

(2023) 02 KAR CK 0004

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3921 Of 2014 (MV-D)

T.R. Srinivasa

APPELLANT

Vs

K.N. Madhu & Others

RESPONDENT

Date of Decision : 02-02-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166(1), 166(1)(c)
Indian Penal Code, 1860 — Section 279, 304, 337, 338

Citation : (2023) 02 KAR CK 0004

Hon'ble Judges : K.S. Mudagal, J; Anil B. Katti, J

Bench : Division Bench

Advocate : Nagaraja S, H.S. Lingaraj

Final Decision : Allowed

Judgement

K.S. Mudagal, J

1. Heard.

2. "Whether the Tribunal was justified in rejecting the claim petition of appellant for compensation due to the death of his mother?"

3. The appellant is the son of one Lakshamma. It is the case of appellant that on 17.06.2011, at 11.00 p.m., when Lakshamma was travelling in Tata Indica Car KA.01/9248 to go to Dharmasthala, lorry bearing No.KA.53/7367 dashed the said Tata India car near Siddapur Village in Kunigal Taluk and caused instantaneous death of Lakshamma.

4. The appellant filed MVC No.908/2011 before the III Additional District Judge and IV MACT, Tumkur, claiming that the accident took place due to rash and negligent driving of the lorry No.KA.53/7367 and he being the dependent of Lakshamma, suffered damages due to her death. At the time of accident, respondent Nos.1 and 2 were registered owner and Insurer of lorry No. KA.53/7367. The appellant claimed compensation of Rs.25,00,000/- from both

the respondents.

5. Respondent No.1 did not contest the petition. Respondent No.2-Insurer alone contested the petition denying the occurrence of accident, rashness and negligence on the part of the driver of lorry and death of Lakshmamma. Respondent No.2 also disputed the liability to pay compensation.

6. In support of the claim of appellant, he was examined as PW.1 and Exs.P.1 to P.7 were marked. On behalf of respondent No.2, its Manager was examined as RW.1 and Insurance Policy was marked at Ex.R.1.

7. The Tribunal, on hearing both sides, by the impugned award dismissed the claim petition on the following reasons;

i) That appellant has failed to prove that Lakshmamma was travelling in Tata Indica Car No.KA.01/9248;

ii) That appellant has failed to prove that the accident occurred due to rash and negligent driving of lorry No.KA.53/7367; and

iii) That appellant has not impleaded his other siblings in the claim petition. Therefore, the claim petition is bad for non-joinder of necessary parties.

8. Sri Nagaraja S., learned counsel for appellant submits that impugned order is self-contradictory and contrary to documentary and oral evidence on record. He further submits that in dismissing the petition for non-joinder of necessary parties, the Tribunal acted contrary to Section 166(1) of Motor Vehicles Act, 1988 (for short 'MV Act').

9. Sri H S Lingaraj, learned counsel for respondent No.2-Insurer seeks to justify the impugned award on the ground that appellant ought to have impleaded all his siblings to the petition. He further submits that except the self-serving statement of PW.1, there is no oral evidence to prove the accident or Lakshmamma travelling as inmate of the car.

Reg. Occurrence of accident and death of Lakshmamma:

10. To substantiate his claim that Lakshmamma was travelling in car No.KA.01/9248 and lorry No.KA.53/7367 hit the said car, appellant relied on his ocular evidence and Exs.P.1 to P.7. No doubt, the appellant/PW.1 is not an eyewitness to the incident. However, Ex.P1 the FIR in Crime No.95/2011 of Amruthur Police Station shows that soon after the accident, complaint was registered against the driver of lorry No.KA.53/7367.

11. The complaint shows that Police visited the hospital and recorded the statement of Ashwini, one of the inmates of the car, the injured person. She has stated that herself, her grandmother Lakshmamma and other family members were travelling to Dharmasthala in Car No.KA.01/9248. She also stated that the accident took place due to rash and negligent driving of the lorry and Lakshmamma died at the spot.

12. After investigation, charge sheet was filed against the driver of lorry for the offences under Sections 279, 337, 338 and 304 of IPC. In the charge sheet, it is stated that accident occurred due to rash and negligent driving of lorry No.KA.53/7367 by its driver causing death of Lakshamma and injuries to CWs.1 to 4. In light of such evidence, Tribunal's finding that occurrence of accident due to rash and negligent driving of lorry No.KA.53/7367 and Lakshamma travelling in car No.KA.01/9248 were not proved is erroneous. It is also material to note that Tribunal itself at several places in its award, at one breath states the said facts are proved in the evidence of PW.1 and again contradicting its own statement to that effect goes on saying that the said facts were not proved by PW.1 in Exs.P.1 to P.7. Therefore, it can be said without any hesitation that such findings of the Tribunal are perverse.

Re: Non-joinder of necessary parties:

13. The Tribunal dismissed the petition on the ground that appellant has not impleaded his other siblings in the petition as claimants or respondents. The claim petition was under Section 166 of the MV Act. Section 166(1)(c) of the MV Act states that where death has resulted from the accident, petition shall be filed by all or any of the legal representatives of the deceased. The Proviso to Section 166(1) of M.V.Act which is relevant for the purpose of this case read as follows:

166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."

14. A reading of the above provisions makes it clear that in case of death due to motor accident, all or any of legal representatives of the deceased can file a claim petition. In case all of them are not impleaded as claimants, the claimant shall implead them as respondents. It is settled law that a petition or a suit cannot be dismissed for non-joinder of necessary parties. Firstly, the Court has to call upon the plaintiff or petitioner to implead such parties. If he fails to do so, then the petition or suit has to be dismissed. Learned counsel for appellant

submits that appellant may be permitted to implead his other siblings. Permission can be granted to appellant to do the same before the Tribunal.

15. In the present case, claimant was also not diligent. Even after filing of this appeal, he did not file any application to implead them. The original petition was of the year 2011. Even if appellant impleads them at this stage, Insurance Company was not to be penalised for his indolence by making it to pay interest, if he succeeds in the petition. Since petition was dismissed on the ground of failure to prove the accident, the victim travelling in the car in question and on the technical ground of non-joinder of necessary parties, the Tribunal did not consider the quantum of compensation.

16. In view of the discussion made above, the impugned award is liable to be set aside and the matter requires to be remanded. Hence, the following order:

ORDER

i) The appeal is allowed.

ii) The impugned award is hereby set aside.

iii) The matter is remanded to the Tribunal for fresh consideration in light of the observations made above.

iv) To avoid delay, appellant shall appear before the Tribunal on 02.02.2023. On such appearance, he shall file application for impleading his other siblings. If he fails to comply the same, the Tribunal shall proceed to dismiss the application on the ground of non-joinder of necessary parties. If complied, the Tribunal shall give opportunity to both the parties and dispose of the same, in accordance with law, in light of the observations made above.

v) It is made clear that, if at all the appellant-claimant succeeds in the petition, respondent No.2-Insurer is not liable to pay interest on the compensation payable to the claimant/claimants from the date of petition till he so impleads his other siblings.