(2015) 04 KAR CK 0220

In the Karnataka High Court

Case No : Writ Petition No. 103761/2015 (GM-AC)

Meer Mohiddin and Others — APPELLANT

Vs

Hanumanth Gouda and Others — RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, 151

Citation : (2015) 04 KAR CK 0220

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : Jalgar Ismail Dadesaheb, for the Appellant

Final Decision : Dismissed

Judgement

B. Manohar, J.

This writ petition is directed against the order dated 23-03-2015 allowing I.A. No. 12 in MVC No. 450/2003 passed by the I Additional Senior Civil Judge Hubballi.

2. Brief facts of the case are as follows:

"The son of the petitioners one Azar Meer Chiraguddin died in the road traffic accident occurred on 11-05-2003 while he was proceeding in a Motor Cycle near Nagenahalli village, Koratagere-Bangalore Road. The petitioners had filed a claim petition seeking for compensation contending that due to the rash and negligent driving of the Tempo Trax bearing registration No. KA-25/N-1786 by its driver, the accident had occurred and the claimants are entitled for compensation."

3. The Motor Accidents Claims Tribunal, after considering the oral and documentary evidence by its judgment and award dated 09-10-2006 dismissed the claim petition in MVC No. 450/2003 on the ground that due to the rash and negligent riding of the motor cycle which dashed against the electric pole, the accident had occurred and the deceased had sustained injuries and died

subsequently in the hospital. Hence, the claimants are not entitled for compensation. Being aggrieved by the said judgment and award, the claimants preferred MFA No. 377/2007 before this court, which came to be dismissed. Being aggrieved by the said judgment and award the claimants preferred Spl. Leave Petition No. 16656/2012 before the Hon''ble Supreme Court which was subsequently numbered as Civil Appeal No. 9222/2013. The Hon''ble Supreme Court by its order dated 17-10-2013 allowed the said appeal and set aside the judgment and award passed by the Tribunal as well as the High Court and remitted the matter to the Tribunal for fresh determination of the claim made by the claimants. The Hon''ble Supreme Court held that the claimants had examined P.W. 2 who is one of the eyewitnesses of the accident and his evidence was not taken into consideration by the Tribunal as well as the High Court. Accordingly, directed the Tribunal to reconsider the matter. After remand, the petitioners filed a memo stating that they are not adducing any fresh evidence. On the basis of the said memo, the evidence of the petitioners was closed.

4. On the other hand, the respondent-Insurance Company filed an application I.A. No. 12 under Order 18 Rule 17 r/w Section 151 of CPC recalling P.W. 2 for further cross-examination since he was the eye-witness to the accident. The specific case of the Insurance Company is that the accident had not occurred on 11-05-2003 and the Tempo Trax was falsely implicated in the accident. On the other hand, the motor cycle on which son of the petitioners along with the pillion rider were travelling dashed against the electrical pole and they sustained injuries and died in the hospital. In order to prove the said contention, the Insurance Company wanted to examine P.W. 2 who is the eye-witness to the accident.

5. The petitioners filed objections to the said application contending that P.W. 2 has been already cross-examined in the earlier proceedings. In the application seeking for recalling P.W. 2 no material has been placed or brought out any compelling circumstances to cross-examine P.W. 2. The Hon''ble Supreme Court looking into the evidence of P.W. 2 who was the eyewitness to the accident held that if the evidence of P.W. 2 is taken into consideration there is no escape from the conclusion that the accident occurred due to the rash and negligent driving of the Tempo Trax by its driver. Hence, the petitioners contended that the question of cross-examining P.W. 2 does not arise and sought for dismissal of I.A. No. 12.

6. The Trial Court after considering the matter in detail taken into consideration the fact that on the basis of the evidence of P.W. 2, the Hon''ble Supreme Court has set aside the judgment passed by the Tribunal as well as this Court and remitted the matter to the Tribunal for fresh determination of the claim of the claimants. However, the claimants filed a memo stating that they have no further evidence to lead. In view of that the Insurance Company filed I.A. No. 12 under Order 18 Rule 17 read with Section 151 of CPC praying for recalling of P.W. 2 for further cross-examination who is the eye-witness to the accident. In view of that, the Trial Court allowed I.A. No. 12. Being aggrieved by the said order, the

petitioners preferred this writ petition.

7. The main contention of the petitioners is that P.W. 2 has already been cross-examined by the Insurance Company and the question of further cross-examining him does not arise. In the application, they have not brought out any compelling circumstances to cross-examine P.W. 2. The provision of Order 18 Rule 17 of CPC cannot be exercised for filling up the lacuna in the evidence. Further, the Insurance Company cannot file an application under Order 18 Rule 17 of CPC to further cross-examine the witness and it is the discretionary power of the Court to recall the witnesses if it thinks it proper. It does not by itself confer a right on the party. In support of his contention he relied upon the judgments reported in Vadiraj Naggapa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate, AIR 2009 SC 1604 : (2009) 7 JT 202 : (2009) 4 SCALE 90 : (2009) 4 SCC 410 : (2009) 3 SCR 1071 ; K.K. Velusamy Vs. N. Palanisamy, (2011) 3 CTC 422 : (2011) 4 JT 38 : (2011) 2 RCR(Civil) 875 : (2011) 4 SCALE 61 : (2011) 11 SCC 275 : (2011) 4 SCR 31 ; 2011(4) AIR KAR 363 (Kavitha Mahesh v. Chief Election Commissioner and Commissioners and Others) and sought for setting aside the order made on I.A. No. 12 by allowing the writ petition.

