

(2023) 12 KAR CK 0073

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1877 Of 2014 (MV-D)

Hunumavva & Others

APPELLANT

Vs

Nagaraja & Others

RESPONDENT

Date of Decision : 26-12-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2023) 12 KAR CK 0073

Hon'ble Judges : T.G. Shivashankare Gowda J

Bench : Single Bench

Advocate : Hanumanthappa A, C.Shankar Reddy

Final Decision : Allowed

Judgement

T.G. Shivashankare Gowda, J

1. In this appeal, the petitioners have challenged the judgment and award dated 30.12.2013 passed in M.V.C.No.755/2011 by the II Additional Senior Civil Judge & VI Additional MACT., Davangere ('the Tribunal' for short).

2. For the sake of convenience, the rank of the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, on 26.07.2011, son of petitioner Nos.1 and 2, husband of petitioner No.3, father of petitioner No.4 and elder brother of petitioner No.5 by name Duggavati Ramappa was riding the motor cycle bearing No.KA-17/EC-3730 along with one Hasi Earappa @ Veeresh, the pillion rider, met with an accident at 7.30 p.m., on Harihara-Harapanahalli road near the land of one Lingarajaswamy, hit by a Truck bearing No.AP-02/U-2556 killing the rider on the spot and the pillion rider was brought dead to SSIMS Hospital, Davanagere. The petitioners claiming to be the dependants of the deceased have approached the Tribunal for a grant of compensation of Rs.15 lakhs. The claim was opposed by the Insurance Company of the Truck. After taking the evidence, the Tribunal dismissed the claim petition. Aggrieved by the same, the petitioners have filed

this appeal on various heads.

4. Heard the arguments of Sri.A.Hanumanthappa, learned counsel for the petitioners and Sri.C.Shankar Reddy, learned counsel for the Insurance Company.

5. It is the contention of the learned counsel for the petitioners that inspite of the petitioners placing the evidence explaining the accident, the Tribunal doubted the credibility of the accident, dismissed the claim petition, which is contrary to the material on record and he sought for interference and requested for an assessment of the compensation.

6. Per contra, learned counsel for the Insurance Company has contended that the alleged accident was a 'hit and run' case. The Truck in question was not at all involved in the accident. There is a delay in filing the complaint. The petitioners have not placed any evidence in proof of the accident. Contrarily, on behalf of the Insurance Company, 6 witnesses are examined as RWs-1 to 6 and Exs.R1 to R6 are marked. The Tribunal after considering the disparity in the evidence and also the evidence on behalf of the Insurance Company accepted the defence and doubted the involvement of the Truck in question and dismissed the claim. There is no illegality in the finding of the Tribunal and he supported the impugned judgment.

7. I have given my anxious consideration to the arguments addressed on behalf of the parties and perused the records.

8. The material on record did point out that on 26.07.2011 on Harihara-Harapanahalli road at about 7.30 p.m., there was an accident involving a motor cycle bearing No.KA-17/EC-3730 in which Duggavati Ramappa was the rider and the deceased, as pillion rider, have sustained injuries and rider died at the spot and pillion rider was declared brought dead in SSIMS Hospital, Davanagere.

9. It is the case of the petitioners that the Truck bearing No.AP-02/U-2556 was the offending vehicle which hit against the motor cycle killing the riders. The Insurance Company has taken a contention that the said Truck was not at all involved in the accident. In the similar line, the Tribunal has recorded its findings. The Tribunal did not doubt the accident, but it only doubted the involvement of the Truck. In view of this, the point that arises for consideration is, whether the Truck bearing No.AP-02/U-2556 was involved in the accident or not.

10. On behalf of the petitioners, only the wife of the deceased is examined as PW-1. Admittedly, she was not an eyewitness. Even in the other connected claim petition, the wife of the deceased is examined as PW-2, she is also not an eyewitness. The evidence of RW-1/Dr.A.Nagaraj and RW-2/Dr.Raju point out that when the deceased was brought to the hospital, they were not informed about the vehicle involved in the accident. Hence, their evidence is of no use either to the petitioners or to the respondent.

11. Ex.P2 is the complaint, Ex.P1 is the FIR. On perusal of the allegations made in the FIR, it is pertinent to note that an unknown vehicle hit against the motor

cycle killing the rider at the spot injuring the pillion rider, but he was declared brought dead at the hospital. On the date of the accident, the petitioners or the Police Officers were not aware as to which was the vehicle involved in the accident.

12. Ex.P5 is the inquest panchanama conducted on the dead body of the deceased on 27.07.2011 between 9.00 a.m. to 11.00 a.m. There is a specific mention in the inquest that the Truck bearing No.AP-02/U-2556 was the vehicle which caused the accident. On the very day, under Ex.P4/mahazar, PSI S.M.Ramkumar of Rural Police Station, Harihara secures and produces the Truck before the Investigating Officer at 5.00 p.m. and it was seized under mahazar between 5.00 p.m. to 6.00 p.m. The accident took place on 26.07.2011 at 7.30 p.m. whereas, the Police officers came to know that the offending vehicle was AP-02/U-2556 by 9.00 a.m. of 27.07.2011; within 24 hours of the accident, the vehicle was traced and it has been brought before the Investigating Officer.

