

K.E. Basavarajappa Vs. H. Chandrappa and Another

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Court : Karnataka

Decided On : Jan-09-2012

Judge : A.S. Pachhapure

Appeal No. : MISCELLANEOUS FIRST APPEAL NO. 1822 of 2010 (MV) C/w
MISCELLANEOUS FIRST APPEAL NO. 2846 of 2010 (MV)

Appellant : K.E. Basavarajappa

Respondent : H. Chandrappa and Another

Advocate for Pet/Ap. : For the Appellant: R. Shashidhara, Advocate. For the
Respondent: R2 - K. Rajashekar, B.C. Seetharama Rao, Advocates, R1- Served.

Judgement :

(Prayer: MFA No.1822/2010 IS FILED UNDER Section 173(1) of Motor Vehicles Act, against the judgment and Award dated 02.02.2010 passed in MVC No.88/2009 on the file of Civil Judge (Sr.Dn.) and MACT, Holalkere, partly allowing the Claim Petition for compensation and seeking enhancement of compensation.)

1. The appellant has filed MFA No. 1822/2010 seeking enhancement of the compensation for the injuries sustained in an accident, whereas the insurer has filed MFA No. 2846/2010 challenging the occurrence of the accident and the amount of compensation granted.

2. The facts relevant for the purpose of these appeals are as under:

The parties are referred to as per their rank before the Tribunal, for the purpose of convenience.

The appellant in the first appeal is the petitioner, whereas the appellant in the other appeal is the respondent No.2-insurer. The petitioner claims that while he was going by walk on the left side of S.H.47 road near Chowdamma Temple, Hirekere, Holalkere Taluk, on 14.10.2008 at about 6.00 p.m., the rider of Motor Cycle bearing registration No.KA-16/R-7185 rode the Motor Cycle in a rash and negligent manner and hit the petitioner due to which he sustained injuries. He was taken to the hospital, treated for the injuries. He claims to have suffered disability and in the circumstances sought for compensation on all the heads.

3. The insurer contested the claim after seeking leave of the Court under Section 170 of the Motor Vehicles Act. It denied the involvement of the offending vehicle in the accident, its liability and also the quantum of compensation claimed as highly exorbitant and arbitrary. During the enquiry, the petitioner was examined as P.W.1, a witness P.W.2 and in their evidence got marked the documents Exs. P-1 TO P-12, whereas the respondents examined two witnesses, R.Ws.1 and 2 and got marked the documents Exs. R-1 to R-5. The Tribunal after hearing the counsel for the parties and on appreciation of the material on record, held actionable negligence on the part of the rider of the Motor Cycle and granted compensation of Rs.41,000/- for pain, suffering and mental agony, Rs.12,660/- for loss of amenities, Rs.2,000/- as miscellaneous expenses, in all it granted a total sum of Rs.55,660/- with interest at 6%. The petitioner has preferred appeal in MFA No. 1822/2010 seeking enhancement, whereas the insurer has filed MFA No. 2846/2010 challenging the involvement of the vehicle in the accident, liability and the compensation awarded.

4. I have heard the learned counsel for both the parties.

5. The points that arise for my consideration are,

1. Whether the petitioner proves that he sustained injuries in the Motor Vehicle accident that occurred on 14.10.2008 at 6.00 p.m., due to rash and negligent riding of the motor cycle bearing registration No.KA-16/R-7185 by the respondent

No.1?

2. Whether the petitioner is entitled to enhanced compensation, if so to what extent?

6. The accident in question is said to have occurred on 14.10.2008 at about 6.00 p.m., by the rash and negligent riding of the Motor Cycle bearing No.KA-16 / R-7185 by the respondent No.1. To prove this accident, except the documents produced by the petitioner and his oral evidence, there is no other materials placed on record. It is well established principle of law that proof of an accident need not be beyond reasonable doubt, but under the principle of preponderance of probabilities. According to the petitioner, the accident occurred on 14.10.2008. Ex. P-2 is the certified copy of the FIR and it was lodged by the petitioner on 18.10.2008 in which he states that on 14.10.2008 in the evening at about 6.00 p.m., he along with one Prabhu were proceeding by the side of the road and at that time the bike bearing registration No.KA-16/R-7185 came from the opposite direction, ridden in a rash and negligent manner and hit him and he sustained grievous injuries and was admitted to the Hospital for treatment. He claims that the owner of the vehicle undertook to treat the petitioner at his expenses and later the owner did not bear the expenses and he was compelled to file a complaint of the accident. Ex. P-4 is the certified copy of the scene of occurrence and no incriminating material is found in the mahazar. Ex.P-5 is the Motor Vehicle Inspector's report of the vehicle bearing registration No.KA-16/R-7185 and no damage was found to the vehicle. The injury certificate has been produced at Ex.P-6 and so far as history of the accident is concerned, except stating the history as RTA on 14.10.2008 at 6.00 p.m., no particulars has been furnished in the injury certificate. The petitioner has not produced the case sheet with regard to his treatment in the hospital except the injury certificate referred to supra.

7. The insurer has produced the document, Ex.R-2, the case sheet pertaining to the treatment of the petitioner in the hospital. He has also examined the doctor, R.W.2, who treated him. It is revealed from Ex.R-2 the petitioner was admitted in the hospital on 14.10.2008 at 7.30 p.m. His name has been mentioned therein and the history of the incident is mentioned as under:

“RTA on 14.10.2008 at 06.00 p.m., near Marada office, the victim was travelling in the bike No.KA-16/J-8788 and when a cow came on the road and fell down.”

