

(2016) 01 KAR CK 0078
In the Karnataka High Court
Case No : MFA No. 22408/2012 (MV)

The Sangli District Co-operative Ltd.

APPELLANT

Vs

Puttavva and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 2(30)

Citation : (2016) 01 KAR CK 0078

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : G.S. Hulmani, Advocate for M.B. Gundawade, Advocate, for the Appellant;

Final Decision : Disposed Off

Judgement

B. Veerappa, J.—1. This appeal filed by the financier of the vehicle owned by the respondent No. 7 is before this Court against the impugned judgment and award dated 13.12.2011 made in M.V.C. No. 323/2010 on the file of the Senior Civil Judge & AMACT, Iterate Court, Byadagi awarding compensation of Rs. 5,05,000/- along with 6% interest per annum from the date of the petition till the realization of the award amount.

2. The respondent Nos. 1 to 6 who are the claimants before the Tribunal, filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 17,65,000/- along with interest at 12 % per annum, contending that on 27.05.2000 at about 11:30 a.m. deceased Gundappa was coming on his cycle from Motebennur towards his native place Gundenahalli on NH4 at the left side of the road. While he was crossing NH4 towards Gundenahalli village i.e., towards right side after giving right hand signal, Gundappa had almost crossed the road while he was at the edge of the right side, respondent No. 3 driver of Mahindra Viagre Van bearing MH-10/C-4342 came from Motebennur side with high speed and in a rash and negligent manner without observing the traffic rules and regulations, dashed to the hind side of the

cycle that caused sever accident to Gundappa. Due to the impact of the said accident, Gundappa had thrown to the ground on the mud, away from the cycle on which he was coming and sustained several fatal injuries and died on the spot. Soon after the accident, the dead body brought to the Government Hospital, Byadagi and after postmortem examination, the body was taken to Gundenahalli Village where the funeral was conducted.

3. The unfortunate wife and children of the deceased filed claim petition claiming that at the time of accident, Gundappa was aged about 45 years and he was working as Assistant Wireman and thereby he was earning Rs. 3,000/- per month and he was doing electrical sub-contractor work and he was earning Rs. 1,00,000/- as agricultural income and he was only male adult member in his family and as such, the entire family of the petitioners was depending on the earnings and management of the deceased Gundappa. Due to untimely death of deceased Gundappa, the family of the petitioners sustained loss of estate. The claimants 2 to 4 being the boys of young age, they are unable to maintain the family with all needs and necessities etc. Therefore, they have filed petition before the Tribunal for claiming compensation as sought for.

4. The present appellant, respondent Nos. 7 and 8 are the respondents before the Tribunal, served and remained absent and all of them were placed ex parte. The respondent No. 9 " Insurance Company was not made as party. One of the claimant was examined as P.W. 1, marked the documents Exs. P-1 to P-7.

5. After considering the entire material on record, the Tribunal awarded a compensation of Rs. 5,05,000/- with 6% interest per annum from the date of petition till the realization of the amount. Hence, the present appeal is filed by the appellant, who is the 2nd respondent before the Tribunal.

6. I have heard the learned counsel for the parties to the lis.

7. Shri G.S. Hulmani, learned counsel appearing for Shri M.B. Gundawade strenuously contended that the very claim petition filed by the appellant for compensation is not maintainable, since earlier M.V.C. filed by the very claimants in M.V.C. No. 199/2000 was came to be dismissed for default and without taking steps to restore the said M.V.C., they have filed the present case and obtained ex parte impugned judgment and award. Therefore, the same is contrary to law and cannot be sustained. He further contended that the appellant being the banker with whom the vehicle was hypothecated, has in no way control over the said vehicle involved in the accident and he is not responsible for the day today affairs, control and management of the said vehicle. Therefore, the appellant as a financier is not liable to pay compensation arising out of the accident, while the said vehicle was not within its custody. The judgment and award passed by the Court below is in violation of natural justice and the Tribunal has not provided an opportunity to the appellant to put forth his case etc. Therefore, he sought to set to aside the impugned judgment and award passed by the Tribunal, seeking for the remand so as to contest the case on merits in accordance with law.

8. Shri Lokesh Malavalli, learned counsel for one of the claimant sought to justify the impugned judgment and award. But not disputed the fact that the appellant and others " respondents before the Tribunal were placed ex parte and the insurer was not made as party to the proceedings.

9. Shri R.R. Mane, learned counsel for the Insurance Company has contended that the Insurance Company was not made party before the Tribunal and there was no opportunity to contest the matter. Therefore, he sought to set aside the judgment and award and requested the Court to remand the matter for fresh adjudication between the parties on merits.

10. Shri H.M. Dharigond, learned counsel for the owner has contended that as on the date of the accident, the vehicle was insured with 9th respondent and the policy was in force. Unfortunately 9th respondent was not made as a party before the Tribunal. Therefore, he requested the Court to set aside the impugned judgment and award and remand the matter for fresh consideration.

11. It is an undisputed fact that the accident took place on 27.05.2000 at about 11:30 a.m. and deceased Gundappa was died on the spot. Thereby the 1st claimant and other claimants lost husband and father. The Tribunal while passing the impugned judgment and award at para 3, specifically stated that on being served notice on respondent Nos. 1 to 3, they are all absent and placed ex parte. The Tribunal proceeded to pass the impugned award only on the basis of the evidence adduced by P.W. 1 and on the basis of Exs. P-1 to P-7. Admittedly the 9th respondent herein/Insurance Company was not impleaded as party to the proceedings before the Tribunal. Even though as stated by the learned counsel for the parties that policy was in force as on the date of the accident, the claimants ought to have been impleaded the Insurance Company. There was no opportunity for the Insurance Company to put-forth its case. For the first time, in the present case, financier impleaded the Insurance Company as party to this appeal.

12. It is not in dispute that the appellant who is the financier of the vehicle involved in the accident is not the owner of the vehicle as contemplated under the provisions of Section 2(30) of the Motor Vehicles Act, 1988. The vehicle involved in the accident was insured with the respondent No. 9/insurer who not made as party to the case before the Tribunal. Admittedly, the respondents before the Tribunal were placed ex parte. No opportunity was given to the appellant, respondent No. 7/owner of the vehicle and respondent No. 9/the insurer of the vehicle as on the date of the accident. In view of the same, in order to give an opportunity to all the parties including the Insurance Company, it is appropriate to remand the matter to the Tribunal for fresh adjudication between the parties.

13. The Tribunal shall take into consideration of all the materials and evidence to be adduced by the parties including the claimants and pass orders in accordance with law. All the contentions of all the parties are left open to be agitated before

the Tribunal and Tribunal shall decide the claim of the claimants without reference to earlier dismissal of the petition for default.

14. Taking into consideration the accident took place on 27.05.2000 and even after lapse of 15 years, the wife and children of the deceased could not take the fruits. It is appropriate for the Tribunal to decide the claim petition as early as possible. This Court hopes and trust that all the parties to the proceedings will co-operate with the Tribunal to dispose of the claim petition as early.

The claimants are directed to implead the insurance company as a party to the proceedings before the Tribunal immediately.

The statutory deposit made by the financier while filing the appeal shall be transmitted to the Tribunal.

Ordered accordingly.