

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29th DAY OF MAY, 2012

BEFORE

THE HON'BLE MR. JUSTICE A.N.VENUGOPALA GOWDA

M.F.A.No.9043 OF 2010 (MV)

BETWEEN:

The Manager,
The Taluk Agricultural Produce
Co-operative Marketing Society Ltd.,
RMC Yard, Tiptur,
Tumkur District - 572 201.

...APPELLANT

(By Sri A.V. Gangadharappa, Adv.)

AND:

1. Nijalingappa S/o. Siddaramaiah,
Aged about 57 years.
2. Smt. Sarojamma J.D.
W/o. Nijalingappa,
Aged about 54 years.

Both are residing at
C/o. N.C. Boothegowda, No.1577,
1st Main road, Vinayakanagara,
Tumkur - 572 101.

3. United India Insurance Co. Ltd.,
Represented by its Manager,
B.H. Road, Tiptur,

Tumkur District – 572 201.

4. C. Basavaraju S/o. Chikkanna,
Aged about 40 years,
Resident of Melapura,
Tiptur Taluk,
Tumkur District – 572 201.

...RESPONDENTS

(By Sri K. Venkate Gowda, Adv. for R1 & R2;
Sri M. Arun Ponnappa, Adv. for R3;
Notice to R4 is dispensed with)

This MFA is filed under S.173(1) of MV Act, against the Judgment and Award dated 09.06.2010 passed in MVC No.489/1999 on the file of Additional Civil Judge (Sr.Dn.) & CJM, Tumkur, awarding a compensation of Rs.2,40,000/- with interest at 6% p.a. from the date of petition till realisation.

This appeal coming on for hearing this day, the Court delivered the following:

JUDGMENT

This appeal is directed against a Judgment and Award dated 09.06.2010 passed by the Additional Civil Judge (Sr. Dn.) and CJM, Tumkur whereby and whereunder, a claim petition preferred under S.166 of MV Act, 1988 by respondents 1 and 2 herein against the appellant and respondents 3 and 4 was allowed in part, entitling the claimants to compensation of ₹2,40,000/-

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along with interest at 6% p.a. from the date of petition till realisation and the appellant was directed to deposit the said sum within three months and in case of default, the amount to carry interest at 8% p.a.

2. One Guruprasad, aged about 12 years, S/o respondents 1 and 2, having died, alleging that the death was on account of a fatal accident caused by the 4th respondent on 15.04.1999 near Sidlahalli Gate while driving a lorry bearing registration No. CNT 7589 belonging to the appellant, a claim petition under S.166 of MV Act was instituted. The claim petition was allowed in part and Award dated 13.07.2006 was passed, directing the payment of ₹2,55,000/- with interest. An appeal filed thereagainst by the appellant herein in MFA No.11302/2006 was allowed on 23.10.2009. The impugned award was set aside and the matter was remitted to MACT for fresh consideration.

3. The matter having been taken up for consideration by the MACT, the 3rd respondent – driver of



lorry was impleaded. The claim petition was contested. Involvement of the vehicle and the resultant occurrence of the accident was denied. Issues were framed. For the claimants, PWs 1 to 3 were examined through whom Exs.P1 to P6 were marked. For the respondents in the claim petition, RWs 1 to 5 were examined, through whom Exs.R1 to R5 were marked. The Tribunal having heard the learned counsel for the parties and having perused the record has held that the claimants have proved that they are the legal representatives of deceased Guruprasad but have failed to prove that he was working as a cleaner of the lorry bearing registration No. CNT 7589 of M/s.T.A.P.C.M.S. Ltd., Tiptur. However it has held, that on 15.04.1999, at 10.30 a.m. Guruprasad met with an accident due to wrongful use of lorry No.CNT 7589 on B.H. Road near Sidlahalli Gate and succumbed due to the fatal injuries sustained. It quantified the compensation payable at ₹2,40,000/- and has held that the 2nd respondent in the claim i.e., the appellant herein as liable to deposit the determined compensation amount with interest.

