

The Manager Vs. A Rajendra

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Court : Karnataka

Decided On : Jul-10-2018

Judge : S Sunil Dutt Yadav

Appeal No. : MFA 10357/2012

Appellant : The Manager

Respondent : A Rajendra

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE10H DAY OF JULY 2018 BEFORE THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV M.F.A.No.10357 OF2012(MV) Between: The Manager Royal Sundaram Alliance Insurance Company Limited No.186/7, Sri Raghavendra Plaza, Hosur Main Road, Wilson Garden, Bangalore 560 027. By Royal Sundaram Alliance Company Ltd. Subramaniam Building II Floor, No.1, Club House Road, Annsasalai, Chennai 600 002. By its Manager. ...Appellant (By Sri O.Mahesh, Advocate) And:

1.

2. A.Rajendra, Aged about 53 years, S/o A.Narasimhulu, R.Geetha, Age:

46. years, W/o A.Rajendra Both are residing at No.17, J.V.Chetty Road, Ramaswampalyam, M.S.Nagar, Near Banaswadi, Bangalore 560 003. Also at

native address No.9-10A, Surappa Street, Palamner, Chittoor Andhra Pradesh. 2 Consultants Pvt. Ltd., No.49, 1st Floor, Cathedral Road, Chennai, Tamil Nadu 600 001. By its Manager.

3. M/s.Mafoi Management (By Sri N.Gopalakrishna, Advocate for R1 & R2 Notice to R3 dispensed with) ...Respondents This MFA is filed under Section 173(1) of the M.V. Act against the judgment and award dated 10.08.2012 passed in MVC No.4664/2011 on the file of the XIII Additional Small Causes Judge, Member, MACT, Court of Small Causes, Bangalore awarding a compensation of Rs.4,22,900/- with interest at 6% p.a. from the date of petition till deposit in Tribunal. This MFA coming on for admission, this day, the Court delivered the following:

JUDGMENT

Though the matter is listed for admission, with the consent of both the parties, it is taken up for final disposal.

2. This appeal is preferred by the appellant- insurer challenging the judgment and award dated 10.08.2012 passed in MVC No.4664/2011 wherein the Tribunal overruling the objection raised by the insurer as regards the jurisdiction to entertain the claim 3 petition had allowed the claim petition and awarded compensation to the claimants/petitioners amounting to `4,22,900/-.

3. The facts made out in the claim petition were that on 25.2.2011 at about 10.30 a.m., when the deceased was proceeding in a lorry bearing Registration No.AP-16-TU-7661 at Punganur-Palamner NH-219 road and when the lorry had reached Basavaraja Kandriga Village, Panajari Mandal, Chittoor District, a Chevrolet Optra car bearing Registration TN-07-BZ-3439 being driven in a rash and negligent manner dashed against the lorry and it is averred that due to such impact, the lorry turned turtle and the deceased having sustained grievous injuries in the said accident succumbed to such injuries. The petitioners had contended that the deceased was working as a loader and earning `3,330/- per month. It was also contended that the accident had 4 taken place due to the rash and negligent driving of the car.

4. The insurer, on appearance, apart from denying the averments in the claim petition has contended that the Tribunal has no territorial jurisdiction to try and decide the claim petition. The insurer had also contended that the procedural requirements as per Sections 134(c) and 158(6) of the Motor Vehicles Act, 1957 (M.V. Act for brevity) were not complied with and on this ground alone the claim petition ought to have been rejected.

5. The Tribunal, while framing the issues has specifically framed an additional issue, which reads as follows:- 1. Whether the respondent No.2 proves that this Tribunal has no jurisdiction to entertain and try this petition?. 5 6. The Tribunal, after considering the material on record, by its judgment and award dated 10.08.2012, allowed the claim petition by awarding compensation to the claimants as mentioned above and while allowing the claim petition had rejected the contention regarding the absence of jurisdiction as contained in additional issue No.1. It is that order of the Tribunal that has been challenged before this Court primarily contending that the finding of the Tribunal as regards its territorial jurisdiction was erroneous.

