

(2015) 12 KAR CK 0133
In the Karnataka High Court
Case No : M.F.A. No. 6158 of 2010(MV)

A.M. Shivanna and Others

APPELLANT

Vs

The Managing Director B.M.T.C. and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 12 KAR CK 0133

Hon'ble Judges : P.D. Waingankar, J.

Bench : Single Bench

Advocate : Sreevidya G.K., Adv. for T.N. Viswanatha, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

P.D. Waingankar, J.—This appeal is directed against the judgment and award dated 17.4.2010 in MVC No. 5759/2008 on the file of XII Additional Small Causes Judge and Member, Motor Accident Claims Tribunal, Bangalore(for short "tribunal), whereby the claim petition u/s. 166 of the M.V. Act filed by the appellants-claimants claiming compensation on account of death of A.M. Shivanna in a motor vehicle accident came to be dismissed on the ground that the claimants failed to establish the nexus between the death of A.M. Shivanna and the accidental injuries.

2. On 18.6.2008, deceased A.M. Shivanna was proceeding on his motor cycle bearing registration No. KA-04-EP-4744 at about 3.15 p.m. At that time, a KSRTC bus bearing registration No. KA-01-F-1955 dashed against him on account of rash and negligent driving, as a result, he sustained grievous injuries, for which, he was admitted and treated as inpatient in Hosmat Hospital, Bangalore. He underwent surgeries, he spent Rs. 1.00 lakh towards medical expenses. In spite of best treatment, he did not recover. He filed claim petition under Section 166 of the M.V. Act in MVC No. 5759/2008. During the pendency of the claim petition, he died and his LRs came on record to continue the proceedings. The respondent-insurance company opposed the petition on the

ground that there is no nexus between the accidental injuries and the death of the deceased and therefore the LR's have no locus-standi to prosecute the petition.

3. The claim petition came up for consideration before the tribunal, before whom, one Smt. Manjula, wife of the deceased A.M. Shivanna was examined as PW-1, Exs-P1 to P11 were marked. The tribunal on appreciation of evidence recorded a finding that the claimants failed to prove the nexus between the accidental injuries and the death of the deceased, which resulted in dismissal of the petition. Therefore, this appeal.

4. I have heard both the learned counsel appearing for the appellants-claimants and the counsel for the insurance company. Perused the records.

5. The accident occurred on 18.6.2008. The injured A.M. Shivanna died on 8.11.2008 after about five to six months from the date of the accident. He had closed fracture of left tibia-mid third and dislocation of proximal inter phalangeal joint of left little finger, for which, he underwent closed reduction and internal fixation in Hosmat Hospital. He was admitted in the hospital for a period of five days. There is no material on record to show that he was in continuous treatment for the very same injuries sustained by him in the accident until his death nor the dead-body was subjected to post-mortem examination, so as to know the cause of the death. In the absence of concrete material to establish that death was due to accidental injuries, the tribunal has rightly recorded a finding that the claimants failed to establish that the injured A.M. Shivanna died on account of accidental injuries. However, the tribunal is not justified in dismissing the petition. The tribunal ought to have awarded the amount spent by the claimants towards the medical expenses. The claimants have produced as many as 29 medical bills as per Ex-P7 series for Rs. 78,885/-. They have also produced medical prescriptions 15 in number as per Ex-P8. Apart from the amount spent towards medical treatment, the claimant must have also spent some amount towards the conveyance, attendant and such other incidental charges. Since the injured was resident of Ramanagar and he was treated in Hosmat Hospital, taking note of the amount spent towards medical expenses and the amount spent towards incidental expenses, ends of justice will be met, if an amount of Rs. 1.00 lakh is awarded to the claimants towards "medical and incidental expenses".

6. For the forgoing reasons, the appeal filed by the appellants-claimants is allowed-in-part. The judgment and award dated 17.4.2010 in MVC No. 5759/2008 on the file of XII Additional Small Causes Judge and Member, Motor Accident Claims Tribunal, Bangalore stands modified awarding a compensation of Rs. 1.00 lakh together with 6% interest from the date of petition till the date of realization.

The 2nd respondent-United India Insurance Company Limited is directed to deposit the compensation together with interest at 6% p.a. from the date of

petition till the date of realization within a period of three weeks from the date of receipt of copy of this judgment.

In the event of deposit, the entire compensation shall be released in favour of the appellant No. 1-Smt. Manjula.