

(2013) 07 KAR CK 0121
In the Karnataka High Court
Case No : M.F.A. No. 43 of 2009 (MV)

Sri. Kotresh

APPELLANT

Vs

S.B. Jayappa and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2013) 07 KAR CK 0121

Hon'ble Judges : N.K. Patil, J;B. Manohar, J

Bench : Division Bench

Advocate : Manjunatha Pattanashetty, for the Appellant; B.C. Seetharama Rao, Advocate for R2, for the Respondent

Judgement

1. Appellant is the claimant. Being aggrieved by the judgment and award dated 24-07-2008 made in MVC No. 47/2005 passed by the Civil Judge (Sr. Dn.) and Motor Accident Claims Tribunal, Harihar (hereinafter referred to as "the tribunal") dismissing the claim petition filed by the claimant, the appellant has preferred this appeal. The appellant filed a claim petition before the Tribunal contending that he sustained injuries in the road traffic accident occurred on 25-1-2004 at about 11.45 p.m., while he was travelling as a pillion rider in a motorbike bearing registration No. KA-14/TR-5303 towards Benakanahalli from Honnali, due to the rash and negligent riding of the motorbike bearing registration No. KA-17/R-3910 by its rider which was coming from the backside, while over-taking the claimant's motorbike dashed against the motorbike in which the claimant was travelling. Due to the impact, the claimant has sustained grievous injuries and he was initially admitted in the Government Hospital, Honnali, thereafter he was shifted to Nanjappa Hospital, Shimoga. He was in-patient in Nanjappa Hospital for a period of one day and thereafter he was shifted to Kasturba Hospital, Manipal, where he was inpatient for a period 30 days. Due to the road traffic accident he has sustained fracture of right femur, compound fracture of right patella and other injuries to the body. In view of the injuries sustained by the appellant, he could not lead his normal life. He has spent more than Rs. 75,000/-

towards treatment. Even after treatment, he is suffering from disabilities. A steel rod has been inserted. Prior to the accident he was working as a Kirani merchant earning Rs. 8,000/- p.m. In view of the accident, he has lost his livelihood and sought for compensation of Rs. 15,35,000/- with interest.

2. Though the first respondent was served with the notice, he remained ex-parte. The second respondent-Insurer filed written statement denying the entire averments made in the claim petition and also contended that the claim petition filed by the claimant is not maintainable. The Insurer and the owner of vehicle bearing registration No. KA-14/TR-5303 were not made as parties to the proceedings and the accident was due to the actionable negligence on the part of the rider of the aforesaid vehicle. It is further contended that the vehicle of the first respondent was not involved in the accident and the rider of the vehicle bearing registration KA-14/TR-5303 did not possess the valid and effective driving license and insurance at the time of accident. Hence, the Insurer is not liable to pay the compensation.

3. Subsequently, the second respondent-Insurer filed additional written statement contending that the rider of the motorbike bearing registration No. KA-14/TR-5303 is one H.G. Ganesh is solely responsible for the accident. In the complaint lodged before the Police on 25-1-2004, the claimant admitted that a dog came across the motorbike and the rider of motorbike H.G. Ganesh lost control over the motorbike and caused accident, due to which the rider and the pillion rider sustained injuries. Further, the Police have also registered a criminal case against H.G. Ganesh in Crime No. 19/2004 for the offences punishable under Sections 279, 337 and 338 of IPC. The motorbike of the first respondent is not at all involved in the accident. Since the said H.G. Ganesh did not possess the effective driving license and the said vehicle is not covered by insurance, in collusion with the first respondent, a false story has been created. Hence sought for dismissal the claim petition.

4. On the basis of the pleading of the parties, the Tribunal framed the following issues:

(i) Whether petitioner proves that on 25-1-2004 at about 11.45 p.m. when the petitioner was travelling as a pillion rider on a Motor Bike from Bekahanahalli to Honnali and while travelling at Shanthinagar Main Road, the respondent No. 1 being the rider of T.V.S. Victor Motor Bike No. KA-17/R-3190 came from backside in a rash and negligent manner with high speed and tried to overtake the petitioner's vehicle, at that time dashed to petitioner's vehicle, as a result of which, the petitioner's motor bike dashed to a telephone pole and petitioner sustained grievous injuries?

(ii) Whether petitioner is not maintainable for non-joinder of necessary parties such as owner, rider and insurer of Motor Bike bearing Reg. No. KA-14/TR-5303?

(iii) Whether petitioner is entitled for compensation? If so, at what amount and from whom?

(iv) What order or decree?