8. So this information is on the date when the petitioner was admitted in the hospital. But after the lapse of four days when a complaint came to be filed by the petitioner, the manner of accident altogether was changed and in the complaint it is stated that while proceeding by the side of the road, the bike bearing registration No.KA-16/R-7185 came in a rash and negligent manner and hit the petitioner. So there are inconsistent views in the contentions raised by the parties. The insurer has examined R.W.2, Dr.Vijay Sajjan and in the chief examination he states that Ex.R-2 is the M.L.C. extract and in the said extract it is mentioned that on 14.10.2008 at about 6.00 p.m., the petitioner was proceeding on the bicycle and a cow came across and he fell and sustained injuries. R.W.2 was cross examined by the petitioner and he states in the cross examination that the injured had sustained a blow on the head and was not in a position to speak and he states that he cannot remember what actually the petitioner said on the date of his admission in the hospital. He also states that he did not take the signature of the petitioner on the case sheet and he further states that it is either the injured or the person who accompanies him would be the person, who gives the information of the accident. As could be seen from the injury certificate and the injury suffered, injury No.1 is the abrasion over the forehead, injury No.2 is the cut lacerated wound on the nose, injury No.3 is the abrasion over the left knee, injury No. 4 is the cut lacerated wound over the right thumb and injury No.5 is the abrasion over the nose tip and the x-ray reveal the fracture of patella. So as could be seen from the injury certificate, the petitioner had not sustained such a severe blow and even the case sheet does not reveal that at the time when he was admitted in the hospital he was unconscious. The case sheet, Ex.R-2 also reveals that the petitioner had drunk alcohol, there was positive smell, he was disoriented and was not in a position to handle the bike. The earliest information of the accident is by an accident due to the use of the vehicle bearing registration No.KA-16/J-8788, whereas in the delayed complaint which was filed after four days, the vehicle referred to is KA-16/R-7185. It is not elicited from the evidence of R.W.2 as to why the number of the Motor Cycle was wrongly mentioned in the case sheet. So when there is such a controversy in the records produced by the parties, the interested version of the

petitioner is itself is not sufficient to explain the controversy and therefore he ought to have examined other independent witnesses to prove involvement of the vehicle mentioned in his complaint.

9. Learned counsel for the appellant has placed reliance on the decision reported in 2003(4) KCCR 2579 (DB) [Harkhubai and Others Vs. Jiyaram and Others]. The facts reveal that in an accident occurred due to rash and negligent driving of lorry, there was death in the said accident, there were no eyewitnesses except the driver of the vehicle and the inmates. The driver had pleaded guilty in the criminal case and this Court held that this admission of guilt by the driver is sufficient to hold that the accident was due to rash and negligent driving of the vehicle. Infact there are no such facts or circumstances on hand and the controversy in the case are altogether different.

10. The learned counsel for the insurer has placed reliance on an unreported Judgment of the Apex Court in Civil Appeal No.3171/2009 (North West Karnataka Rd. Transport Corp. Vs. Gourabai and Ors.), wherein it has been observed and held as under:

“Reference was made to the evidence of the doctor, who had admitted the deceased to the hospital, that the deceased had suffered head injury due to fall from the height of 8 to 10 feet of his own house. Though this was specifically stated in the written statement, the MACT and High court brushed aside the same stating that there was indirect admission about the deceased having sustained injury in vehicular accident. The effect of the evidence of the doctor and exhibit R-1 does not appear to have been looked into by the MACT and the High Court. MACT did not place reliance on the document R-1 on the ground that the brother of the injured stated that he did not know what was written in the document and his signature was taken on one page. This conclusion overlooks from the fact that a doctor will not take a signature on a piece of paper mentioning something which is not correct. Exhibit R-1 establishes beyond the shadow of doubt that the injuries sustained were not on account of any vehicular accident. That being so, the MACT and the High Court were not justified in making any award. The order of the MACT and the High Court stands set aside.”

In the decision referred the deceased was admitted in the hospital with the history that he suffered head injury due to fall from the height, whereas later in the complaint, it was mentioned that the injuries sustained due to vehicular accident. Therefore, considering the facts on hand as Ex.R-2, case sheet reveals the earliest information of the involvement of a different vehicle, I do not think that the material placed on record is sufficient to prove the involvement of the vehicle alleged by the petitioner in his complaint. It appears that to make a false claim for compensation, the petitioner subsequently has taken disadvantage of the circumstances and by falsely showing a different vehicle though he did not suffer any injury due to the accident of the said vehicle made a false claim for compensation. Hence this Court is of the view that the Tribunal was not justified in holding that an accident occurred due to the rash and negligent driving.

11. So far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.41,000/- for pain and suffering, Rs.12,660/- towards loss of amenities and Rs.2,000/- on miscellaneous heads. It has not taken in to consideration the loss of income during the period of treatment and also the disability that the appellant has suffered at 5% as stated by the doctor. Though on those two heads, the appellant is entitled to claim the compensation, as the involvement of the vehicle has not been proved and so also the rash and negligent riding of the Motor Cycle by its rider, his claim petition has to be rejected.

12. In that view of the matter, I answer the point Nos.1 and 2 in the negative and proceed to pass the following:

ORDER

M.F.A.No.1822/2010 is dismissed. M.F.A.No 2846/2010 is allowed. The judgment and Award dated 02.02.2010 passed by the Tribunal is set aside. The claim petition of the petitioner is dismissed.

The amount in deposit shall be refunded to the insurer.

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