

(2016) 02 KAR CK 0035
In the Karnataka High Court
Case No : M.F.A. No. 30648/2010 (MV)

Vijayalaxmi and Others

APPELLANT

Vs

Shivasharanappa Basappa Sajjan and Others

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0035

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Sudhirsingh R. Vijapur, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

B. Manohar, J.—1. Appellants being the claimants have filed this appeal, being aggrieved by the judgment and award dated 1-2-2010 made in MVC No. 779/2003 passed by the Motor Accidents Claims Tribunal and Fast Track Court-II, Bijapur (hereinafter referred to as "the Tribunal" for short) dismissing the claim petition filed by them.

2. Appellants filed the claim petition contending that the husband of the first claimant, father of the second claimant one Ramanagowda Patil died in the road traffic accident that occurred 16-1-2003, while he was proceeding in a Hero Honda motor cycle on Sindhanoor-Maski road at about 7.30 p.m., on main canal bridge, a truck bearing registration No. KA-33/1961 driven by its driver in a rash and negligent manner, dashed against the motor bike. In view of that, Ramanagowda sustained grievous injuries and subsequently succumbed to injuries. In the claim petition, it was contended that the deceased was working as a teacher in a Government School at Hedagi Bal Camp at Sindhnoor, earning Rs. 5,875/- p.m. He is the sole bread earner of the family. At the time of death, he was aged about 37 years. The first claimant has lost her husband at her young age and the minor daughter lost love and affection of her father. Hence sought for compensation of Rs. 11,72,000/-.

3. In pursuance of the notice issued by the Tribunal, owner of the vehicle filed statement of objections and denied the contention raised in the claim petition and also contended that if the court comes to the conclusion that the claimants are entitled to compensation, it is the liability of the Insurance Company to compensate the claimants since the vehicle is covered by the insurance policy and sought for dismissal of the claim petition.

4. The second respondent/Insurance Company filed written statement denying the entire averments made in the claim petition and also the factum of accident involving the vehicle bearing registration No. KA-33/1961. A specific contention taken by the Insurance Company is that the said offending vehicle was not involved in the accident that occurred on 16-01-2003, however, the said vehicle is insured with them under the policy for a period from 30-07-2002 to 29-07-2003. Due to the negligence on the part of the rider of the Hero Honda motor cycle, the accident had occurred. In collusion with the police, the offending vehicle has been falsely implicated in this case. Hence, sought for dismissal of the claim petition.

5. On the basis of the pleadings of the parties, the Tribunal framed necessary issues. In order to prove the case, the first claimant got examined herself as P.W. 1 and one of the witnesses of the accident was examined as P.W. 2 and got marked the documents as Ex. P1 to Ex. P7. On behalf of the Insurance Company, one of the officers of the Insurer one K.M. Manjunath Swamy was examined as R.W. 1 and got marked the documents as Ex. R1 to Ex. R13.

6. The two important issues raised during the course of trial are:

(i) Whether the petitioners prove that Ramanagouda died due to the accident on 16-1-2003 at about 7.30 p.m. on Sindhanoor-Maski road due to the rash and negligent driving of the goods truck KA-33/1961 by its driver?

(ii) Whether Respondent No. 2 proves that the Truck KA-33/1961 was not involved in the accident at 16-01-2003 at about 7.30 p.m. on Sindhanoor-Maski Road?

7. The parties have led their evidence to prove the occurrence of accident. P.W. 1 is not the eye witness and she has not seen the occurrence of accident. Whereas P.W. 2 claims himself to be the eye witness and seen the occurrence of the accident. P.W. 2 in his evidence deposed that he along with one Vijayakumar Kentikal was proceeding in a Truck bearing registration No. KA-31/1961 from Sindhanoor to his village and they were sitting in the cabin. When they were proceeding towards Talikoti/Maski, near main canal Bridge, the motor cycle on which the deceased was travelling was proceeding from Maski side towards Sindhanoor side. The driver of the truck drove the vehicle in a rash and negligent manner and dashed against the oncoming motor cycle. Thus accident took place in the cross-road. However, the driver of the Truck did not stop the vehicle.

8. On behalf of the Insurance Company, one of the officers of the Company was

examined. In his evidence, he has clearly deposed that the offending vehicle was not involved in any accident. The said vehicle was falsely implicated in the alleged accident in order to claim compensation from the Insurance Company but, the vehicle number has been furnished after 3 1/2 months of the accident. On the basis of the said complaint, a criminal case was registered against the driver of the said truck, which ended with acquittal as per the order dated 24-07-2007. In the criminal case, one Vijayakumar was examined as P.W. 6 and P.W. 2 in MVC case was examined as P.W. 5 in the criminal case. The certified copy of the order made in C.C. No. 243/2005 passed by the JMFC, Sindhanoor was marked as Ex. R2.

9. The complaint has been lodged on 17-01-2003 by one Govinda gouda, who was working in the very same School. He has also not seen the occurrence of the accident. While he was returning his home, somebody informed him about the accident. He went to the spot and found the Hero Honda CD 100 motor bike which belonged to Ramanagouda. Thereafter, he lodged the complaint on 17-1-2003. The said complainant has furnished the vehicle number after 3 1/2 months of lodging the complaint. Thereafter, the offending vehicle was traced and a criminal case was registered against the driver of the said vehicle, which ended with acquittal, by the JMFC, Sindhanoor. One of the eye-witnesses, Vijayakumar who was travelling along with P.W. 2 in the said truck, has turned hostile in the criminal case. The said eye-witness has not been examined in the Motor Vehicle Case. In order to get compensation from the Insurance Company, the vehicle has been falsely implicated and due to the negligence on the part of the rider of the Hero Honda motor bike himself, the accident had occurred. Hence, the claimants are not entitled for compensation and sought for dismissal of the claim petition.

