

The Divisional Manager vs Sri.Basappa S/O Nagappa Kurabar

The Divisional Manager vs Sri.Basappa S/O Nagappa Kurabar

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Court : Karnataka Dharwad

Decided On : Mar-28-2024

Judge : Vijaykumar a.Patil

Appeal No. : MFA/103185/2019

Appellant : The Divisional Manager

Respondent : Sri.Basappa S/O Nagappa Kurabar

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 28TH DAY OF MARCH, 2024 BEFORE THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL MISCELLANEOUS FIRST APPEAL NO. 104082 OF 2019 (MV-I) C/W MISCELLANEOUS FIRST APPEAL NO. 103184 OF 2019 MISCELLANEOUS FIRST APPEAL NO. 103185 OF 2019 MISCELLANEOUS FIRST APPEAL NO. 104083 OF 2019 IN MFA NO. 104082/2019 BETWEEN: SHRI. BASAPPA S/O. NAGAPPA KURABAR, AGE: 60 YEARS, OCC: AT PRESENT NIL, R/O. DESAI ONI, AT POST: ANKALAGI, (BADAL ANKALAGI), TQ & DIST: BELAGAVI-591109.

APPELLANT (BY SRI. B. M. PATIL, ADVOCATE) Digitally signed by AND: ROHAN HADIMANI T Location: HIGH COURT 1. SHRI. ARBAZ S/O. DADAPEER BADEGHAR, OF KARNATAKA AGE: 42 YEARS, OCC: BUSINESS, R/O. KASAYI

GALLI, AT POST: PARISHWAD, TQ: KHANAPUR, DIST: BELAGAVI-591131.

2. SHRIRAM GENERAL INSURANCE CO. LTD, THROUGH ITS DIVISIONAL MANAGAER, DIVISIONAL OFFICE, E/8, EPIP, RIICO INDUSTRIAL AREA, SITAPURA, JAIPUR, RAJASTHAN-302022. RESPONDENTS (BY SMT. ANUSHA SANGAMI, ADV. FOR SRI. S. K. KAYAKAMATH, ADV. FOR R2; NOTICE TO R1 DISPENSED WITH) -2- THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S.173(1) OF

THE MOTOR VEHICLES ACT, PRAYING TO ENHANCED THE COMPENSATION BY MODIFYING THE JUDGMENT AND AWARD IN M.V.C NO.565/2017 DATED 05-04-2019 PASSED BY THE COURT OF PRL. SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE AND ADDL. MOTOR ACCIDENT CLAIMS TRIBUNAL, BELAGAVI, AT: BELAGAVI IN THE INTEREST OF JUSTICE AND EQUITY. IN MFA NO.103184/2019 BETWEEN: THE DIVISIONAL MANAGER, SHRIRAM GENERAL INSURANCE COMPANY LIMITED, DIVISIONAL OFFICE, E/8, EPIP RIICO, INDUSTRIAL AREA, SITAPURA, JAIPUR, RAJASTHAN, NOW REPRESENTED BY ITS AUTHORIZED SIGNATORY. APPELLANT (BY SMT. ANUSHA SANGAMI, ADV. FOR SRI. S. K. KAYAKAMATH, ADVOCATES) AND:

1. SRI. SADEPPA @ SADANAND S/O. SIDDAPPA GUGGARI, AGE: 49 YEARS, OCC: AT PRESENT NIL, R/O. HOUSE NO.243, AT POST: ANKALAGI, (BADAL ANKALAGI), TQ & DIST: BELAGAVI-590001.

2. SRI. ARBAZ S/O. DADAPPER BADEGHAR, AGE: 42 YEARS, OCC: BUSINESS, R/O. KASAYI GALLI, AT POST: PARISHWAD, TALUK: KHANAPUR, DIST: BELAGAVI-590001. RESPONDENTS (BY SRI. B. M. PATIL, ADV. FOR R1; NOTICE TO R2 SERVED) THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S.173(1) OF

THE MOTOR VEHICLES ACT, 1988, PRAYING TO CALL THE RECORDS, HEAR THE PARTIES AND ALLOW THE APPEAL AS PRAYED FOR BY SETTING ASIDE THE IMPUGNED JUDGMENT AND AWARD DATED -3- 05.04.2019 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CHIEF

