
(2015) 03 KAR CK 0383

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 8634 and 8633 of 2014(MV)

Legal Manager, Reliance General Insurance Co. Ltd.

APPELLANT

Vs

K. Nagaraj and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 03 KAR CK 0383

Hon'ble Judges : N.K. Patil, J;G. Narendra, J

Bench : Division Bench

Advocate : Pradeep B., for the Appellant

Final Decision : Dismissed

Judgement

N.K. Patil, J.

1. These two appeals by the insurer arise out of the common Judgment and award dated 4th September, 2014, passed in MVC Nos. 2668/2011 and 2667/2011 on the file of the VIII Additional Small Causes Judge and XXXIII Additional Chief Metropolitan Magistrate, Member, (SCCH-5), Motor Accident Claims Tribunal, Bangalore. The Tribunal by its common Judgment and award awarded a sum of Rs. 19,57,0000/- and Rs. 19,77,0000/- respectively with interest at 6% per annum from the date of the petition till the date of realization.

2. The brief facts of the case are that the claimants in MVC Nos. 2668/2011 and 2667/2011 i.e., respondents 1 and 2/respondents 1 to 3 herein in these two appeals have filed their respective claim petitions under Section 166 of the Motor Vehicles Act, claiming compensation on account of the death of the deceased Sri Vijay Nanaiah and Sri Vinay Raj in the Road Traffic Accident that occurred on 13-4-2011 at about 11.10 p.m. contending that the deceased persons were moving on their two wheeler vehicle bearing Registration No. KA-04-HA-9705 on B.B. Road, Nandi Cross (Ram Cross) towards Mahadenahalli and while returning towards Bangalore, at that time a bus bearing Registration No. KA 01 D-4195

came from Bangalore side and due to the rash and negligent driving by the driver of the bus, the rider and the pillion rider were crushed to death on the spot and the bus went away in very high speed. The further case of the claimants is that their friends namely Anil Kumar and Vinod Kumar were also returning on another two wheeler and they have seen the accident being eye witnesses and have reported the same to the police. It is the further case of the claimants that the deceased Vinay Raj aged 22 years was working as Team Leader in M/s. All Technology, M.G. Road, Bangalore, earning Rs. 16,000/- per month besides working as part time V3 Insurance Agent and getting commission of Rs. 5,000/- per month and was the only earning member in the family. The claimants are none other than his parents. The deceased Vijay Nanaiah was working as Sales Executive in M/s. Trademan Associates, R.T. Nagar, Bangalore, and earning Rs. 16,000/- per month and was the sole earning member in the family. The claimants are none other than his parents and sister. Both the deceased used to contribute their entire earnings for the welfare of their respective families. On account of their untimely death in the Road Traffic Accident, the claimants have lost the sole earning member and it has affected them socially and economically and they suffered mental pain and agony and they are put to financial distress and the sister of the deceased Vijay Nanaih has lost love and affection and inspiration and guidance. Taking all these aspects into consideration the claimants filed their individual claim petitions under Section 166 of the Motor Vehicles Act, claiming compensation against the appellant-insurer and the owner of the bus.

3. Since both the MVCs arose out of a common accident, the claim petitions were clubbed together and a common judgment was passed. The Tribunal after due consideration of the oral and documentary evidence, allowed the claim petitions awarding a sum of Rs. 19,77,000/- and Rs. 19,57,000/- respectively with interest at 6% per annum from the date of petition till the date of realization.

4. Being dissatisfied with the impugned common Judgment and award passed by the Tribunal, the appellant/insurer felt necessitated to present these two appeals.

5. The submission of the learned counsel appearing for the appellant/Insurer Sri. B. Pradeep, at the outset is that the Tribunal ought to have considered the evidence on record including the evidence of the officers of the Insurer. They have taken a specific contention that the insured vehicle was not at all involved in the alleged accident. This aspect of the matter has not been considered by the Tribunal. Therefore it has lead to miscarriage of justice. The Tribunal right to have taken into consideration that on inspection of the vehicle there was no damage to the vehicle and therefore the Tribunal ought to have held that it is well established principle that the man can lie but documents cannot lie. This has lead to miscarriage of justice. Further that the Tribunal ought to have taken note of the evidence of P.W. 3, an eye witness, who has clearly admitted in his cross-examination that he does not know the vehicle number which caused the accident. Further, he submitted that the Tribunal erroneously taking the income

of the deceased at Rs. 16,000/- per month without there being a cogent and convincing evidence and adding 50% towards future prospects to the income of the deceased though the employment of the deceased was not permanent in nature has calculated the loss of dependency and also erred in awarding higher compensation under the conventional heads. Therefore the impugned Judgment and award passed by the Tribunal is liable to be set aside.

