

(2015) 11 KAR CK 0135
In the Karnataka High Court
Case No : M.F.A. No. 1963 of 2015 (MV)

Rajeshwari and Others

APPELLANT

Vs

B.K. Sathish and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0135

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : Omkara Murthy G., Advocate, for the Appellant

Final Decision : Allowed

Judgement

N.K. Patil, J.—Though this appeal is posted for orders, it is taken up for final disposal, with the consent of the learned counsel appearing for the parties.

2. This appeal by the claimants is directed against the judgment and award dated 9th April 2014 passed in MVC No. 973/2009, by the Senior Civil Judge, Additional Motor Accident Claims Tribunal-17, Gubbi, (for short, "Tribunal"), dismissing the claim petition for compensation on the ground that, the Tribunal is not justified in dismissing the claim petition.

3. The submission of the learned counsel appearing for appellants, Shri. Omkara Murthy G., at the outset is that, the Tribunal has erred in not considering the relevant material available on record inasmuch as the statements made by S. Raju, the driver of the offending vehicle and an eye witness to the accident and the contents of the charge sheet have not been looked into or considered or appreciated by Tribunal. Therefore, if one more opportunity is given to the appellants, they would examine the driver of the offending vehicle, Raju S., who is the eye witness to the accident and also owner of the vehicle involved in the accident, with whom the deceased was working as a second driver/cleaner in the Lorry bearing Registration No. KA-04/C-7209 (multi axle), which is involved in the accident.

He further submitted that, on account of the negligent act of the driver of the aforesaid Lorry, the deceased, who was an inmate of the said Lorry and another inmate of the Lorry sustained fatal injuries and succumbed to the same. Due to inadvertence and lack of knowledge, the driver of the said Lorry, who is an eye witness is not examined. It is a case of death and the claimants are none other than the wife, aged about 25 years and two minor children aged about six years and four years respectively.

He also submitted that so far as the death of another inmate of the said Lorry is concerned, the claim petition filed by the LRs. of the said deceased inmate has been allowed and the award also has been satisfied.

Therefore, he submitted that, in the interest of justice and equity, one more opportunity may be given to the appellants, to establish that the accident occurred on account of negligence on the part of the driver of the Lorry in question and liberty may be reserved to them to file necessary application for adducing additional oral and documentary evidence to substantiate their claim in the claim petition.

4. As against this, learned counsel appearing for second respondent/Insurer, inter alia sought to substantiate the impugned judgment and award passed by Tribunal, stating that the Tribunal, after due consideration of the oral and documentary evidence available on file, has passed the impugned judgment and award and hence, interference in the same is uncalled for. However, after going through the original records, he fairly submitted that the first driver, Raju S. has not been examined and in fact, he has given a statement before the jurisdictional Police, at the time of filing the charge sheet, that the deceased was working as a "Cleaner" in the Lorry in question and that he had parked the said Lorry to attend the nature call. But, unfortunately, the Lorry moved further and the deceased fell down in the ditch, on account of which, he and another inmate sustained grievous injuries and they succumbed to the same. But, this fact has not been looked into or considered by the Tribunal. Therefore, he fairly submitted that the impugned judgment and award passed by Tribunal may be set aside and the matter may be remitted back to Tribunal for fresh consideration, leaving open all the contentions of both the parties.

5. After hearing the learned counsel appearing for both the parties and after perusal of the impugned judgment and award passed by Tribunal, it emerges that occurrence of accident and resultant death of deceased are not in dispute. It is significant to note here itself that the driver of the Lorry in question, one Raju S. who is an eye witness to the accident, has not been examined. Further, it emerges that, Raju S. the driver of said Lorry has given a statement in unequivocal terms, before the Police, at the time of filing the charge sheet/ investigation that, the deceased was working as a "Cleaner" in the Lorry in question. This aspect of the matter has not been looked into or considered or appreciated by the Tribunal.

6. More over, the question, whether the deceased was working as an employee with owner of the Lorry in question, in the capacity of a "second driver" or "cleaner" is to be gone into and answered by the Tribunal alone, after appreciating the oral and documentary evidence available on file and also additional evidence to be adduced by the parties.

7. Therefore, without expressing any opinion on the merits or demerits of this case, it would suffice for this Court, if the parties are permitted to adduce additional oral and documentary evidence and the Tribunal is directed to consider the matter afresh and dispose of the same, to meet the ends of justice.

8. In the light of the discussion made above, the appeal filed by the claimants, is allowed.

The impugned judgment and award dated 9th April 2014, passed in MVC No. 973/2009, by the Senior Civil Judge, Additional Motor Accident Claims Tribunal-17, Gubbi, dismissing the claim petition for compensation, is hereby set aside;

The matter stands remanded back to Tribunal for consideration afresh and to pass appropriate order, in accordance with law, after affording reasonable opportunity of hearing to the parties, personally or through their counsel and dispose of the same, as expeditiously as possible, not later than six months from the date of receipt of notice by the owner of the offending vehicle;

All the contentions of both the parties are left open;

Further, the jurisdictional Tribunal is directed to issue notice to first respondent/ owner of the offending vehicle and thereafter proceed further, in accordance with law, after hearing all the parties concerned;

Parties are permitted to file necessary application/s, for adducing additional evidence, oral/documentary, to substantiate their respective cases within four weeks from the date of receipt of a copy of this judgment;

In case such application/s is/are filed by the learned counsel for the parties, within the time stipulated above, the Tribunal is directed to receive the same and proceed further and dispose of the same as expeditiously as possible, in compliance of the direction given by this Court, as above;

Both the appellant and Respondent No. 2/Insurer are directed to appear before the jurisdictional Tribunal either personally or through their counsel, on 14-12-2015, to enable them to take further dates of hearing,;

Registry is directed to return the entire original records, to the jurisdictional Tribunal, immediately.