(2017) 07 KAR CK 0066

In the Karnataka High Court

Case No : 9392 of 2011(MV)

SMT. THAYAMMA W/O RAMEGOWDA APPELLANT

Vs

KUMARAA, S/O RANGEGOUDA, & ANR. RESPONDENT

Date of Decision : 13-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0066

Hon'ble Judges : B.Manohar

Bench : SINGLE BENCH

Advocate : G.BALAKRISHNA SHASTRY, N.R.RAVIKUMARA, B.C.SEETHARAMA RAO

Final Decision : Allowed

Judgement

1. Appellant is the claimant. Being aggrieved by the judgment and award dated 20th July 2011 made in MVC No.120/2009 by the Motor Accident Claims Tribunal, Arkalgud (hereinafter referred to as "the Tribunal" for short), fastening liability on the owner of the vehicle to compensate the claimant he has filed this appeal.

2. Appellant is the wife of deceased Ramegowda, she filed a claim petition contending that on 15-04-2009, the deceased Ramegowda after finishing Friday cattle business at Arkalgud, while returning to his village on Arkalgud-Mallipatna Road at about 4.30 p.m., on the left side of the road, near Adikebommanahalli, a goods auto bearing Registration No.KA-42/S-1404 came from opposite direction in a rash and negligent manner dashed against the deceased. Due to that, he fell down and sustained fatal injuries. Immediately after the accident, he was shifted to the Government Hospital by Papegowda. However, he died on the way to the Hospital. In the claim petition, it was contended that the deceased was earning Rs.9,000/- p.m., at the time of death, he was aged about 65 years, the family has lost the bread earner. Hence sought for compensation of Rs.5,00,000/-.

3. In response to the notice issued by the Tribunal, the respondents 1 and 2 filed written statement. The respondent No.1 in the written statement denied the rash and negligent driving of the goods auto by its driver. Due to negligence on the

part of the deceased while walking on the middle of the road, the accident occurred. As on the date of accident, the insurance policy was in force, hence sought for dismissal of the claim petition as against Respondent No.1. The second respondent in the written statement denied the entire averments made in the claim petition and denied rash and negligent driving of the goods auto. Due to negligence on the part of the deceased himself, the accident occurred. The driver of the goods auto was not having valid and effective driving license as on the date of accident and also there is violation of terms and conditions of the insurance policy. Hence, insurance company is not liable to compensate the claimant.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. The wife of the deceased got examined herself as P.W.1, son of the deceased who is the complaint was examined as P.W.2 and got marked the documents as Ex.P1 to Ex.P5. On behalf the respondents, one of the officials of the insurance company was examined as R.W.1 and got marked the documents as Ex.R1 and Ex.R2.

6. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration the police records held that the accident occurred due to the actionable negligence on the part of driver of the goods auto. Claimant is the wife of the deceased and she is entitled for compensation. Taking the income of the deceased as Rs.3,000/- p.m., applying the multiplier 7 since he was aged about 65 years as on the date of death, deducting 1/3rd towards his personal expenditure, awarded compensation of Rs.2,48,000/- with interest at the rate of 6% p.a. With regard to liability is concerned, during the course of evidence of R.W.1, he has stated that while lodging the complaint, the driver of the goods vehicle has been mentioned as M.K.Kumara s/o. Puttegowda, whereas the charge sheet has been filed against Ramesha S/o.Karigowda. The Tribunal, on the basis of the said evidence held that since M.K.Kumara S/o Puttegowda was not having valid and effective driving license, hence the charge sheet has been filed against Ramesha, in collusion with the police officials. Taking into consideration some of the statements made by some persons during investigation, the liability was fastened on the owner of the vehicle to compensate the claimant. Being aggrieved by the judgment and award passed by the Tribunal, fastening liability on the owner of the vehicle and also being not satisfied with the quantum of compensation, the claimant has preferred this appeal.

