

M Mahadevappa, Vs. The Branch Manager,

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Court : Karnataka

Decided On : Jun-02-2015

Judge : S.N.Satyanarayana

Appeal No. : MFA 7949/2011

Appellant : M Mahadevappa,

Respondent : The Branch Manager,

Judgement :

- 1 - IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE2D DAY OF JUNE 2015 BEFORE THE HONBLE MR.JUSTICE S.N.SATYANARAYANA M.F.A.No.7949 /2011 (MV) BETWEEN:

1. M.MAHADEVAPPA S/O MAHADEVAIAH AGED ABOUT55YEARS, OWNER OF THE GOODS AUTO RICKSHAW BEARING REGISTRATION No.KA:18/7384 R/O ARASHINAGUPPE, CHIKMAGALURU TALUK AND DISTRICT.

2. SANJEEVA S/O KUNDARAMESTRI, AGED ABOUT36YEARS DRIVER OF THE GOODS AUTO-RICKSHAW BEARING REGISTRATION NO.KA:18/7384 R/O MALLENAHALLY VILLAGE, CHIKMAGALURU TALUK AND DISTRICT. APPELLANTS. (BY SRI K.N.MOHAN, ADVOCATE) AND:

1. THE BRANCH MANAGER THE NEW INDIA ASSURANCE CO. LTD., BRANCH OFFICE, PANDURANGA COMPLEX, - 2 - CHIKMAGALURU - 577 101.

2. SHIVAKUMAR S/O LATE BASAPPA AGED ABOUT 41 YEARS, AGRICULTURIST, R/O PILLENAHALLY VILLAGE, KADUR TALUK, CHIKMAGALURU DISTRICT. RESPONDENTS. (BY SRI A.K.BHAT, ADVOCATE FOR R1 R2 IS SERVED AND UNREPRESENTED) *-*-*-*-*- THIS APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT AGAINST THE

JUDGMENT

AND AWARD DATED 18.07.2011 PASSED IN MVC.No.121/2005 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MACT, AT KADUR, CHIKMAGALURU DISTRICT, AWARDING A COMPENSATION OF Rs.1,50,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION. THIS APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Respondent Nos.1 and 2 in MVC No.121/2005 on the file of the MACT., Kadur, Chikmagalur District, have come up in this appeal impugning the judgment and award dated 18.07.2011 in so far as it pertains to the finding on additional - 3 - issue No.1, which was framed pursuant to the judgment dated 04.08.2009 passed by this Court in MFA No.7232/2007 arising out of the very same claim petition.

2. Brief facts leading to this appeal are as under:- Appellants herein are respondent Nos.1 and 2 in MVC No.121/2005, which was filed by 2nd respondent herein seeking compensation for the injuries sustained in a road traffic accident taken place on 05.05.2005 at about 6 p.m. on Hulikere - Megala Pillenahalli Road. The accident is not in dispute. Involvement of the goods auto-rickshaw bearing No.KA-18/7384 belonging to appellant No.1 in the said accident is also not in dispute. It is further not in dispute that the said vehicle goods auto rickshaw was driven by 2nd appellant herein.

3. Initially, the Tribunal allowed the claim petition awarding compensation to the claimant in a sum of Rs.1,50,000/- payable with interest at 6% per annum by the Insurance Company, which had issued the policy in favour of the 1st appellant herein with reference to the offending goods - 4 - vehicle. The said judgment and

award passed on 07.02.2007 was subject matter of appeal in MFA No.7232/2007 filed by respondent No.3 - Insurance Company in MVC No.121/2005. A coordinate Bench of this Court while hearing the said appeal by its judgment dated 04/08/2009, allowed the same and remanded the matter to the Tribunal for fresh consideration with a direction to the Tribunal to frame a specific issue regarding the validity of the driving licence held by 1st respondent in MVC No.121/2005, who was driver of the offending goods vehicle.

4. After remand, the Tribunal framed additional issue No.1 in MVC No.121/2005 as under: Whether the respondent No.1 proves that, he was holding a valid and effective driving license to drive a transport vehicle ?. Thereafter, the Tribunal recorded the evidence of the claimant, the officer of the Insurance Company and respondent No.1 - driver of the offending vehicle and - 5 - proceeded to answer the said issue in the negative against respondent Nos.1 and 2 in MVC No.121/2005. Being aggrieved by the same, they have come up in this appeal.

5. To substantiate the ground urged by the appellants that the licence, which was held by 2nd appellant herein for driving light motor vehicle is sufficient to drive goods vehicle, learned counsel for the appellants has relied upon the judgment of the Apex Court rendered in the matter of National Insurance Company Limited Vs. Annappa Irappa Nesaria and Others reported in 2008 AIR SCW906

6. However, the same was countered by the learned counsel for the respondent No.1- Insurance Company by relying upon the judgment rendered by the very same presiding Judge in the matter of Oriental Insurance Co., Ltd. Vs. Angad Kol and others reported in 2009 ACJ1411

7. Heard the learned counsel for both the parties. Perused both the judgments rendered by the very same senior Judge of the Apex Court. On going through the judgment, it is - 6 - clearly seen that in the matter of National Insurance Co. Ltd. (referred supra), the finding is vague with reference to the right of a person having licence to drive light motor vehicle also to drive goods vehicle, which is subsequently clarified in the later judgment rendered in the matter of Oriental Insurance Company (referred supra) ,wherein it is stated as under:- Distinction between a LMV and a transport vehicle is evident-Licence to the driver was

granted for 20 years, a presumption arises that it was meant for the purpose of a vehicle other than a transport vehicle-Had the licence been granted for transport vehicle, the tenure thereof could not have exceeded 3 years-Whether the driver had a valid and effective licence and insurance company is liable -Held: no;

8. In that view of the matter, it is clearly seen that the finding of the Apex Court is to the effect that granting of Light Motor Vehicle licence to a driver would not automatically enable him to drive goods vehicle as a matter of right. In that view of the matter, this Court find that the finding on additional issue No.1 framed by the Tribunal after remand of - 7 - MVC No.121/2005, which is disposed of by the judgment and award dated 18.07.2011, appears to be just and proper. Hence, the question of admitting this appeal to consider the correctness or otherwise of the same does not arise.

9. Accordingly, this appeal is dismissed. The judgment and award of the MACT., Kadur, Chikmagaluru, dated 18.07.2011 in MVC No.121/2005 is confirmed. In view of the appeal being dismissed, the amount in deposit is ordered to be transmitted to M.A.CT., Kadur, Chikmagaluru, for disbursement to the claimant - respondent No.2 herein, in terms of the award passed by the Tribunal. SD/-
JUDGE sma

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