
(2015) 02 KAR CK 0068
In the Karnataka High Court
Case No : M.F.A. No. 16 of 2011 (MV)

Nagamma

APPELLANT

Vs

The Oriental Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 02 KAR CK 0068

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

Bench : Single Bench

Advocate : V.B. Siddaramaiah, Advocate, for the Appellant; A. Ravishankar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 19th August 2010, passed in MVC No. 426/2008, by the Senior Civil Judge and Additional Motor Accident Claims Tribunal, Sira, (for short, "Tribunal"), for awarding reasonable compensation by allowing the claim petition, on the ground that, the Tribunal is not justified in dismissing the claim petition.

2. The appellant claims to be aged about 52 years at the time of filing the appeal and as the claimant, her husband died during the pendency of the claim petition, she continued the prosecution of the case, seeking expenses incurred for the treatment of the injuries sustained by her husband in the road traffic accident.

3. It is stated that the claimant was aged about 50 years and hale and healthy prior to the date of accident. It is alleged that the claimant met with an accident at about 9:00, on 24-11-2005, when he was traveling in the bus, as the said Bus turtled down near Thogarugunte bridge on Sira-Amarapura road, due to rash and negligent driving by him.

4. Due to the impact, the appellant has sustained grievous injuries and was immediately shifted to Government Hospital, Sira, where the Doctor informed

that there is fracture to the chest bones and therefore, was referred to District Hospital, Tumkur, where he took treatment as m-patient for one month and also took follow-up treatment in a rented car, by spending huge amount for treatment.

5. On account of the injuries sustained in the accident, the claimant/husband of appellant filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 7,00,000/- against the Insurance Company and another. The said claim petition had come up for consideration before the Tribunal on 19th August, 2010. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, dismissed the claim petition, with exemplary cost of Rs. 2,000/-. Being dissatisfied with the dismissal of the claim petition, the appellant, wife of claimant has filed the appeal before this Court, seeking to allow the claim petition, awarding just and reasonable compensation for the treatment taken by her husband for the injuries sustained in the road traffic accident.

6. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant.

7. Shri V.B. Siddaramaiah, learned counsel appearing for appellant at the outset vehemently submitted that, the Tribunal grossly erred in dismissing the claim petition on hyper technical grounds, without considering the relevant material available on file. He further submitted that the Tribunal further erred in not considering the documentary evidence, i.e. Wound Certificate and also the medical bills and dismissed the claim petition, mechanically without any application of mind. Therefore, he submitted that the impugned judgment and award passed by Tribunal, dismissing the claim petition is liable to be set aside and the same is to be allowed, awarding just and reasonable compensation for the treatment taken by her husband for the injuries sustained in the road traffic accident.

8. After hearing the learned counsel appearing for appellant, after perusal of the impugned judgment and award passed by Tribunal, and after due consideration of the entire material available on file, it can be seen that the Tribunal, after assessing the oral evidence of P.Ws. 1 and 2 and documentary evidence at Exs. P1 to P12, has rightly dismissed the claim petition filed by the claimant/husband of appellant on the ground that the appellant has failed to establish that she is the legal heir of deceased and also that she incurred expenses for the treatment of her deceased claimant/husband.

9. It is significant to note after careful evaluation of the entire material available on file that, the legal heir of appellant i.e., the wife of appellant is impleaded as she is the legal heir of deceased. This fact was denied by the respondent No. 2 Insurance Company. Then it is the duty of legal heir of the appellant to establish that she is the wife of appellant. The Legal heir has produced Ex. P. 9 Ration Card. Except the said document, nothing is produced to show that she is the wife

of deceased claimant. On perusal of said ration card, it is seen that the same stands in the name of appellant, Sannamarappa. Further the age of L.R. of appellant shows that Nagamma is aged 35 years, where-as the age of deceased claimant shown as 58 years i.e., it shows 23 years difference between the husband and wife. It creates a doubtful situation. But in the claim petition she has shown her age as 50 years. Even though the said Ration card is not an authenticated document, for the sake of claim of appellant is considered she is the wife, but as per Ration Card, when the children were also shown as Legal heirs of deceased Sannamarappa, the question remains as to why all those children were not made party as legal heirs of the deceased. Even the wife does not mention regarding the other heirs of deceased. She does not produce voters Identity Card. Even though in order to say that the L.R. of appellant is the legal heir and wife of deceased, strict proof is not necessary. But, at least prima-facie available documents are required to be produced. Actually in order to show legal heir, the Tahsildar will issue heirship certificate or else voters I.D. card and other documents are available, which are not produced. So considering these aspects, the documents produced by appellant are not sufficient to hold that she is the lone legal heir of deceased claimant. Accordingly, the Tribunal answered the Addl. Issue No. 1 in Negative.

10. To find out whether the L.R. of deceased claimant is entitled for the compensation with respect to expenses incurred for the treatment of the deceased claimant, it can be seen that, the appellant has produced Medical bills as per Ex. P. 10. So on perusal of the said bills, numbering 11, it is seen that the date of each bill shows that two bills are dated 11-1-2007 one for Rs. 2,720-00 and another for Rs. 1,500-00, then dated 9.8.2007, 10.8.2007, 15.1.2007, 5.1.2008, 15.1.2008, two bills of 5.6.2009, finally dated 9.9.2009. Very interesting thing is that as per the version of appellant, i.e. L.R. of appellant, she met with accident on 24-11-2005. But bills produced is of the year 2007, 2008 and 2009. One more most important aspect is that the deceased claimant expired on 21-6-2008. But the bills produced by P.W. 1 shows that they purchased medicines for the treatment of appellant on 5.6.2009, 5.6.2009 two bills and on 9.9.2009. Under such circumstances, it is very difficult to believe the said bills and the version of the appellant. Further, all the eleven bills produced are purchased from the same Guru Medicals and there is no prescription of the Doctor to purchase these medicines. Hence from these aspects, the Tribunal held that, it is crystal clear that only in order to claim compensation they have filed these documents which are concocted documents. No single document is produced to show that deceased claimant took treatment as in-door patient at District Hospital, Tumkur. Therefore, considering all these aspects, the L.R. of claimant has failed to establish that she has incurred any expenses for the treatment of deceased claimant.

11. Further, one more aspect is that, when she is unable to establish that she has provided treatment to deceased claimant, then question of considering Taxi bills, Ex. P. 11 and Bus tickets Ex. P. 12 does not arise for consideration.

Accordingly, it answered the said Addl. Issue No. 2 also in the negative.

12. Further, when the L.R. of claimant has failed to established that she is the legal heir of deceased as well as she has failed to establish that she incurred any expenses for the treatment of deceased claimant, then the question of considering the evidence of P.W. 2 who is alleged to be Nati Vaidya will not arise at all.

13. Therefore, after critical evaluation of the oral and documentary evidence available on file, it is seen that the Tribunal, has after proper appreciation of the oral and documentary evidence, has rightly dismissed the claim petition filed by claimant and thereafter prosecuted by his alleged wife, as the claimant died during the pendency of the claim petition, by assigning valid and cogent reasons at paragraphs 12 to 15 of its judgment. The said reasoning given by Tribunal is just and proper and it does not call for interference by this Court.

14. Therefore, having regard to the facts and circumstances of the case, the appeal filed by appellant is liable to be dismissed as being devoid of merit. Accordingly, it is dismissed.

Office to draw award, accordingly.