

(2016) 03 KAR CK 0087

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7802 of 2011 (MV)

K. Ganapathi Bhat

APPELLANT

Vs

Ramananda Bhat

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2016) AAC 2264 : (2016) 3 AirKarR 674

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : H. Pavana Chandra Shetty, Advocate, for the Appellants; Served and Unrepresented, for the Respondent No. 1; O. Mahesh, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Claimants have called in question the legality and validity of the judgment and award dated 11.02.2011 dismissing MVC 682/2009 of the District Judge and Member, MACT, Udupi, (for short "MACT").

2. One Smt. Gayathri Bhat, wife 61" first appellant and mother of Appellants 2 and 3 as well as first respondent claimed to have been a pillion rider, on 15.10.2008, at about 6 p.m. on the motorcycle bearing certificate of registration KA-20/U-7425 belonging to first respondent none other than her son, is said to have caused the accident whence Gayathri Bhat, aged 60, fell off the motorcycle, suffered grievous injuries and despite treatment, succumbed to injuries, after five days. In the claim petition under Section 166 of the Motor Vehicles Act, 1988, appellants asserted that the deceased was alive when the accident occurred and shifted to KMC Hospital, Manipal, by the first respondent and died on 20.10.2008. The first respondent, it is said, did not lodge a complaint but the 2nd appellant son of the deceased is said to have lodged the complaint on 17.10.2008 following which FIR was filed and the motorcycle seized on 18.10.2008 at the place of accident, with damages to the head light, rear side

indicator light and front mud guard, as indicated in the motorcycle Inspector's report. Further asserting that the deceased was earning Rs. 6,000/- per month by rearing cows at her house and selling milk, sought compensation by arraying the Insurance Company as party respondent No. 2.

3. Claim petition was resisted by the 2nd respondent/insurance Company denying the allegations and assertions including that of alleged accident, admission as an inpatient in KMC Hospital, Manipal, discharged on 18. 10.2008. In addition it was asserted that the first respondent before the MACT, the registered owner of the motorcycle in question I have not paid additional premium to cover the risk of the pillion rider was not liable to pay compensation.

4. The MACT framed issues following which the second claimant's affidavit in lieu of examination-in-chief as P.W. 1 was taken on record, who introduced in evidence Exs.P.1 to 13 while the witness summons issued to Circle Inspector, though served, did not present himself where afterwards no further steps were taken, whence further evidence of the claimants was taken as nil while for the 2nd respondent insurer produced the policy of insurance dated 21.09.2010 marked as Ex.R.1 without adducing oral evidence.

5. MACT, have regard to the material on record, the evidence both oral and documentary, declined to accept the plea that the death of Gayathri Bhat, a pillion rider who suffered grievous injuries in the accident that occurred on 15.10.2008, due to rash and negligent riding of the motorcycle by the 1st respondent. MACT observed that the alleged accident on 15.10.2008 was reported in the complaint by the 2nd claimant on 17.10.2008 at 6.30 p.m. while the pillion rider is said to have died on 20.10.2008; neither the KMC hospital admission card nor the wound certificate was forthcoming; the extract of medico legal case was not produced; the discharge summary of KMC hospital, Manipal or treatment extended, and; the post-mortem report of the death of Gayathri Bhat were not placed on record. The strange conduct of the husband and children of the deceased in not lodging the complaint on 15.10.2008 and absence of explanation as to why such a complaint was not lodged by the 1st respondent on the date of accident, the MACT observed that the assertion of an alleged accident was suspicious. In the absence of relevant material constituting substantial legal evidence of the fact of occurrence of the accident, grievous injuries due to which Gayathri Bhat died, the MACT declined to record a finding in the affirmative over actionable negligence on the part of the 1st respondent while riding his motorcycle to have caused injuries to deceased Gayathri Bhat.

6. The MACT noticed that the policy of insurance Ex.R. 1 did not disclose payment of additional premium to cover the risk of pillion rider and therefore, answered the issue absolving the insurer of paying compensation. In the premise of the said findings on the issues, MACT dismissed the claim petition by the judgment and award impugned.

7. Although Sri. Pavana Chandra Shetty, learned counsel submits that another

opportunity be extended for a fresh trial before the MACT by remitting the proceeding, in the facts and circumstances noticed supra and in the light of the findings of the MACT based on material on record, that submission is rejected. No exception can be taken to the reasons findings and conclusion arrived at by the MACT calling for interference. Appeal is dismissed.