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Court : Karnataka Dharwad

Decided On : Sep-16-2013

Judge : K.L. Manjunath & a.N. Venugopala Gowda

Appeal No. : Miscellaneous First Appeal No. 21115 of 2012 (MV)

Appellant : Ravi

Respondent : Govindappa and Another

Judgement :

1. The appellant was claimant in M.V.C. No. 23 of 2007 on the file of Motor Accident Claims Tribunal at Saundatti, which was lodged by him claiming compensation on account of the injuries sustained by him in the accident said to have been occurred on 2-11-2005.

2. According to the claim petition on 2-11-2005 he was riding his motorcycle bearing No. KA-22/L-1700 proceeding from Saundatti towards Yellamma Temple. When he was near Jogulabhavi, a Mahindra jeep bearing No. KA-04/M-6173 was coming from the opposite direction in a rash and negligent manner and dashed against his motorcycle as a result of which he fell down on the road. He was first shifted to the Government Hospital, Saundatti and thereafter to a private Hospital at Hubli. Therefore, he filed a claim petition. The owner of the Mahindra Jeep was placed ex parte. The Insurance Company contested the case contending that no accident took place on 2-11-2005 due to rash and negligent driving of the driver of

the Mahindra Jeep. According to the Insurance Company-the appellant was riding the motorcycle after consuming alcohol On account of his negligence as he could not control the motorcycle dashed against an electric pole and sustained injuries. The accident was witnessed by one Basavaraj Lamani, an Autorickshaw driver who lodged FIR before the jurisdiction police, based on the same case was registered. The appellant was also shifted by Basavaraj in his autorickshaw with the help of one Shankar to Government Hospital, Saundatti. Contending that due to collusion between the owner of Mahindra Jeep and the claimant, a false petition is lodged to claim compensation from the Insurance Company. Therefore, the Insurance Company requested the Tribunal to dismiss the claim petition.

3. The Tribunal framed the following issues for its consideration:

1. Whether the petitioner proves that he has sustained bodily injuries in the motor vehicle accident that occurred on 2-11-2005 at about 5.15 p.m on Saundatti-Jagulabhavi Road, near Jagulbhavi within the limits of Saundatti-Jagulabhavi Road, near Jagulbhavi within the limits of Saundatti Police Station, on account of rash and negligent driving of Mahindra Commander Jeep bearing its Reg. No. KA-04/M-6173 by its driver and thereby caused the accident?

2. Whether the petitioner is entitled to any compensation? IF so, for what amount and from whom?

3. What award?

4. To prove their respective contentions in all 5 witnesses were examined on behalf of the petitioner/appellant. Amongst them P.W. 1 is the complainant; P.W. 5 is the person who lodged the FIR. Claimant relied upon Ex. P. 1 to Ex. P. 34 and on behalf of the Insurance Company one Anil Ashok Kore was examined as R.W. 1 and relied upon Ex. R. 1 to Ex. R. 26.

5. The Trial Court after considering the entire evidence let in by the parties held issue No. 1 in the negative. On account of answering issue No. 1 in the negative, did not answer issue No. 2 and dismissed the claim petition. Challenging the same the present appeal is filed.

6. Learned Counsel for the appellant contends that the Trial Court has committed a serious error in dismissing the claim petition based on Ex. P. 1-FIR and also Ex. P. 14-case sheet maintained by the Government Hospital, Saundatti, without considering the evidence of P.W. 5-Basavaraj, who deposed before the Court that he had signed a blank paper and the police have converted the same into a FIR to suit their convenience and he further submits that the driver of the Mahindra Jeep has pleaded guilty before the Criminal Court and that order of conviction in a Criminal Court was required to be considered by the Court and without considering the same erroneously the petition is dismissed. Therefore, he requests the Court to allow the appeal.

7. Having considered the arguments of the parties this Court has to consider:

Whether the accident occurred on account of the rash and negligent driving of the appellant or on account of the rash and negligent driving of the driver of the Mahindra Jeep?

8. The trial Court considering the evidence let in by both the parties in paragraphs 14 to 17 has discussed the evidence let in by the parties in detail.

9. At the first instance the FIR is lodged by P.W. 5 who is an autorickshaw driver who was also proceeding towards Yellamanagudda along with Shankar who was a passenger in the autorickshaw. According to the FIR the claimant was proceeding ahead of the autorickshaw and when he was near Jogulabhavi the claimant was driving the motorcycle in a rash and negligent manner and as a result of which he could not control the vehicle and dashed against an electric pole. Immediately P.W. 5 and Shankar went near the spot and noticed that the front wheel of the motorcycle was completely damaged and they observed the liquor smell was emanating from the mouth of the complainant and immediately they shifted the injured to the Government Hospital and FIR was lodged by him at about 7.30 p.m. on the same day. Ex. P. 14 is the case-sheet maintained by the Government Hospital wherein the history sheet of the accident has been mentioned by the claimant stating that he had a fall from the motorcycle at about 5.30 p.m. There also he does not mention about the involvement of Mahindra Jeep. Next day to overcome the FIR, further statement of P.W. 5 has been recorded by the Police as

if FIR was wrongly typed by an unknown Typist and it further reads that the petitioner had not consumed alcohol when the accident took place. The Trial Court refused to believe the second version of P.W.5 contending that it is only an after thought. The Tribunal has also noticed that if really the appellant had sustained injuries in a road traffic accident occurred due to rash and negligent driving of the Mahindra Jeep by its driver, the same should have been mentioned in the history sheet when the claimant was admitted to the Hospital In addition to that, the Trial Court has also relied upon the IMV Report wherein it is stated that front left side indicator of assembly and front left side headlight of Mahindra Jeep were damaged. Even according to the appellant he was proceeding towards Yellamanagudda from Saundatti side and Mahindra Jeep was coming from Yellamma Temple towards Saundatti. If the Jeep had dashed against the motorcycle, damage, if any, caused to the jeep shall be towards the right side and not towards the left side. The Trial Court observing these discrepancies came to the conclusion that under no stretch of imagination the left side indicator and left side headlight of the Mahindra Jeep could not have been damaged if really the accident is taken place as contended by the appellant. Merely because the driver of the Mahindra Jeep has pleaded guilty before the Court by paying fine cannot be a ground for the Trial Court to accept the same as a gospel truth and allow the claim petition, in view of Ex. P. 1, Ex. P. 14 and the IMV Report. In the circumstances, we are of the opinion the Tribunal is justified in dismissing the claim petition on the ground that the accident did not occur due to the rash and negligent driving of the driver of the Mahindra Jeep. Accordingly, the appeal is dismissed.

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