

(2011) 01 KAR CK 0026

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4054 of 2007

Syed Izar

APPELLANT

Vs

Miss. Rekha and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2011) 01 KAR CK 0026

Hon'ble Judges : Subhash B., A.D.I.

Bench : Single Bench

Advocate : R. Gopal, in Miscellaneous First Appeal No. 4054, 4055, 4056 and 4057/2007, for the Appellant; R.C. Nagaraj, for R1, Smt. H.R. Renuka, for R5, Sri. B.A. Ramakrishna, for R3, R4 Served in Miscellaneous First Appeal No. 4054, 4055, 4056 and 4057/2007, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. ADI

1. All these appeals are by the owner of the vehicle, questioning the liability fixed against him. Four claim petitions were filed against the owner and the Insurance Company interalia alleging that, claimants, who were travelling in a lorry bearing No. KA.06/455, suffered grievous injury on account: of rash and negligent and excessive speed driving by the lorry driver, which dashed against the KSRTC bus. In the said accident, one inmate of the lorry died and other three sustained injury.

2. The claim petitions were opposed by the insurer interalia denying its liability, also denying rash and negligent driving by the driver of the lorry, it specifically contended that, the vehicle involved in the accident is a goods vehicle and claimants were the passengers in the said vehicle. As such, there is no coverage of risk of such passengers and accordingly, denied its liability.

3. Before the Tribunal, though the owner has been examined as.RW-3, the

Tribunal considering the evidence on record, though awarded compensation, but held that the insurer is not liable to indemnify the compensation, as the claimants were paid passengers travelling in a goods vehicle and accordingly, the owner is held liable to pay compensation. It is against the finding of the liability on the owner, the owner is in these appeals.

4. Sri. R. Gopal, learned Counsel appearing for the owner submitted that, accident was due to collision between lorry and KSRTC bus. It is on account of the negligence on the part of the driver of the KSRTC bus, the accident has occurred, as such, the claimants being third party to the KSRTC bus, claimants are entitled for recovery of compensation from the KSRTC and not from the owner of the lorry. In the alternative, he also submitted that, the claimants were not the passengers, but they were coolies travelling in the lorry and their risk is covered u/s 14-7 of the M.V. Act. He further submitted that, Ex.D1 produced by the respondent, the judgment and award in M.V.C.it1o.89/2000 will not affect the claim of the owner in these appeals, when the M.V.C. No. 89/2000 was disposed of, KSRTC was not made party and as such, the findings in the said judgment.confirmed in M.F.A.No. 8598/2003 will not have any effect on the contentions raised in these appeals. He also submitted that, since the judgments are two different judgments. it will not operate as res judicata. To support. his claim, he relied on the judgment. of the Apex Court reported in Mahboob Sahab Vs. Syed Ismail and Others, and submitted that, the judgments in two separate proceedings between different panes will not operate as res judicata between the co-defendants.

5. On the other hand, learned Counsel appearing for the KSRTC submitted that, MVC No. 89/2000 arises out of the same accident. The claimant in the said case is one of the injured in the said accident, who has filed separate claim petition. In the said claim petition, a contention was raised as regard to the liability of the appellant - owner herein and a specific issue was framed as issue No.4. The Tribunal on consideration of the evidence has held that the accident was not due to the negligent driving of the KSRTC bus and KSRTC is not the necessary part-V. It is against this judgment, the owner filed an appeal befofe this Court in M.F.A.No. 8598/2003 and this Court confirmed the said finding by judgment dated 29th January 2004. In view of the finding in the said proceedings, it is no, more open to the learned Counsel for the appellant to conterid to the contrary. When there is a clear finding that the driver of the KSRTC bus was not negligent, the question of liability of KSRTC does not. arise.

6. Learned Counsel appearing for the insurer submitted that, the evidence on record clearly establishes that the inmates of the lorry were not coolies, but they were all paid passengers. This finding is confirmed by this Court in earlier proceedings, as such, liability cannot be fastened on the insurer.

7. In the light of the rival contentions, the points that arise for consideration are:

1. Whether the KSRTC is liable to pay compensation?

2. Whether the insurer Is liable to indemnify the compensation?

8. Facts, which are not in dispute, are that the claimants in M.V.C. No. 105/2000. 8/2001 and 13/2001 in these appeals and M.V.C. No. 89/2000 were the inmates of the lorry, except the claimants in M.V.C. No. 7/2001, as in the said case it is representatives of the deceased inmate of the lorry are the claimants. Arising out of the same accident, different claim petitions were filed. One claim petition.. was disposed of by judgment and award dated 26th September 2003. In the said claim petition, issue No. 4 reads as under:

4. Whether the 3rd respondent further proves that the accident was due to the rash and negligent driving of KSRTC bus by its driver and the petition is bad for non-joinder of necessary parties.

As against this, the Tribunal has given a finding holding that:

But there is no iota of evidence that the accident was also caused due to caused and negligent driving of the KSRTC "bus by its driver. The petition also does not reveal that the accident was due to the rash and negligent driving of the KSRTC bus. The copy of the FIR which consists the copy of the complaint also does not reveal. that the accident was due to rash and negligent driving the KSRTC bus. Even PW-1 never stated so in his. evidence. That being so, the owner and. driver of the KSRTC bus are not at all necessary parties to this proceedings.

This finding clearly establishes that the Tribunal on consideration of the evidence has found that the driver of the KSRTC bus was not negligent Hence, the presence of KSRTC as a party was found unnecessary. As against this finding, the owner had admittedly filed an appeal in M.F.A. No. 8598/2003. This Court by judgment dated 29th January 2004 has dismissed the appeal, confirming the findings of the Tribunal, it is not a case where two separate proceedings in respect of separate accident were filed and findings are given. It is a case, where claimants have filed separate claim petitions. Out of the said claim petitions, one was disposed of earlier and in the said claim petition, KSRTC was not made party. k pertinent to note that, an I.A. for impleading KSRTC is filed in these M.V.Cs. only after disposal of M.V.C. No.89/2000 and after the disposal of M.F.A. No. 8598/2003. The Owner having suffered the said finding in order to get over to e same, he sought to implead KSRTC. Merely impleading KSRTC does not prove that the KSRTC is liable to pay compensation. Further, the finding arrived by the Tribunal in respect of the same accident as regard to the actionable negligence, which is binding on the owner in other cases. also, as they arise out of the same accident. Apart from this, even on evidence, the Tribunal has considered this aspect and has found that there is no material to hold that the KSRTC is liable and further, as far as insurer is concerned, finding and the evidence of the claimants also disclose that they were not coolies, but they were passengers and it is also not disputed that, the risk of such passengers is not covered under the policy. It is in these circumstances, liability has been fixed against the owner.

I.A. No. 1/2008 is filed for production of additional documents viz., judgment in

C.C. No. 434/2000 to show that the driver of the KSRTC bus was negligent does help the appellant. It is not in dispute that the charge sheet is filed against the driver of the lorry and not against the driver of the bus. As such, acquittal or conviction will not have, any. bearing on the claim petition when actionable negligence is proved "against the driver of the lorry. I find that the finding,- arrived by the Tribunal is based. on legal evidence and they do not call for interference.

Accordingly, the appeals fail and same are dismissed. The amount in deposit be tranmitted to the Tribunal.