13. It is pertinent to note that the Harihara-Harapanahalli road leading to Bellary and from there to Andhra Pradesh. The vehicles from Andhra Pradesh move regularly ply on the said road. Sri.S.M.Ramkuamr, PSI of Rural Police Station, Harihara has been examined before the learned JMFC., Harihar in C.C.No.808/2011 and this has been referred to by the learned Magistrate in the judgment marked at Ex.R5. RW-5/Rajappa and Devendrappa are said to be the eyewitnesses to the accident. They have been arrayed as CWs-16 and 17 in the charge sheet. Both of them have given statement before the learned Magistrate as per Exs.R2 and R6. Their statements clearly point out that they have seen the accident i.e., Truck hitting against the motor cycle. They did not recall the Truck number. The learned Magistrate recorded the acquittal finding against the driver of the Truck on the ground that though the accident has been proved involving the said Truck, rash and negligent driving of it has not been established. Exs.R2, R5 and R6 is the evidence relied upon by the Insurance Company, which speaks there was an accident involving the motor cycle and the Truck in question and for the reason of negligence of the Truck driver being not proved, the driver of the Truck has been acquitted on the benefit of doubt.

14. It is the duty of the petitioners to establish the accident in order to claim the compensation. But they have not produced any evidence except the investigation papers. The Insurance Company has proved the accident by placing the evidence before the Tribunal in the form of RWs-1 to 5. RW-5/Rajappa admitted that he has given statement as per Ex.R2 before the Magistrate, Harihara and he did not deny before the Tribunal that the Truck was not involved in the accident. He was not treated hostile on behalf of the Insurance Company. The cross-examination on behalf of the accused brought out that he has seen the accident and has correctly given the statement before the Police and it is the Truck which hit against the motor cycle. Then what more is required for the Tribunal to accept the alleged accident?

15. On perusal of the impugned judgment, the reasons assigned by the Tribunal

that the Truck was not involved in the accident is contrary to the materials on record. Within 24 hours of the accident, Truck has been seized by the Police. The Tribunal ought to have appreciated the evidence placed before it by the Insurance Company proving the accident, but the Tribunal has committed an error in not appreciating the same. Hence, there is no reason to doubt the non-involvement of the Truck in question. Hence, the evidence on record establishes the involvement of the Truck in question and thereby the petitioners are entitled to claim compensation.

16. Adverting to the compensation, the accident was on 26.07.2011. The deceased was aged 28 years as indicated in the postmortem report as well as his election ID card. The deceased was an agriculturist earning Rs.10,000/- per month, according to the petitioners. But there is no proof of it. The deceased has to be treated as a person with no proof of income. In the year 2011, a person with no proof of income will earn not less than Rs.6,500/- per month. Accordingly, his income has to be assessed.

17. In a case of this nature, compensation has to be determined by following the principles settled by the Hon'ble Apex Court in National Insurance Co.Ltd. -vs- Pranay Sethi and Others (2017) 16 SCC 680 and Sarla Varma (Smt.) and Others -vs- Delhi Transport Corporation and Another (2009) 6 SCC 121 so also the principle laid down in Shri Ram General Insurance Co. Ltd. -Vs-Bhagat Singh Rawat & Ors. Civil Appeal Nos.2410-2412/2023, decided on 27.03.2023

18. The deceased left behind his wife, minor daughter, parents and minor sister, there are five dependants. Hence, in the light of the law laid down, 1/4th has to be deducted towards persona expenses and 40% has to be added as future prospects for the notional income of the deceased. If these facts are taken into consideration, the loss of dependency will be : Rs.6,500/- + Rs.2,600/- (40%) = Rs.9,100/- - Rs.2,275/- (1/4th) = Rs.6,825/- x 12 x 17 multiplier = Rs.13,92,300/-. Under the conventional heads, for the parents towards loss of consortium to the wife at Rs.40,000/-; towards loss of love and affection to the parents, minor child and sister at Rs.50,000/- together and towards funeral expenses and loss of estate at Rs.15,000/- each, amounting to Rs.1,20,000/-. In view of the judgment in Bhagat Singh Rawat's case (supra), 10% has to be given in appreciation. The claim is 12 years old. Hence, 40% appreciation comes to Rs.48,000/-. Then the compensation under conventional heads comes to Rs.1,68,000/-. If all added, the total compensation comes to Rs.15,60,300/-, which is the just compensation the petitioners are entitled to, in the facts and circumstances of the case. Hence, the appeal merits consideration. In the result, the following:

ORDER

(i) The appeal is allowed.

(ii) The impugned judgment and award passed by the Tribunal is set aside;

(iii) The claim petition filed under Section 166 of the Motor Vehicles Act, 1988 is hereby allowed;

(iv) The petitioners are entitled to compensation of Rs.15,60,300/- with interest at the rate of 6% per annum on the enhanced compensation from the date of petition till its realization;

(v) The Insurance Company is directed to deposit the compensation amount within eight weeks from the date of receipt of certified copy of this judgment.