

(2014) 01 KAR CK 0161
In the Karnataka High Court
Case No : M.F.A. NO. 359 OF 2013 (MV)

M. Narayanappa

APPELLANT

Vs

M/s. Shiva Shakthi Bio-Planetic Ltd. and The Regional
Manager, New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 01 KAR CK 0161

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

Bench : Division Bench

Advocate : K. Vishwanatha, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal is filed by the claimants against the impugned judgment and award dated 04.10.2012 passed in MVC No. 6945/2008 on the file of the VI Additional Judge & MACT, Bangalore City (SCCH-2) (hereinafter referred to as "Tribunal" for brevity). By its impugned judgment and award, the tribunal dismissed the claim petition filed u/s 166 of M.V. Act., holding that the legal representatives have not made out any case that on account of the injuries suffered in a road traffic accident, the deceased has died. Being aggrieved by the same, the legal representatives have presented this appeal. Brief facts of the case are:

Appellant Nos. 1(a) and 1(b) are respectively the wife and son of the deceased M. Narayanappa. The appellants contend that deceased M. Narayappa was aged about 75 years and was agriculturist by avocation. He was hale and healthy prior to the accident. On fateful day i.e., 23.06.2008 at about 2.30 p.m., when the deceased got down from the bus near Channahalli gate on Devanahalli-Sulibele road and while he was crossing the road, a goods vehicle bearing registration No. HR-46-B-4013, owned by first respondent, insured with the second respondent being driven by its driver in a rash and negligent manner knocked down the

deceased, who was standing on the extreme left side of the road. Thereafter, the said vehicle hit the Neem tree, which is by the side of the road. On account of the said accident, he sustained injuries. He was admitted in the hospital and also in ICU for one week and thereafter, he was shifted to special ward till the date of discharge. They also contend that the deceased had spent Rs. 4,00,000/- towards hospital charges, medicine, transport and for nutritious food etc. In spite of treatment given to the deceased, he was bed ridden. Due to the accidental injuries he was unable to do agricultural operations as earlier. Therefore, the deceased appellant was constrained to file a claim petition u/s 166 of M.V. Act claiming compensation of Rs. 20,00,000/-.

2. During the pendency of the case, the deceased died and hence, the legal representatives of the deceased came on record as appellant Nos. 1(a) and 1(b), by order dated 14.10.2010, passed by the Tribunal. After service of notice to respondents, respondent No. 1 remained ex-parte and respondent No. 2- Insurance Company has filed detailed objections contending that the claim petition is not maintainable on the ground that the deceased died during the pendency of the petition and the legal representatives have not amended column Nos. 11 and 14 of the claim petition. Further they have contended that the injured M. Narayanappa has claimed compensation for personal injuries, but nowhere it is stated that the injured died due to accidental injuries during the pendency of the petition. The second respondent denies the avocation and age of the deceased. It was also contended that the accident took place on 23.06.2008, the deceased died on 07.11.2008 and the post mortem was not conducted to prove that the injured died due to accidental injuries. Further, they contended that the legal representatives have not produced any documents to show that the injured was under treatment till his death. The nexus between the accidental injuries and death caused after long period is not proved by the legal representatives. It is also further contended that the deceased died due to his old age. The respondent--Insurer has admitted the policy. It is also further contended that accident occurred due to negligence on the part of deceased Narayanappa and not due to the alleged rash and negligent driving of the Eicher vehicle by its driver.

3. The said claim petition filed by the claimants came up for consideration before the Tribunal, and the Tribunal in turn, after perusal of the oral and documentary evidence on the file, framed the following issues for its consideration:-

1. Whether the petitioners prove that the deceased Sri M. Narayanappa died due to injuries sustained in a road traffic accident occurred on 23.06.2008 at 2.30 p.m., near Channahalli gate, Devanahalli--Sulibele road, on account of rash and negligent driving of the Eicher Goods Vehicle bearing Reg. No. HR-46-B-4013 by its driver?
2. Whether the petitioners are entitled for compensation as claimed ? If so, from whom?

3. What order or award?

The tribunal after due appreciation of the oral and documentary evidence and other material on file has answered issue Nos. 1 and 2 in negative. The tribunal held that the claimants have failed to prove that the death of the deceased was on account of accidental injuries. It has also held that there is no nexus between the accidental injuries and cause of death of M. Narayanappa and the claimants have not proved their case that the death is due to accidental injuries but the death of the deceased is only because of his old age.

4. Learned Counsel for appellants Sri K. Vishwanatha, contends that the tribunal has erred in not awarding compensation towards loss of dependency, loss of estate and reasonable compensation towards transportation and medical expenses incurred by them during the treatment period in the hospital by the deceased. He also submits that the claimants have produced the medical bills as per Exs. P.6 and P.7 but the tribunal has not looked into nor considered the same. Therefore, he submits that the judgment and award is liable to be modified and compensation may be awarded.

5. We have heard the learned Counsel for the appellants and the learned Counsel for the second respondent-Insurance Company.

6. After critical evaluation of the oral and documentary evidence and other relevant material available on file and the impugned judgment and award, what emerges is that the occurrence of the accident is not in dispute. The claimants have not examined any independent witnesses nor the doctor. The accident occurred on 23.06.2008 and the deceased died on 07.11.2008. It is significant to note that the post mortem is also not conducted to prove that the death of the deceased is due to accidental injuries. Therefore, the tribunal has rightly recorded the finding that the claimants are not entitled for any compensation. The judgment is well founded and valid. There is no arbitrariness or irregularity in the judgment passed by the tribunal. The claimants have not made out any good ground to interfere in the judgment of the tribunal. For the foregoing reasons, the instant appeal filed by the appellants is dismissed confirming the impugned judgment dated 04.10.2012 passed in MVC No. 6945/2008 on the file of the VI Additional Judge & MACT, Bengaluru City (SCCH-2).

Ordered accordingly.