

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 30TH DAY OF OCTOBER 2019

PRESENT

THE HON'BLE MR.JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ

MISCELLANEOUS FIRST APPEAL No.200119/2014 (MV)

Between:

1. Venkatesh Dedy by L.Rs.
- 1(a) Suvarna W/o Late Venkatesh
Age: 46 Years, Occ: Household
- 1(b) Srinivas S/o Late Venkatesh
Age: 28 Years, Occ: Nil
- 1(c) Yashodha D/o Late Venkatesh
Age: 23 Years, Occ: Student

All are R/o Manvi
Dist. Raichur-584101

...Appellants

(By Sri Babu H. Metagudda, Advocate)

And:

1. Ramareddy S/o Gopalreddy
Age: 28 Years, Occ: Driver of Indica
Car No.AP-22/H-7659

R/o Vatam, Nagarkarnur
Dist. Mahaboobnagar-585 101

2. Akula Vishnu C/o Petaiah Akula
Age: Major, Occ: Owner of Indica
Car No.AP-22/H-7659
R/o No.2-68, Rayanpet
Kothakota Mandal
Kothakota, Mehaboobnagar-585101
3. The Manager
ICICI Lombard Gen. Insurance Co. Ltd.,
Interface Building No.11/401/402
4th Floor, New Link Road, Malad (W) Mumbai
Through its Branch Office Double Road
Bellary-585101
4. K. Gopal Reddy S/o K. Ramareddy
Age: 49 Years, occ: Owner of Indica
Car No.AP-22/H-7659
R/o 2-47/1, Vattam Mandalam
Bijanapalli, Tq. Nagarkarnul
Dist. Mehaboobnagar-522101

...Respondents

**(By Sri Manjunath M. Shetty, Advocate for
Sri C.S. Kalaburagi, Advocate for R3;
Notice to R1 & R2 is dispensed with
V/O. Dtd.17.02.2016;
Notice to R4 served but unrepresented)**

This MFA is filed under Section 173(1) of Motor Vehicle Act, 1988, praying to allow the appeal and modify the judgment and award dated 05.09.2013 passed in MVC No.177/2010 by the I Addl. District Judge & MACT at Raichur by enhancing the compensation from Rs.2,05,147/- with 6% interest to Rs.41,00,000/- with 12% interest.

This MFA is coming on for hearing this day,
MOHAMMAD NAWAZ J., delivered the following:

JUDGMENT

We have heard the learned counsel appearing for the appellants and the learned counsel for respondent No.3/ Insurance company.

2. The appellants are the legal representatives of the victim by name Sri Venkatesh, who met with a road traffic accident on 30.11.2009. Claim petition was initially filed by the victim, in MVC No.177/2010 on the file of the Court of I Addl. District Judge and MACT, Raichur seeking compensation for the injuries sustained by him in the aforesaid accident. During the course of the proceedings, he died on 13.09.2011. The present appellants being his wife and two children came on record and filed an amended petition seeking compensation for his death contending that Sri Venkatesh died on account of the injuries sustained in the above accident. The claim petition was repudiated by the respondent – Insurance company wherein it is contended that there was no nexus

between the injuries sustained and the death of the injured.

3. Before the Tribunal, the claimants examined three witnesses as P.Ws.1 to 3 and got marked Exs.P.1 to 121. The respondent-Insurance company got examined one of its official as R.W.1 and got marked Ex.R.1, copy of the insurance policy.

4. The Tribunal after considering the evidence and material on record, awarded a total compensation of Rs.2,05,147/- with interest at the rate of 6% per annum for the injuries sustained by the victim. The Tribunal held that the claimants are not entitled for compensation for the death of the injured. To come to the said conclusion, the tribunal placed reliance on the post-mortem report and the evidence of doctor, examined as P.W.3, wherein in the cross-examination he has stated that the injured died due to cardiac arrest and not because of the injuries sustained by him.

5. The learned counsel appearing for the appellants vehemently contended that immediately after the accident, the injured was shifted to Government Hospital, Raichur and after first aid and on the advise of the doctors, he was shifted to Navodaya Hospital, Raichur, then again he was referred to Shivam Hospital, Raichur and again on the advise of the doctors he was shifted to Apollo Hospital, Hyderabad then to B.G.S. Global Hospital, Bangalore. He submits that inspite of prolonged treatment, the injured did not survive and he succumbed to the injuries sustained by him, on 13.09.2011. The learned counsel placed reliance on the wound certificate which is marked as Ex.P.6 as well as post mortem report marked as Ex.P.7, to contend that the victim had sustained severe injuries, which ultimately resulted in his death. He submits that the Tribunal while answering issue No.2 has opined that there was nexus between the injury and the death. He submits that the appellants being the legal heirs of the deceased are entitled for just

compensation for the death of Sri Venkatesh. He has further contended that according to medical bills which are marked as per Exs.P14 to 118, an amount of Rs.3,30,294.81 was spent towards medical treatment, however, only a sum of Rs.1,65,147/- has been awarded by the Tribunal which is unjust. Hence, he sought to allow the appeal.

