
(2015) 01 KAR CK 0310
In the Karnataka High Court
Case No : M.F.A. No. 24627/2010 (MV)

Renuka

APPELLANT

Vs

The Divisional Manager, National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0310

Hon'ble Judges : P.D. Waingankar, J.;A.S. Bopanna, J.

Bench : Division Bench

Advocate : Chandrashekar P. Patil, for the Appellant; Ravindra R. Mane, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Bopanna, J.—Sri. Ravindra R. Mane, the learned counsel, to appear on behalf of the first respondent since it is served and unrepresented. He is permitted to file his vakalath in the Registry within four weeks.

2. The claimants are before this court, assailing the judgment passed by the Tribunal in MVC No. 144/2003. The Tribunal by its judgment dated 25.09.2010 has dismissed the claim petition. The Tribunal in order to arrive at such conclusion has arrived at the finding that the rider of the motorcycle himself was negligent in causing the accident and therefore, the claimants who are his L.Rs cannot claim compensation against the respondents. The rider of the motorcycle bearing No. KA-37/H-8924 had dashed against the stationary lorry bearing No. MYW-7485 and has succumbed to the injuries suffered in the said accident.

3. The claimants contending that the driver of the lorry was negligent in parking the lorry without any indication or signal in the middle of the road should be held liable and therefore, the Insurance Company should reimburse the compensation. The respondents had contended that the lorry had been parked in an orderly manner with an indication with regard to the parking and therefore, the driver of the lorry was not negligent in causing the accident.

4. The Tribunal while answering the issue No. 1 has taken into consideration, the documents marked at Exs.P1 to P3 and P6 in relation to the case registered in Crime No. 38/2001 based on the complaint registered by Sri. Govindraju who is the driver of the lorry bearing No. MYW-7485. Since the charge sheet had been filed against the rider of the motorcyclist, the Tribunal has referred to the decisions of this Court as well as the Hon"ble Supreme Court to come to the conclusion that the claimants having relied on the said documents would be bound by the same and since, the driver of the lorry had complained alleging negligence against the rider of the motorcycle, the same would bind the claimants. In that view, considering the fact that no other witness had been examined to establish the manner in which the accident had taken place, the Tribunal was of the opinion that the motorcyclist himself was negligent. In the light of the finding rendered by the Tribunal, we have perused the records received from the Tribunal.

5. The fact that the driver of the lorry had lodged the complaint is not in dispute. However, what is necessary to be noticed in the instant facts is that, apart from the rider of the motorcycle and the driver of the lorry, there was no other person present at the spot. In any event, no such contention had been raised by the respondents except for contending that the lorry driver had lodged the complaint. It is important to note that the accident had occurred at 10:30 p.m. on 07.03.2001 on NH-13. In such circumstance, when no contention has been raised that any other person was present at the spot, from among the two persons who were present when the accident occurred, the rider of the motorcycle had died in the said accident. In such circumstance, when the lorry driver had lodged the complaint and alleged negligence against the dead person, mere lodging of the complaint and the said documents relied on by the claimants cannot be taken into consideration to nonsuit the claimants on that ground. In a circumstance where there was no other eyewitness to the said accident, the claimant has examined herself and stated with regard to the manner in which the accident and death has occurred and has also alleged the negligence on the part of the driver of the lorry in parking the lorry during the night without any indication and the lorry had been parked on the road. When such evidence has been tendered on behalf of the claimants least that the respondent ought to have done was to examine the lorry driver to state with regard to the manner in which the accident had occurred.

6. In that view, we are of the opinion that the respondents having failed to discharge the burden to the said extent cannot take advantage of the fact that the claimants had not examined any other witness. Therefore, if the said aspect is taken into consideration and in that light if it is kept in view that the accident had occurred at night and an allegation had been made by the claimants that there were no indicators or parking lights, the motorcyclist in any event cannot be held negligent to the entire extent. Therefore, taking into consideration that the lorry had been parked on the road during night hours and the motorcyclist had dashed the same from behind, the negligence would have to be apportioned

equally between the driver of the lorry and the rider of the motorcyclist. Hence, we hold that the driver of the lorry was negligent to the extent of 50% and the rider of the motorcyclist was negligent to the remaining extent of 50%. The compensation therefore, if worked out by the Tribunal would have to be apportioned in the said manner. In that view, we modify the finding rendered on issue No. 1 and hold the driver of the lorry to be negligent to the extent of 50%.

7. Since, the Tribunal has not proceeded to consider the other aspects of the matter to determine the compensation and award the same, the matter is remitted to the Tribunal to restore MVC No. 144/2003 on the file and consider the other issues and determine the compensation and thereafter, apportion the same in the manner as indicated above.

8. The appeal is accordingly allowed in part.

Since all the parties are represented by their respective learned counsel, they shall now appear before the Tribunal without further notice on 02.02.2015 as the first date of appearance. The Tribunal shall thereafter regulate its proceedings and dispose of the claim petition in an expeditious manner, but in any event not later than six months from the date of first appearance.