JUDICIAL MAGISTRATE & M.A.C.T, BELAGAVI, IN MVC NO.566/2017, WITH COST IN THE INTEREST OF JUSTICE AND EQUITY. IN MFA NO.103185/2019 BETWEEN: THE DIVISIONAL MANAGER, SHRIRAM GENERAL INSURANCE COMPANY LIMITED, DIVISIONAL OFFICE, E/8, EPIP RIICO, INDUSTRIAL AREA, SITAPURA, JAIPUR, RAJASTHAN, NOW REPRESENTED BY ITS AUTHORIZED SIGNATORY. APPELLANT (BY SMT. ANUSHA SANGAMI, ADV. FOR SRI. S. K. KAYAKAMATH, ADVOCATES) AND:

1. SRI. BASAPPA S/O. NAGAPPA KURABAR, AGE: 60 YEARS, OCC: AT PRESENT NIL, R/O. DESAI ONI, AT POST: ANKALAGI, (BADAL ANKALAGI), TALUK & DIST: BELAGAVI-590001.

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-4- IN MFA NO. 104083/2019 BETWEEN: SHRI. SADEPPA @ SADANAND S/O. SIDDAPPA GUGGARI, AGE: 49 YEARS, OCC: AT PRESENT NIL, R/O. H.NO.243, AT POST: ANKALAGI, (BADAL ANAKALAGI), TQ & DIST: BELAGAVI-591109. APPELLANT (BY SRI. B. M. PATIL, ADVOCATE) AND:

1. SHRI. ARBAZ S/O. DADAPEER BADEGHAR, AGE: 42 YEARS, OCC: BUSINESS, R/O. KASAYI GALLI, AT POST: PARISHWAD, TQ: KHANAPUR, DIST: BELAGAVI-591131.

2. SHRIRAM GENERAL INSURANCE CO. LTD, THROUGH ITS DIVISIONAL MANAGAER, DIVISIONAL OFFICE, E/8, EPIP, RIICO INDUSTRIAL AREA, SITAPURA, JAIPUR, RAJASTHAN-302022.

RESPONDENTS (BY SMT. ANUSHA SANGAMI, ADV. FOR SRI. S. K. KAYAKAMATH, ADV. FOR R2; NOTICE TO R1 DISPENSED WITH) THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S.173(1) OF THE MOTOR VEHICLES ACT, PRAYING TO ENHANCED THE COMPENSATION BY MODIFYING THE JUDGMENT AND AWARD IN M.V.C NO.566/2017 DATED 05-04-2019 PASSED BY THE COURT OF PRL. SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE AND ADDL. MOTOR ACCIDENT CLAIMS TRIBUNAL, BELAGAVI, AT: BELAGAVI IN THE INTEREST OF JUSTICE AND EQUITY. THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING: -5-

JUDGMENT

MFA No.104082/2019 is filed by the claimant/injured, whereas, MFA No.103185/2019 is filed by the Insurance Company. Both these appeals are arising out of MVC No.565/2017. MFA No.104083/2019 is filed by the claimant/injured, whereas, MFA No.103184/2019 is filed by the Insurance Company. Both these appeals are arising out of MVC No.566/2017.

2. These appeals are arising out of the common

judgment and award dated 05.04.2019 passed in MVC Nos.565

and 566 of 2017 on the file Principal Senior Civil Judge and Chief Judicial Magistrate and Addl. MACT, Belagavi (for short, Tribunal).

3. Heard Miss.Anusha Sangami learned counsel appearing for the appellant/Insurance Company and Sri.B.M.Patil learned counsel appearing for the appellants/claimants.

4. Learned counsel appearing for the

appellant/Insurance Company submits that the Tribunal has committed grave error in saddling the liability on the Insurance -6- Company without appreciating the fact that the driver of the offending lorry bearing Registration No.KA-22/A-5157 was not having a valid and effective driving license to drive heavy goods vehicle. Admittedly, the offending lorry was the heavy goods, hence, there is a clear violation of the terms of the policy. Hence, the liability is required to be shifted on the owner of the vehicle. She submits that the award of compensation by the Tribunal in both the claim petitions is just and proper does not call for any enhancement. Hence, she seeks to allow the appeals filed by the Insurance Company by dismissing the appeals filed by the claimants.

