

Ranganath C Vs. M/s Sany Heavy Industry India Pvt Ltd

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SooperKanoon Citation : sooperkanoon.com/1234697

Court : Karnataka

Decided On : Jul-14-2023

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 12227/2011

Appellant : Ranganath C

Respondent : M/s Sany Heavy Industry India Pvt Ltd

Judgement :

- 1 - NC:

2023. KHC:24666 MFA No.12227 of 2011 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE14H DAY OF JULY, 2023 BEFORE THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL No.12227 OF2011(MV-I) BETWEEN: RANGANATH.C, AGED ABOUT49YEARS, S/O. GOVINDA RAJ, R/AT.NO.65/1, ANAJANEYA COMPLEX, (ADJ.

A.V.M ROAD COMPLEX) GROUND FLOOR, HONGASANDRA MAIN ROAD, SRI RAM NAGAR, G.V.PALYA, BANGALORE- 560 068. APPELLANT (BY SRI R.CHANDRASHEKHAR, ADVOCATE) AND:

1. M/S SANY HEAVY INDUSTRY INDIA PVT. LTD., PLOT NO.31, BHAWKAR BHAVAN, I FLOOR, K B JOSHI ROAD, NEAR AGRICULTURE COLLEGE,

SHIVAJINAGAR, PUNE - 411 005. REP BY ITS MANAGER.

2. ICICI LOMBARD GENERAL INSURANCE CO. LTD., NO.89, 2ND FLOOR, S.V.R COMPLEX, - 2 - NC:

2023. KHC:24666 MFA No.12227 of 2011 HOSUR MAIN ROAD, MADIWALA, BANGALORE - 560 068. REP BY ITS DIVISIONAL MANAGER RESPONDENTS (BY SRI B.C.SHIVANNE GOWDA, ADVOCATE FOR R2 V/O DTD1202/2015, NOTICE TO R1 IS HELD SUFFICIENT) THIS MFA FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 29.10.2010 PASSED IN MVC NO.9966/2008 ON THE FILE OF THE MACT, XXIV ADDL. SMALL CAUSES JUDGE, BANGALORE, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THIS APPEAL, COMING ON FOR HEARING, THIS DAY, AND THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The present appeal is filed by the appellant-claimant challenging the judgment and award dated 29.10.2010 passed in MVC.No.9966/2008 by 24th Addl. Judge, Member, Motor Accident Claims Tribunal, Bangalore (ACMM-22), fastening the liability on the owner of the vehicle/machinery for payment of compensation and also for enhancement of compensation.

2. The factum of accident is not in dispute.-. 3 - NC:

2023. KHC:24666 MFA No.12227 of 2011 3. Heard the arguments from both sides and perused the records.

4. In the present case, the Tribunal has fastened liability on respondent No.1-owner on the ground that the insurance policy issued is Contractors Plant and Machinery Insurance Policy and it is not Motor Vehicle Insurance Policy. Therefore, the risk of third party is not covered under the said Contractors Plant and Machinery Insurance Policy. Based on this, the Tribunal has exonerated the Insurance Company and fastened liability on respondent No.1-owner of the

machinery/vehicle.

5. Learned counsel for the appellant-claimant submitted that the offending vehicle is a motor vehicle as its nomenclature is mentioned as Motor Taradar as described in the certificate of registration issued by the Regional Transport Authorities. Therefore, when the Contractors Plant and Machinery Insurance Policy is issued, third party risk is covered. The claimant is a third - 4 - NC:

2023. KHC:24666 MFA No.12227 of 2011 party. Therefore, the insurance policy issued covers the risk of claimant also. In support of his arguments, he placed reliance on the judgment of this Court in the case of M/s Tara Chanda & Sons Vs. the Oriental Insurance Company Limited and Others¹ (hereinafter referred to as M/s Tara Chandas case for short). Therefore, prays that the Insurance Company is liable to pay compensation by indemnifying the owner. Hence, prays for modification of liability.

