

Surendra Kumar Vs. Dinesh and Another

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Court : Karnataka Dharwad

Decided On : Jan-30-2012

Judge : K. Sreedhar Rao & Bopanna

Appeal No. : M.F.A. No.1207 of 2005 (MV)

Appellant : Surendra Kumar

Respondent : Dinesh and Another

Advocate for Pet/Ap. : For the Appellant: H.N. Kasal, Advocate. For the Respondents: R2 - G.N. Raichur, Advocate, R1 - Notice dispensed with.

Judgement :

Sreedhar Rao, J.

1. The appellant/petitioner sustained fracture of right tibia in a Motor vehicle accident. The occurrence of accident, negligence of the driver of the offending vehicle and coverage of insurance is not in dispute. The petitioner has filed a claim petition for compensation and is in appeal seeking enhancement of compensation.

2. The petitioner was working as a Medical Sales Representative. The petitioner was paid a salary of Rs.2,500/- with additional benefit of Rs.1,100/- towards other incentives. Besides, he was paid Rs.3,000/- as TA and DA for promoting sales and his net salary should be considered as Rs.3,600/- and an amount of Rs.3,000/- paid would be necessarily spent for TA and DA and it does not accrue as of

income to the petitioner. The nature of work of the petitioner involve extensive travels, which involves physical movements. The fracture involved would result in disability at 10%. The said disability would affect the efficiency. The income loss proportionate to the disability would be Rs.360/- per month. The petitioner is entitled to compensation of Rs.40,000/- towards pain and agony Rs.15,000/- towards loss amenities and future discomforts. The loss of dependency would be Rs.360/- (income) x 12 (months) x 16 (multiplier) = Rs.69,120. The petitioner was under treatment for about 17 days and operated. The medical bills are produced for Rs.485/-. Hence it is just and proper to award compensation of Rs.5,000/- towards medical and other incidental expenses and Rs.1,000/- towards loss of income during treatment.

3. The petitioner in all entitled to a total compensation of Rs.1,30,120/- as against Rs.1,00,000/- awarded by the Tribunal. On the enhanced compensation, the interest payable would be at the rate of 6% p.a. from the date of petition till payment.

4. It is the practice of the Insurance Company, while filing the objection statements to plead a stereo type defence of denial of existence of policy and denial of valid driving licence on the part of the drivers, without proper information and verification in this regard. The Insurance Company has a duty cast in law to compensate the victim expeditiously and in a just and proper manner. The conduct of Insurance Companies in indulging stereo type defence of denial of the liability, without proper information and verification of facts would unnecessarily result in procrastination of proceedings and such perfunctory denial would result in delaying the justice and it amounts to obstructing injustice. Therefore, any objection statement or written statement filed by the Insurance Company without proper responsibility would amount to criminal contempt. It is therefore, just and necessary to direct the Insurance Companies to be cautious and careful in filing statement of objections and to avoid taking stereo type pleas in casual manner.

5. With the advancement of computer technology it would be no more difficult for the Insurance Companies to find out the coverage of insurance for any particular vehicle in question on their part. The registration of the vehicles by the Motor

Vehicle Departments in all the States in India are computerized. The Insurance Company would have a digitalized data of issuance of policy in respect of the vehicles. A comparison of the digital data of the insurers with the digital data of registered Motor Vehicles would give the information regarding the insurance at the click of the button. If the insurers have not collected the digital data of the registered vehicle all over India and does not have the digital data of the issuance of policy in respect of the vehicles, they should immediately take efforts to digitalize the data and such office professionalized management would enable the insurers to say at the click of the button whether the vehicle in question is covered by the policy issued by the Company or not.

6. It is now settled proposition of law by the decision of the Hon'ble Apex Court that the burden of proving that the driver does not have valid driving licence. It is therefore, the insurers should be more diligent in making proper inquiries to find out the driving licence particulars. It is because of want of particulars for helpless victims of the accident have to run pillar to post for collecting the documents. Section 158 of the Motor Vehicles Act, 1988, obligates the Investigation Officer to submit the report to the Jurisdictional Motor Vehicle Accident Claims Tribunal, about the particulars of the accident, vehicle ownership particulars and the driving licence particulars of the driver of the offending vehicle. The said provision of Law is honoured more in breach than in practice. The non compliance of the provisions by the Police is a contributory cause for the delay in disposal of the Motor Vehicle accident cases.