5. Learned counsel appearing for the

appellants/claimants at the outset submits that the Insurance Company has not placed any driving license before the Tribunal and they have failed to establish that the driver of the offending lorry was not having a valid and effective driving license to drive heavy goods vehicle. He submits that the Tribunal has justified in saddling the liability on the Insurance Company. It is submitted that, insofar as award of compensation by the Tribunal in MFA No.104082/2019, the Tribunal has grossly erred in awarding global compensation of -7- Rs.20,000/- to the injured without considering the income, disability and the other evidence available on record. Hence, he seeks to reassess the same by awarding just and appropriate compensation to the injured.

6. It is further submitted that in MFA

No.104083/2019, the award of compensation by the Tribunal is contrary to the evidence available on record. He submits that the Tribunal assessed the disability of the injured at 10% which is contrary to the evidence of PW4, he seeks to reassess the same. It is also submitted that the award of compensation by the Tribunal on the other heads are on the lower side and is required to be enhanced by allowing the appeal.

7. I have heard the arguments of learned counsel for the respective parties. Perused the material available on record.

8. The parties to the proceeding do not dispute that

both the claimants have met with a road accident on 04.03.2017 and sustained grievous injuries. The evidence available on record indicates that both the claimants have taken treatment at hospital and to support their claims by entering the witness box and also produced 17 documents in -8- support of their claim with regard to the income, disability and to prove the entitlement of compensation. The Tribunal considering the evidence available on record, has awarded total compensation of Rs.20,000/- in MVC No.565/2017 and Rs.2,24,463/- in MVC No.566/2017 along with interest at the rate of 6% per annum.

9. This Court on re-appreciation of the entire evidence

available on record is of the considered view that the Tribunal has committed grave error in saddling the liability on the insurer. The appellant/Insurance Company has placed on record the driving license of driver of the offending lorry in these proceedings, which clearly indicate that, the driver of the offending lorry possessed the driving license to drive light motor vehicles and he was not having a valid and effective driving license to drive heavy goods vehicle. Admittedly, the driver of the offending lorry was driving the heavy goods vehicle, hence, there is a clear violation of the terms of the policy. Hence, saddling of liability on the insurer by the Tribunal is contrary to the evidence available on record. This Court considering the evidence available on record, saddled the liability to pay the compensation to the injured/claimants in -9- both claim petitions on the owner of the offending lorry, with a direction to the insurer to pay the compensation to the claimants now and recover the same from the owner of the offending lorry.

10. Insofar as the quantum of compensation is

concerned, the Tribunal has committed grave error in awarding meagre compensation of Rs.20,000/- in MVC No.565/2017. Admittedly, the injured/claimant has not placed any evidence with regard to the income. This Court assess the income of the injured notionally at Rs.10,250/- per month placing reliance on the notional income chart prepared by the Karnataka State Legal Services Authority. Evidence indicate that the claimant/injured has sustained the

following injuries:

1) Lacerated wound of Rt. Knee joint 6 x 2 cms red colour fresh. 2) Lacerated = wound on left foot 2 x 0.5 cms bright red fresh. 3) Lacerated wound on rt. Frontal region 8 x 3 cms bright red fresh. 4) Lacerated wound on rt shoulder joint 0.5 x 0.5 cm bright red fresh. 5) Fracture of proximal phalanx of left 4th toe (+). 6) Fracture of right 6th and 7th rib is present.

This Court keeping in mind the aforesaid injuries/fractures sustained by the claimant/injured, keeping in mind Ex.P7- Disability Certificate and oral testimony of PW3, is of the considered view that it would be just and appropriate to assess - 10 - the disability of the appellant/injured at 10% for the purpose of determination of compensation. Thus, the claimant/appellant is entitled to the compensation under the head of loss of future earnings due to disability as under: $\text{Rs.}10,250 \times 12 \times 9 \times 10\% = \text{Rs.}1,10,700/-$

11. The appellant/claimant would be entitled to modified compensation on the following heads: Particulars Amount (in Rs.)

Pain and suffering

40,000/- Lo

Conveyance charges Total 2,26,450/- Thus, the claimant-Basappa Kurabar in MVC No.565/2017 is entitled to total compensation of Rs.2,26,450/- as against Rs.20,000/- awarded by the Tribunal.

12. Insofar as the determination of compensation in MVC

No.566/2017 is concerned, the Tribunal has assessed the disability of the appellant/injured at 10%. Admittedly, the appellant has sustained the following injuries: - 11 - 1) Fracture of right femur. 2) Fracture of middle Phalax of second right toe. 3) Fracture of left middle 1/3rd of tibia and fibula. 4) Lacerated wound on left knee joint 6 x 1 cms. 5) Abrasion on left leg 0.5 x 0.5 cms. 6) Lacerated wound on lateral aspect of left eye and lacerated wound on right elbow joint 4 x 1 cms and grievous injuries all over the body.