7. Sri.G.Balakrishna Shastry, learned counsel appearing for the appellant contended that the judgment and award passed by the Tribunal fastening liability on the owner of the offending vehicle is contrary to law. There is no dispute regarding occurrence of the accident and death of the deceased. The son of the deceased on hearing the news regarding occurrence of the accident, went to the spot and lodged a complaint before the jurisdictional police at about 7.15 p.m. In the complaint, it was stated that one Kumara of Mathara village was driving the

goods auto. However, the police after investigation found that one Ramesha S/o Karigowda was driving the said goods auto on the date of accident. Accordingly, charge sheet was filed against him. The goods auto belonged to Kumara S/o Rangegowda. However, in the complaint, subsequently, initials of "M.K." and "son of Puttegowda" was added to the name of Kumara. The insurance company has not taken any defense in the written statement or in the cross-examination of P.W.1 and P.W.2 also nothing has been suggested to the claimant with regard to the name of driver of the goods auto. No document has been produced to show that M.K.Kumara S/o Puttegowda was driving the goods auto and he did not possess the valid and effective driving license. The Tribunal on the basis of some statements made by some persons and on the assumption and presumption passed the judgment and award fastening liability on the owner of the offending vehicle which is contrary to law. In view of the judgment of the Hon''ble Supreme Court in the case of NATIONAL INSURANCE COMPANY LIMITED v/s SWARAN SINGH AND OTHERS reported in (2004) 3 SCC 297, the insurance company cannot disown their liability. In support of his contention he relied upon the judgments AIR 1996 SC 2627 (SOHAN LAL PASSI v/s P.SESHAREDDY AND OTHERS); ILR 1999 KAR 1636 (NATIONAL INSURANCE COMPANY LIMITED v/s SUBRAMANYA AND OTHERS).

8. On the other hand, Sri.B.C.Seetharama Rao, learned counsel appearing for Respondent No.2 argued in support of the judgment and award and contended that immediately after the accident, son of the deceased filed a complaint stating that Kumara of Mathara village was driving of the goods auto. However, the charge sheet was filed against Ramesha S/o Karigowda. The complainant has also not made any re-statement with regard to mistake committed while lodging the complaint. The police on their own filed the charge sheet against some other person, whereby his name was not found in the FIR. The statement made before the Police by some of the villagers clearly disclose that Kumara was driving the goods auto. The Tribunal taking into consideration all these aspects of the matter had fastened the liability on the owner of the offending vehicle and sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel appearing for the parties. Perused the judgment and award, oral and documentary evidence adduced by the parties.

10. The dispute in this appeal is only with regard to liability to compensate the claimant.

11. The contention of the appellant is that while the deceased was returning to his village after finishing his Friday cattle business at Arkalgud, near Adikebommanahally, the goods auto dashed against the deceased. One Papanna and Tattikere Javaregowda had taken deceased to the hospital, however, he died on the way to hospital. Only on the information given by the said persons, the complainant went to the hospital and lodged the complaint before the jurisdictional police stating that one Kumara was driving the goods auto.

However, the police after investigating the matter in detail found that as on the date of accident, Ramesha son of Karigowda was driving the goods auto and filed a charge sheet against the said person. The name of owner of the goods auto is also Kumara son of Rangegowda. It appears that in the complaint M.K.Kumara son of Puttegowda was added subsequently. During the investigation, the police had recorded statements of Rangaswamy, Laxmegowda and Shankara. But, they are not eye-witnesses to the occurrence of accident, they were the persons who identified the dead body. They have stated that one Kumara was driving the goods auto. There is lot of confusion, since the name of owner of the goods auto was also Kumar. M.K.Kumara S/o Puttegowda is different from Kumara S/o Rangegowda. None of the witnesses have said anything whether M.K.Kumara or Kumara was driving of the goods auto. The police after investigating the matter in detail filed a charge sheet against Ramesha S/o Karigowda who was driving the goods auto on the said day. In the written statement, the insurance company has not taken any such contention regarding change of name of the driver in the charge sheet. Only in the examination-in-chief, such a stand has been taken and even in the written statement also, no such contention has been taken. The insurance company, during the course of cross- examination also not suggested anything regarding change of name of the driver in the FIR as well as in the charge sheet. The Tribunal, solely on the basis that in the FIR name of Kumara has been shown. However, charge sheet has been filed against Ramesha S/o Karigowda on the basis of assumption held that since M.K.Kumara was not having valid driving license as on the date of accident, the charge sheet was filed against Ramesha which is not based on any evidence on record. No independent eye-witness was examined to prove that M.K.Kumara was driving the goods vehicle. The finding of the Tribunal is not based upon any oral and documentary evidence. As on the date of accident insurance policy was in force. Hence, the judgment and award passed by the Tribunal, fastening liability on the owner of the goods vehicle cannot be sustained. Hence, the insurance company is liable to compensate the claimant.

12. Accordingly I pass the following:

ORDER

The appeal is allowed in part. The judgment and award dated 20th July 2011 made in MVC No.120/2009 by the Motor Accident Claims Tribunal, Arkalgud is modified and the insurance company is liable to compensate the claimant.

