
(2021) 06 KAR CK 0029

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5826 Of 2013 (MV)

Binub @ Binoop John

APPELLANT

Vs

Francis Cutinho & Others

RESPONDENT

Date of Decision : 04-06-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2021) 06 KAR CK 0029

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : R. Lakshmana, Y. Aruna, G.M. Raghu, O. Mahesh

Final Decision : Allowed

Judgement

H.P. Sandesh, J

1. This appeal is filed challenging the judgment and award dated 12.10.2012 passed in M.V.C.No.433/2010, on the file of the Principal Senior Civil

Judge, Additional, MACT, Udupi ('the Tribunal' for short) dismissing the claim petition.

2. The parties are referred to as per their original rankings before the Tribunal to avoid the confusion and for the convenience of the Court.

3. The factual matrix of the case is that the claim petition was filed on 28.05.2010 under Section 163-A of the Motor Vehicles Act, 1988 ('MV Act'

for short) as amended by Act 54/1994, wherein the petitioner has contended that he was the driver of the Santro car and the accident occurred due to

the negligence on the part of the driver of the offending vehicle. As a result, he has sustained injuries and spent an amount of Rs.1,25,000/- towards

medical expenses and also he has taken continuous medication and due to the accident, he has suffered permanent disability.

4. The claim petition was opposed by respondent No.1 by filing a detailed objection statement on 26.07.2010 contending that negligence was on the part of the driver of the offending vehicle i.e., mini lorry. The Insurance Company also filed a detailed objection statement denying the negligence on the part of the driver of the mini lorry and contended that liability is subject to terms and conditions of the policy.

5. The claimant in order to substantiate his case, examined himself as P.W.1 and examined the doctor as P.W.2 and other witness as P.W.3 and got marked the documents at Exs.P.1 to 14. The respondents have not led any evidence, however got marked the documents at Exs.R.1 and 2. The Tribunal after considering both oral and documentary evidence placed on record, dismissed the claim petition coming to the conclusion that the claimant himself is the tort-feasor as he has admitted in the cross-examination that he paid the fine and pleaded guilty before the criminal Court.

Hence, the present appeal is filed before this Court.

6. The learned counsel for the appellant would vehemently contend that it is not in dispute that the claimant was driving the Santro car and it is also not in dispute that the accident occurred involving of two vehicles and he has sustained injuries. The learned counsel would contend that the Tribunal has committed an error in dismissing the claim petition in coming to the conclusion that the claimant is the tort-feasor. The learned counsel would contend that the claim petition was filed under Section 163-A of the MV Act and when the petition is filed under Section 163-A of the MV Act and when the amendment was brought into, the very intention and object of bringing the enactment inserting Section 163-A of the MV Act has not been properly appreciated by the Tribunal. When the petition is filed under Section 163-A of the MV Act, the Tribunal ought not to have come to the conclusion that the claimant is the tort-feasor. The Court has to look into the involvement of the vehicle and the injuries sustained in the road traffic accident and the same has not been done.

7. Per contra, the learned counsel for respondent Nos.2 and 4 would vehemently contend that the Tribunal while dismissing the claim petition, particularly in paragraph No.12 of the judgment discussed in detail and relied upon the judgment of the Apex Court reported in 2012 AIR SCW 10 and rightly comes to the conclusion that the claimant is not entitled for

compensation. In paragraph No.12 it is held that he is the tort-feasor and he clearly

admitted in the cross-examination that he pleaded guilty and paid the fine and he cannot claim the compensation.

8. Having heard the arguments of the learned counsel for the appellant and the learned counsel for respondent Nos.2 and 4, the point that arise for the consideration of this Court is:

(i) Whether the Tribunal has committed an error in coming to the conclusion that the claimant is the tort-feasor and he cannot maintain the claim petition?

9. Having heard the respective learned counsel and on perusal of the records, it is not in dispute that the claimant has filed the claim petition under

Section 163-A of the MV Act as amended by Act 54/1994 on 28.05.2010. The owner as well as the Insurance Company have filed the

objections/written statement contending that the petition is filed under Section 166 of the MV Act. It is important to note that the Tribunal framed issue

Nos.1 and 2 assuming that the petition is filed under Section 166 of the MV Act. When the claim petition is filed under Section 163-A of the MV Act,

the Tribunal ought not to have framed issue Nos.1 and 2 whether the petitioner proves the accident in question occurred due to rash and negligent

driving of the vehicle. The Tribunal failed to take note of the very proviso of Section 163-A of the MV Act and the very object in bringing the

enactment and ought not to have considered the negligence while considering the claim petition filed under Section 163-A of the MV Act. The very

wisdom of the legislature has been missed out by the Tribunal and only issues ought to have been framed with regard to the involvement of the vehicle

in the accident and whether the claimant has sustained the injuries on account of use of the vehicle and the same has not been done. In the case on

hand, it has to be noted that two vehicles are involved in the accident and the claimant attributed negligence against the driver of the offending vehicle

i.e. mini lorry. In this regard, I would like to rely upon the judgment of the Apex Court in the case of UNITED INDIA INSURANCE COMPANY

LIMITED v. SUNIL KUMAR AND ANOTHER reported in (2014) 1 SCC 680 wherein it is categorically held that the negligence cannot be

considered in a case filed Section 163-A of the MV Act. I have already pointed

out that the very issues framed by the Tribunal is erroneous and also proceeded in an erroneous approach considering the negligence. Hence, I am of the opinion that the matter requires remand and the Tribunal has to apply its mind considering the petition filed under Section 163-A of the MV Act and frame appropriate issues and if necessary record the evidence of the witnesses for giving finding to consider the matter in awarding the compensation in favour of the claimant by giving an opportunity to the respective parties, if necessary.

10. In view of the discussions made above, I pass the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned judgment and award of the Tribunal dated 12.10.2012 passed in M.V.C.No.433/2010 is hereby set aside.
- (iii) The matter is remanded to the Tribunal to consider the matter afresh in view of the observations made in the judgment.
- (iv) This is the matter of the year 2010 and hence the Tribunal is directed to dispose of the matter within six months from today.
- (v) The respective learned counsel are directed to assist the Tribunal to dispose of the matter within the stipulated time.
- (vi) The parties are directed to appear before the Tribunal on 28.06.2021 without expecting any notice.
- (vii) The Registry is directed to transmit the records to the concerned Tribunal, forthwith.