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Dhanaji vs Datta and Anr

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Court : Karnataka Kalaburagi

Decided On : Feb-27-2024

Judge : H.T.Narendra Prasad,K V Aravind

Appeal No. : MFA/201685/2022

Appellant : Dhanaji

Respondent : Datta and Anr

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH DATED THIS THE 27TH DAY OF FEBRUARY, 2024 PRESENT THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD AND THE HON'BLE MR. JUSTICE K V ARAVIND MISCL. FIRST APPEAL NO. 201685 OF 2022 (MV-I) BETWEEN: DHANAJI S/O PUNDALIK DANGE, AGE: 40 YEARS, OCC: DRIVER, R/O MARWADE VILLAGE, TQ: MANGALWEDA, DIST: SOLAPUR, NOW AT R/O GANESH NAGAR, VIJAYAPURA-586101. APPELLANT (BY SRI. KOUJALAGI CHANDRAKANT LAXMAN, ADVOCATE) AND:

1. DATTA S/O PANDURANG GAIKWAD, AGE: 56 YEARS, OCC: BUSINESS, R/O MARWADE VILLAGE, TQ: MANGALWEDA, DIST: SOLAPUR-413305. Digitally signed by VARSHA N

2. THE DIVISIONAL MANAGER, RASALKAR Location: HIGH TE UNITED INDIA INSURANCE COMPANY LTD., COURT OF KARNATAKA S.S. FRONT ROAD, VIJAYAPURA-586101.

RESPONDENTS (BY SRI. SUDARSHAN M, ADVOCATE FOR R2; NOTICE TO R1 IS HELD SUFFICIENT) THIS MFA IS FILED UNDER SECTION 173(1) OF M.V. ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED: 06.07.2020 PASSED IN MVC NO.1197/2015 ON THE FILE OF THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE AND MEMBER MOTOR ACCIDENT CLAIMS TRIBUNAL NO.VII, VIJAYAPURA AT VIJAYAPURA. AND ALLOW THIS APPEAL AND TO GRANT THE COMPENSATION AMOUNT OF RS.19,75,000/- ONLY AS CLAIMED BY THE APPEALLANT BEFORE THE TRIBUNAL. -2-

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, K.V.Aravind J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal by the claimant against the rejection of the claim petition in MVC No.1197/2015 dated 06.07.2020 on the file of Addl. Senior Civil Judge and Member of Motor Accident Claims Tribunal No.VII Vijayapura, at Vijayapura.

2. The claim petition was filed under Section 166 of

the Motor Vehicles Act 1988, claiming compensation for the injuries sustained due to the accident that occurred on 01.04.2015 involving the motorcycle bearing No.MH-13/M-

5727 and the tractor bearing No.MH-13/AJ-4963. It is stated in the claim petition that the claimant while riding the motorcycle along with his friend on 01.04.2015 at

about 9:30 a.m. from Marwade to Yadrav, the tractor dashed the motorcycle and the claimant sustained injuries. It is stated that the police have registered the FIR in Crime

No. 165/2015. It is further stated that he was inpatient for 10 days, was earning Rs.15,000/- per month and he was aged 34 years as on the date of accident. -3-

3. On the issuance of notice, respondent No.1

remained absent and placed ex-parte. Respondent No.2file

further specifically contended that the injuries were due to self fall of the claimant himself. The Tribunal on consideration of the pleadings of both sides, framed the following issues:

1. Whether the petitioner proves that, on

> along with his friend Dagadu Jadhav were proceeding on Motorcycle No. MH-13/M.5727 from Maravde-Yadrav. The petitioner himself was riding the said motorcycle in slow land cautious manner by observing all road traffic rules and his friend Dagadu Jadhaf was pillion rider of the motorcycle. When they came near the land of Bapurao S/o. Maruti Suryavanshi, at that time one Tractor No.MH-13/AJ-4693 was came from opposite direction in downal road, the driver of the said Tractor was lost control over it and dashed to the petitioner motorcycle and caused the accident. By this impact the petitioner sustained injured?

2. Whether the petitioner proves that this tribunal has got jurisdiction to try and settle the dispute involved between the parties in this petition? -4-

3. Whether the Respondent No.2 proves that, due to violation of policy conditions, they are not liable to pay the compensation?

