
(2017) 07 KAR CK 0029
In the Karnataka High Court
Case No : 3101 of 2015 (MV)

RAMANJINAPPA & ORS

APPELLANT

Vs

K.H.RAVI & ANR

RESPONDENT

Date of Decision : 05-07-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 1 Rule 9](#) -
[Indian Penal Code, 1860](#), [Section 279](#),
[Section 337](#), [Section 304-A](#)

Citation : (2017) 07 KAR CK 0029

Hon'ble Judges : N.K. Sudhindrarao

Bench : SINGLE BENCH

Advocate : GEETHA RAJ, M.V.MAHESWARAPPA

Final Decision : Allowed

Judgement

1. This appeal is by the claimants for setting aside the judgment and award dated 16.02.2015 passed by the Senior Civil Judge & JMFC, Doddaballapura, in MVC No.8/2013.

2. To avoid confusions and overlapping, the parties are hereinafter referred with reference to their respective status before the Tribunal.

3. One Manu was said to be travelling on a motorcycle bearing No.KA 43 K 5566 as a pillion rider on 15.12.2011 and Shivakumar G.K was the rider of the said motorcycle. When the motorcycle reached a place near Muthur Shivappa's land, a two wheeler TVS Moped bearing reg. No.TN-29-AA-279 suddenly rushed and turned it without passing any signal because of which, the rider of the TVS Moped and the motorcycle dashed against each other. In the process, the rider and the pillion rider suffered injuries, but Manu, who was the pillion rider of motorcycle suffered serious injuries and died on his way to the Hospital. The parents of the deceased Manu filed claim petition seeking compensation. Respondent No.1-K.H.Ravi, owner of the vehicle is said to be the brother-in-law

of Manu, apparently, has not contested the case. Respondent No.2- National Insurance Company contended that it did not dispute the policy, but asserts that its liability would be subject to fulfillment of the terms by the owner as required under Section 134(c) of the Motor Vehicles Act and also contends that the petition is bad for non-joinder.

4. Section 134(c) of the Motor Vehicles Act is as under: "Sec.134(c) -Duty of driver in case of accident and injury to a person-

When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall-

(a) xxx

(b) xxx

(c) give the following information in writing to the insurer, who has insured their certificates of insurance, about the occurrence of the accident, namely-

(i) insurance policy number and period of its validity;

(ii) date, time and place of accident;

(iii) particulars of the persons insured or killed in the accident;

(iv) name of the driver and the particulars of his driving license."

5. The Tribunal framed issues relating to the accident, injuries of Manu, who succumbed to them. The petitioner/appellant was examined as PW1, Exs.P.1 to P.10 were marked, which includes copy of the FIR, complaint etc., and the respondents neither examined any witness nor filed documents on their behalf. The Tribunal has failed to consider why the Insurance Company in a span of more than 5 years has not initiated the action against the person whom it claims as guilty.

6. It appears that the Tribunal applied much emphasis on the contention of the Insurance that the rider of the Motor cycle never was negligent or rash in riding, but entire negligence of TVS Moped. And does not assign the legally acceptable reasons. The respondent No.2 Insurance Company therein admitted the policy but contends the liability would arise only when the holder of the policy complied with terms of driving of the offending vehicle fits into the terms.

7. Whenever a point of law has to be considered for its applicability to a given set of facts, the courts are there to ensure that principles of natural justice are properly respected.

8. But in the case on hand, the Tribunal does not appear to have extended fair and full opportunities to the parties to know the extent of nexus between criminal case and the claim petition as to the parties who are arrayed as the accused persons in the complaint, FIR and final report as well. It does make a

mention effect of investigation and filing of final report connecting the criminal case registered in Crime.No.143/2011 for the offence under Sections 279, 337, 304(A) of IPC and final report of the accident related to this claim petition. Regard being had to the fact final report need not be accepted in principle. However that aspect becomes relevant when the matter is under judicial scrutiny of a given case. The said point is observed because the learned member has passed the judgment holding that rider of TVS Moped committed the accident, regard being had to the fact that the rider of the motor cycle is the accused as per the investigation and final report.

