

(2012) 09 KAR CK 0235
In the Karnataka High Court
Case No : M.F.A. No. 7102 of 2007 MV

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Velliyamma and Kum. Nithya

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163 A, 170
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 09 KAR CK 0235

Hon'ble Judges : N. Kumar, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : B.C. Seetharama Rao, for the Appellant; Kalyan. R., Advocate for R1
R2 and R3 Are Minors, Rep By R1 Sri G.V. Dayananda, Advocate for R4, for the
Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The Insurance Company has preferred this appeal against the judgment and award dated 21.2.2007 passed in MVC No. 987/2005 by the MACT, Bangalore holding that the injury sustained which resulted in death was caused on account of the motor vehicle accident and consequently, the claimants are entitled for compensation u/s 163A of the Motor Vehicles Act, 1988 ["M.V. Act" for short]. For the purpose of convenience, the parties in this appeal would be referred to by their rankings as they are arrayed in the claim petition before the Tribunal.

2. The claimant No. 1 is the widow and the claimant Nos. 2 and 3 are the minor children of deceased Cheluvaraju @ Thamara Cheluva, who died on 14.4.2004 at Bangalore.

3. The case of the claimants is that, on 14.4.2004 at about 6.45 p.m., the deceased Cheluva was walking on the side of the road in front of Iyengar Cool Joint & Bakery at BEML Layout, 3rd Cross, Rajarajeshwari Nagar, Bangalore. At that time, a BMTC bus bearing No. KA-01-B-9100 driven-in a rash and negligent

manner by its driver dashed against the said Cheluva. On account of the said accident, he sustained grievous injuries. Immediately, he was taken to the Children's Hospital and from there he was shifted to Victoria Hospital, where he succumbed to the injuries. The deceased was aged about 25 years at the time of accident. He was working as a coolie and was earning Rs. 110/- per day. He was contributing the entire earnings towards the maintenance of his family. On account of the untimely death of deceased, the petitioners being the legal heirs having lost their breadwinner of the family and being put to mental agony and facing financial crisis, preferred the claim petition claiming compensation in a sum of Rs. 10,00,000/-.

4. After service of notice, the owner of the bus did not appear and therefore, he was placed *exparte*. The respondent No. 2-Insurance Company contested the claim. It specifically pleaded in the written statement that the death of Cheluva did not occur in a road traffic accident, but he was murdered. The jurisdictional police have registered a case in FIR No. 99/2004 u/s 302 r/w Section 34 of IPC. The cause of death has been mentioned in the post mortem report. It further stated that there is no involvement of the vehicle in the accident as alleged by the petitioners. However, it admitted the issuance of the insurance policy in respect of the bus in question. In fact, it sought permission to contest the claim u/s 170 of the M.V. Act.

5. The Tribunal, on consideration of the aforesaid contentions, framed the following issues:-

1. Whether the petitioners prove that one Cheluvaraju died in an accident on 14.04.2004 at about 6.45 a.m. caused by the rash and negligent driving of the bus bearing No. KA-01-B-9100 by its driver at Rajarajeshwari Nagar, 5th Stage, BEML Layout, near Iyengar Cool Point & Bakery, Bangalore?

2. Whether the petitioners are entitled for compensation as claimed?

3. What order or award?

6. To substantiate their claim, claimant No. 1 was examined as PW-1. They produced 15 documents, which are marked as Exhibits P1 to P15. On behalf of respondent No. 2-Insurance Company, its Administrative Officer by name, Mr. Samuel Gnanaprakash was examined as RW1 and they also produced 5 documents, which are marked as Exhibits R1 to R5.

7. The Tribunal, on consideration of the aforesaid oral and documentary evidence on record held that the accident was on account of rash and negligent driving by the driver of the BMTC bus and therefore the claimants are entitled for compensation. Thereafter, it proceeded to decide the compensation under the head "loss of dependency". It awarded a sum of Rs. 4,08,000/- towards "loss of dependency" and Rs. 4,500/- under the conventional heads. Thus, in all, the Tribunal awarded compensation in a sum of Rs. 4,12,500/- with interest @ 6% p.a. from the date of the petition till the date of payment. Aggrieved by the said

award of the Tribunal, the Insurance Company has preferred this appeal.

8. Sri B.C. Seetharama Rao, the learned counsel for the appellant assailing the judgment and award contended that the material on record discloses that there was no negligence on the part of the driver of the BMTC bus. He submits that the evidence on record shows that Lakshma and Subramani chased the deceased, assaulted him and pushed him under the BMTC bus and thereafter he appears to have been stuck under the hind wheel. Immediately, he was shifted to the hospital by the driver and the conductor of the bus to the hospital and from there he was shifted to Victoria hospital. A case of murder was registered against the said Lakshma and Subramani and no case was registered against the driver of the bus.

