

(2014) 04 KAR CK 0060

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 9053 of 2007 (MV)

Branch Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Kempamma and Others

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173(1)

Citation : (2014) 4 ACC 487 : (2015) ACJ 1082 : (2014) 2 AKR 702 : (2014) ILR 3336 : (2014) 3 KarLJ 442

Hon'ble Judges : P.D. Waingankar, J;N.K. Patil, J

Bench : Division Bench

Advocate : A.N. Krishnaswamy, Advocate for the Appellant; A.R. Sharadamba, Advocate for R2, Advocate for the Respondent

Judgement

Pradeep D. Waingankar, J.—This appeal u/s 173(1) of M.V. Act, 1988 is filed by the Appellant-Oriental Insurance Company Limited against the award dated 19.1.2007 in M.V.C. No. 115/2006 on the file of Civil Judge (Sr. Dn.) & MACT (for short "Tribunal"), K.R. Pet, directing the appellant Insurance Company to satisfy the award amounting to Rs. 9,51,333/- with interest at 6% p.a.

2. One B.S. Ramakrishnegowda was working as Assistant Master in Government Junior College at Krishnarajpet Town. He used to travel daily from his native place Ballekere village to attend the School. On 27.8.2001, after finishing his duty, he was returning to his house on a motor cycle bearing No. KA 11-J-9846 as pillion rider from Krishnarajpet to Ballekere. The motorcycle was being driven by the rider one L.S. Hemanth kumar in a rash and negligent manner and thereby B.S. Ramakrishnegowda, the pillion rider fell down from the motor cycle and sustained grievous injuries. He was taken to Krishnarajpet General hospital and since his conditions were precarious, he was referred to B.M. Hospital at Mysore, where he succumbed to injuries, while undergoing treatment as inpatient. As such, claiming compensation of Rs. 24,39,152/-, his mother, wife and two minor children filed claim petition u/s 166 of M.V. Act against the rider,

owner and the appellant-Insurer of the motor cycle.

3. The claim petition was opposed by appellant-Insurance company denying that, the first respondent L.S. Hemanth kumar, was riding the motor cycle bearing registration No. KA-11-J-9846 with deceased B.S. Ramakrishnegowda- as the pillion rider. On the other hand, it was contended that deceased B.S. Ramakrishnegowda himself was riding the motor cycle in a rash and negligent manner and as a result the skid of motor cycle, the rider deceased B.S. Ramakrishnegowda fell into the ditch, sustained head injuries, to which he succumbed, while undergoing treatment in B.M. Hospital, Mysore. It was further contended by the Insurance company that since the deceased himself was riding the motor cycle at the time of accident, the Insurance company is not liable to pay compensation to his legal heirs and hence the Insurance company sought for dismissal of the claim petition.

4. Respondent Nos. 1 and 2 the rider and the owner of the motor-cycle have contended that, the first respondent was riding the motor cycle at the time of accident having valid driving licence and since the motor cycle was insured with the appellant Oriental Insurance Company Limited, in the event award being passed in favour of the claimants, the Insurance company may be directed to satisfy the award.

5. The claim petition came up for consideration before the Tribunal. The claimants in order to establish their claim examined as many as five witnesses as PW-1 to PW-5 and relied upon 20 documents marked as Ex-P1 to P20. On behalf of the respondents, one K. Venkatesh was examined as RW-1, Sudeendra as RW-2 and Exs-R1 to R7 came to be marked. The Tribunal upon consideration of the entire material placed on record and hearing the counsel for both the parties recorded a finding that respondent No. 1 was riding the motor cycle at the time of accident and the deceased-B.S. Ramakrishnegowda was the pillion rider. The Tribunal has also recorded a finding that the accident and the resultant death of B.S. Ramakrishnegowda is on account of rash and negligent riding of the motorcycle by respondent No. 1 and thereby, the Tribunal awarded a total compensation of Rs. 9,51,333/- to the claimants together with 6% p.a. from the date of petition till the date of realization and directed the insurance company to satisfy the award by judgment and award dated 19.1.2007. Aggrieved by the same, this appeal is preferred by Insurer.

6. We have heard learned counsel appearing for the appellant-insurance company and the respondents-claimants. Perused the records.

7. Learned counsel for the respondents-claimants would submit that, the Tribunal upon consideration of the entire material placed on record has recorded a finding that the motor cycle was driven by one L.S. Hemanth kumar, wherein the deceased was travelling as pillion rider, the rider had valid driving licence and that the motor cycle was insured by appellant-Oriental Insurance Company Limited by issuance of a policy and thereby the Tribunal passed an award in

favour of the claimants legal heirs of the deceased. The judgment and award do not call for interference. Hence, learned counsel sought for dismissal of the appeal.

8. Learned counsel for the appellant-Insurance company submitted that, the deceased himself was riding the motor cycle at the time of accident and because of his own rash & negligent driving, the motor cycle got skidded and the deceased fell down and sustained grievous injuries, for which he succumbed while undergoing treatment. It is further submitted that the complaint that was given at the earliest point of time makes it very clear that the deceased was riding the motor cycle and it is because of his own negligence, he fell down from the motor cycle and died and since the deceased himself was responsible for the accident, the question of awarding any amount from the owner and insurer of the motor cycle does not arise. The Tribunal has committed grave error in awarding compensation and directing the insurer company to satisfy the award. Hence he sought to set-aside the judgment and award passed by the Tribunal and to dismiss the claim petition.

