

(2016) 01 KAR CK 0243

In the Karnataka High Court

Case No : MFA Nos. 2165, 2167 and 2166/2010 (MV)

Manjunatha Gonda and Others

APPELLANT

Vs

George and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 01 KAR CK 0243

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : A. Dharmesh, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

B. Sreenivas Gowda, J.—1. As these appeals are arising out of a common road traffic accident and a common judgment of the Tribunal, with the consent of learned counsel appearing for the parties, they are heard together and disposed of finally by this common judgment.

2. Heard the learned counsel for the parties and perused the judgment and awards of the Tribunal.

3. Sri. R. Dharmesh, learned counsel for the appellants submits claimants have lost sight of dismissal of the claim petitions against the owner of the offending bus and without noticing the same they pursued the claim petitions against the insurer of the offending bus and the owner and insurer of another vehicle involved in the accident and hence the Tribunal dismissed the claim petitions holding that without owner being a party to the claim petition, no award could be passed against the insurer of the bus.

4. Learned counsel submits that due to inadvertent act on the part of the claimants in pursuing the claim petition against the insurer of the bus without noticing the fact of dismissal of claim petition against the owner of the bus, the claimants who sustained injuries in a road traffic accident should not be deprived

of getting legitimate compensation from the owner and insurer of the vehicle which caused the accident. Therefore, he prays for allowing the appeals by setting aside the judgment and awards impugned in the appeal and remanding the matters to the Tribunal with a liberty to the appellants to move the Tribunal for recalling the order of dismissal of the claim petitions against the owner of the bus and seeking permission to take effective steps to serve the owner of the bus and proceed with the claim petitions.

5. Per contra, Sri B.A. Ramakrishna, learned counsel appearing for the insurer of the bus in MFA No. 2165/2010 and Sri E.R. Diwakar, learned counsel appearing for insurer of the bus in MFA Nos. 2167 & 2166 of 2010 submit that since the claimants have failed to take effective steps to serve notice on the owner of the bus, the Tribunal was justified in dismissing the claim petitions against the insurer of the bus. Alternatively, they submit that in the event of this Court allowing the appeals, setting aside the judgment and awards impugned in these appeals and remanding the matters to the Tribunal by granting liberty to the claimants to move the Tribunal for recalling the order of dismissal of the claim petitions against the owner of the bus and giving them an opportunity to take steps to serve the owner of the bus and then proceed with the claim petitions and in case of the Tribunal passing awards against the insurer of the bus, the insurer of the bus should not be made to pay interest on such awards from the date of dismissal of the claim petitions against the owner of the bus till the date of restoration of the claim petitions against him. They further submit that though the Tribunal has held that the accident has occurred due to rash and negligent driving of the bus, they did not challenge the said findings of the Tribunal on negligence since the claim petitions themselves came to be dismissed against the insurer of the bus on the ground that without owner of the bus being a party, no award could be passed against the insurer. Now in the event of Court remanding the matter to the Tribunal for re-consideration of the claim petitions by giving an opportunity to the claimants to move the Tribunal for recalling its order dismissing the claim petition against the owner of the bus with a further request to grant permission to serve the owner of the bus, issue relating to the negligence may also ordered to be reconsidered afresh.

6. Sri. Ravish Benni, learned counsel for the insurer of Tempo submits that the Tribunal has already answered the issue relating to negligence by holding that the accident has occurred due to the rash and negligent driving of the bus and therefore, the finding of the Tribunal on negligence need not be reopened and matter may be remanded to the Tribunal for re-consideration on other issues. Alternatively, he submits that in the event of this Court remanding the matter to the Tribunal for re-consideration of all the issues afresh, an opportunity may be given to the insurer of the Tempo to examine the claimants and their witnesses on such additional evidence and to lead evidence, if any, from the side of the insurer of the Tempo, as well.

7. Submissions made by learned counsel for the parties are placed on record.

8. The appellants in the above appeals having sustained certain personal injuries in the road traffic accident occurred on 11.10.1995 by involvement of a private tourist bus and a Tempo filed three separate claim petitions before the MACT, Bengaluru Rural District seeking compensation under Section 166 of MV Act from the drivers, owners and insurer of both the vehicles.

9. The driver of the bus who was arrayed as respondent No. 1 before the Tribunal though was served with the notice of the claim petitions, he did not contest the petitions and he was placed ex-parte.

10. The insurer of the bus arrayed as respondent No. 3 was represented through their counsel and filed statement of objections contesting the claim petitions.

11. The driver and owner of the tempo arrayed as respondent Nos. 4 and 3 respectively appeared through their common counsel and filed common statement of objections contesting the claim petitions by denying negligence on the part of the driver of the tempo. The insurer of the tempo arrayed as respondent No. 6 appeared through their counsel and filed statement of objections contesting the claim petitions by denying the case of the claimants.

12. The claim petitions against the owner of the bus who was arrayed as respondent No. 2 were dismissed on 2.7.2001 for want of service of notice.