9. The learned member has literally found the rider of TVS Moped No.TN-29-AA-279 guilty in a proceedings initiated under Sec.166 of the Motor Vehicles Act,1988. The judgment and award passed by the Tribunal does not cover the circumstances which were necessary for complete adjudication. It does not discuss about the necessity of going beyond the scope and to give a finding on a person who was not a party to the proceedings.

10. It is necessary to mention that the Insurance Company has not preferred cross objection or a separate appeal. The rider of the motor bike is none other than the brother-in-law of Manu, the victim who succumbed to the injuries. Thus, issue No.1 casts burden directly on the petitioner and ultimately the Tribunal ends the case holding that the petition was bad for non-joinder of rider of TVS moped by considering him as necessary party and ends up by dismissing it. Whether could it be a finding to exonerate the accused in a criminal case and the rider of Moped to be placed, is the point to be considered.

11. In this connection Order 1 Rule 9 of CPC is as under: "9. Misjoinder and non-joinder- No suit shall be defeated by reason of the Misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

(Provided that nothing in this rule shall apply to non-joinder of a necessary party.)"

12. The Tribunal also failed to take note of the finding of a court regarding holding a person negligent in the proceedings of determination of compensation more particularly, when he is not the accused regard being had to the fact that no steps are initiated against him.

13. There is no material or reasoning, as to whether the claimant was made known of framing of issues in the evidence in the light of fact of such contention which was not relied on by the Insurance Company in its evidence through an affidavit.

14. It is to be noted that the learned member authoritatively comes to a conclusion that at the end of para No.12 at page 10: "It is the insured or insurer of the TVS moped who is/ are liable to pay the compensation to the petitioners. Hence, the present petition is bad for non-joinder of necessary parties and mis-

joinder of unnecessary parties. Hence, issue No.3 is held in the Affirmative".

It is nobody's case to try a criminal case during MVC proceedings.

It is quite understandable that non-joinder of parties raised by the Tribunal is at the last segment of the proceedings. An opportunity was not given to claimant to have his say of act on the point of his evidence or contentions after the issue was framed.

15. Besides above, the rider of TVS Moped is not the accused in the criminal case by the police of the offence punishable under sections 279, 337,304A of Indian Penal Code.

16. It is seen that the criminal case was registered against the rider of the motor cycle bearing registration No.KA-43-A-5566 for the offence punishable under the section 279 and 304-A and the outcome of the criminal case does not bear serious impact on the adjudication of a claim petition.

17. The Tribunal holds the owner of TVS moped as the necessary party and finds non-impleading of the TVS moped rider was fatal to case of the claimants. It is not forthcoming whether such defense was raised by the Insurance Company at the time of filing objections or by way of allowing as the same is not spelt out in the affidavit filed by the Insurance Company nor even it finds a place either as an allegation or a suggestion during evidence.

18. Whether the Court of Tribunal, owe duty to ensure that in a case when there is a question of law, it shall not be allowed to be overridden by a question of fact. Otherwise, the reasoning may become redundant. The Tribunal failed to analyze the scope and difference between formal party and necessary party. Section 158 of the Motor Vehicles Act is as under; "Sec.158- Production of certain certificate, license and permit in certain cases.-

(1)xxx

(2)xxx

(3)xxx

(4)xxx

(5)xxx

(6) As soon as any information regarding any accident involving in death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date recording of information or, as a case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

19. In a rush it is probable certain findings incidental to main findings are arrived at but application of mind is very much necessary to ensure that the incidental finding dislodges a person of a right and vests a person of a right which otherwise he was not entitled.

20. In the context of the circumstances stated above, the finding leading to award passed by learned Member of the Tribunal cannot be accepted and matter requires to be adjudicated after providing opportunity which the respective parties were deprived in the earlier proceedings.

21. Accordingly the appeal is allowed. Impugned judgment and award dated 16.02.2015 passed in MVC No.8/2013 on the file of the learned Senior Civil Judge & JMFC, Doddaballapura, is hereby set aside. The matter is remanded to the learned Senior Civil Judge & JMFC, Doddaballapura, for fresh disposal of the same by permitting the parties to file relevant documents or to examine witnesses.

Further, to find "whether issue on non-joinder of a party is necessary" and to dispose of the matter within an outer limit of three months from the date of receipt of a copy of this judgment.