7. The Advocates who conduct the Motor Vehicle cases before the Tribunal have equal share of blame, because they do not collect all the requisite documentary data to go for effective negotiated settlement with the insurers in the Lok Adalath. In the cases where the quantum of compensation alone is in challenge it should not afford difficulty for settlement of such case in Lok Adalath. By and large in 90% of the cases filed before the Court the dispute between the parties is only with regard to the quantum, hardly in 10% of the cases the liability would be in dispute.

8. With regard to the driving licence particulars, if the Criminal Courts/Police were to insist and collect the Insurance Policy particulars and driving licence particulars

of the accused-driver at the time of release of vehicle, it would help the parties to have quick information to prosecute the case expeditiously before the Tribunal.

9. It is also brought to the notice of the Court that the Ministry of Finance (Union of India) has also issued a circular to all the Insurance Companies, to constitute area-wise committee consisting of one retired Judge, one Doctor and an Official of Insurance Company to take up the cases for expeditious disposal for out of Court settlement. In that context, if Insurance Companies have the correct data and fairly admit the liability, in the case where they do not have substantial material to avoid the liability, 90% of the cases filed could be disposed off within six months from the date of filing of the petition.

10. The Insurance Companies unnecessarily take long time, almost a year and above to file objection statement. Rule 254 of the Karnataka Motor Vehicle Rules makes the certain provision of C.P.C. applied to the proceedings before the Claims Tribunal. Rule 254 of the M.V. Rules makes it specific mention that "in so far as the Act and these Rules make no provision or make inefficient provision. The relevant provision of CPC shall so far as maybe applied to the proceedings before the claims Tribunal." In this context the amended provision of Order 8 Rule 1 mandates that the written statement/objection statement should be filed within one month from the date of appearance and the time for filing objection statement can be extended by not more than 60 days. All the Insurance companies in the cases, should file the objection statement or written statement within 30 days and with permission of extension of time by the Court should file written statement within 90 days. Otherwise, they should suffer the same consequence as the party who suffers for not filing the written statement within 90 days under the C.P.C.

11. For the reasons stated above, the following directions are issued:-

i) All the Insurance Companies should have data of all the registered vehicles all over India and collate with reference to their digital data of insurance policy/coverage note issued in respect of the vehicle in question.

ii) The Criminal Courts, which deal with the release of vehicle, should insist for production of the particulars of the policy and the driving licence of the offending

drivers before the vehicle is released.

iii) The Police Officers who release the vehicle involved in an accident, should insist for production of the policy particulars and the driving licence particulars of the offending drivers before the vehicle is released.

vi) The Investigation Officers of the Police Station, who register and investigate the crime with regard to motor vehicle accidents should sincerely and faithfully comply with Section 158 (6) of the M.V. Act and communicate the needed information to Tribunals and furnish the same to the insurers at their request.

v) The Insurance Company should strictly avoid taking stereo type plea of want of licence and want of policy without proper information and knowledge of the material particulars. Any such perfunctory and stereo type plea if taken, would run the risk of facing criminal contempt.

vi) The Insurance Companies should file the objection statement within 30 days from the date of appearance and can seek extension of time for filing the objection statement by not more than further 60 days as required under Order 8 Rule 1 of C.P.C.

12. In the present case as seen in the substantial majority of cases, the Insurance Companies would not lead any evidence. They produced the policy at the time of evidence admitting coverage of insurance. This would virtually substantiate the fact that the Insurance Companies indulge in taking perfunctory and stereo type of plea of want of driving licence and want of policy without proper verification and information.

13. The Registry is directed to send a copy of this judgment to all the Chief Managing Directors and the Regional Manager of all the Insurance Companies in the trade who issue policy of insurance to Motor Vehicles for strict compliance of the directions issued.

14. The Registry is directed to send the copy of this judgment to the Director General of Police (DGP) to give strict instructions to all the Station House Officers of the Police Stations for considering the compliance of the directions issued.

15. The Registry is further directed to send a copy of this judgment to all the Criminal Courts in the State for strict compliance of the observations made regarding insisting of policy particulars and driving licence particulars at the time of release of the vehicle.

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