9. In view of the submissions made by both the learned counsel appearing for the parties and upon perusal of the entire material on record and the judgment and award, the point that arises for our consideration is as under:-

Whether the finding recorded by the Tribunal that at the time of the accident, One L.S. Hemanth Kumar was riding the motor cycle and the deceased was a pillion rider is proper?

10. The case of the Insurance company is that, the deceased himself was the author of the accident and therefore the claim petition filed by his legal heirs u/s 166 of the MV Act against the owner and insurer of the motor cycle is not at all maintainable. The case of the claimants on the other hand is that one L.S. Hemanth Kumar was riding the motor cycle and the deceased was travelling as a pillion rider at the time of accident and that on account of rash & negligent riding of the motor cycle, the accident occurred, wherein the deceased died and as such, respondent Nos. 2 and 3 being the owner and insurer of the motor cycle are liable to pay the compensation as awarded by the Tribunal.

11. In order to find out the truth, it is necessary to go through and examine the oral and documentary evidence placed on record by both the parties. Ex-P1 is the FIR in Cr. No. 105/2001 of K.R. Pet Rural Police Station registered in connection with this accident. If we go through the FIR, it is noticed that the complaint was given by one Byategowda on 31.8.2001. The accident occurred on 27.8.2001 at about 9.00 p.m. Why there was delay of five days in filing the complaint is not explained by the claimants. The complaint given by Byategowda reads as under:-

12. Thus from reading the contents of the complaint lodged by Byategowda that too after 5 days from the date of accident, it is abundantly clear that the deceased himself was riding the motorcycle at the time of accident and he

himself fell down from the motor cycle and sustained injuries, for which, he was taken to K.R. Pet General hospital and from there, he was shifted to B.M. hospital, Mysore, but he died on 31.8.2001 while undergoing treatment. Therefore, it is obvious that it is only after the death of the deceased, they thought of giving the complaint and accordingly true facts as to the manner of accident have been narrated by the complainant in his complaint. It is clearly stated in the FIR that deceased Ramakrishnegowda was riding the motor cycle bearing registration No. K.A. 11-J-9846. It appears that the police with an intention to help the claimants to get compensation colluded and recorded the further statement of the witnesses in such a manner so as to build up a case that the deceased was proceeding as pillion rider, which is contrary to the case made out in the complaint at the earliest point of time. Though the FIR has been produced and marked as Ex-P1, deliberately the copy of the charge-sheet is not produced by the claimants for the reasons best known to them. On behalf of the claimants, as many as five witnesses have been examined. Of-course all of them made an attempt to depose that at the time of the accident, L.S. Hemanth Kumar was riding the motor cycle, whereas the deceased was the pillion rider. But the veracity of their evidence has to be adjudged from other evidence placed on record.

13. The complainant Byategowda has been examined as PW-2. He has given his evidence contrary to the statement made by him in his complaint. His evidence is that though he lodged the complaint stating therein that the deceased was riding the motor cycle, in his further statement recorded by the police, he gave statement on his own that one L.S. Hemanth Kumar was riding the motor cycle. PW-3 is H. Guruswamy stated to be eye-witness to the accident. His evidence is that while he was returning from the agricultural fields at 9.00 p.m., he saw the accident in question at a distance of 20ft. away from him and he saw that two persons fell down from the motor cycle by name Hemanth Kumar the first respondent and another person whose name is not known to him. If really, Hemanth Kumar was riding the motorcycle and he also fell down from the bike alongwith the deceased, he ought to have sustained injuries. He did not suffer any injuries. That is another circumstance to hold that L.S. Hemanth Kumar was not at all riding the motor cycle. Added to that, if PW-3 had really seen the accident, nothing prevented him from lodging the complaint or transmitting the information to the family member of the deceased. He did not do so, for the reasons best known to him. Though the owner of the motor cycle stepped into the witness box and stated that the first respondent-Hemanth Kumar had taken the motor cycle on 27.8.2001 and while he was riding the motor cycle alongwith the deceased as pillion rider, the accident occurred wherein deceased died, his evidence is impossible to believe in view of specific case made out by the complainant in his complaint that the deceased himself was riding the motor cycle and fell down on account of skid of the motor cycle. Thus, it is suffice to say that only with an intention to get compensation, the claimants and respondent No. 1 and the owner of the motor cycle colluded each other to dupe

the Insurance company. This is a clear cut case of self accident as the deceased himself fell down on account of skid of the motorcycle, while he himself was riding the motor cycle. The theory put forth by the claimants that the accident occurred on account of rash & negligent riding of the motor cycle by respondent No. 1 B.S. Hemanth Kumar is contrary to the evidence on record. The Tribunal without having referred to the case made out by the complainant in his complaint recorded a finding that one L.S. Hemanth Kumar respondent No. 1 was riding the motor cycle and the deceased was the pillion rider. As such, the finding to that effect recorded by the Tribunal is liable to be set-aside. Consequently the claim petition filed by the legal representatives of the deceased u/s 166 of M.V. Act is liable to be dismissed as not maintainable. Hence, we proceed to pass the following:-

The appeal is allowed. The judgment and award dated 19.1.2007 passed in M.V.C. No. 115/2006 on the file of Civil Judge(Sr. Dn.) & JMFC & MACT, K.R. Pet is hereby set-aside and M.V.C. No. 115/2006 on the file of the Civil Judge(Sr. Dn.) & JMFC & MACT, K.R. Pet is hereby dismissed.