5. The petitioner examined himself as P.W. 1 and examined the doctor as P.W. 2 and an eye-witness of the accident as P.W. 3 and got marked the documents as Ex. P1 to Ex. P36. On behalf of the respondents, the Senior Assistant of the respondent-Insurance Company was examined as R.W. 1 and got marked the documents as Ex. R1 to Ex. R5.

6. The Tribunal after considering the oral and documentary evidence let in by the parties, held issue Nos. 1 to 4 in the negative, consequently by its judgment and award dated 24-07-2008 dismissed the claim petition holding that the claimant has failed to prove that the accident has occurred due to actionable negligence on the part of the first respondent and vehicle being Reg. No. KA-17/R-3910. Being aggrieved by the said judgment and award, the claimant has preferred this appeal.

7. Learned counsel appearing for the appellant contended that the judgment and award passed by the Tribunal is contrary to law. Without considering the oral and documentary evidence and also without taking into consideration the police records, the wound certificate and other relevant documents, rejected the claim petition and sought for setting aside the judgment and award passed by the Tribunal by granting compensation.

8. On the other hand, learned counsel appearing for the second respondent-Insurer argued in support of the judgment and award passed by the Trial Court and sought for dismissal of the appeal.

9. We have carefully considered the arguments addressed by the parties and perused the judgment and award passed by the Tribunal.

10. The case of the appellant is that due to the road traffic accident occurred on 25-1-2004, he has sustained injuries due to the rash and negligent riding of the offending bike. However, he has made a complaint before the Police as per Ex. R3 on 25-01-2004. In the said complaint, the petitioner himself admitted that while he was proceeding towards Benakanahalli at about 11.45 p.m. his friend H.G. Ganesh was riding the motorbike and he was travelling as a pillion rider. When the vehicle reached Kambaragatti village, a dog suddenly came across the bike and the rider lost control over the vehicle and fell down. Due to the accident, he has sustained injuries. His father-in-law admitted him at Nanjappa Hospital, Shimoga. The head-light, bumper and shock absorbers of the motorbike were damaged. However, subsequently as per Ex. P27, he made a complaint on 15-2-2004 stating that due to rash and negligent riding of the motorbike bearing registration No. KA-17/R-3901, the accident has occurred. On the basis of the said complaint, the Police have registered a case against the rider of the said vehicle. The statement made by the claimant as per Ex. R3 and Ex. P27 are contrary to each other. A copy of the complaint made on the date of accident was not marked by the claimant. However, R.W. 1 in his evidence has got marked the original complaint dated 25-1-2004. P.W. 3 in his examination deposed that he

has seen the accident and due to the accident, both the vehicles have been damaged. But, the report of Motor Vehicle Inspector clearly discloses that the vehicle bearing No. KA-14/TR-5303 has been damaged, whereas there is no damage to the vehicle bearing registration No. KA-17/R-3910. Hence, the evidence of P.W. 3 cannot be accepted. The rider of the motorbike bearing KA-14/TR-5303, H.G. Ganesh was not examined and the said vehicle belonged to the appellant himself. The said vehicle was not registered at the time of accident. No document has been produced to show that the said vehicle is covered by insurance. In order to claim compensation, the vehicle of the first respondent has been set up and a case was registered against the said vehicle. The rider of the said vehicle pleaded guilty and paid the fine of Rs. 1,900/- in collusion with the jurisdictional police officials, though there is no damages to the said vehicle. The spot mahazar has been conducted on 6-2-2004. At that time, the brother of the appellant was present and he shown the place of accident. The said H.G. Ganesh has not made any complaint. The records produced by the parties clearly disclose that due to the rash and negligent riding of the motorbike by H.G. Ganesh, the accident has occurred. The said vehicle is not covered by insurance. The driving license of the said H.G. Ganesh was also not produced.

11. The Tribunal taking into consideration all these aspects of the matter held that the claimant has failed to prove that the accident has occurred due to the rash and negligent riding of the rider of the motorbike bearing registration No. KA-14/TR-5303 and further the owner and the insurer of the said vehicle were not made parties to the claim petition and dismissed the claim petition. We find there is no infirmity or irregularity in the said finding. The accident has occurred due to the rash and negligent riding of the motorbike bearing registration No. KA-14/TR-5303 and the said vehicle is not covered by insurer, hence the appellant is not entitled for any compensation. Accordingly, the appeal is dismissed with a cost of Rs. 5,000/- payable by the appellant to the Insurance Company, within four weeks from the date of receipt of a copy of this judgment., failing which, the Insurer is at liberty to recover the same from the appellant, in accordance with law.