6. Per contra, the learned counsel for the insurance company contended that the victim has died after nearly two years and according to the post mortem report cause of death is acute myocardial infarction and therefore there is no nexus between the injuries sustained and the death. He contended that the tribunal having examined the entire evidence on record has rightly come to the conclusion that the claimants are not entitled for compensation for the death of the injured. Accordingly, he has sought to dismiss the appeal.

7. The accident in question and the original claimant by name Venkatesh sustaining injuries in the said accident is not in dispute. It is also not in dispute that the 3rd respondent herein is the insurer of the offending vehicle which was involved in the accident.

8. It is relevant to see that this Court vide order dated 01.04.2019 while raising a doubt as to whether the death of the deceased on 13.09.2011 is with reference to injuries sustained in the accident which took place on 30.11.2009 or not, was pleased to direct the Superintendent, District Government Hospital, Kalaburagi to constitute a Medical Board with specialists to examine the medical records of the case and to form an opinion as to whether death was due to the accident or not and then to forward medical opinion in a sealed cover to this Court. This Court also permitted the legal heirs of the appellant as well as the respondents to produce all the relevant medical records to the Medical Board to be constituted.

Pursuant to that, the Medical Board thus constituted has forwarded its opinion/certificate dated 15.05.2019. We have perused the said certificate issued by the Medical Board wherein it is opined by the member of the Medical Board that the cause of death mentioned in the post mortem report is not related to the accident.

9. The opinion furnished in the certificate issued by the Medical Board is as under;

“With reference to the above, The Medical Board Member’s of this hospital have examined medical records provided, Pertaining to case MFANo:200119/2014 and it is noted that the person Venkatesh S/o Hanumant met with an accident on 01-12-2009 and bed ridden for approximately one years nine months. He was taking treatment for minor complaints in the year by Govt. Hospital. He died on 13-09-2011. As per post-mortem report the cause of death is mentioned as Acute Myocardial Infarction.

We the members of the Medical Board are of the opinion that cause of death mentioned in the post-mortem report is not related to accident.”

10. Though it is stated in the certificate that the members of the Medical Board have examined the Medical records provided, however, nothing is stated as to which are the medical records they have examined. It is mentioned that the injured was taking treatment for minor complaints in the nearby Govt. Hospital; which goes to show that except the Govt. Hospital records and the post-mortem report, no other medical records have been examined to come to the conclusion that the cause of death mentioned in the post-mortem report is not related to the accident. The reasons assigned to come to the said conclusion is cryptic and therefore we reject the opinion formed therein.

11. The material on record goes to show that the injured took treatment in various hospitals. As per post mortem report which is marked as Ex.P7, the death is due to Acute Myocardial Infarction may be due to long bed ridden history and previous road traffic accident and brain

injury. Perusal of the evidence of PW.3 also goes to show that he has stated that the death of Venkatesh is due to long bed ridden and brain injury caused in road traffic accident. However, in the cross examination conducted by respondent No.3, P.W.3 has stated that the petitioner died due to cardiac arrest and not because of injury sustained by him and petitioner died only due to cardiac arrest. The same is contrary to his evidence given on oath during chief-examination. We find that P.W.3 has not been effectively cross-examined by the claimants with reference to the post-mortem report issued by him.

12. The injured was aged about 51 years at the time of accident. According to the appellants he was not suffering from any ailments at the time of accident. It is the contention of the learned counsel for the appellants that after the accident he was bed ridden throughout and he died only on account of the injuries sustained by him and there is nexus between the injuries and the death.

13. On a meticulous examination of the entire material on record, we are of the view that the appellants may be given an opportunity to establish that the death was on account of the injuries sustained by the victim Venkatesh in the road traffic accident. We also find that PW.3 has not been effectively cross examined by the claimants with reference to the post mortem report issued by him. Hence, we pass the following:

ORDER

The appeal is allowed. The judgment and award dated 05.09.2013 passed in MVC No.177/2010 by the I-Addl. District Judge & MACT at Raichur, is hereby set aside.

The matter is remitted back to the Tribunal with a direction to permit both the parties to lead additional evidence if necessary, and to re-examine and cross-examine the witnesses if they are so advised and thereafter to pass order in accordance with law.

All the contentions of the parties are left open.

**SD/-
JUDGE**

**SD/-
JUDGE**

BL/sdu