
(2015) 07 KAR CK 0311

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 23758 and 23759/2012 (MV)

Bhimanagouda and Others

APPELLANT

Vs

Chambanna V. Tulaji and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Evidence Act, 1872 — Section 101

Citation : (2015) 07 KAR CK 0311

Hon'ble Judges : Ravi V. Malimath, J;G. Narendra, J

Bench : Division Bench

Advocate : Sanjay S. Katageri, for the Appellant

Judgement

G. Narendra, J—Heard the learned counsel for the appellant and also the learned counsel for the respondent.

2. The appellants are the claimants before the Tribunal. The case of the appellants is that on 20.02.2008 at about 15:30 hours, when the appellants were proceeding on a motorcycle bearing No. KA-27/S-1354 from Ganeshgudi to Bidoli Road, the alleged offending vehicle being a tempo bearing No. KA-22/A-2019 came from the opposite direction and that it was driven by the driver in a rash and negligent manner with reckless speed and dashed against the motorcycle. As a result of the accident, the petitioner suffered serious grievous injuries like crush injuries to right leg and as a consequences, the right leg had to be amputated.

3. It is stated that after the occurrence of the accident, he was taken to the General Hospital at Dandeli and thereafter he was shifted to KLE Hospital at Belgaum, where amputation procedure was done. It is stated that he was an inpatient for more than two months and that he took follow up treatment for considerable period of time and he had spent more than Rs. 1,50,000/- towards treatment and as a result of the amputation he has suffered permanent disability and is not in a position to do work and earn the income which he was earning

prior to the accident. It is stated that the second claimant was a pillion rider and that he too sustained grievous injuries. On these grounds, the appellants have filed the appeals claiming for compensation.

4. The claim of the appellant is resisted by the respondent-insurer on the ground of false implication of the vehicle and that the alleged offending vehicle was not at all involved in the accident and the injuries suffered as a result of accident caused by the motorcycle bearing No. KA-22/A 2019. The insurer to resist the claim of the petitioners has relied upon the papers of the prosecution i.e., police papers, wherein, in the complaint dated 21.01.2008 lodged before the Joida Police Station, it is stated that an unidentified Jeep--407 has dashed against the motorcycle causing the grievous injuries to them and that subsequently the petitioners have colluded with the owner of the alleged offending vehicle and concocted the above claim petitions and the Police have fallen prey and with their connivance and in collusion with the insured, the claim petition has been set up. The police got prepared a false charge sheet and it is alleged that the driver of the implicated vehicle is friend of the claimants. The accused driver has admitted to the guilt and pleaded the guilty for the offence for which he has charged.

5. Thus, the insurer has taken a specific ground for resisting the claim, which he asserts, is a spurious and fabricated one and as a result of the collusion between the injured, insured, driver, police and other friends of the appellant. It is further alleged that the driver of the offending vehicle was not holding any effective licence with endorsement to drive transport vehicle and on the above contentions, the Tribunal formulated the following issues.

[1] Whether the petitioner proves that the alleged accident in question was occurred due rash and negligent driving of tempo bearing No. KA-22/A-2019 by the driver and the petitioner sustained injuries as alleged?

[2] Whether the petitioner is entitled for compensation? If so, for what amount and from whom?

[3] What award or order?

The consideration of issue No. 1 is relevant for the present purpose.

6. The undisputed facts are that the appellants/claimants were riding their motorcycle bearing No. KA-22/A-2019. It is not denied that the accident occurred while the appellant were riding on their motorcycle bearing No. KA-27/S-1354. The resistance of the insurer is limited to the aspect that the alleged offending vehicle being a tempo 407 caused the accident. The insurer has not denied either the hospital records or MVI report -- Ex. P5 detailing the damages suffered by the motorcycle.

7. It is seen that the Investigating Officer/Police have charge sheeted the driver and have also filed the charge sheet in the Court.

8. It is contended by the insurer that the complaint does not disclose the number

of vehicle nor the identity and he would also state that it is alleged in the complaint, that an unidentified vehicle, hit them and fled away. This fact is also admitted in the cross-examination.

