

(2015) 02 KAR CK 0318
In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 20575/2009 and 20395/2010

Anasuyamma and Others

APPELLANT

Vs

Nagalinga Swamy and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 187
Penal Code, 1860 (IPC) — Section 279, 304(a)

Citation : (2015) 02 KAR CK 0318

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

Bench : Single Bench

Advocate : Y. Lakshmikant Reddy, for the Appellant; S.K. Kayakmath, Advocates for the Respondent

Judgement

P.D. Waingankar, J.—This appeal by the Insurance Company is against the judgment and award dated 01.09.2008 in MVC No. 15/2008 on the file of Civil Judge, (Sr. Dn.) and MACT. VI, Kudulgi.

2. One Gurubasavaraju was proceeding on a motorbike on 27.05.2005. At about 9.30 p.m. when motorcycle reached on Morab Ammanakeri Cross, a Truck bearing registration No. KA 35-8919 came in a rash and negligent manner and dashed against the motor bike resulting instantaneous death of Gurubasvaraju. His wife and children filed a claim petition under Section 166 of the MV Act against the owner and insurer of the Truck.

3. The insurer of the Truck contested the claim petition, mainly on the ground that it was a case of hit and run, the truck in question has been fixed in collusion with the police and owner of the truck, just to get compensation though it was not at all involved in the accident.

4. The claim petition came up for consideration before the Tribunal. The Tribunal on appreciation of the evidence held that the truck in question caused the accident and the death of the deceased and thereby, the Tribunal awarded a total

compensation of Rs. 5,49,600/- to the claimants and directed the insurer to satisfy the award. The Insurance Company being aggrieved by the award preferred MFA No. 20575/2009. Whereas, dissatisfied with the quantum of compensation awarded by the Tribunal, MFA No. 20395/2010 is preferred by the claimants.

5. I have heard the learned counsel appearing for the Insurance Company and the claimants. Perused the records and the judgment and award of the Tribunal.

6. The following points would arise for my consideration-

"i) Whether the finding given by the Tribunal that the Truck No. KA 35-8990 belonging to the 1st respondent was involved in the accident is proper?

ii) Whether the compensation awarded by the Tribunal is just and reasonable?"

7. To establish the involvement of the truck in question in the accident, on behalf of the claimants one Siddesh was examined as PW.2 apart from relying upon the documents marked as Ex.P1 to P9. Ex.P1 is the FIR, Ex.P2 inquest Panchanama, Ex.P3 spot panchanama, Ex.P4 further statement of Siddesh before Investigating Officer, Ex.P5 is also statement of Siddesh, Ex.P6 seizure panchanama in respect of the vehicle in question, Ex.P7 is the motor vehicle inspector's report and Ex.P8 is the charge sheet. Ex.P1 is the complaint and the FIR in Crime No. 74/2007 of Kudulgi police Station for the offences punishable under Sections 279, 304(a) IPC r/w 187 of MV Act arising out of the death of Gurubasavaraja in the motor vehicle accident. The complaint was lodged on 27.05.2007 by one Siddesh. Accident said to have occurred on 27.05.2007 at about 9.20 a.m. The complainant Siddesh is none other than the brother of the wife of the deceased. In the complaint, he has stated that on 27.05.2007 at about 9.35 p.m. he along with his mother were near Soumya Hotel, he received a telephone message from one Jatappa wherein he was informed that Basavaraj his brother-in-law met with an accident and died in between Ammanakeri and Morab Cross on National Highway No. 13 near a poultry farm. Immediately he rushed to the spot of the accident and saw the dead body of Basavaraj on the left side of the kacha road. He had head injuries, blood was oozing from his mouth, ears and nose. He has also stated in the complaint that while his brother-in-law Basavaraj was proceeding on a motorcycle the driver of some unknown lorry on account of rash and negligent driving hit against the Basavaraj and fled away. This is what he has stated in the complaint and accordingly, the police prepared FIR wherein also the accused was shown as driver of an unknown lorry the number of which was not known. The very same Siddesh who lodged the complaint was examined as PW.2 in the claim petition on 24.06.2008. In his chief examination he has stated as under:

8. In the cross examination, he has deposed as under:

9. Thus, from perusal of the contents of complaint and his evidence one can easily come to the conclusion that vehicle No. KA-35/8914 has been fixed just to

get compensation from the insurer of the vehicle by colluding with the owner of the vehicle and the police. In the cross-examination he has very clearly stated that he had not at all given any further statement before the police disclosing the registration number of the Truck which caused accident as KA -35/8914. He even went to the extent that he did not give evidence in a criminal case arising out of this accident. He has also admitted that he was not an eyewitness to the accident. If we go by his cross - examination it is clear that the police fixed the vehicle in question by creating a false statement said to be the further statement of the complainant though no such statement was given by him as admitted by him. If we go by the evidence of PW.2 in the chief examination in the form of affidavit he states some people went on a motorcycle towards Chitradurga to chase the lorry which caused the accident but when they could not chase and stop the lorry they returned back and furnished registration number of the lorry which caused the accident as KA-35-8914. If it is really so definitely the complainant Siddesh ought to have mentioned the number of the lorry in the complaint itself. Since the number of the lorry finds no place in the complaint it is impossible to believe the statement made complainant - PW.2 that when he rushed to the spot after receipt of the information regarding the accident and the death of his brother-in-law some people went on a motorcycle to chase the lorry towards Chitradurga side and returned back with the registration number of the lorry as KA-35 8914. Except PW.2 who is none other than the brother-in-law of the deceased no other witnesses have been examined to prove the involvement of the lorry in question. The evidence of PW.2 is not worthy of credence inasmuch as he is the brother-in-law of the deceased. PW.1 the wife of the deceased is not an eyewitness to the incident. When such being the case the Tribunal is not justified in observing that the respondent Insurance Company has not produced any iota of documentary evidence to disbelieve the evidence of PW.1 and PW.2 coupled with prosecution papers and that the respondent insurer has not produced the rebuttal evidence nor the respondent examined the investigation officer. The Tribunal failed to note that the burden to prove the involvement of the vehicle is on the claimants more so, in view of the specific assertion made by the complainant who is none other than brother-in-law of the deceased that a unknown lorry hit and caused the accident and fled away. The observation made by the Tribunal is contrary to material on record. The Tribunal is not justified in holding that the claimants have proved the involvement of the lorry No KA-35/8914 in the accident and fastening the liability on the Insurance Company to satisfy the award. On my re-appreciation of the evidence, I am of the view that the claimants have failed to prove the very involvement of the lorry No. KA-35/8914 in the accident. In that view of the matter the claim petition itself is not maintainable.

10. Accordingly, I pass the following:--

ORDER

"i) M.F.A. No. 20575/2009 filed by the Insurance Company is allowed. The

judgment and award dated 01.09.2008 in MVC No. 15/2008 on the file of Civil Judge (Sr. Dn.) cum Member, MACT-VI, Kudligi is hereby set aside.

ii) The judgment and award dated 01.09.2008 in MVC No. 15/2008 on the file of Civil Judge (Sr. Dn.) cum Member-VI, Kudligi is hereby set aside.

iii) Claim petition in MVC No. 15/2008 is hereby dismissed as not maintainable.

iv) Amount in deposit in MFA No. 20575/2009 shall be refunded to the appellant-Insurance Company.

v) Consequently, MFA No. 20395/2010 filed by the claimant is hereby dismissed.