(2016) 08 KAR CK 0027

In the Karnataka High Court

Case No : M.F.A. No. 100684 of 2014 (MV)

Divisional Manager, Oriental Insurance Co Ltd., Hubli — APPELLANT

Vs

Smt. Champa — RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) AAC 2514

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri. M.Y. Katagi, Advocate, for the Appellant; Sri. Anil Kale, Advocate, for the Respondent Nos. 1 and 2; Sri. V.S. Kalasurmath, Advocate, for the Respondent No. 4; Served, for the Respondent No. 3

Final Decision : Allowed

Judgement

Mrs. S. Sujatha, J. - This appeal is by the Insurer, directed against the Judgment and Order passed by the Motor Accident Claims Tribunal, Dharwad (''Tribunal, for short''), in MVC No. 119/2013.

2. Briefly stated the facts are :

that the claimants are the widow and daughter of deceased Praveen Patil who died in the road traffic accident on 16-8-2007 allegedly due to the actionable negligence of the driver of the truck bearing registration No. KA-25-B-2899. The claim petition filed by the claimants seeking compensation for the death of Praveen Patil was resisted by the Insurer. The Tribunal, after appreciating the evidence on record, awarded total compensation of Rs. 10,04,000/- with interest at 9% per annum fastening the liability on the appellant/insurer. Being aggrieved, the appellant is before this Court challenging the liability fastened.

3. Learned Counsel for the appellant would contend that the deceased was travelling as a gratuitous passenger in a goods vehicle. The liability fixed on the appellant/insurer is against the principles of law and ratio laid down by the Apex

Court in the case of ''New India Assurance Company Limited v. Asha Rani'' reported in 2003 (2) SCC 223 : (AIR 2003 SC 607). The documents on record clearly reveals that the deceased Praveen Patil was an unauthorized passenger and he had fallen from the moving truck due to the rash and negligent driving of the driver and succumbed to the fatal injuries sustained. The Tribunal erred in not appreciating the vital evidence Exhibit. P1-complaint lodged by the brother of the deceased which clearly establishes that the deceased was travelling as gratuitous passenger in the goods vehicle. The Tribunal misread the evidence of RW. 1 that he had accepted that at the time of the incident, the deceased was standing by the side of the road and thus the contention taken by the Insurer-appellant that the deceased was an unauthorized passenger is not sustainable. The Tribunal misdirected itself in construing that the deceased was a third party standing on the road who sustained injuries due to the negligence of the driver of the offending vehicle. In support of his contention, learned Counsel places reliance on the judgment of the Apex Court in the case of ''Oriental Insurance Co. Ltd. v. Premlata Shukla'' reported in (2007) 13 SCC 476 : (2007 AIR SCW 3591).

4. Per contra, learned counsel appearing for the claimants would contend that the deceased was standing by the side of the road. The driver of the truck/ offending vehicle suddenly drove his vehicle with great speed, rashly and negligently as a result of which the deceased fell down on the road and left rear wheel of the said truck ran over. Thus, deceased succumbed to fatal injuries and died on the spot. This factum of accident is very well established in the charge-sheet filed against the driver of the offending vehicle. The said charge-sheet is neither challenged by the driver of the offending vehicle nor the Insurer. The documents on record, prima facie, establishes that the deceased was not a gratuitous passenger travelling in the offending vehicle. This aspect was rightly appreciated by the Tribunal on the basis of the material evidence and the liability was thus fastened on the Insurer which cannot be found fault with.

5. Learned Counsel further submits that the complainant was not an eye-witness to the incident. PW.2 was eye-witness who had categorically stated that the deceased was standing by the side of the toad at the time of the accident. It was the driver of the offending vehicle who ran over the deceased as a result of which the deceased Praveen Patil succumbed to fatal injuries on the spot. The Tribunal rightly placing reliance on the evidence of P.W. 2 held that the deceased was a third party standing by the side of the road and died on the spot due to the rash and negligent driving of the driver of the offending vehicle which is justifiable in the facts and circumstances of the case.

6. Having heard the rival submissions of the parties and perusing the material on record, this Court has to re-appreciate the evidence led by the parties as well as the documents marked at Exhibits. P1 to P11 and Exhibits. R1 and R2. Exhibit. P1 is the copy of the first information report which discloses that the driver of the offending vehicle while proceeding from Dharwad to Belgaum, drove in a high