13. This Court keeping in mind the aforesaid

injuries/fractures, the Disability Certificate at Ex.P15 and oral testimony of PW4, is of the considered view that it would be just and appropriate to reassess the disability of the claimant/injured at 25% for the purpose of determination of compensation. Admittedly, the appellant/injured has not placed any evidence with regard to the income. Hence, this Court reassess the notional income of the appellant/injured at Rs.10,250/- per month placing reliance on the notional income chart prepared by the Karnataka State Legal Services Authority. There is no dispute with regard to the age of the claimant/injured as 47 years and proper multiplier of 13. Thus, the claimant/injured is entitled to compensation under the head of loss of future earnings due to disability as under: $\text{Rs.10,250} \times 12 \times 13 \times 25\% = \text{Rs.3,99,750/-}$ - 12 -

14. This Court reassess the compensation keeping in mind

the oral testimony of PW4, who has deposed that the appellant/injured is unable to walk continuously and is unable to sit with cross legs and implants were inserted in the body which requires further surgery. The entire compensation amount has to be paid by the appellant/insurer to the claimant along with interest and liberty is reserved to Insurance Company to recover the said amount from the owner of the offending vehicle.

15. This Court taking note of the injuries suffered by the

appellant and doctors evidence, it would be just and appropriate to award additional sum of Rs.20,000/- under the head of pain and suffering, additional sum of Rs.10,000/- towards loss of amenities. The appellant is also entitled to a sum of Rs.30,750/- ($\text{Rs.10,250} \times 3$) towards loss of income during treatment period as against Rs.16,000/- awarded by the Tribunal. The appellant is entitled to Rs.25,000/- under the head of future medical expenses. The award of compensation by the Tribunal under other heads are just and proper, requires no enhancement. - 13 -

16. Thus, the claimant would be entitled to modified compensation on the following heads:

Particulars Amount (in Rs.) Pain and suffering 50,000/- Loss of future earnings due to disability 3,99,750/- Loss of amenities 30,000/- Loss of income during laid-up period 30,750/- Medical expenses 8,633/- Future medical expenses 25,000/- Food and nourishment, Attendant charges and 25,000/- Conveyance charges Total 5,69,133/-

Thus, the claimant-Sadeppa Guggari in MVC No.566/2017 would be entitled to total compensation of Rs.5,69,133/- as against Rs.2,24,463/- awarded by the Tribunal.

17. This Court vide order dated 19.07.2021, while

condoning the delay of 85 days in filing the appeal, ordered that the appellants/claimants would not be entitled to an interest for the delayed period, in case if they succeed in the appeal. Hence, the claimants would not be entitled to the interest on the enhanced compensation for the delayed period.

18. In the result, this Court proceeds to pass the following: - 14 -

ORDER

a) MFA No.103185/2019 and MFA No.103184/2019 filed by the Insurance Company are allowed in part. b) MFA No.104082/2019 and MFA No.104083/2019 filed by the claimants are allowed in part. c) The common impugned judgment and award of the Tribunal is modified to an extent that the injured/claimant in MVC No.565/2017 would be entitled to total compensation of Rs.2,26,450/- as against Rs.20,000/- awarded by the Tribunal and the injured/claimant in MVC No.566/2017 would be entitled to total compensation of Rs.5,69,133/- as against Rs.2,24,463/- awarded by the Tribunal. d) The enhanced compensation amount in both cases shall carry interest at the rate of 6% per annum from the date of petitions till the date of payment.

e) The respondent No.2/Insurance Company

- 15 - interest to the appellants/claimants in both the cases within six weeks from today and liberty is granted to it to recover the same from respondent No.1/owner of the offending vehicle. f) On such deposit, the said amount shall be released in favour of the appellants/injured. g) The amount in deposit made by the appellant/Insurance Company shall be transmitted to the Tribunal forthwith along with TCR. h) Needless to say that the claimants shall not be entitled to any interest on the enhanced compensation for the delayed period. Registry to take note of same while drawing award. i) Draw modified award accordingly. Sd/- JUDGE PMP
Ct-an List No.: 1 SI No.: 36

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