

(2015) 11 KAR CK 0184

In the Karnataka High Court

Case No : R.P. No. 1149/2014 in M.F.A. No. 2361/2009

Madappa

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 11 KAR CK 0184

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Karumbaiah T.A., Advocate, for the Appellant; B.C. Setharama, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.

ORDER ON I.A. 2/2014

1. Matter had been called twice. None appears for the petitioner.
2. This application is filed under section 5 of the Limitation Act seeking for condonation of delay of 539 days in filing the review petition. For the limited purpose of considering as to whether delay is to be condoned and it would subserve the ends of justice and thereby matter has to be heard on merits, this Court has considered the grounds urged in support of the review of the order passed by this court on 20.03.2013 in M.F.A. No. 2361/2009.
3. In a road traffic accident that occurred on 02.06.2002 at about 5.30. P.M. one Sri. Nandish who was riding a bicycle was hit by a lorry bearing No. CAA 799 coming from opposite direction driven in a rash and negligent manner. On account of said impact said Sri. Nandish was dragged from front wheel to back wheel and on account of grievous head injury sustained he succumbed to the

same at spot. Hence, parents of the deceased filed a claim petition under Section 166 of Motor Vehicles Act, 1988 in MVC No. 963/2006. Review petitioner herein had been arrayed as second respondent who was owner of the lorry. Though served he did not contest the matter and as such after evaluating the evidence tendered by claimant as well as insurer, Tribunal allowed the claim petition in part and awarded a total compensation of Rs. 2,00,000/- with interest @ 6% p.a. from the date of petition and fixed the liability jointly and severally on respondents 1 to 3. However, tribunal reserved liberty to the insurer to recover the same from the owner (respondent No. 2) in execution proceedings on the ground that driver of the offending vehicle did not possess valid driving licence.

4. Insurer being aggrieved by this Judgment and award filed an appeal in M.F.A. No. 2361/2009. This Court after considering the rival contentions urged by learned advocates appearing for the respective parties by Judgment dated 20.03.2013 allowed the appeal and set aside the liability fixed on the insurer by following the Judgment rendered by Division Bench of this Court in M.F.A. 2596/2007 disposed of on 12.07.2012 in the matter of The Oriental Insurance Company Ltd. v. K.C. Subramanyam and Others and it was held that dismissal of the claim petition against appellant-insurer would not come in the way of claimants recovering the compensation awarded by the tribunal from the owner of the offending vehicle.

5. It is against this Judgment the present review petition has been filed by the owner of the offending vehicle contending inter alia that as on the date of accident the driver of the offending vehicle was possessing a valid and effective driving licence and in order to substantiate the said claim certified copy of the driving licence issued by the Regional Transport Officer, Transport Department has been appended to I.A. 1/2013 (Application filed under Order 41 Rule 27 read with section 151 of C.P. C for production of document - Licence) contending that driver of the offending vehicle possessed a valid and effective driving licence as on date of accident.

6. At the outset it requires to be noticed that perusal of the said driving licence said to have been possessed by driver of the offending vehicle relates to a licence issued in favour of one Sri Krishna Naik s/o Mancha Naik and address indicated in the said driving licence is "Madapura, Hullahally Hobli, Nanjangud Taluk, Mysore District." to contend that name indicated in the driving licence namely Sri Manchanaika is the same as indicated in the claim petition before Tribunal as well as before this Court by arraying him as third respondent. Said plea cannot be accepted for reasons more than one. Firstly, name of the father of review petitioner differs from the name indicated in the driving licence, though name of the holder of driving licence and father's name as indicated in the driving licence is same as that of judgment rendered in CC No. 625/2002. In that view of the matter, this Court is of the considered view that there is no error apparent on the face of the record or no substantial ground has been made out to review the judgment rendered in MFA No. 2361/2009 and as such by

condoning the delay and entertaining the review petition on merits would only be an exercise in futility. Hence, I.A. 2/2014 stands rejected. Consequently, review petition is dismissed.