speed and negligently, due to which the deceased fell down from the offending vehicle and the truck ran over him. The contents of the first information report thus establishes that the deceased was travelling in the truck and fell down from the moving track due to the negligent driving of the driver on whom the vehicle ran and the accident occurred. The charge-sheet at Exhibit. P2 also substantiates that the driver of the offending vehicle made the deceased to fell down due to his negligent driving and drove the vehicle on him. The complaint lodged at the first instance by the brother of the deceased reveals that the deceased boarded the goods vehicle to proceed to Belgaum. The conspectus reading of these documents suggests that the deceased was travelling as a gratuitous passenger in the goods vehicle and he fell down from the moving vehicle due to the rash and reckless driving of the driver on whom the vehicle moved and the victim died on the spot. The evidence of PW.2 on the contrary suggests that the deceased was standing by the side of the road on whom the offending vehicle ran over. To appreciate the veracity of evidence of PW.2, it would be significant to notice the sequence of events involved in the case. The accident occurred on 16-8-2007, complaint was lodged on 16-8-2007 marked as Exhibit. P1, charge-sheet was filed on 23-12-2007 and the claim petition was filed on 14-2-2013 claiming compensation for the death of the deceased. No reasons are assigned for the delay caused in filing the charge-sheet and instituting the claim petition after five and half years. It is hard to believe how the witness PW.2 would recollect the chain of events even if he had witnessed the accident in question after nearly five years of the occurrence of the incident. In the circumstances, first information report plays an important role, if the factum of accident is to be accepted based on the first in-formation report the same has to be considered in its entirety. The evidence on record reveals that no admission was made by RW. 1 that the accident caused while the deceased was standing by the side of the road. The finding given by the Tribunal on this aspect observing that RW.l has admitted this aspect is contrary to the available material on record.

7. At this juncture, it would be relevant to refer to the authoritative pronouncements of the Apex Court in the case of ''Oriental Insurance Co. Ltd. (2007 AIR SCW 3591) (supra) wherein the Apex Court has held thus :

"5. It is to be noted that in the claim petition itself a reference was made to the lodging of the First Information Report.

6. The learned counsel appearing on behalf of the appellant would submit that as the respondents themselves relied on the First Information Report, the High Court could not have ignored the same. Reliance in this behalf has been placed on Hukam Singh and others v. Smt. Udham Kaur (1969 PLR 908).

7. The learned counsel appearing on behalf of the respondent, on the other hand, would submit that only because First Information Report was relied upon for the purose of proving the accident, the contents thereof ipso facto cannot be said to have been proved. In support of the said contention, reference has been made on Narbada Devi Gupta v. Birendra Kumar Jaiswal and another ((2003) 8

SCC 745) : (AIR 2004 SC 175).

8. It is not known whether the Central Government has yet framed any scheme in respect of the hit and ran cases. We are not, however, concerned therewith in this case. Respondent had filed an application under Section 166 of the Motor Vehicles Act, 1988. It was required to be determined in accordance with the procedures laid down therefor. It will, however, be pertinent to refer to Deepal Girishbhai Soni and ors. v. United India Insurance Co. Ltd., Baroda ((2004) 5 SCC 385: (AIR 2004 SC 2107) on this aspect, wherein it was observed:

"The Law Commission furthermore recommended for laying of a scheme in terms where of the victims of ''hit and run accident'' could claim compensation where the identity of the vehicle involved in the accident was unknown.

Yet again, the 199th Law Commission in its report submitted in 1987 stated the law as it stood then in the following terms: "the law as it stands present, save the provisions in Chapter VIIA inserted by the Motor Vehicles (Amendment) Act, 1982, enables the victim or the dependants of the victim in the event of death to recover compensation on proof of fault of the person liable to pay the compensation and which fault caused the harm."

9. Where an accident occurs owing to rash and negligent driving by the driver of the vehicle, resulting in sufferance of injury or death by any third party, the driver would be liable to pay compensation therefor. Owner of the vehicle in terms of the Act also becomes liable under the 1988 Act. In the event vehicle is insured, which in the case of a third party, having regard to sub-section (2) of Section 147 of the Act, is mandatory in character, the Insurance Company would statutorily be enjoined to indemnify the owner.

10. The insurer, however, would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act.

11. The learned counsel appearing on behalf of the respondent contended that First Information Report was brought on record for the purpose of proving the accident and not for fixing the liability on the part of driver of the vehicle involved therein.

12. In Narbada Devi (supra) whereupon reliance has been placed, this Court held that contents of a document are not automatically proved only because the same is marked as an Exhibit. There is no dispute with regard to the said legal proposition.

13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the

rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise."

8. In view of the law laid down by the Apex Court in the aforesaid judgment, it is thus clear that the contents of the first information report can be relied upon by the Court if the said document is marked as an Exhibit and the factum of accident is accepted. The Tribunal mainly placing reliance on the evidence of PW. 2 said to be the eye-witness ignored the other documentary evidence placed on record by the claimants themselves. In the circumstances, this Court is of the considered opinion that the deceased was travelling as an unauthorized passenger in the offending vehicle and met with the accident and died on the spot. As such, no liability can be fastened on the Insurer to indemnify the owner in the light of the judgment of the Apex Court in the case of Asha Rani (AIR 2003 SC 607)(supra). Thus, the judgment and Award passed by the Tribunal is modified exonerating the Insurer from the liability to satisfy the Award. The owner-Respondent No. 4 shall satisfy the Award. The quantum of compensation awarded by the Tribunal remains intact.

9. Thus, the appeal stands allowed to the extent indicated above. The amount in deposit shall be refunded to the appellant-insurer forthwith.