4. Whether the petitioner is entitled for compensation? If so, how much and from whom?

5. What order or award?

4. Petitioner No.1 examined himself as PW-1 and marked the documents as Ex.P1 to P11. Respondent No.2 examined RW-1 and marked the documents as Ex.R1 and R2.

5. The Tribunal on appreciation of the material

evidence on record, dismissed the claim petition by holding that the petitioner has not proved the occurrence of the accident on 01.04.2015, involving the motor cycle bearing No.MH-13/M-5727 and the tractor bearing No.MH- 13/AJ-4963.

6. Heard Sri.Koujalagi Chandrakant Laxman, learned counsel for the claimant/appellant and Sri.Sudarshan.M., learned counsel for respondent No.2/insurance company.

7. Learned counsel for the appellant submits that the claimant while traveling on his motorcycle along with his -5- friend on 01.04.2015 met with an accident at about 9:30 a.m., due to the rash and negligent driving of the tractor bearing No.MH-13/AJ-4963. The complainant was inpatient for 10 days due to the injuries sustained. Further, after discharge from the hospital, due to the accidental injuries the claimant was under rest. As the claimant could not move around, the complaint has been

filed on 25.05.2015. The Tribunal without taking into consideration the above aspect has committed an error in rejecting the claim petition on the ground of delay and holding that the accident has not been proved by the claimant. It is further stated that the claimant was earning Rs.15,000/- per month and was aged 34 years. Due to the accident he has suffered disability and incurred expenditure on the treatment. Thus, prays to award compensation.

8. Learned counsel for the respondent/insurance company submits that the accident occurred on 01.04.2015, the claimant was inpatient from 01.04.1015 to 08.04.2015. The complaint has been lodged before the -6-

police on 25.05.2015. There is a delay of 54 days in filing the complaint with the police and no explanation has been offered in the complaint. The FIR does not state the reason for the delay in lodging the complaint. It is further stated that though the claimant was inpatient from 01.04.2015 to 08.04.2015, no MLC intimation is given to the jurisdictional police by the hospital. The involvement of the offending vehicle, tractor bearing No.MH-13/AJ-

4963 is not proved. The Tribunal is justified in rejecting the claim petition. Thus, prays to dismiss the appeal.

9. Having heard learned counsel for the parties and perused the appeal papers, the point that would arise for consideration is: Whether the order of the Tribunal needs inference of this Court?

10. Our answer to the above point is in negative for the following reasons: It is the specific case of the claimant that he met with the accident on 01.04.2015, while riding the motor cycle bearing No.MH-13/M-5727, due to the rash and -7- negligent driving of the tractor bearing No.MH-13/AJ-

4963. It is not in dispute that the complaint was filed on 25.05.2015 and the claimant was inpatient from 01.04.2015 to 08.04.2015. The claimant has made an attempt to explain the delay by referring to the treatment

from 01.04.2015 to 08.04.2015 i.e., 8 days. If the injuries were sustained due to the accident the hospital would have given MLC intimation to the jurisdictional police. In the present case, no intimation was given to the police. The complaint has been lodged on 25.05.2015, after a delay of 54 days. The contention of the claimant that due to the hospitalization and due to the injuries sustained, he could not immediately file the complaint with the police is not acceptable. The complaint has been filed by the claimant through one Abhimanyu. There was no impediment for the claimant to file police complaint lodged immediately after the accident through friend. The burden of proof is on the claimant to prove that he met with an accident involving the offending vehicle. The evidence placed on record would not demonstrate or prove the case -8- of the claimant that he met with an accident on 01.04.2015 involving the tractor bearing No.MH-13/AJ- 4963.

11. As per Ex.P-1, case sheet indicates that the

injuries were sustained due to self fall from motorcycle. RW-1 has clearly deposed that the injuries were sustained due to self fall from the motorcycle and no MLC intimation was given to the jurisdictional police. There is no eyewitness to the accident. Though it is pleaded that the claimant was riding the motorcycle along with Sri.Dagadu Jadav as pillion rider, the pillion rider has not been examined.

12. In view of the above discussion, the Tribunal has

rightly arrived at the conclusion that the accident involving the tractor bearing No.MH-13/AJ-4963 is not proved by the claimant. Hence, no grounds are made out before this Court to interfere with the order of the Tribunal. Hence, we pass the following: -9-

ORDER

The appeal is dismissed. Sd/- JUDGE Sd/- JUDGE NJ List No.: 1 Sl No.: 8 CT: CS

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