
(2015) 08 KAR CK 0337

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 11852/2012 (MV)

B. Subramanayam and Others

APPELLANT

Vs

Bajaj Allianz General Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 08 KAR CK 0337

Hon'ble Judges : N.K. Patil, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : Prakash H.C., Advocate for M. Anil Kumar, for the Appellant; O. Mahesh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.S. Dinesh Kumar, J—This appeal is filed challenging the Judgment and Award dated 3.2.2012 in MVC No. 5734/2007 on the file of I Addl. Small Causes Judge & MACT., Bengaluru (Tribunal" for short), whereby the claim petition filed under Section 166 of M.V. Act has been dismissed.

2. Case of the claimants - appellants borne out on record is that, son of the claimants, Girish Kumar was a pillion rider on a motor cycle which rammed into a bullock cart on 28.4.2007 at about 6 a.m. near Attur gate on Bengaluru-Kolar Highway. The victim sustained serious injuries and succumbed to the same.

3. The claimants filed the instant claim petition for compensation and the same was resisted by the Insurer. On consideration of the material on record, the Tribunal came to the conclusion that in all probabilities, the deceased was riding the motor cycle and the claimants had failed to prove that the deceased was a pillion rider and dismissed the petition. Hence, this appeal.

4. We have heard Sri Prakash H.C. for Sri M. Anil Kumar, learned Counsel for the appellants and Sri O. Mahesh, learned Counsel for respondent No. 1.

5. Learned Counsel for the appellants vehemently contends that the Judgment and Award is perverse because the Tribunal was not justified in coming to the conclusion that the deceased was riding the motor cycle when he was actually the pillion rider.

He submits that the evidence of eyewitness - P.W. 2 is categorical to the effect that the deceased was a pillion rider and therefore the impugned judgment is unsustainable in law and accordingly prays for allowing the appeal.

6. Per contra, learned Counsel for the respondent while supporting the impugned Judgment contends that it does not suffer from any legal infirmity calling for interference by this Court. Adverting to the deposition of P.W. 2, he submits that his admission in the cross - examination clearly discloses that he had not read the contents of the examination-in-chief. Therefore, his evidence does not support the case of the claimants. Accordingly, he prays for dismissal of the appeal.

7. We have perused the material papers contained in file and given our anxious consideration to the submissions made by the learned Counsel. Specific case of the claimants is that the deceased was a pillion rider. In support of their case, the claimants have examined P.W. 2, who is said to be an eyewitness. Although, it is stated in his examination-in-chief filed in the form of an affidavit, that the deceased was a pinion rider, his categorical admission in the cross - examination that he had not read the contents of his examination-in-chief and his further admission that he had stated before the Insurance Company officials that deceased Girish Kumar was riding the motor cycle have completely eroded the case of the claimants.

8. The reasoning of the Tribunal that the Complainant could not have been an eyewitness is logical and correct because the accident has admittedly taken place at 6 a.m. and the Complaint was lodged at 9 a.m. by the father of the deceased and not the eyewitness.

9. The IMV report and the panchanama disclose that the front portion of the motor cycle such as headlight, Odometer, handlebar, indicators have been completely damaged. With such severe damage to the two wheeler, the rider of the vehicle also ought to have sustained grievous injuries. There is no mention about the rider of the vehicle in the entire record. If the deceased was indeed a pillion rider, when he was shifted to the hospital, the rider also ought to have been in his company as an injured or atleast as an attendant if he had providentially escaped unhurt.

10. The version of the claimants with regard to the accident are not analogous with the documents such as IMV report, panchanama and cross - examination of P.W. 2 and therefore did not inspire the confidence of the Tribunal as also of this Court.

11. Tribunal has adverted to every minute aspect of the case and come to a

definite and correct conclusion that the claimants have failed to establish that the deceased was a pillion rider. No exception can be taken to the said finding and the resultant judgment. While agreeing with the findings of the Tribunal, we hold that the deceased was infact the rider of the motor cycle. It is settled in law that the rider of a vehicle being a tortfeasor himself is disentitled to any claim against the Insurer as he steps into the shoes of the insured. Accordingly, the claim petition lacks bona fides and merit and liable to be dismissed.

12. In the result, the appeal fails and accordingly, stands dismissed.

No costs.