6. Though, notice is served on respondent No.1- owner, he has not appeared before the Court and hence, notice to respondent No.1 is held sufficient.

7. On the other hand, learned counsel for respondent No.2-Insurance Company submitted that the insurance policy issued is Contractors Plant and Machinery Insurance policy, but not issued under the provisions of 1 ILR 2016 KAR5581- 5 - NC:

2023. KHC:24666 MFA No.12227 of 2011 Motor Vehicle Act. Therefore, the insurance policy is a pure contractual policy for plant and machinery and in the said policy, the instant vehicles/machineries are covered. Hence, when the insurance policy is not a motor vehicle policy, but using the vehicle/machinery on public road, and accident is caused, hence, as per the clauses in the insurance policy issued, the Insurance Company is not liable to indemnify the owner as per Clause (h) in Exceptions in the insurance policy. Therefore, the Tribunal is correct in not fastening liability on the Insurance Company. Therefore, prays to confirm the judgment and award passed by the Tribunal. He places reliance on the judgment of this Court in the case of K.Thirupathi Reddy Vs. Rajegowda and Others² (hereinafter referred to as K.Thirupathis Reddys case for short).

8. The admitted factual matrix in the case is that Motor Taradar/Sureaser (JCB) is involved in the accident while it was moving reverse from North to South direction 2 ILR 2010 KAR3406- 6 - NC:

2023. KHC:24666 MFA No.12227 of 2011 with high speed and in a rash and negligent manner dashed the claimant and the claimant sustained injuries and it has occurred in the place called Hosur Main Road, in service road, in front of Balaji Steels at Bangalore. These are the admitted facts. Ex.R.1 is the copy of policy and Ex.R.2 is the terms and conditions of policy. Ex.R1 and Ex.R.2 are the policy issued as Contractors Plant and Machinery Insurance Policy. The insurance policy issued is not under the provisions of Motor Vehicle Act. It is a pure Contractors Plant and Machinery Policy (CPM Policy). Therefore, under these circumstances, when policy issued is CPM Policy, third party risk is covered or not is to be considered in the context of nature of insurance policy as above discussed.

9. No doubt, the vehicle/machinery is Motor Taradar as per the certificate of registration issued by the Regional Transport Authorities by registering it as HR-55- B-6309. The class of vehicle is mentioned as Motor - 7 - NC:

2023. KHC:24666 MFA No.12227 of 2011 Taradar. In the police records, while conducting panchanama and filing charge sheet, it is mentioned as Motor Taradar, but the nature of policy is to be looked into as to whether it is issued under Section 147 of Motor Vehicle Act or it is a pure contractual insurance policy. Ex.R.1 is the insurance policy, which is Contractors Plant and Machinery Insurance Policy. The area of operation is Chitradurga, Karnataka as per the insurance policy. The Insurance Company has not only issued insurance policy only to the vehicle/machinery involved in the case, but also issued for several other vehicles/machineries across the country scheduled in the insurance policy. Therefore, basically, the insurance policy issued is for all the machineries/equipments upon executing the contract of insurance with respondent No.1-owner. It is worthwhile to extract the preamble and recital and for what purpose the insurance policy issued is extracted below.-. 8 - NC:

2023. KHC:24666 MFA No.12227 of 2011 10. Ex.R.2 is the terms and conditions of insurance policy, which reads as follows: Now this policy of insurance witnesses That subject to the terms, exceptions, exclusions, provisions and conditions contained herein or endorsed hereon, the Company will, at its own option, by payment or reinstatement or repair indemnify the Insured against unforeseen and sudden physical damage by any cause not hereinafter included, to any insured property specified in the attached Schedule(s) whilst at the location mentioned therein necessitating its immediate repair or replacement. This Policy shall apply to the insured items whether they are at work or at rest, or being dismantled for the purpose of cleaning or overhauling, or in the course of the aforesaid operations themselves, or when being shifted within the premises, or during subsequent re-erection, but in any case only after successful commissioning. The liability of the company for any one item of the insured property shall not exceed in the aggregate in any one period of insurance the Sum Insured set against such item in the attached Schedule(s). However the sum insured under such item can be reinstated after occurrence of a claim for balance period. EXCEPTIONS The company shall not be liable under this policy in respect of a) XXXXXXXX b) XXXXXXXX c) XXXXXXXX d) XXXXXXXX e) XXXXXXXX f) XXXXXXXX g) XXXXXXXX h) Loss or damage whilst in transit, from one location to another location (Public Liability will not be payable while Contractors Plant and Machinerys are on Public Roads); - 9 - NC:

2023. KHC:24666 MFA No.12227 of 2011 11. From the above Clause (h), it is very clear that the Insurance Company is not bound for public liability while the Contractors Plant and Machinery are on public roads and it is made clear in Clause (h) that the Insurance Company shall not be liable under this policy in respect of any loss or damage caused while in transit from one location to another location. From the above said Clause (h), it is also very clear that the Insurance Company is not liable to indemnify the owner for any loss or damage caused while the plant and machinery are in transit from one location to another location. As per this Ex.R.1 and Ex.R.2-insurance policy, the insurance policy is issued covering the risk at the location of Chitradurga, Karnataka, mentioned therein apart from other places in the country in respect of other machinery/equipment insured. Therefore, even though, indemnification of owner insofar as third party liability is

concerned as per the terms and conditions enumerated in the insurance policy is only in respect of third party damage caused or loss caused in the said location only, which means the cause occurred in - 10 - NC:

2023. KHC:24666 MFA No.12227 of 2011 Chitradurga, Karnataka. But the accident is caused at Bangalore as above stated. Therefore, when the insurance policy issued is CPM policy, but not in respect of motor vehicle policy, therefore, the Insurance Company is not liable to indemnify the owner in terms of exceptions, terms and conditions enumerated in the insurance policy.

12. In M/s Tara Chandas case (stated supra), the facts are different. The mobile crane attached to a heavy goods vehicle is both a construction equipment vehicle as well as heavy goods vehicle and that the policy issued is CPM policy and additional premium is paid covering the risk of third party. Under those circumstances, the vehicle was considered as both construction equipment vehicle and heavy goods vehicle and thus, it is held that the Insurance Company is liable. But in the present case, even though, in the certificate of registration, it is mentioned as Motor Taradar, but whether attached to the heavy goods vehicle or not is not in the evidence. Further more, the insurance policy is not issued as per Section 147 of Motor - 11 - NC:

2023. KHC:24666 MFA No.12227 of 2011 Vehicle Act for compulsory issuance/purchase of insurance policy covering the risk of third parties. Therefore, where the insurance policy is purely a contractual policy, the parties are bound by terms and conditions and exceptions enumerated therein. Therefore, the above said judgment is not helpful for the appellant-claimant.

13. The Division Bench of this Court in K.Thirupathi Reddys case (stated supra) has held that the policy is termed as Contractors Plant and Machinery Insurance Policy and the machinery in question is a earth- mover and it is not registered under the Motor Vehicle Act. Therefore, from looking into the schedule of the said policy, it is clear that only machinery is covered and not any other type of risk. The factual matrix in K.Thirupathi Reddys case (stated supra) is squarely applicable to the case on hand. It is worthwhile to extract Paragraph No.5 of K.Thirupathi Reddys case as follows: 5. We have perused the insurance policy which is marked

as Ex.R-1. The policy is termed as contractors plant and machinery insurance policy. Machinery in question is a - 12 - NC:

2023. KHC:24666 MFA No.12227 of 2011 earth-mover. It has not been registered under the provision of the MV Act. From looking into the schedule of the policy, it is clear to us that only machinery is covered and not any other type of risk. According to the Counsel for the appellant, as the appellant being the owner of the machinery was required to move the same from one place to another for the purpose of carrying on his constructional activities, in the process, if the vehicle has met with an accident, it is the duty of the insurance company to indemnify the owner. We have perused the India Motor Tariff Regulations. There is a provision to cover the risk of the accident if the same is caused by the machinery issued under non-motor policy, provided liability of third party is covered and premium is paid on such policies. It covers the risk or damage caused to the plant and machinery and not to the risk of third party. When the claimant has not paid extra premium and has purchased non-motor policy covering the risk of a third party, we cannot hold that the Tribunal has committed an error in fixing the liability on the appellant herein. In the circumstances, we do not see any reasons to interfere with the findings of the Tribunal.

14. In the present case, respondent No.1-owner has not paid premium to cover the risk of third party when the vehicle/machinery is moved to other location and in transit any accident occurred, the risk is to be covered. There is no such premium is paid covering the risk of third party in different locations while the machinery is in transit.

15. Therefore, where the insurance policy is purely a contractual policy and if any extra premium is not paid - 13 - NC:

2023. KHC:24666 MFA No.12227 of 2011 covering the risk of third party in different location other than mentioned in the policy and in transit the accident occurred, the Insurance Company is not liable as per Clause (h) in Ex.R1 and Ex.R2-insurance policy. Respondent No.1-owner is absent and when he has purchased the insurance policy for carrying out operation/work in Chitradurga, Karnataka, stated in Ex.R1-insurance policy and in that place, if any loss or

damage caused to third party, the risk is covered as per the insurance policy, but not in other location or in transit as it is clearly barred under Clause (h) of the insurance policy as discussed above. Therefore, the Tribunal in this regard is correct in fastening liability on respondent No.1- owner to pay compensation to the claimant. Regarding quantum of compensation:

16. In the present case, from the medical evidence on record, the claimant had suffered the following injuries: - 14 - NC:

2023. KHC:24666 MFA No.12227 of 2011

1) Type III fracture tibia left leg with circumferential degloving.

2) Diabetes Mellitus

3) Phimosis and Amputation of left leg below knee. From the above said injuries, the claimant had suffered amputation of left leg below knee due to the accidental injuries.

17. The Tribunal has granted compensation under various heads as follows:

1. Pain and agony Rs. 57,000/- 2. Medical expenses Rs. 2,20,000/- 3. Loss of income during the period of Rs. 28,000/- treatment 4. Loss of amenities in life Rs. 65,000/- Total Rs. 3,70,000/- 18. When it is the case of amputation of left leg, the compensation awarded under the head injury, pain and suffering is on the lesser side. Therefore, it is enhanced to Rs.1,00,000/- as against Rs.57,000/- awarded by the Tribunal under the head injury, pain and suffering.-. 15 - NC:

2023. KHC:24666 MFA No.12227 of 2011 19. The Tribunal has granted compensation of Rs.2,20,000/- under the head medical expenses and hospitalization charges and it is granted as per the actual bills produced. Hence, it is kept in tact.

20. The doctors who are examined as P.W.2 and P.W.3 have stated in the evidence that the claimant had suffered permanent physical disability at 70% to the left lower limb and 30% to the whole body. The claimant is working as a tea vendor. The aspect of physical disability and functional disability are different.

Even though, the doctors may say percentage of physical disability, but the functional disability can be assessed based on the avocation, nature of injuries and disability sustained. If the injured is not able to do the work as he was doing earlier to the accident, then that would be amounting to 100% of functional disability. The Honble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and Another³, 3 (2011) 1 SCC343- 16 - NC:

2023. KHC:24666 MFA No.12227 of 2011 wherein at Paragraph Nos.12, 13 and 19, it is held as under: 12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give 'ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross- examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability.