9. The learned counsel submits that the evidence on record also shows that there is no negligence on the part of the driver and the cause of accident is not the motor vehicle and therefore neither the owner nor the Insurance Company is liable to pay any compensation u/s 163A of the M.V. Act or under any other provision of law. He submits that the Tribunal has committed a serious error in not properly appreciating the material on record and coming to an erroneous conclusion that the death was on account of the accident involving the motor vehicle and therefore Section 163A is attracted. Therefore, he submits that the impugned award is liable to be set aside.

10. Per contra, the learned counsel appearing for the respondents submits that the material on record shows immediately the deceased was taken to the hospital and the duty doctor has sent the report to the jurisdictional police intimating about the accident and the injuries caused to the deceased on account of the motor vehicle accident. Though the evidence on record shows that the driver of the bus was arrested and thereafter released, no case was registered against him. The criminal case, which was registered against Lakshma and Subramani ended in acquittal. Therefore, the material on record clearly establishes that the cause for the accident is the motor vehicle and therefore Section 163A is attracted and the Tribunal is justified in granting compensation to the claimants. Hence, no case is made out for interference.

11. From the facts and the rival contentions, the only point that arises for our consideration is:

Whether the Insurance Company has successfully proved that the accident was not on account of rash and negligent driving of the bus by the driver and therefore they are not liable to pay compensation?

12. Having regard to the scheme of the M.V. Act, what was tortious liability earlier is now made statutory liability in Chapter XI and XII of the M.V. Act. If, on account of the negligent act of the driver of the bus a person is injured or killed, he has to be compensated by them. Then the concept of vicarious liability was developed. Most of the drivers were unable to pay the compensation and as they found that even the owners were not able to satisfy the claimants, then the

concept of insurance was developed. In other words, if a person is killed or injured in a motor vehicle accident, the person so injured is to be compensated for the wrong done to him. In the case of death, the compensation is paid to the legal heirs of the deceased. The basic fact, which has to be established in such claim petition is that the injury or death was on account of motor vehicle accident.

13. Keeping this basic principle in mind when we look at the facts of this case, if the death was on account of rash and negligent driving of the bus by the driver, certainly the claimants would be entitled to the compensation. As they have invoked section 163A of the M.V. Act, they need not prove the negligence on the part of the driver. It is the owner or the Insurance Company, if they want to avoid the liability, have to rebut the presumption flowing u/s 163A. But, Section 163A or Section 166 or Section 140 has no application for a case where assault takes place and injuries are inflicted and then thrown under a bus. The object of the Act is not to compensate such accidents.

14. The evidence on record reveals that the deceased was assaulted, chased and pushed underneath the bus by one Laxma and Subramani. After the accident, the driver and the conductor took the deceased to the hospital, who was admitted and the police also went to the hospital. The duty doctor after attending to the deceased has sent the information to the jurisdictional police, as per Exhibit P4. Thereafter, the police registered a case in Crime No. 191/2004 against Lakshma and Subramani, the residents of Nallamballi Village, Dharmapuri District of Tamilnadu u/s 302 r/w Section 34 of IPC. Subsequently, the said accused were arrested and put behind the bars. The chargesheet was filed. The Sessions Court in S.C. No. 681/2004 conducted the trial. Except the driver of the BMTC bus, all other witnesses turned hostile. The driver of the bus, who was an eye-witness, stood the test of cross-examination and deposed as to how the accident took place, but the Sessions Court was not prepared to act on his evidence, as he was driver of the BMTC bus, it was of the view that he is the interested person, inasmuch as he wanted to save himself from being prosecuted for rash and negligent driving. The Sessions Court acquitted the accused.

15. Admittedly, no complaint was lodged against the driver of the bus. The police did not prosecute him. The date of death was 14.4.2004, the date of accident itself. The claim petition is filed on 7.2.2005, nearly ten months thereafter. During the pendency of the claim petition before the Tribunal, the Sessions Court acquitted the accused on 23.4.2005. The evidence of the wife of the deceased makes it abundantly clear that both Lakshma and Subramani are her relatives and on the date she was deposing they were in jail and has stated that they are not the cause for the death of her husband. She has also stated that she has already filed a claim petition before the jurisdictional Tribunal and the cause of the death is the accident.

16. The certified copy of the judgment of the Sessions Court is before us, which is marked as Exhibit P14. If we look into the evidence of the driver of the bus,

which is extracted therein, it is clear that when he was driving the bus, he was seeing from the mirror that the deceased was chased by two persons, they assaulted him and pushed him under the bus. He has further stated immediately he stopped the bus, got down from the bus along with the conductor as the deceased was stuck to the hind wheel. Immediately, they took him to the nearest hospital and got him admitted. The conductor was also examined, but he has not supported the case.

