

(2017) 07 KAR CK 0073
In the Karnataka High Court
Case No : 201373 of 2015

Royal Sundaram

APPELLANT

Vs

Savita & Ors.

RESPONDENT

Date of Decision : 17-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0073

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : C.S.Kalburgi, Hanmantharay Sindhol, Manvendra Reddy

Judgement

1. This appeal is by respondent No.2-insurance company assailing the judgment and award passed by the learned Principal Motor Accident Claims Tribunal and Principal District and Sessions Judge, Bidar, in MVC No.408/2012 dated 23.05.2015.

2. Heard. Appeal is admitted and with the consent of the leaned counsel appearing for the parties, it is taken up for final disposal.

3. Brief facts leading to the case are that,- On 05.09.2011 the deceased-Srinivas Mule had been to Basavakalyan for attending the pooja in the house of his friend and at about 10.15 p.m., he was returning to his native place on his motorcycle bearing registration No.KA-39-H-8086. When he reached near Kohinoor water servicing, lorry bearing registration No.KA-39-6340 was stationed in the center of the road without putting parking lights and no signals and as such, said Srinivas Mule while moving on the road because of the darkness failed to notice the parked lorry and voluntarily went and dashed to the stationed lorry and as a result of the same, he sustained grievous injuries and subsequently, he succumbed to the injuries on the spot. Because of the death of the deceased-Srinivas Mule, his wife, children and mother of the deceased filed the claim petition claiming compensation. Inspite of service of notice, respondent No.1 did not appear before the Tribunal and he was placed exparte. Respondent Nos.2 to

4 appeared through their advocate and filed separate written statement. Respondent No.2-insurance company contended that the claimants in collusion with the police have filed the claim petition. It has also been contended that the deceased was riding the motorcycle under intoxication and without following the traffic rules, he himself dashed to the stationed lorry. It has been further contended that the rider of the motorcycle was not having valid and effective driving licence to ride the motorcycle and thereby, the deceased has violated the terms and conditions of the policy and as such, it is not liable to pay compensation. Respondent No.3-owner of the Hero Honda has filed objections and respondent No.4-insurance company has also filed objections by denying the averments made in the claim petition and has contended that the accident has occurred due to the negligence of the driver of the lorry and as such, respondent No.2-insurance company is liable to pay compensation.

4. On the basis of the pleadings, the Tribunal has framed the issues and awarded compensation of Rs.14,25,000/-.

5. Being aggrieved by the said judgment and award passed by the Tribunal, respondent No.2- insurance company is before this Court.

6. The main grounds urged by the learned counsel for the appellant is that driver of the lorry in question was not negligent and the said lorry was parked by the side of the road by following traffic rules and as such, fastening of the liability on the appellant insurance company is not sustainable in law. He would also contend that abated charge sheet has been filed against the deceased and because of the death, charge sheet has been abated which itself indicates that the deceased himself was at fault and the Tribunal has failed to notice the said fact and has wrongly fastened the liability on the appellant-insurance company. He would further contend that when the deceased has also contributed to the alleged accident, the Tribunal ought to have apportioned the liability on the deceased as well as appellant-insurance company and as such, the said award requires to be interfered with at the hands of this Court. On these grounds, he prays for allowing the appeal by setting aside the impugned judgment and award.

7. Per contra, learned counsel appearing for respondent Nos.1 to 5/claimants would contend that the records clearly disclose that the said lorry was parked without putting parking lights and domestic lights and the said lorry was parked in the middle of the road. As such, driver of the lorry was negligent in parking the lorry and because of the fault of the driver of the lorry, the accident has taken place and the Tribunal has rightly fastened the liability on the appellant-insurance company. He would further contend that the deceased has not contributed to the said accident and as such, there is no question of fastening any liability on the deceased and prays for dismissal of the appeal.

8. Learned counsel for respondent No.8 has also contended that the Tribunal after considering all the facts and circumstances of the case has come to the conclusion and as such, there is no question of interfering with the said judgment

and award and prays for dismissal of the appeal.

9. I have heard the learned counsel appearing for the parties and perused the records.

10. The accident is not in dispute. The only question which is raised by the learned counsel for the appellant is that abated charge sheet has been filed against the deceased and the deceased has also contributed to the alleged accident. He would further contend that the lorry was parked on its right side by following the traffic rules as such, liability ought not to have been fixed on the appellant-insurance company. As could be seen from the judgment and award passed by the Tribunal and the documents, the Tribunal after considering all the facts and circumstances has come to the conclusion that the driver of the lorry was negligent and as such, liability has been fixed on him. On perusal of Exs.P12 and P14 it would indicate that charge sheet has been filed against the driver of the lorry and the driver of the lorry had pleaded guilty and he was convicted for the offence for having parked the lorry in the middle of the road and for causing obstruction for free movement of the vehicle which is supported by the evidence of PWs.3 and 4. Even Ex.P3- spot panchanama discloses that the driver has parked the lorry two feet away from the mid line and it also indicates that the driver of the lorry has parked the said lorry without any parking lights and domestic lights or any other indication for having parked the said lorry in the said place. Admittedly, the said accident has taken place on the said road during night hours. The driver of the lorry has parked the lorry without any just cause and without putting parking lights or domestic lights or any indication, all these facts indicate the negligence on the part of the driver of lorry and there is no negligence on the part of the rider of the motorcycle. Though the abated charge sheet is said to have been filed against the deceased, the records clearly indicates that the driver of the lorry has pleaded guilty and has not contested the case. Under the circumstances, fixing of entire liability on the appellant-insurance company appears to be justifiable.

11. As the claimants have not preferred any appeal seeking enhancement of compensation and the learned counsel for the appellant-insurance company has not urged with regard to compensation awarded as excess or on higher side, those issues have not been taken into consideration in this appeal.

12. Keeping in view the above facts and circumstances, I hold that the appeal is devoid of merit and the same is liable to be dismissed. Accordingly, the appeal is dismissed. The amount in deposit be transmitted to the Tribunal forthwith along with the records.