

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF SEPTEMBER, 2007

PRESENT

THE HON'BLE MR. JUSTICE K.L. MANJUNATH

AND

THE HON'BLE MR. JUSTICE JAWAD RAHIM

MISC. FIRST APPEAL No.6002/2002 (MV)

BETWEEN:

1. Jayamma w/o Chikkaswamaiah,
40 years,
2. Padmavathi d/o late
Chikkaswamaiah, 20 years,
3. Vijayakumar s/o late
Chikkaswamaiah, 18 years,
4. Savitha d/o late Chikka-
Swamaiah, minor, R/by
Natural guardian mother
1st appellant.

All are R/o Habbathannahalli,
Kasaba Hobli, Tumkur Dist.

.. APPELLANTS

(By Sri.N. Srinivas & Sri. M.R. Shashidhar, Advs.,)

AND:

1. K.H.Bheemaraju s/o Hanumaiah,
Principal, Sri.Vishwabharathi
P.U.College, Mallasandra,
Tumkur Tq.



2. The New India Assurance Co. Ltd.,
R/by its Branch Officer,
Tumkur Shopping Complex,
B.H.Road, Tumkur.

.. RESPONDENTS

(Advocate Sri.Ravishankar for R-1)
(Advocate Sri.A.N.Krishna Swamy for R-2)

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This M.F.A. is filed under Sec.173(1) of MV Act against the judgment and award dated 4.6.2002 passed in MVC 374/1997 on the file of the Prl. Civil Judge (Sr.Dn.) & CJM, Tumkur, dismissing the claim petition for compensation.

This Appeal is coming on for hearing this day, JAWAD RAHIM J. delivered the following:

J U D G M E N T

Claimants are in appeal against the judgment and award in MVC 374/1997 dated 4.6.2002.

2. We have heard both sides.

3. Appellants lodged a claim invoking Sec.166 of the MV Act seeking grant of compensation contending that Chikkaswamaiah, husband of the 1st claimant and father of the other claimants suffered injuries on 22.1.1997 while riding as a pillion on a motor cycle bearing No.KA 06 J-218 owned and driven by




one Hanumantharayappa, practicing advocate. The injuries were so severe that local hospital treatment was not sufficient, he was therefore shifted to St. Jon's Medical College Hospital, Bangalore on 4.2.1997, then he was taken to NIMHANS where doctors pronounced him dead and inquest was conducted. Report in this regard was sent to the local police station who registered a case of unnatural death. During inquest statement was given by the close relative of the deceased. Such a report was registered by Koramangala police, Bagalore and treated as FIR. Later, report was transferred to Kyatasandra police, Tumkur District. It was re-registered for investigation and during such re-investigation claimants appeared to have made statement vide Ex.P-1 that he died while travelling on a motor cycle. Investigating Officer on the basis of such report summoned Hanumantharayappa and prepared spot mahazar. That is only incriminating document against the motor cycle rider. Charge-sheet filed against motor



cycle rider was seriously disputed. During enquiry before the tribunal, same evidence was lead. Tribunal noticed that inquest which was relied upon by the claimants disclose occurrence in a different manner compared to the allegations made in the charge-sheet against Hanumantharayappa, rider of the motor cycle. Since there were divergent versions about the occurrence of the accident and it generated sufficient controversy which the tribunal has rightly considered in the light of the documents.

4. The finding on fact arrived at by the tribunal is that there is no proof that Chikkaswamaiah suffered injuries while riding as a pillion rider on motor cycle of Hanumantharayappa at Habbathanahalli, Tumkur District. In the resultant position, tribunal felt that initiation of claim under Sec.166 of MV Act being on fault liability and as that fault was not established, claimants were not entitled to compensation. However, during proceedings, under no fault



liability they were compensated more than Rs.50,000/- by way of interim compensation. Tribunal affirmed the said action and dismissed the petition. Against which this appeal has been filed.

5. Having considered the arguments of both the sides and on examination of records, we are satisfied that there is no specific proof regarding the allegation that deceased died while riding as a pillion rider of motor cycle driven by Hanumantharayappa on 22.1.1997. In the absence of proof regarding such incident, it is difficult to accept the case of the claimants that accident occurred within the jurisdiction of Habbathanahalli. Besides, there is no explanation of the claimants about the different version given by a close relative. Consequent to such discrepancy, burden cast upon the claimants to prove that Chikkaswamaiah suffered injuries in motor vehicle accident as alleged was not fully discharged and the tribunal had no choice but to



dismiss the petition. We are unable to take a different view from what the tribunal has taken.

6. In the result, the appeal fails. Order impugned needs no interference and the same requires to be confirmed.

Sd/-
JUDGE

Sd/-
JUDGE

R/260907