

(2016) 01 KAR CK 0246

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 521 of 2013 (MV)

Sreedhara and Others

APPELLANT

Vs

M.B. Jagadeeshappa and Others

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) AAC 1635 : (2016) 2 ACC 636 : (2016) 2 CivillJ 787 : (2016) 2 KantLJ 271 : (2016) 3 TAC 268

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : R. Shashidhara, Advocate, for the Appellant; S. Srishaila, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—1. By judgment and award dated 4-8-2012, the claim petition filed by the appellants/claimants under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of deceased Prema in a motor vehicle accident in MVC No. 136 of 2009 came to be dismissed by Additional Motor Accident Claims Tribunal and Senior Civil Judge at Hosadurga. Therefore, this appeal questioning the legality and correctness of the judgment and award. It is alleged in the petition under Section 166 of the M.V. Act that deceased Prema was proceeding along with her husband in Maruthi Van bearing Registration No. KA-16/M-3746 on 9-9-2008. When the Maruthi Van reached near Kere Yeri of Bandrehalli in Chikkanayakanahally Taluk of Tumkur District at about 9.30 p.m., on account of rash and negligent driving, the Maruthi Van toppled and fell into a lake and thereby Prema died on the spot. Her husband and two minor children filed a claim petition under Section 166 of M.V. Act in MVC No. 136 of 2009 against the owner and insurer of the Maruthi Van. The claim petition was opposed by the insurer of the Maruthi Van contending that the husband of deceased Prema on account of marital dispute committed her murder

and in order to give an impression that it is a case of accident, lodged a false complaint and filed a false claim to claim compensation.

2. The claim petition came up for consideration before the Tribunal, before whom Sreedhara, the husband of deceased Prema was examined as P.W. 1. Exs. P. 1 to P. 5 were marked. On behalf of the respondents, three witnesses were examined as R.Ws. 1 to 3. Exs. R. 1 to R. 9 were marked. The Claims Tribunal upon hearing the submission made by the learned Counsel appearing for the parties and on appreciation of evidence, recorded a finding that the claimants failed to establish the involvement of the Maruthi Van in question and that the deceased Prema died in a motor vehicle accident on account of rash and negligent driving of the Maruthi Van in question which resulted in the dismissal of the claim petition by the impugned judgment and award. Aggrieved by the dismissal of the claim petition, this appeal is preferred.

3. I have heard the learned Counsel for the appellants/claimants and learned Counsel for respondent 2-Insurance Company. Perused the records.

4. The submission of the learned Counsel appearing for the appellants/claimants is that the claimants placed on record sufficient evidence both oral and documentary, particularly the FIR-Ex. P. 1, IMV report-Ex. P. 3, spot mahazar-Ex. P. 5, but the Tribunal without considering the evidence in its proper perspective has recorded a finding that the claimants failed to establish the involvement of the Maruthi Van in question and that the deceased died in a motor vehicle accident. Thus, the learned Counsel sought to set aside the judgment and award and allow the claim petition awarding just and reasonable compensation.

5. On the other hand, the submission of the learned Counsel for the Insurance Company is that the Tribunal on proper appreciation of the evidence both the oral and documentary has rightly dismissed the claim petition holding that the claimants failed to prove the involvement of the Maruthi Van, that there is no merit in the appeal filed by the appellants/claimants and hence he sought for dismissal of the appeal.

6. In view of the submission made by both the learned Counsel and on perusal of the material on record, the point that would arise for our determination is:

"Whether the Tribunal is justified in dismissing the claim petition?"

7. It is the case of the claimants that deceased Prema along with her husband was proceeding in a Maruthi Van bearing Registration No. KA-16/M-3746. On account of rash and negligent driving of the van, it fell into a road side lake and thereby deceased Prema died. Whereas it is the case of the Insurance Company that it is a case of false implication of Maruthi Van just to claim compensation though deceased Prema was killed by her husband on account of marital discord. P.W. 1-the husband of deceased Prema of course has given his evidence in conformity of the petition averments that on account of negligent driving, the Maruthi Van fell into a lake and his wife/deceased Prema died. In the cross-

examination, P.W. 1 has admitted that the van was of the ownership of his friend Jagadeesh. Further, he has admitted that he along with his wife was sitting on the back seat of the van. He has stated that his wife died due to the drowning in the water.

8. R.W. 2-Jagadeesh is the owner of the Maruthi Van in question. His evidence would go to show that on the alleged date, deceased Prema and her husband Sreedhar had taken his Maruthi Van on the pretext of going to temple. Sreedhar himself was driving the van. His further evidence would go to show that he received an information that his Maruthi Van was involved in the accident. Immediately, he came to the spot and observed that his Maruthi Van was not at all involved in the accident, it was not damaged and that Harish was not driving his Maruthi Van on that day as stated by P.W. 1. He has also deposed that Sreedhar, the husband of deceased Prema in collusion with the police has created false documents to show that his Maruthi Van was involved in the accident, though in fact it was not at all involved in the accident. In his cross-examination, he has admitted that no vehicle dashed against his Maruthi Van.

9. The evidence of R.W. 3 an investigator, who investigated into the matter on behalf of Insurance Company would reveal that the Maruthi Van bearing Registration No. KA-16/M-3746 was not involved in the alleged accident, deceased Prema did not die due to accidental injuries, that her husband Sreedhar gave her sleeping tablets and killed her in order to marry one Latha of Nagenahalli Village, Kanoor Taluk and he created a false story. He has further deposed that at the time of the investigation, he came to know that Sreedhar had already married to said Latha who had given birth to a male child out of her marriage with Sreedhar. He has deposed that his investigation disclosed that Harish was not at all driving the Maruthi Van.

10. Ex. P. 4-post-mortem report reveals that the death of the deceased was due to shock and haemorrhage as a result of injury to the vital organ brain. If as alleged by the claimants that the Maruthi van fell into a lake and thereby she died on account of drowning, the post-mortem report ought to have revealed the water in the body. There are no such symptoms as could be seen from the post-mortem report. Moreover, the opinion of the Doctor is that the death was not due to the drowning. On the other hand, the death is due to shock and haemorrhage as a result of injury to the brain. This also creates suspicion as to the theory put forth by the claimants that Maruthi Van, wherein she was proceeding along with her husband fell into a lake and thereby she died due to drowning. Moreover, the owner of the Van himself has denied that his Maruthi Van was involved in the accident or for that matter it was being driven by one Harish. Thus, having regard to the evidence of the owner of Maruthi Van, opinion given by the Doctor as to the cause of the death, that no damage was caused to the Maruthi Van, a reasonable doubt arises as to the case made out by the claimants that she died on account of motor vehicle accident. Thus, the evidence placed on record is not sufficient to come to the conclusion that deceased Prema died due to the

involvement of the Maruthi Van. Thus, the Tribunal on proper appreciation of evidence has rightly rejected the claim petition. On our reappreciation of evidence, we do not find any reason to call for our interference in the impugned judgment and award. For the foregoing reasons, the appeal is dismissed as devoid of merits.