7. It is also contended that the accident was due to the sole negligence of driver of the Truck and if that were to be so, the lodging of the claim petition against the insurer of the car was a mala fide claim and hence, the claim petition ought to have been dismissed. Though other contentions have been raised, the same are not seriously canvassed in the light of settled law, which governs the said contentions. 6 8. The points that arise for consideration are:- (i) Whether the finding of the Tribunal on additional issue No.1 as regards the jurisdiction of Tribunal is erroneous and liable to be set aside and (ii) Whether in a claim petition under Section 163A of the M.V.Act, the question of negligence is a matter that needs to be pleaded and proved?.

9. The contention of the appellant-insurer in specific is as follows:- (I) The insurer contends that though the claim petition was preferred at Bengaluru, the accident having occurred outside Karnataka, i.e. in Andhra Pradesh, an effort had been made by the father of deceased Mr.A.Rajendra to furnish the address of Bengaluru only for the purpose of bringing the claim petition within the jurisdiction

of the Tribunal at Bengaluru. It is pointed out that the parents of deceased, who are the claimants in the claim petition 7 had furnished the address as Banaswadi, Bengaluru and simultaneously, provided the address of their native place as being that of Palamaner, Chittoor, Andhra Pradesh. Even in the First Information Report - Ex.P1, the address furnished is that of Palamaner, Chittoor as per the declarations made in columns 6(b) and 6(h) of the F.I.R. and hence, the insurer contends that it is only for the purpose of jurisdiction an effort is made to provide an address in Bengaluru. (II) The insurer contends that the chargesheet had been filed against the driver of the lorry and hence, the claim petition against the insurer of the car against which there is no evidence of negligence, is not maintainable. It is further contended that the claim ought to have been preferred under the Employees Compensation Act, 1923 and the claim petition under Section 163A of the Motor Vehicles Act 8 preferred against the insurer of the car was not maintainable, as the claim under the special legislation being more beneficial, there was no warrant for a claim under the Motor Vehicles Act. The insurer submits that the claim is a mala fide claim, as the employee was a traveller in the lorry unauthorisedly and in light of such admitted fact, no claim has been made against the owner of the lorry and claim is preferred only against the owner of the car. The insurer also contends that in the normal course, the claim under Section 166 of M.V.Act being more beneficial to the claimant, it ought to have preferred against the tortfeasor and instead of doing so, the claim petition is filed under Section 163A of the M.V. Act against the insurer of the car.

10. The claimant, on the other hand contends that in fact, the deceased was a resident within the jurisdiction of Tribunal at Bengaluru and rental 9 agreement had been produced to evidence the residence. It is further contended that irrespective of the factum of residence, jurisdiction is available where there is a Branch Office of the insurer and the said point is no longer open for argument in view of the findings of the Apex Court in the case of MALATI SARDAR v. NATIONAL INSURANCE COMPANY LIMITED AND OTHERS reported in (2016) 3 SCC43 11. Insofar as the contention regarding the negligence of driver of the lorry, it is contended that the question of negligence has no role to play in a claim petition under Section 163A of the M.V. Act and the Apex Court in the case of UNITED INDIA INSURANCE CO. LTD. v. SUNIL KUMAR AND ANOTHER reported in

2018 ACJ1 while answering the reference as regards the defence of negligence that could be taken by the insurer in a claim under Section 163A of the M.V. Act has categorically answered the reference by holding that it was not open for the insurer to raise the defence of negligence on the part of the victim.

12. It is also contended that there is nothing in law that prohibits claim being made against the insurer of any of the vehicle involved in the accident and that the choice is with the claimant and hence, countered the arguments of the insurer.

13. After having heard learned counsel for both the parties at length, the points for consideration are answered as follows:- (A) Point for consideration No.(i) Admittedly, the accident has occurred at Kandriga Village, Punganur Palamaner, Chittoor District, Andhra Pradesh. The claim petition has been preferred by showing the residence of the claimants at Banaswadi, Bengaluru and reliance has been placed on the rental agreement, however, an answer to the said point for consideration can be made without getting into the 11 disputed question of residence of the claimants. Section 19 of the Code of Civil Procedure, 1908 provides that jurisdiction as regards suits for compensation for wrongs to person would be the local limits of the jurisdiction of the Court where the defendant resides, or carries on business. The relevant provision regarding jurisdiction as regards claimant under the Motor Vehicles Act as found in Section 166(2), reads as follows:- 166. Application for compensation.- (1) (2) xxxxxxxx Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

12. Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant. 14. It is also of relevance to note the effect of adjudication and raising of contention as regards the absence of territorial jurisdiction by relying on Section 21 of C.P.C., which provides as

follows:- 21. Objections to jurisdiction.- (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been an consequent failure of justice. (2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court 13 unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. 15. It is no doubt true that the objection as regards the territorial jurisdiction has been taken at the earliest point of time and the Tribunal has framed an additional issue as regards the said contention. While the Tribunal has rejected the said contention by holding that the insurer/respondent No.2 had its office in Bengaluru and was carrying on business at Bengaluru and hence, the contention of the insurer was not accepted.

16. It is clear that Section 166(2) of the M.V. Act does provide for jurisdiction where the defendant resides apart from where the claimant resides or carries on business. The choice of jurisdiction is one available to the claimant and the claimant could invoke the 14 jurisdiction of either of the place. It is pertinent to note that Section 166(2) was inserted by way of an amendment of Substituting Act 54 of 1994 w.e.f. 14.11.1994 and the said provision has been interpreted by the Apex Court in Malati Sardars case (supra) wherein it has been held that the words, where the defendant/respondent resides which in the case of juristic person would include its principal office. In the present case, there is no dispute nor is it denied that the insurer had a Branch Office in Bengaluru within the jurisdiction of the Tribunal. If that were to be so, the Tribunal at Bengaluru had jurisdiction and so far as the Branch Office was situated within its jurisdiction.

17. The next question as regards the same contention that needs to be addressed is as to whether any failure of justice had been caused to the insurer, which is a pre-condition or sustaining the contention as regards the absence of territorial jurisdiction in the light 15 of express mandate under Section 21 of C.P.C. extracted supra. Apart from contending that the Tribunal did not have the territorial

jurisdiction, no efforts have been made to demonstrate that there has been a consequent failure of justice.

18. It must be noted that the present provision which provides for invocation of remedy is a beneficial provision which confers choice on the claimant and the abovesaid contentions have been aptly dealt with in para-16 of the judgment in Malati Sardars case (supra), which reads as follows:- 16. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hypertechnical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party in such cases, has its business. In such cases, there is no 16 prejudice to any party. There is no failure of justice. Moreover, in view of categorical decision of this Court in Mantoo Sarkar, contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 of CPC. In view of the law laid down by the Apex Court, the question as regards territorial jurisdiction is rejected. (B) Point for consideration No.(ii) 19. As regards the contention that though chargesheet had been filed against the driver of the lorry, curiously the claim petition came to be made only against the insurer of the car and that in the absence of negligence, the claim petition against the insurer did not lie, the said contention has been answered in Sunil Kumars case (supra).

20. Section 163A (2) of the M.V. Act makes it clear that in any claim for compensation under Section 163A, the claimant is not required to plead or establish that the death or permanent disablement in respect of which 17 the claim had been made was for doing any wrongful act or neglect or default of the owner of the vehicle.

21. The question as to whether fault was a necessary ingredient for maintainability of a claim petition under Section 163A, the same has been dealt with by the Apex Court in Sunil Kumars case (supra) at para-9 of its judgment, which reads as follows:- 9. For the aforesaid reasons, we answer the question arising by holding

that in a proceeding under Section 163-A of the Act it is not open for the insurer to raise any defence of negligence on the part of the victim. 22. As regards the subsidiary contention that the claim ought to have been preferred under Section 166 of the M.V. Act against the insurer of the lorry and the effort of claimant to invoke indemnity as regards the owner of the car is illegal has to be answered by observing that law does not prohibit making of the claim as in the present case and the choice of the remedy as 18 available under law can be invoked by the claimant. Hence, in the present case, the invocation of the contract of indemnity as regards the insurer of the car cannot be found fault with.

23. In view of the findings on points for consideration (i) and (ii), the appeal of the insurer is dismissed.

24. The amount in deposit shall stand transferred to the Tribunal for disbursement to the claimants in view of the dismissal of appeal of the insurer. VGR Sd/- JUDGE

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