8. On the other hand, Sri. S.K. Kayakamath, learned counsel appearing for the second respondent-Insurance Company argued in support of the order passed by the Trial Court and contended that the Hon''ble Supreme Court taking into consideration evidence of P.W. 2. has set aside the judgment of the Tribunal as well as the High Court and remitted the matter to the Tribunal for fresh determination of the claim of the claimants. The specific case of the insurer is that the insured vehicle is not involved in the accident, the deceased on his own dashed against the electric pole, sustained injury and died in the accident and the petitioners had played fraud on the Insurance Company. In order to prove their case, they wanted to further cross-examine P.W. 2. There is no infirmity or irregularity in the said order and sought for dismissal of the writ petition.

9. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the orders impugned and other relevant records.

10. The records clearly disclose that the claim petition in MVC No. 430/2007 filed seeking compensation due to the death of the son of the petitioners was dismissed by the MACT, Hubli. Thereafter, MFA No. 377/2007 was also dismissed by the High Court. Civil Appeal No. 9222/2013 filed by the claimants was allowed by the Hon''ble Supreme Court setting aside the judgment passed by the Tribunal as well as this Court on the basis of evidence of P.W. 2 and remitted the matter to the Tribunal for fresh determination of the claim of the petitioners. After remand, the petitioners filed a memo stating that they have no evidence to lead. The Insurance Company wanted to cross-examine P.W. 2 who is the alleged eye-witness of the accident. In view of that, I.A. No. 12 was filed invoking Order 18 Rule 17 of CPC for recalling P.W. 2 for further cross-examination. The petitioners objected for the said application contending that P.W. 2 has already been cross-

examined and no further material has been produced to show what purpose they want to cross-examine P.W. 2. The Hon''ble Supreme Court has not permitted the Insurance Company to cross-examine P.W. 2 and sought for dismissal of the said application.

11. The Hon''ble Supreme Court has set aside the judgment passed by the Tribunal as well as this Court remitted the matter for fresh determination of the claim of the claimants. However the claimants filed a memo stating they have no further evidence to lead. The Insurance Company wanted to cross-examine P.W. 2 to prove their case that the petitioners have played fraud played though the insured vehicle has not been involved in the accident the same has been falsely implicated in the case. The Tribunal taking into consideration all these aspects of the matter permitted the Insurance Company to cross-examine P.W. 2. I find no infirmity or irregularity in the said finding. The Insurance Company is bound to protect their interest since they are handling the public money. In an identical matter, the Hon''ble Supreme Court in a judgment reported in United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, (2000) 1 ACC 484 : (2000) ACJ 1032 : AIR 2000 SC 1165 : (2000) 2 CLT 25 : (2000) 100 CompCas 705 : (2000) 3 CTC 506 : (2000) 3 JT 122 : (2000) 2 SCALE 343 : (2000) 3 SCC 581 : (2000) 2 SCR 264 : (2000) 1 UJ 655 : (2000) AIRSCW 835 : (2000) 2 Supreme 294 held as under:

"12. The Tribunal refused to open the door to the appellant Company as the High Court declined to exercise its writ jurisdiction which is almost plenary for which no statutory constrictions could possibly be imposed. If a party complaining of fraud having been practised on him as well as on the Court by another party resulting in a decree, cannot avail himself of the remedy of review or even the writ jurisdiction of the High Court, what else is the alternative remedy for him? Is he to surrender to the product of the fraud and thereby became a conduit to enrich the imposter unjustly? Learned single Judge who indicated some other alternative remedy did not unfortunately spell out what is the other remedy which the appellant Insurance Company could pursue with.

13. No one can possibly fault the Insurance Company for persistently pursuing the matter up to this Court because they are dealing with public money. If they have discovered that such public fund, in a whopping measure, would be knocked off fraudulently through a fake claim, there is full justification for the Insurance Company in approaching the Tribunal itself first. At any rate the High Court ought not have refused to consider their grievances. What is the legal remedy when a party to a judgment or order of Court later discovered that it was obtained by fraud?"

12. Order 18 Rule 17 of CPC enables the Court, at any stage of a suit, to recall any witnesses who have been examined. The Court, either on its own motion or on an application filed by any of the parties to the suit requesting the Court to exercise the said power, can permit the parties to examine or further examine the witnesses. It is the discretionary power of the Court to recall the witnesses, if

it thinks proper. In the instant case, the specific case pleaded by the insurer is that due to rash and negligent riding of the motor bike, the deceased dashed against the electric pole, sustained injuries and died subsequently, and that the tempo trax is not involved in the said accident. In view of that, the Tribunal exercising its discretionary power permitted the insurance company to further examine P.W. 2. I find there is no infirmity in the said order.

13. If the Insurance Company is allowed to cross-examine P.W. 2 it will not cause any harm to the claimants. On the other hand, it will enable the Trial Court to adjudicate the matter in a proper perspective. The petitioners have not made out a case to interfere with the same. Accordingly, the writ petition is dismissed.

