

(2014) 03 KAR CK 0077

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 24594/2012 (MV)

Mailarappa Channabasappa Idaguri

APPELLANT

Vs

Prabhu

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2014) 03 KAR CK 0077

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : S.M. Kalwad, Advocate for the Appellant; R.R. Mane, Advocate for R3, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—Though matter is listed for orders, by consent of learned advocates, it is taken up for final disposal.

2. Heard Sri S.M. Kalwad, learned advocate appearing for the claimants and Sri R.R. Mane, learned advocate appearing on behalf of respondent No. 3. Notice to respondent Nos. 1 and 2 has been dispensed with by order of even date.

3. Claimants being the sons of brother of deceased Devappa Mariyappa Idagudi's as Class II heirs filed a claim petition u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 7,88,000/- with interest. Said petition came to be resisted by the Insurer by filing a detailed statement of objections denying the averments made in claim petition and contending that claimants are neither legal representatives of the deceased nor they were dependent on the deceased. Hence, they sought for dismissal of the claim petition.

4. Tribunal after appreciation of evidence has held that deceased Devappa Mariyappa Idagudi is the uncle of the claimants (father's elder brother) and claimants being aged 50 years and 42 years were having their own avocation of

agriculture and they were not dependent on the deceased. Hence, Tribunal has not awarded any amount towards loss of dependency. It is this judgment and award which has been assailed by the claimants in the present appeal seeking compensation for "loss of dependency" by relying upon the judgment of this Court in Managing Director, K.S.R.T.C., Bangalore Vs. Venkataramappa K.S. and Others, .

5. Per contra, Sri R.R. Mane, learned counsel appearing for the Insurer would support the judgment and award passed by the Tribunal and contends that claimants were not the dependants of deceased and they cannot seek for award of compensation towards loss of dependency and in support of his submission, he relies upon the judgment of this Court in Smt. T.S. Rukmani and Another Vs. M.B. Aiyappa and Others, .

6. Having heard learned advocates appearing for the parties and after bestowing my careful attention to the citations relied upon by the respective learned advocates, I am of the considered view that following point would arise for my consideration:

Whether Tribunal was justified in denying the compensation towards loss of dependency to the claimants?

7. It is not in dispute that deceased Devappa Mariyappa Idagudi was unmarried and he was residing along with his brother Chennabasappa Idagudi who had two sons namely the claimants. The ration card of the deceased produced before the Tribunal and marked as Ex. P.8 would evidence this fact.; u/s 166 of the Motor Vehicles Act, an application for compensation arising out of an accident can be made where death has resulted from the accident, by all or any of the legal representatives of the deceased. Under the Motor Vehicles Act, the word "legal representative" has not been defined. The word "legal representative" has been defined u/s 2(11) of the Code of Civil Procedure, 1908, to mean a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased. The definition clause reads as under:

2 (11) "legal representative" means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

8. While determining compensation for "loss of dependency" u/s 163A-A of the Motor Vehicles Act, 1988, or for awarding compensation to the claimants, Tribunal would examine as to whether they were dependent on the deceased or not. In a given case, if it is found from the evidence on record that legal representative of the deceased was not dependant on the income of the deceased, Tribunal is not required to award any compensation to the said claimant. On the other hand, if it comes to a conclusion that legal representatives were dependant on the income of the deceased, then it would

definitely award compensation considering the extent of dependency. There may be instances even if a Class I legal heir who is major may be dependant on the deceased and if it is so established, Tribunal would be compelled to award compensation for loss of dependency.

9. In K.S. Venkataramappa's case stated supra, the Division Bench of this Court was examining as to whether the brothers and sisters of the deceased are entitled to claim compensation and has held the same in the affirmative. There cannot be any dispute with regard to this proposition of law. If the claimants were not dependant on the income of the deceased, question of awarding any compensation to claimants towards loss of dependency does not arise. Thus, burden is cast on the claimants to prove and establish that they were dependant on the income of the deceased. In the absence thereof, they cannot be heard to contend that de-hors such proof, there is an obligation on the part of Tribunal to award compensation even if they are not dependants inasmuch as it would amount to stretching logic to an illogical end or in other words it can be construed that such a proposition would be fallacious.

10. In the background of what is stated above if the facts on hand are examined, it would clearly indicate as per the ration card Ex. P.8 which was issued in the year 1989, deceased was aged about 70 years. Accident in question occurred on 22.01.2010 which would indicate that deceased was aged about 91 years at the time of accident. The very document produced by the claimants itself would indicate it is the deceased who was dependant on the income of the claimants and not vice-versa. As such, it cannot be construed or imagined that claimants were dependant on the income of the deceased. As such, it cannot be construed that the claimants were dependent on the income of the deceased or the claimants being entitled to compensation towards loss of dependency. In that view of the matter, I do not find any merit in this appeal. It stands dismissed with costs quantified at Rs. 4,000/- payable by claimants to R-3-Insurance Company within four weeks failing which R-3 would be at liberty to recover same from appellants.