

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR. JUSTICE S.N.SATYANARAYANA

AND

THE HON'BLE MR.JUSTICE SACHIN SHANKAR MAGADUM

M.F.A.NO.7902/2014(MV-I)
C/W M.F.A.NO.6263/2014(MV-I)

DATED : 11-10-2019

SRI SRINIVASIAH VS. MT HEMAVATHI AND OTHERS

JUDGMENT

SATYANARAYANA J.,

Though these appeals are at the stage of admission, since the lower court records are already received, at the request of learned counsel appearing for both parties they are taken up for final disposal

2. The judgment and award dated 10.01.2014 on the file of Motor Accident Claims Tribunal (for short 'Tribunal') is assailed by the appellant in MFA No.7902/2014 on the ground that the compensation awarded is on the lower side. So far as the appeal in MFA No.6263/2014 is by the Insurer impugning the very same judgment and award on the ground that fastening liability to pay compensation on the Insurance Company is erroneous in the light of there

being evasion of policy conditions.

3. Heard learned counsel for the appellants in both the matters and as well as the contesting respondent-owner of the offending lorry.

4. The material on record would disclose that on 08.01.2010 at about 9.15 a.m. while the claimant was proceeding on his bicycle from his residence on Tumkur-Kunigal road, near Nagavalli pump house he was hit by a bus bearing registration No.KA-06-A-6733. The said accident is not in dispute. So also the claimant suffering certain injuries for which claim petition being filed by him seeking compensation from the owner and insurer of the offending bus. In the said claim petition, the contesting respondent - insurer took up a defence that the vehicle involved in causing the accident was not having valid permit and the said bus was used as a substitute in place of a bus which had no permit to run. In view of breach of permit condition, the insurer is not liable to pay compensation.

5. The Tribunal has refused to accept the line of defence taken by the insurer and proceeded to assess the

compensation payable to the claimant at Rs.1,50,240/- with interest at 6% p.a. from the date of petition till the date of payment of the entire amount and saddled the liability to pay compensation on the insurer. Being aggrieved by the same, two appeals are filed, one by the claimant seeking enhancement of compensation and another by the Insurer challenging fastening of liability to pay compensation to the claimant on it. This Court would take up the claimant's appeal first.

6. Heard Sri Gopal Krishna N, learned counsel for the appellant/claimant and as well as the contesting respondent-Insurer. Perused the reasoning given by the Tribunal on Issue No.2 at paragraph-13(a-f) where the Tribunal has considered threadbare the nature of injuries suffered by the claimant which are in the nature of laceration wound to right foot with fracture of right femur, fracture of left 6th and 7th rib, fracture of right bone, fracture of base right 5th metatarsal bone, fracture of base proximal phalynx right second toe and other injuries which are already healed and not having left any residuary disability to the claimant and awarded compensation in a sum of Rs.1,50,240/-, which appears to be just and proper. Therefore, question of entertaining the appeal filed by the claimant seeking enhancement of compensation does not merit consideration.

Accordingly, the same is dismissed.

7. Now, with regard to connected appeal in MFA No.6263/2014 by the insurer is concerned, the same is filed on an erroneous footing in as much as substitution of the vehicle in place of vehicle which is seen in the permit would absolve the liability of the insurer. The point that arises for consideration is whether the vehicle in question was insured with the appellant-Insurer at the relevant point of time when the accident took place? In this regard, when the material on record is looked into, the same would reveal that the vehicle in question was insured with the appellant- Insurer after paying the required premium. In that view of the matter, the insurer is not entitled to raise an objection regarding the said vehicle being substituted for the permit on the relevant date, is of no consequence. In any event, the material on record would indicate that the said formality is completed by the owner at a later stage by securing necessary endorsement. If at all there is any delay in getting such substitution, it is open for the RTO to impose penalty or fine as required under the Motor Vehicles Act and to recover the same from the owner of the bus. In any event, it would not empower or entitle the insurer to wriggle out of its liability to pay compensation to the injured-third party in the said accident.

8. At this juncture, learned counsel for the appellant-insurer is also seeking permission to exercise pay

and recovery. In the facts and circumstances of the case, this Court is of the considered opinion that even such concession is also not available to the insurer. Accordingly, the appeal filed by the 3rd respondent- Insurer in MVC No.418/2010 is dismissed.

9. In view of the appeal filed by the Insurer being dismissed, the amount in deposit is ordered to be transmitted to the Tribunal for disbursement in favour of the claimant.