6. After careful consideration of submission of the learned counsel appearing for the appellant-Insurer and on a perusal of the impugned Judgment and award passed by the Tribunal, what emerges is that the reasoning given by the Tribunal is after due evaluation of the oral and documentary evidence available on file holding that due to the rash and negligent driving by the driver of the bus, the accident has occurred and the deceased persons sustained fatal injuries and succumbed to the same. This fact has been recorded by the Tribunal after due consideration of the oral and documentary evidence and other relevant material available on file. Therefore, interference in the said finding recorded by the Tribunal is unwarranted.

7. Further, it emerges from the evidence on record that the deceased Vijay Nanaiah and Vinay Raj were bright and young boys working as Team Leader and Sales Executive respectively. They were bright and committed to profession and they were the only earning members in their respective families. The claimants have placed reliance on Exs.P-1 to P-5, FIR, Complaint, Mahazar, Spot Sketch and IMV report and Exs.P-15 to P-23 which are pan card, ration card, salary slip, Registration certificate and E-TDS Intermediary certificate and Income Tax return Exs.P-12 to P-18 in MFA 8634/2014 (MVC No. 2668/2011). In MFA No. 8633/14 (MVC No. 2667/2011) the claimants placed reliance on Exs. P-1 to P-5 FIR, Mahazar, Complaint, Mahazar, Spot sketch and IMV report Exs.P-14 to P-18, the Identity card, the driving licence SSLC Marks card, the employment letter, Experience certificate, the appointment letter and also placed heavy reliance on Charge sheet Ex. P-18 filed by the investigating authority which is after due investigation against the driver of the bus involved in the accident. The appellant insurer has examined R.Ws 1 to 4 at length and cross-examined all the witnesses, P.Ws 1 to 4. The Tribunal after critical evaluation of the oral and documentary evidence and other relevant material on record, specifically with reference to the evidence of P.W. 3 the eye witness to the accident, who is the complainant, in the cross-examination admitted, that, he did not observe the bus number because it was dark. The accident occurred on 13-4-2011 at 11.10 PM. On further examination he has produced the income tax certificate and other particulars as required, with regard to the registration of the vehicle. What is significant to note is that the learned counsel appearing for the appellant insurer has cross-examined P.W. 4. But, nothing worthwhile has been elicited from him in the same. In the evidence of the Investigating Officer, he deposes that the spot is at a distance of one kilometer from the police station and the Stage Carriage bus was going from Bangalore towards Hyderabad. He deposes that the vehicle has been seized on 19-4-2011 and the specific stand taken by the learned

counsel for the insurer has been considered rightly and discussed in detail at para-10 of the Judgment. In spite of giving sufficient opportunity to the Insurer they have failed to establish by producing credible documents including the oral evidence to show that the bus was not involved in the accident. Moreover, the incident has been explained by the eye witness as per the police records, Exs.P-1 to P-9. It discloses that the injuries sustained can only be in the road accident rather than in any other accident. Therefore the stand taken by the insurer that the bus was not at all involved in the accident has no substance. Even, in the first instance, while registering the crime, the vehicle number is noted in the charge sheet itself. Except taking oral stand, no credible or authenticated documents as such are produced to establish that the vehicle in question was not at all involved in the accident. Therefore, after due consideration of entire material on record and after appreciation of oral and documentary evidence on record, the Tribunal has recorded a specific finding at paras 9 and 10 of the Judgment holding that the bus was involved in the accident and due to rash and negligent driving of the bus by its driver the accident has occurred and the deceased sustained fatal injuries and ultimately succumbed to the same. The said finding of fact is supported by oral and documentary evidence as discussed above. Therefore, we find no substance in the submission of the counsel for the appellant to hold that bus in question was not at all involved in the accident and the same cannot be accepted. Therefore interference by this Court is not called for. Taking all these relevant factors into consideration, the instant appeals filed by the appellant/Insurer are liable to be dismissed as being devoid of merits. Accordingly, they are dismissed.

The amount in-deposit in both the appeals shall be transmitted to the jurisdictional Tribunal immediately.

In view of dismissal of the main matter on merits, the relief sought for in I.A. 2/2014 in MFA No. 8634/2014 does not survive for consideration. Accordingly, I.A. 2/2014 is dismissed as having become infructuous.