13. The Tribunal based on the rival contentions of the parties has framed the following common issues in all the three claim petitions for its considerations:

"i) Whether the petitioner proves that the driver of the tourist bus bearing Reg. No. NLH 2653 was rash and negligent in driving the vehicle and caused the accidental injuries to the petitioner as alleged in the petition?

ii) Whether the petitioner is entitled to for compensation? If so, for what amount and from whom?

iii) What Order or Award?

Additional Issues In MVC 247/96 (MFA No. 2165/2010)

iv) Whether respondent No. 3 proves that the driver of the tempo had also contributed to the cause of accident as alleged in the objection statement?

v) Whether respondent No. 3 further proves that the driver of bus had no valid and effective driving licence and that owner of the bus had committed breach of policy conditions as alleged in the objection statement?"

14. The claim petitions were clubbed together and common evidence was recorded and disposed of by common judgment impugned in these appeals.

15. The claimants in support of their contention that they sustained personal injuries in a road traffic accident occurred on 11.10.1995 examined themselves as PW.1, PW.2 and PW.3 respectively, examined a record keeper in the hospital as PW.4 and common doctor was examined in all the three claim petitions as

PW.5, PW.6 and PW.7. The claimants have produced 31 documents which were marked as Exs.P1 to P31 and no evidence was adduced either by the driver and insurer of the bus or by the driver, owner or insurer of the tempo.

The Tribunal, upon consideration of oral and documentary evidence on record, has answered issue No. 1 in all the three cases in the affirmative holding that claimants have proved that accident has occurred due to rash and negligent driving of the tourist bus and held claimants are not entitled for compensation from the insurer of the bus in the absence of owner of the bus being a party to the claim petitions and consequently dismissed the claim petitions.

16. It is not in dispute that claimants sustained certain personal injuries in the road traffic accident occurred on 11.10.1995 by involvement of a Tourist bus and a Tempo. It is also not in dispute that the claimants have filed claim petitions seeking compensation under Section 166 of the MV Act from the drivers, owners and the insurers of the bus and the tempo. The claim petitions against the owner of the bus were dismissed on 2.7.2001 on the ground that steps were not taken to serve notice on him. The claimants pursued their claim petitions against the driver and the insurer of the bus and against the driver, the owner and the insurer of the tempo.

17. The facts and circumstances of the case discloses that the claimants and the learned counsel appearing for them had lost sight of dismissal of their claim petitions against the owner of the bus for having not taken steps to serve notice on him and without noticing the same they pursued the claim petitions against the driver and insurer of the bus and driver, owner and insurer of the tempo. The Tribunal on the basis of oral and documentary evidence available on record has held that the accident has occurred due to rash and negligent driving of the driver of the bus and dismissed the claim petitions holding that in the absence of owner of the bus being a party to the claim petitions no award could be passed against the insurer of the bus. Since claim petitions were dismissed against the insurer of the bus, the insurer of the bus had not preferred appeal challenging the finding of the Tribunal on negligence. In the facts and circumstances of the case, it is just and proper to set aside the judgment and awards impugned in the appeals and remit the matter to the Tribunal with a direction to reconsider the claim petition on all the issues including the issue relating to the negligence afresh. Since award is not passed, it may not be proper for this Court to hold at this stage that on remand in the event of Tribunal passing awards against the insurer of the bus, the insurer of the bus will not be liable to pay interest from the date of dismissal of the claim petitions against the owner of the bus till the restoration of the claim petitions against him and it is appropriate to give liberty to the parties concerned to contend this before the Tribunal and direct the Tribunal to consider the same while reconsidering the claim petitions. Hence, the following:

ORDER

"i) Appeals are allowed.

ii) Judgment and awards dated 11.12.2009 passed in MVC Nos. 246, 247 & 248 of 1996 are set aside. The matters stand remitted to the Tribunal. The claim petitions are restored to the file of I Additional District and Sessions Judge, Bengaluru rural District, Bengaluru.

iii) Appellants/claimants are at liberty to move the Tribunal for recalling the order dated 2.7.2001 dismissing the claim petitions against the owner of the tourist bus and seeking permission to take effective steps to serve the owner of the bus in such an event, the Tribunal shall consider the same after giving opportunity to the parties.

iv) Since, the appellants/claimants and insurer of both the vehicles were represented before this Court through their respective counsel, they are directed to appear before the Tribunal either personally or through their counsel on 25.04.2016 at 11.00 a.m. without expecting further notice from the Tribunal.

v) On the said date or on the next date of hearing the appellants shall file application for recalling the order dated 2.7.2001 dismissing the claim petitions against the owner of the bus and shall take steps to issue notice to the drivers and owners of both the vehicles on recalling application as well as on main claim petitions.

vi) The Tribunal shall re-consider the claim petitions by granting opportunity to the respondents to file statement of objections, if any, to the main claim petitions and granting permission to the parties to lead evidence and further evidence, if any and cross-examine on such evidence and hear arguments and decide the claim petition afresh and in accordance with law.

vii) The Tribunal while passing the judgment and awards shall consider the issue regarding awarding or denying the interest from the date of dismissal of the claim petitions against the owner of the Tourist bus till the date of restoration of the petition against the owner of the bus."