13. We may now summarise the principles discussed above : (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity. (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that - 17 - NC:

2023. KHC:24666 MFA No.12227 of 2011 percentage of loss of earning capacity is the same as percentage of permanent disability). (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety. (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors. 19. The evidence showed that at the time of the accident, the appellant was aged around 25 years and was eking his livelihood as a cheese vendor. He claimed that he was earning a sum of Rs.3000/- per month. The Tribunal held that as there was no acceptable evidence of income of the appellant, it should be assessed at Rs.900/- per month as the minimum wage was Rs.891 per month. It would be very difficult to expect a roadside vendor to have accounts or other documents regarding income. As the accident occurred in the year 1991, the Tribunal ought to have assumed the income as at least Rs.1500/- per month (at the rate of Rs.50/- per day) or Rs.18,000/- per annum, even in the absence of specific documentary evidence regarding income.

21. Further the Honble Supreme Court in the case of Rekha Jain Vs., National Insurance Co., Ltd., and Others⁴ were pleased to consider that the injured has suffered 100% of functional disability as the injured was a woman working in a film and a TV actress and was aged 4 (2013) 8 SCC389- 18 - NC:

2023. KHC:24666 MFA No.12227 of 2011 about 24 years. The injured has suffered injury on the face and her face was disfigured. The injured is no longer to work in film or as a TV actress and had lost her entire earning capacity as a TV actress. Therefore, the Honble Supreme Court considered it as 100% of functional disability. The principle of law laid down therein is squarely applicable to the case on hand.

22. The Honble Supreme Court in the case of Jakir Hussein Vs. Sabir and Others⁵ were pleased to hold that the permanent disability and functional disability are two different aspects. Even though, there would not be 100% of permanent physical

disability, but it affects the avocation of the injured to carry out the profession as he was doing before the accident. Then it would amount to 100% of functional disability. The injured being a driver met with an accident and as per the doctors evidence, he suffered 55% of permanent physical disability and cannot drive any motor vehicle in future. Therefore, with such 5 (2015) 7 SCC252- 19 - NC:

2023. KHC:24666 MFA No.12227 of 2011 disability, when the driver is not able to carry on the profession as driver, then it is amounting to functional disability and accordingly, awarded compensation by holding functional disability at 100%. Further the Honble Supreme Court in the case of Mohan Soni Vs. Ram Avtar Tomar and Others⁶ had held that the injured being a cart-puller met with an accident and left leg was amputated below the knee. Under these circumstances, the Honble Supreme Court held the functional disability at 100%. Since, the injured is not able to work as a cart- puller and had suffered functional disability at 100% and accordingly, awarded compensation.

23. The principle of law laid down regarding permanent physical disability and functional disability is applicable in the present case also. There may not be evidence of the doctor that the injured has suffered 100% of permanent physical disability, but the functional disability is to be considered on the basis of nature of 6 (2012) 2 SCC267- 20 - NC:

2023. KHC:24666 MFA No.12227 of 2011 injuries sustained and the profession of the injured/claimant. In the present case, the claimant was working as a tea vendor and due to amputation of left leg below knee, the claimant is not able to work as he was working earlier. Therefore, he suffered 100% of functional disability affecting the earning capacity as he was a tea vendor and due to amputation of left leg below knee, it is not possible for him to work as a tea vendor in the office or factories. Therefore, it is considered in the present case that the claimant has suffered 100% of permanent physical disability.

