

(2016) 03 KAR CK 0318

In the Karnataka High Court

Case No : M.F.A. Nos. 5079 and 8506/2009 (MV)

Regional Manager, National Insurance Company Ltd. and
Others

APPELLANT

Vs

Sunitha and Others

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Citation : (2016) 03 KAR CK 0318

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : A.N. Krishna Swamy, Advocate, for the Appellant; R. Chandrashekar for Lawyers Net, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Rathnakala, J.—1. These two appeals are directed against the judgment and award dated 20.1.2009 passed in M.V.C. No. 6137/2006 by the XVI Additional Judge, M.A.C.T., Bangalore City ("the Tribunal" for short), whereby the claim petition filed by the legal heirs of deceased Suresh is allowed by awarding compensation of Rs. 5,40,000/- with interest @ 6% per annum.

2. While the appellant of M.F.A. No. 5079/2009/Insurance Company is at challenging the very veracity of the claim made against the owner and the insurer, the appellants of M.F.A. No. 8506/2009 are aggrieved by the insufficient compensation awarded in their favour.

3. Sri. A.N. Krishnaswamy, learned Counsel appearing for the appellant/ Insurance Company submits that, on the showing of the claimants itself, the accident occurred on 27.5.2006 at 11.45 a.m.; while the deceased was proceeding on the road near Chowdeshwari Weigh Bridge, 11th Cross junction, he was hit by the heavy crane bearing registration No. KA-02/MM-99; he was admitted to the hospital and consequent upon his expiry on 9.6.2006, complaint was filed by one Shivanna/the brother of the deceased on 10.6.2006 at 10.45

p.m.

4. Before the Tribunal, the defense of the insurer was that the crane bearing registration No. KA-02/MM-99 is not at all involved in the accident. The owner of the vehicle/second respondent in M.F.A. No. 8506/2009 also disputed the involvement of his vehicle in the accident. He had taken a categorical stand that on 27.5.2006, his vehicle was not on the road but was in the auto garage. It being a heavy crane it cannot run more than 10 kilo meters per hour and it does not have spring plates and shock observer and said crane will be used only for industrial purpose but not for transport.

5. The Tribunal on consideration of the pleadings framed the first issue thus:

Whether the petitioners prove that the deceased died in the accident arising out of the use of the Motor vehicle No. KA-02/MM-99 on 27/5/2006 at about 11.45 a.m.?

6. On behalf of the claimants, sole witness/wife of the deceased Sunitha was examined as PW-1. Admittedly, she was not the eye witness. On behalf of the respondents, owner of the vehicle Kuberan, who was examined as RW-1, reiterated the stand that the vehicle was not involved in the accident and at the relevant point of time and date, it was in the garage. RW-2 was one M. Selvan, who was the Proprietor of a garage where the vehicle was said to have been under repairs at the relevant point of time. The documentary evidence from the side of the respondents was Exs.R1 and R2, Ex. R3/case summary and discharge card from the M.S. Ramaiah Hospital (carbon copy) and Ex. R4/letter addressed by the owner of the vehicle to the jurisdictional Police Inspector. In Ex. R3, the history of the case was mentioned as "fall from height" and in Ex. R4, the owner of the vehicle while addressing the Police Inspector contended that, his vehicle was in the garage from 22.5.2006 to 30.5.2006. At the stage of the pleadings itself, the respondents had disclosed their stand that the vehicle was not involved in the accident. Despite the same, the claimants have not placed clinching evidence to establish that the accident in question has occurred involving the vehicle bearing registration No. KA-02/MM-99. The burden was heavy on the claimants to prove 1st issue. The entire case is tailor-made and fabricated to make undue gain. The Tribunal without proper appreciation of the evidence has fastened the liability of compensation against the Insurance Company.

7. In reply, Sri. R. Chandrashekar, learned Counsel appearing for the claimants would submit that, when PW-1 was in the witness box, the tone of cross-examination was, the vehicle was very much present at the place of accident. There was no direct question to her either by the insurer or the owner that a false claim is made. The driver of the vehicle is charge sheeted and there is nothing from the respondents' side that said charge sheet has been challenged in the higher court. The Investigating Officer on his personal visit to the spot has prepared a rough sketch and also spot mahazar, whereby involvement of the vehicle is successfully brought on record. Hence, there is no merit in the

contention of the Insurance Company challenging the liability.

Sri. Chandrashekar further adds that, the Tribunal has erred in calculating the loss of dependency on the death of deceased by deducting 1/3rd of his income towards personal expenses; it was a family of six persons and as per the judgment of the Apex Court in *Sarla Verma and Others v. Delhi Transport Corporation and Another* reported in , 2009 ACJ 1298), 1/4th should have been deducted towards personal expenses of the deceased. By deducting 1/3rd of his income, the loss of dependency has decreased substantially resulting in miscarriage of justice. The amount awarded under the conventional heads is also on a lower side. The appeal preferred by the Insurance Company may be dismissed and the award of the Tribunal may be modified by awarding just and reasonable amount.

8. In the light of the above rival submissions, I have perused the impugned award and also the evidence placed by the parties before the Tribunal.

9. It is the fundamental principle of the Evidence Act that the party, who comes to the court for a relief has to prove the same, in claim petitions burden of proving a fact certainly lies on the claimant. In the instant case, the sole witness examined for the deceased is the first appellant, who was not an eye witness to the incident. The claimants have not examined the brother of the deceased, who lodged the complaint after a delay of 14 days to establish, the bonafides of lodging complaint belatedly. The driver of the vehicle, who would have been an eye witness, is not examined. The evidence on record adduced by the respondents as of now overweighs the evidence placed on claimants' side. It is a claim of an young wife, minor children and aged parents of the deceased. In the said circumstances, I am of the considered opinion that the matter shall be remanded to the Tribunal, so that the appellants discharge the burden entrusted on them by issue No. 1. Without expressing any merits or de-merits of the case, for the above said reason, the judgment and award of the Tribunal needs to be set aside.

M.F.A. No. 5079/2009 filed by the Insurance Company is allowed. The judgment and award dated 20.1.2009 passed in M.V.C. No. 6137/2006 by the XVI Additional Judge, M.A.C.T., Bangalore City, is hereby set aside.

The matters stand remanded to the Tribunal for fresh consideration.

Both the parties are permitted to adduce additional/rebuttal evidence.

The Tribunal shall take the matter and dispose of the case in accordance with law within a time frame of five months from the date of appearance of the parties before it.

Without waiting for the notice from the Court, both parties are directed to appear before the concerned Tribunal on 27.4.2016 at 11.00 a.m.

The appellant/Insurance Company is entitled for refund of the amount deposited

before this Court.

In view of the disposal of M.F.A. No. 5079/2009, M.F.A. No. 8506/2009 stands disposed of.

Registry to transmit the L.C.R. to the concerned Tribunal, forthwith.