
(2016) 10 KAR CK 0063
In the Karnataka High Court
Case No : M.F.A. No. 1282 of 2013 (MV)

New India Assurance Co. Ltd.

APPELLANT

Vs

Y.S. Anjaneya Reddy

RESPONDENT

Date of Decision : 17-10-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, Section 163A

Citation : (2016) 4 ACC 932 : (2017) 2 TAC 108

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Mr. N. Gopalakrishna. Advocate, for the Respondent No. 2; Served-unrepresented, for the Respondent No. 1; Mr. R. Jai Prakash, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

S. Sujatha, J. - This appeal is by the Insurer challenging the Judgment and Order passed by the Motor Accident Claims Tribunal, Bangalore, [the Tribunal", for short] in MVC No. 8944/2010.

2. Briefly stated the facts are:

That the claimant is the mother of the deceased Sathish Yadav @ Babu @ Sateesh Rao who died in the motor vehicle accident on 11.12.2010 at about 7.30 p.m. while he was riding a Yamaha motor cycle bearing registration No. KA-01-EN-5630 along with his friend Srikanth as a pillion rider. It was contended that the said accident occurred owing to actionable negligence of the driver of the Tractor-Trailer bearing registration Nos. KA-07-T- 6896 and KA-07-T-6897 duly insured with the appellant/Insurer herein. The Insurer entered appearance and contested the matter. The Tribunal, after analysing the evidence on record, awarded the total compensation of Rs. 4,36,500 with interest at 6% per annum fastening the liability on the appellant/insurer. Being dissatisfied, the appellant is in appeal.

3. Heard the learned Counsel for the parties and perused the material on record.
4. It is an admitted fact that the claim petition was instituted by the claimant under Section 163A of the Motor Vehicles Act, 1988 ["Act", for short] which is a special provision enacted to expedite the claims of the victims of the road traffic accident. The said special provision is based on "no fault liability".
5. Learned Counsel appearing for the appellant/insurer placing reliance on the Judgment of the Hon"ble Apex Court in the case of National Insurance Company Limited v. Sinitha and Others reported in 2012 ACJ 1, would contend that Section 163A of the Act is not based on "no fault liability" if, the Insurer establishes the factum of negligence on the part of the opposite vehicle, no liability can be fixed on the appellant/insurer. However, this Judgment of the Hon"ble Apex Court being referred to a larger Bench in the case of United India Insurance Company Limited v. Sunil Kumar and Others, reported in 2013 AIR SCW 6694, the scope of Section 163A of the Act as much as the "no fault liability basis" is at large. However, considering the factual matrix of the present case, it would be axiomatic to refer to the documents available on record i.e., Exhibit.PI-criminal case registered against the driver of the Tractor-Trailer; Exhibit. P2-Mahazar; Exhibit.P3-Spot sketch; Exhibit.P4-Copy of IMV report; Exhibit.P5-Inquest; Exhibit.P7-Charge-sheet; Exhibit.P6-PM Report. All these documents clearly indicate negligence on the part of the driver of the Tractor-Trailer who had parked the vehicle on the road without exhibiting any indication of the vehicle being parked. The accident in question admittedly occurred at 7.30 p.m. In the absence of any indication of the tractor-trailer for having parked on the road, no common man would visualise the same that too in tire night hours. It was not a slot allotted for parking the vehicle. Moreover, the vehicle was parked at the asphalted portion of the road by the driver of the tractor-trailer negligently. It is also recorded by the Tribunal that the deceased in spite of taking due care and caution was not able to notice the tractor-trailer due to the heavy vehicle coming from the opposite direction with high beam lights and dashed against stationed tractor and trailer which was parked un-mindfully on the tar portion of the road. This factual finding recorded by the Tribunal is based on evidence available on record no rebuttal evidence was led by the Insurer to discard this crucial evidence.
6. In the circumstances, the Insurer-Appellant herein has miserably failed to establish the factum of contributory negligence on the part of the driver of the two wheeler i.e., the deceased. Even assuming Section 163A of the Act is not based on "no fault liability", as contended by the learned Counsel for the Appellant, the negligence on the part of the deceased having not been established by the appellant/insurer, no ground is made out by the appellant/insurer to warrant interference with the well reasoned order passed by the Tribunal.
7. The appeal stands dismissed as devoid of merits.

The Award amount in deposit shall be transferred to the jurisdictional Tribunal for disbursement forthwith.