24. The accident was caused on 07.10.2008, therefore, the notional income is to be taken as Rs.4,500/- per month as per the Notional Income Chart recognized by the Karnataka State Legal Service Authority. Since the claimant had suffered amputation of left leg below knee affecting his loss of future income, therefore, he

also suffers loss of future prospects in life. Hence, following the principles of law laid down by the Honble Supreme Court - 21 - NC:

2023. KHC:24666 MFA No.12227 of 2011 in the case of New India Assurance Company Vs. Abdul S/o Mehaboob Tahasildar⁷ and Sidram Vs. Divisional Manager, United India Insurance Company Limited and Another⁸, certain income is to be added towards loss of future prospects in life. What would be the income is to be added is guided by the Honble Supreme Court in the case of National Insurance Co., Ltd., Vs. Pranay Sethi⁹ according to the age limit of the claimant/deceased. The claimant was aged 46 years, therefore, 25% of income is to be added towards loss of future prospects in life. As the claimant was aged 46 years, the appropriate multiplier applicable is 13. Hence, compensation under the head loss of future income including loss of future prospects in life is hereby reassessed and quantified as follows: Rs.4,500/- + Rs.1,125/- (Rs.4,500/- x 25%)=Rs.5,625/- Rs.5,625/- x 13 x 12=Rs.8,77,500/- 7 MFA.NO.103807/2016 C/W MFA.NOS.103835/2016 & 103807/2018 DD.27.05.2022 8 (2023) 3 SCC4399 (2017) 16 SCC680- 22 - NC:

2023. KHC:24666 MFA No.12227 of 2011 Accordingly, compensation of Rs.8,77,500/- is awarded under the head loss of future income including loss of future prospects in life.

25. The compensation of Rs.28,000/- awarded under the head loss of income during laid up period and treatment period is found to be just and proper. Hence, it is kept in tact.

26. The compensation of Rs.65,000/- awarded under the head loss of amenities is found to be just and proper. Hence, it is kept in tact.

27. Further compensation of Rs.50,000/- is awarded under the head incidental expenses such as food, nourishment, conveyance and attendant charges etc., 28. Further compensation of Rs.1,00,000/- is awarded under the head future medical expenses as he needs it for purchase of artificial limb and it is required to be changed periodically from time to time.-. 23 - NC:

2023. KHC:24666 MFA No.12227 of 2011 29. Thus, in all, the appellant/claimant is entitled to the compensation under various heads as follows:

1. Injury, pain and Rs. 1,00,000/- sufferings 2 Medical expenses Rs. 2,20,000/- Kept in tact 3 Loss of future income including loss of future Rs. 8,77,500/- prospects in life 4 Incidental expenses such as food, nourishment, Rs. 50,000/- conveyance and attendant charges 5 Loss of income during Rs. 28,000/- Kept in tact laid up period 6 Loss of amenities Rs. 65,000/- Kept in tact 7 Future medical Rs. 1,00,000/- expenses Total Rs. 14,40,500/- 30. The Tribunal has awarded compensation of Rs.3,70,000/-, but the appellant/claimant is entitled to total compensation of Rs.14,40,500/- Hence, the appellant/claimant is entitled to enhanced compensation of Rs.10,70,500/- (Rs.14,40,500/- - Rs.3,70,000/-). Therefore, the appellant/claimant is entitled to enhanced - 24 - NC:

2023. KHC:24666 MFA No.12227 of 2011 compensation of Rs.10,70,500/- along with interest at the rate of 6% per annum from the date of petition till the date of realization, in addition to what has been awarded by the Tribunal.

31. Accordingly, I proceed to pass the following

ORDER

i. The appeal is allowed-in-part. ii. The impugned judgment and award dated 29.10.2010 passed in MVC.No.9966/2008 by 24th Addl. Judge, Member, Motor Accident Claims Tribunal, Bangalore (ACMM-22), is modified insofar as only quantum of compensation is concerned. iii. The appellant/claimant is entitled to enhanced compensation of Rs.10,70,500/- along with interest at the rate of 6% per annum from the date of petition till the date of realization, in - 25 - NC:

2023. KHC:24666 MFA No.12227 of 2011 addition to what has been awarded by the Tribunal. iv. No order as to costs. v. The appellant/claimant is not entitled for interest for the delay period of 325 days in filing the appeal. vi. Registry is directed to transmit the TCR along with copy of this order to the Tribunal forthwith. vii. Draw award accordingly. Sd/- JUDGE PB