9. The claimants have examined themselves and a Doctor who treated them and it has come out that the injuries have been suffered on account of the road traffic accident. The medical bills and X-ray have also been produced. The appellant/claimant have got marked 24 documents in support of their claim which include the FIR, charge sheet, copy of the judgment and order in CC No. 785/2008, the salary certificate, medical bills, disability certificate, discharge summary etc., The respondents have not got examined any witnesses nor they have produced any documents in evidence. In this background, the parties went to trial and the Tribunal after considering the various facets of the case was pleased to determine that the petitioners have failed to establish the nexus between the accident suffered by them and the offending vehicle. In that view of the matter, the Tribunal was pleased to reject the claim petitions filed by the appellants.

10. The learned counsel for appellant would submit that the trial Court misdirected itself and has rendered an illegal judgment and award which is liable to be set aside. He would submit that the appellant claimants have probalilized a case and have produced all material which speaks for the case set out by the claimants. He would submit that they have got examined themselves and also the Doctor who treated them.

11. He would submit that the offending vehicle was traced by the Investigating Officer and the Police have registered the FIR and have also filed the charge sheet and the guilt was also admitted by the driver. That being the case, the claimant had secured and placed before the Tribunal all these records. He would submit that the Court below erred in holding that the claimant ought to have produced the additional and independent evidence to demonstrate their case. When the respondent insurer had miserably failed to elicit any discrepancy in the evidence before the trial Court. He would further submit that the trial Court has made much ado about the simple aspect of an error committed by the third parties i.e., hospital authorities while detailing the vehicle which caused the road traffic accident. He would submit that the claimants have steadfastly claimed that they were not aware of the vehicle which hit them and that the offending vehicle was traced by the Police and that the insurer has been arrayed as a party on the strength of the Police records, which have been placed before the jurisdictional magistrate for prosecution of the offender. He would submit that the insurer-respondent has not demonstrated any illegality. That prosecution initiated by the Police authorities against the driver of the vehicle ended in conviction but the Court has simply proceeded on suppositions and inferences, neither of which are legally sustainable grounds.

12. He would submit that the Tribunal erred in rejecting the claim after admitting the motorcycle inspection report. The appellants' counsel would further submits that the Tribunal has not rendered any findings which in effect nullifies the

investigation and finding of the police authorities and consequentially the prosecution before the jurisdictional magistrate. That being the case, the judgment and order of the Tribunal is perverse and is liable to be set aside.

13. Per contra, the learned counsel for the respondent insurer would once again point out the inconsistency in the records produced by the claimants. He would submit that he is entitled to justify his case on the strength of the evidence relied upon by the claimants itself. There can be no dispute for the said proposition, that the respondent or the defendant, is entitled to resist any claim on the strength of the evidence produced by the claimants. But in the instant case, a notable feature is that it is the respondent who has set up a specific claim of implication of the offending vehicle.

14. In that view of the matter, as per the provisions of Section 101 of the Indian Evidence Act, 1872, the burden or onus of establishing the said fact was on the respondent. It is not in dispute that the Tribunal has not rejected the Exs. P4, P5, P7 and P8 which are none other than spot pachanama, MVI report, charge sheet and copy of the order in CC No. 785/2008. It is also undisputed that Exs. P4, P7 and P8 are Court documents and public documents of which judicial notice can be taken. No material having been placed before the Tribunal to discredit the evidentiary value of the above noted materials, the Tribunal has seriously erred in accepting the bald, vague and unsubstantiated defence set up by respondent insurer. The above material evidence are unchallenged.

15. In that view of the matter, this Court is of the considered opinion that the dismissal of the claim petitions is unjustified and illegal. The Tribunal has admitted the fact that the claimants have indeed suffered crush injury, which has been caused in a road traffic accident. The preponderance of probabilities, the evidentiary value of the material on record tilt firmly in favour of the claimants. The insurer has not even stepped into the witness box and it is established law that no amount of evidence without sufficient pleading is of any avail to the party. Similarly, also no amount of evidence without pleading is of no avail to the parties.

16. It is undisputed that the insurer has not let in any evidence either to controvert the case of the claimants or in support of its defence. Hence, the impugned judgment and award warrants interference at the hands of this Court. Accordingly, the impugned judgment and order is set aside and the claim petitions are remitted back to the trial Court for disposal in accordance with law.

17. The Tribunal is directed to grant such opportunity to the parties as is permitted in law for a complete adjudication of the dispute.