
(2015) 01 KAR CK 0372
In the Karnataka High Court
Case No : MFA No. 11112 of 2011 (MV)

D.S. Udaya and Others

APPELLANT

Vs

Chokira Bopanna and Others

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2015) 01 KAR CK 0372

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : Harish Ganapathy, for the Appellant

Final Decision : Allowed

Judgement

B. Sreenivas Gowda, J.—This appeal is by the driver and owner of the offending vehicle challenging the judgment and award passed by the Tribunal on the ground of liability.

2. With the consent of the learned counsel appearing for the parties, appeal is heard and disposed of finally.

3. Learned counsel appearing for the appellants submits the appellants who are the driver and owner of the offending vehicle after service of notice in the claim petition before the Tribunal entrusted the matter to their Advocate and thereafter due to certain inconvenience they could not follow up the matter. Consequently, except filing of the statement of objections on their behalf, documents like insurance policy and driving licence have not been produced and their interest was not effectively defended. As a result, the Tribunal by the impugned judgment has awarded compensation and fastened liability on the driver and owner of the vehicle. Learned counsel further submits while filing the appeal they have produced a copy of the insurance policy to show that the vehicle was insured and policy was also in force as on the date of the accident along with an application under Order 41 Rule 27 of Code of Civil Procedure and therefore, he prays for

allowing the appeal by setting aside the judgment and award of the Tribunal.

4. On the other hand, Sri. Souri Raju, learned counsel appearing for the insurer of the offending vehicle submits the appellants who were duly served with notice in the claim petition before the Tribunal except filing statement of objections denying the case of the claimant, did not choose to file either the insurance policy or the driving licence and therefore, the Tribunal is justified in fastening the liability on the appellants, as such, there is no illegality or infirmity in the findings of the Tribunal on liability warranting interference of this Court and he prays for dismissal of the appeal.

5. In response to his submission, learned counsel appearing for the appellants submits if the Court is pleased to allow the appeal and remand the matter to the Tribunal, appellants would certainly demonstrate that the vehicle was insured as on the date of the accident and liability has to be fastened on the insurer. In reply, Sri. Sowri Raju, learned counsel submits even then as observed by the tribunal in para 12 of its judgment, the driver had valid licence to drive the offending vehicle, which is the transport vehicle from 12.11.2006 to 21.11.2008, whereas, the accident was taken place on 21.12.2009 and that his submission is the driver had no effective driving licence to drive the offending vehicle as on the date of the accident and the insurer could not have pleaded in their statement that the driver had no valid and effective licence to drive the vehicle as on the date of the accident. Therefore, he submits the matter may be remanded at the risk and cost of the appellant. There is force in his submission.

6. Learned counsel appearing for the appellants as well as the insurer submit there is no dispute regarding certain injuries sustained by the claimant in the road traffic accident occurred on 21.12.2009 due to rash and negligent driving of the offending bus by its driver and quantum of compensation awarded by the Tribunal. Therefore, the dispute is whether the offending bus was insured and the policy was in force as on the date of accident and whether the driver had valid licence to drive the vehicle as on the date of the accident and the appellants pray an opportunity to establish the same by adducing additional evidence and therefore, it is just and necessary to allow the appeal and set aside the judgment and award of the Tribunal insofar as its findings on liability without disturbing its finding on negligence and quantum. Hence, the following order:

"(i) Appeal is allowed.

(ii) The judgment and award of the tribunal is set aside only insofar as its finding on liability is concerned and the judgment and award of the Tribunal insofar as negligence and quantum of compensation awarded are undisturbed.

(iii) The matter is remanded to the Tribunal with a direction to re-consider the issue relating to liability after giving an opportunity to the parties to lead additional evidence and cross-examine on such additional evidence and in accordance with law.

(iv) As the driver, owner and insurer are represented through their Advocate, notice need not be issued to them and they are required to appear before the Tribunal at 11.00 a.m. on 24.02.2015.

(v) On remand, notice shall be issued to the claimant at the instance of the appellants i.e., the driver and owner of the bus who are directed to pay process fee on the date of hearing before the Tribunal.

(vi) The amount deposited in this appeal is transmitted to the Tribunal and same shall be paid to the claimant, which shall be subject to adjustment depending upon the result of the claim petition on remand.

(vii) Office is directed to transmit the application along with the file to the Tribunal for its consideration."