17. Now we have the evidence of the wife of the deceased recorded in this case. Though in the affidavit filed by way of examination-in-chief she has stated that her husband died on account of road accident, in the cross-examination, she has admitted the contents of the chargesheet, which is marked as Exhibit PH., is true. She has stated that when her husband was murdered on 14.4.2004, she was at Meenakshinagar. She has not produced the statement given by her before the Byatarayanapura Police. She admits that Lakshma is her elder sister's husband and Subramani is her mother's brother and Shabari is her brother. Shabari and his wife Ambika are living together. She has stated that Ambika was living in front of their husband's house at Meenakshinagar and she is the daughter of a watchman. She has also stated that the said Ambika and her brother Shabari loved each other and they had eloped. She denied the suggestion that because of the said marriage, Lakshma and Subramani were angry and she admits that the police have registered a case against them and they are in jail. She has not lodged any complaint to the higher authorities against the jurisdictional police for not registering the case against the driver of the bus and has also not chosen to file any private complaint against the driver of the bus. She has stated that when her husband was walking on the right side of the road, a BMTC bus dashed against him.

18. Then, we have the evidence of the official of the Insurance Company, who has sworn to the affidavit and has denied the accident. Much relevance is placed on one sentence in the cross-examination where he has stated that the "bus has run over the deceased". In fact, before the Sessions Court, Dr. C.M. Sumangala, the doctor who conducted the post mortem was examined. At paragraph No. 7 of her evidence marked as Exhibit P10, she has stated that the injury found on the dead body of the deceased can be caused if a person is thrown under a moving bus and if such person came in contact with the running of wheel. In the cross-examination, she has stated what are the conditions of a person in the event of a bus running over him and then she has stated that at the time of post mortem, she has not seen the above features over the dead body of the deceased. She has further stated that, with this type of injury, the patient cannot talk or have a conversation with another. With this evidence on record, it is clear that it is not the case of motor vehicle accident.

19. With this evidence on record, it is not a case of the driver of the bus driving in a rash and negligent manner and causing accident by dashing against the pedestrian on the road. It is a case where two persons after chasing the

deceased, assaulted him and had thrown him under the bus without the knowledge of the driver. The moment the driver came to know as he saw in the mirror of the bus that the deceased was found stuck to the hind wheel of the bus on account of throwing him, immediately he stopped the bus and took the deceased to the Hospital where he succumbed to the injuries few hours after the incident. What we are concerned in this case is by a misplaced sympathy and a liberal interpretation of Section 163A of the Act, if compensation were to be awarded on the ground that the claimants need not prove negligence and admittedly, as the vehicle is not involved in the accident, it sends wrong signal to the Society. After committing crimes, they may use these provisions to compensate the victims or the dependants of the victims. In the instant case, all the witnesses have turned hostile. When the very wife of the deceased turns hostile, there is very little the Courts can do in these matters. For the sake of money, people are prepared to do anything. If the widow of the deceased had been told that only by putting the blame on the BMTC Bus, she can get compensation in terms of money otherwise, she has already lost her husband and even if accused are put behind bars she will be left without compensation, her evidence loses significance as she is not an eye witness to the accident. It is purely hearsay evidence. That apart, all are close relatives. One accused is her mother's brother, another accused is her elder sister's husband and dispute is about her brother marrying a girl who was living opposite to their house. Certainly when the Parliament enacted the Motor Vehicles Act, they had no intention of these provisions being abused and certainly they did not make provision for compensation to such victims. If Sections are interpreted so as to include these claims also, such cases will increase and it would send a wrong message to the Society. Under these circumstances, with the evidence on record, we are satisfied that this is not a case where Chapter XI and XII of the Motor Vehicles Act is attracted. It is not a case where the accident occurred on account of rash and negligent driving of the bus by the driver. If a person is assaulted and thrown underneath the bus and even if the bus were to run over such a person, certainly such accidents are not covered under the provisions of Section 163A or 166 of the Act. Keeping the object of Legislation in mind, the type of persons who have to be compensated, we are of the opinion the claimants are not the persons who have to be compensated under the Act in the nature of the incident which is the subject matter of these proceedings. The Tribunal has not properly appreciated the facts and circumstances of the case. Probably, it is a misplaced sympathy, the pity towards the claimants who are young which has prompted the Tribunal to bring the case within the four corners of Section 163A. In doing so, it did not look at the other angle of the case where the provision can be abused by unscrupulous persons which has to be prevented at any cost. In that view of the matter, the impugned order requires to be set aside. In the result, we pass the following:-

ORDER

Appeal is allowed. The impugned award is set aside. The parties to bear their

own costs. The High Court Registry is directed to refund the amount deposited by the Insurance Company before and after filing the appeal to the Insurance Company.