10. The Tribunal, on appreciating the oral and documentary evidence and taking into consideration the copy of the order made in C.C. No. 243/2003 passed by the JMFC, Sindhanoor and evidence of all the witnesses examined in the criminal case and further taking into consideration copy of the complaint and other relevant records held that the claimants have failed to prove that the deceased died to the rash and negligent driving of the offending vehicle and held that the claimants have failed to prove the occurrence of accident involving the offending vehicle. Accordingly, held issue Nos. 1 and 2 against the claimants and dismissed the claim petition. Being aggrieved by the said judgment and award, the claimants have preferred this appeal.

11. Learned counsel appearing for the appellants contended that the judgment and award passed by the Tribunal dismissing the claim petition is contrary to law. Admittedly, the husband of first claimant and father of second claimant died in the road traffic accident occurred on 16-1-2003 at about 7.30 p.m., near main canal bridge on Sindhanoor-Maski Road. The offending truck bearing registration No. KA-33/1961 is responsible for the accident. The driver of the truck has not stopped the vehicle and taken the injured person to the hospital for first aid. The

truck was traced and number has been furnished to the Police. The Police have registering a case. The degree of proof in the criminal case as well as motor vehicle cases is different. In the motor vehicle case, it is a social piece of legislation to compensate the claimants due to the death of persons in the accident. One of the eye-witnesses who was travelling in the offending vehicle has clearly deposed that he was sitting in the cabin of the offending vehicle when the accident occurred. Sufficient documents were made available before the Tribunal to prove that due to actionable negligence on the part of driver of the offending vehicle, the accident had occurred and the deceased died in the said accident. The Tribunal has dismissed the claim petition only on the basis of order passed in the Criminal Proceedings wherein, driver of the offending truck was acquitted, which is contrary to law. Hence, sought for setting aside the judgment and award and to award compensation of Rs. 9,38,840/- with interest at 6% p.a.

12. On the other hand, Sri Manvendra Reddy, learned counsel appearing for the Insurance Company argued in support of the judgment and award passed by the Tribunal and contended that as on 16-1-2003, the offending vehicle was not involved in any accident. Due to negligence on the part of rider of the Hero Honda motor bike, he fell down and sustained injuries and subsequently succumbed to injuries. In order to get compensation from the Insurance Company, the offending vehicle was falsely implicated that too the number of the offending vehicle was furnished after 3 1/2 months after lodging the complaint by one Govinda Gouda. The said complainant was also not examined in the motor vehicle case to prove as to how he got the number of the offending vehicle. Further, the alleged eye-witnesses who have seen the occurrence of the accident have not informed the police regarding the accident. He contended that the case set up by the claimants could not be acceptable and sought for dismissal of the appeal.

13. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award and oral and documentary evidence.

14. The records clearly disclose that in view of the accident occurred on 16-1-2003, the said Ramanagoud Patil died. The question to be decided in this appeal is whether the accident occurred due to the rash and negligent driving on the part of the driver of the offending Truck or on his own, the deceased fell down and died.? The claimants in order to get compensation from the Insurance Company, furnished the number of offending truck that too 3 1/2 months after the filing of complaint. In the complaint lodged on 17-1-2003, Govinda Gouda who lodged the complaint before the police did not furnish the vehicle number, and the same was furnished after 3 1/2 months of lodging the complaint. P.W. 1 is not the eyewitness. Though she has alleged that the accident had occurred in view of the rash and negligent driving of the offending vehicle and her husband died, that witness cannot be believable. P.W. 2 is said to be the eye witness of the accident. He was also a witness examined as P.W. 5 in C.C. No. 243/2003.

P.W. 2 in his evidence clearly deposed that he was travelling in the offending vehicle sitting in the cabin. He has seen the occurrence of accident, near the bridge. He further deposed that due to rash and negligent driving of the driver of the truck, the accident had occurred and rider of the motorbike fell down and sustained injuries. However, the driver of the truck did not stop the vehicle. If that is so, nothing prevented P.W. 2 to lodge a complaint before the jurisdictional police or could have informed the relatives and wife of the deceased person. P.W. 2 was also a resident of the same village. Hence, it is clear that in order to fix the offending vehicle, the vehicle number has been furnished to the Police. Apart from that, the criminal case lodged against the driver of the truck was ended with acquittal. In the criminal case, it was clearly held that the vehicle was not involved in the accident, more over, one of the witnesses in the criminal case, Mr. Vijayakumar turned hostile and said that he has not seen the occurrence of the accident. Whereas, P.W. 2 who was P.W. 5 in C.C. No. 243/2003 deposed that he has seen the occurrence of the accident, but he has not lodged the complaint. The conduct of P.W. 2 cannot be acceptable. He has stated that the driver of offending vehicle did not stop the vehicle on the spot of accident. Immediately thereafter, he should have lodged the complaint before the police and furnished the vehicle number of the offending vehicle. However, the number was furnished after 3 1/2 months after the accident by Govinda Gowda. But he has not been examined to ascertain as to from whom he got that vehicle number. All these circumstances clearly disclose that the offending vehicle is not involved in the accident. In order to claim compensation from the Insurance Company in collusion with the police authorities, the offending vehicle was falsely implicated in the alleged accident. The Tribunal taking into consideration all these aspects of the matter dismissed the claim petition. I do not find any infirmity or irregularity in the judgment and award passed by the Tribunal.

The appellants have not made out any case to interfere with the judgment and award passed by the Tribunal. Accordingly, the appeal is dismissed.