

T.R. Srinivasa Vs K.N. Madhu & Others

Court: Karnataka High Court At Bengaluru

Date of Decision: Feb. 2, 2023

Acts Referred: Motor Vehicles Act, 1988 " Section 166, 166(1), 166(1)(c)
Indian Penal Code, 1860 " Section 279, 304, 337, 338

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 Lakshmamma. It is the case of appellant that on 17.06.2011, at 11.00 p.m., when Lakshmamma 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 Lakshmamma.

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 Lakshmamma, 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.

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 Lakshamma 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 Lakshamma travelling as inmate of the car.

Reg. Occurrence of accident and death of Lakshamma:

10. To substantiate his claim that Lakshamma 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 Lakshamma 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 Lakshamma 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

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 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

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.