objector is limited in terms of the W.C. Act to the extent of Rs. 1,32,424/-.

27. In terms of the W.C. Act, the claimants will be entitled for interest at 12% p.a. on the compensation after one month from the date of the accident till deposit of the same. The insurer has already satisfied the award by depositing the entire amount determined by the Tribunal. Therefore the insurance company, i.e. M/s Bajaj Allianz will be entitled to recover the amount in excess of what is to be paid under the W.C. Act, with interest from the owner who is respondent no. 1 in the main appeal and respondent no. 2 in the cross-objections.

28. Mr. Gopalakrishna representing the claimants submits that notice has not been issued to the owner of the vehicle in the connected cross-objections and therefore there cannot be any further liability on the owner. This court cannot accept the contention because the owner has already been duly served in the very appeal filed by the claimant seeking enhancement of compensation. In fact it is the owner

and insurer who will be jointly and severally liable to pay the award/compensation. In this view of the matter there is no need to issue fresh notice to the owner in cross objections, more particularly in the light of sub-rule (4) of Rule 14 of Order 41, C.P.C. Thus the appeal filed by the insurer and the appeal filed by the claimant will have to be allowed in part.

29. In the result, I pass the following order:

ORDER

The appeal filed by the insurer, M.F.A CROB 106/2012 is allowed, restricting its liability to a sum of Rs. 1,32,424/- with interest at 12% p.a. on the compensation after one month from the date of the accident till deposit of the same. The insurer is entitled to recover the amount in excess of liability determined under the W.C. Act from the owner-Shivakumar.

Insofar as the appeal filed by the claimant is concerned, the compensation is enhanced to Rs. 4,47,000/- and the claimant is entitled to recover Rs. 1,17,000/- with interest at 6% p.a. thereon from the date of petition till realization from the owner. The judgment and award of the Tribunal stands modified accordingly.

Parties to bear their own costs.

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