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4. Sri A.V. Gangadharappa, learned Advocate appearing for the appellant, firstly contended that, the Tribunal has failed to notice that the claim petition is vague and that there is variation between pleadings and proof. Secondly, there being inconsistency in the evidence of PWs 1 to 3, the Tribunal has erred in accepting the evidence of PW-3, whose evidence was totally disbelieved in the criminal case, as is evident from Ex.R3. Thirdly, no credible evidence with regard to the involvement of the vehicle, occurrence of the accident and resultant death of Guruprasad having been placed on record, the Tribunal, out of surmises and conjectures has passed the Award illegally fastening the liability on the appellant. Fourthly, the claim petition being false and the same having not been substantiated, the award passed is wholly erroneous. Learned counsel submitted that PW-1 is not an eye-witness and even PWs 2 and 3 cannot be eye-witnesses and since they being relatives of PW-1, their evidence ought to have been scrutinised with care, which is not the case herein. He submitted that the Tribunal has failed to



consider Ex.R3 an undisputed record, in which case also N.D. Mariyappa had deposed and whose evidence was not accepted. Learned counsel submitted that there is omission to notice and appreciate the relevant evidence, apart from the misreading of oral and documentary evidence placed on record. Learned counsel further contended that the onus of proof was wrongly cast by the Tribunal on the appellant and the findings recorded on issue No.3 is perverse and illegal.

5. Sri K. Venkate Gowda, learned Advocate for respondents 1 and 2 / claimants, however, supported the Judgment of the MACT.

6. Sri M. Arun Ponnappa, learned Advocate appearing for the Insurance Company submitted that the case of the claimants being inconsistent, the accident has not been proved in accordance with law and hence, the impugned Judgment and Award is unsustainable.

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7. Keeping in view the rival contentions and the record of the case, the point for consideration is, whether the impugned Judgment and Award is sustainable?

8. Tribunal on account of non production of the trip-sheet of the vehicle has drawn adverse inference against the owner of the vehicle – appellant. Appellant filed Misc.Cvl.No.7146/2011 seeking permission to produce additional evidence – log book of the vehicle in question. Said application was allowed on 28.05.2012 and the log book of the vehicle was taken on record.

9. Sri K. Venkate Gowda, learned Advocate, pointed out that the log book does not show the vehicle having been plied on road on 15.04.1999, which is contrary to the evidence of RWs 3, 4 and 5, who in categorical terms have deposed that the vehicle did ply on 15.04.1999 and was not at the accident spot at the relevant point of time.

10. While dealing with a claim petition filed under S.166 of MV Act, 1988, it is trite that, MACT *stricto-sensu* is not bound by the pleadings of the parties. Its functioning is to determine the amount of just compensation, in the event an accident has taken place on account of the rash and negligent driving of a motor-vehicle by its driver. To grant relief in a claim petition, claimants are required to prove the involvement of the vehicle and the resultant occurrence of the accident on account of the rash and negligent driving of the vehicle by its driver. In this background, the material issue which arises for consideration is, whether the vehicle in question was involved in the accident or not?

11. MACT for the purpose of determining the said issue was required to take into consideration the oral and documentary evidence brought on its record by the parties. Indisputedly, PW-1 is not an eye-witness. From the evidence of PW-2, it can be seen that he was not present at the accident spot and cannot be termed as an

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eye-witness. PW-3 though claimed to be an eye-witness, his evidence ought to have been scrutinised, keeping in view the Ex.R3. The same has not been done. The Tribunal has also not appreciated the evidence of RW-4, the driver of the vehicle in question as on 15.04.1999. Since it is apparent, that on account of non production of trip-sheet of the vehicle in question, adverse inference was drawn against the appellant, in view of the production of log book of the vehicle, in this appeal, along with Misc. Cvl.7146/2011, in my opinion, an opportunity is required to be provided to the appellant and respondents 1 and 2 to lead further evidence in the matter. The evidence on record is insufficient to decide the case.

In the circumstances, appeal is allowed, the impugned Judgment and Award are set aside and the matter is remitted to the Tribunal to decide the case keeping in view the observations made supra and in accordance with law.

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Since the matter is pending for considerable length of time and the matter pertains to claim arising out of an alleged fatal accident, the Tribunal is directed to decide the case within three months from the date of the first appearance of the parties.

The parties are directed to appear before the MACT on 11.06.2012 and receive further orders.

The Tribunal shall provide reasonable opportunity to both parties and decide the matter within the stipulated period.

Contentions of both parties are kept open for consideration.

There shall be no order as to costs.

Return the LCR forthwith to the Tribunal.

Refund the amount in deposit to the appellant for the time being.

**Sd/-
JUDGE**

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