



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2023

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

MISCELLANEOUS FIRST APPEAL NO. 3973/2015 (MV-I)

BETWEEN:

SRI Y.S SAMPANGI
S/O MANI
AGED ABOUT 20 YEARS
RESIDENT OF NO. 79
VALMIKINAGAR
MYSORE ROAD
BANGALORE-26

...APPELLANT

(BY SRI. H. B SOMAPUR., ADVOCATE)

AND:

1. THE UNITED INDIA INSURANCE CO. LTD.
BY ITS MANAGER
DIVISIONAL OFFICE NO.7
NO.25/1, 2ND FLOOR
VINOD COMPLEX
J C ROAD
BANGALORE-2

2. SRI SYED INYATH
S/O SYED HYDER
MAJOR
NO.11, 5TH CROSS
VALMIKINAGAR
MYSORE ROAD
BANGALORE-26

...RESPONDENTS

(BY SRI. K.NAGARAJAIAH.,ADVOCATE FOR R1;
NOTICE TO R2 IS DISPENSED WITH V/O DATED 13.07.2021)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 173(1) OF MV ACT PRAYING TO SET ASIDE THE JUDGMENT
AND AWARD DATED 10.02.2015 PASSED IN MVC NO.6613/2012 ON



THE FILE OF THE XVI-ADDITIONAL JUDGE, COURT OF SMALL CAUSES, MACT, BENGALURU.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR HEARING, THIS DAY, **K.S.MUDAGAL J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Challenging the dismissal of his claim petition, claimant in MVC No.6613/2012 on the file of MACT and XVI Additional Judge, Court of Small Causes, Bengaluru has preferred the above appeal.

2. On 27.04.2012 at 12 midnight the appellant suffered certain injury in City Market Circle, Bengaluru. For treating the said injury he was admitted in Victoria hospital, Bengaluru. During his stay in the hospital, on 30.04.2012 the PSI of City Market Traffic Police Station, Bengaluru purportedly visited the hospital and recorded the statement of the appellant. In the said complaint, the appellant claims to have alleged that at the time of the accident he was sleeping on the loaded lorry and accidentally he fell from the lorry and suffered the injuries. He has also given the number of the said lorry as KA.20/7243.

3. Based on the said complaint, City Market Traffic Police registered FIR in Crime 21/2012 as per Ex.P1 against the driver of the lorry No.KA.20/7243. On investigation they filed



charge sheet as per Ex.P2 against the driver of the lorry for the offences punishable under Section 279, 338 IPC. In the charge sheet it is alleged that the driver of the lorry rashly and negligently took the said lorry in reverse direction and right hind wheel ran over his right leg. Consequently, the appellant who was sleeping on the lorry fell down and the wheels of the lorry ran over him causing him grievous injuries. At the relevant time, respondent Nos.1 and 2 were the insurer and registered owner of lorry bearing registration No.KA.20/7243.

4. The appellant filed MVC No.6613/2012 claiming compensation of Rs.20,00,000/- from the respondents alleging that the accident and consequential injuries to the appellant were the outcome of actionable negligence on the part of the driver of the lorry. Due to the accidental injury he has suffered the permanent physical disability.

5. Respondents contested the petition denying occurrence of accident as alleged by the appellant and involvement of lorry bearing registration No.KA.20/7243 in the accident. They further denied the injuries suffered by the appellant, his age, occupation, income and their liability to pay the compensation. They claimed that the appellant has planted lorry No.KA.20/7243 to make unlawful gain.



6. The Tribunal on recording the evidence and hearing the parties by the impugned award held that the claimant has failed to prove the involvement of lorry No.KA.20/7243. The Tribunal further held that the claimant's own documents and evidence of PW.2 probabalize the defence of the respondents that the appellant himself under the influence of some narcotic substance fell from a lorry and suffered the injuries and to make wrongful gain, the respondents' lorry is planted in the case.

7. Despite the said finding the Tribunal assessed the damages suffered by the appellant at Rs.2,52,000/- on the following heads:

Sl. No.	Particulars	Compensation awarded in Rs.
1.	Loss of Future income	1,30,000/-
2.	Pain and Sufferings	25,000/-
3.	Loss of amenities	25,000/-
4.	Medical expenses	18,000/-
5.	Future medical expenses	10,000/-
6.	Nourishment, conveyance and attendant charges	20,000/-
7.	Loss of income during laid up period	24,000/-
	Total	2,52,000/-



However, the Tribunal by the impugned award dismissed the claim petition on the ground that the involvement of the lorry No.KA.20/7243 was not established.

8. Sri H.B. Somapur, learned Counsel for the appellant submits that on investigation the police have filed charge sheet Ex.P2 against the driver of the lorry and that was not challenged by the respondents. Therefore, it is not open to them to contend that the lorry No.KA.20/7243 was not involved in the accident. So far as the alleged medical records relied on by the Tribunal, he submits that the appellant was illiterate and ignorant person and whatever information is entered in the medical records was given by the person who admitted him into the hospital. Therefore, that cannot be relied. So far as the affidavit allegedly filed by the mother of the appellant, it is submitted that the appellant had no chance to meet those documents as they were produced after the evidence of the appellant. He further submits that the compensation assessed on all the heads is on the lower side.

9. In support of his submission, he relies upon the following judgments:



- (i) **Bajaj Allianz general Insurance Co.Ltd., V/s Smt. Lakshmamma and others¹.**
- (ii) **National Insurance Co.Ltd. Vs Mr.Ajju and another².**
- (iii) **Smt. Rukmani Sundarajan V/s Smt. Usha Srihari and another³.**
- (iv) **Sri Suresh C. S/o Chotegowda V/s M/s Bajaj Allianz General Insurance Co.Ltd.,⁴.**
- (v) **Kamala Mangalal Vayani and Ors V/s M/s United India Insurance Co.Ltd. and others⁵**

10. Per contra Sri K Nagarajaiah, learned Counsel for respondent No.1-insurer submits that, the claimant's own documents Ex.P10 and Ex.P6 show that the appellant having consumed some substance, under the influence of the same, fell from the lorry and suffered the injuries and that was not a motor accident as alleged. He further submits that the evidence of PW.1 was contradictory to the documentary evidence produced on his behalf and the evidence of his own witness PW.2. He further submits that the charge sheet is not the conclusive proof of occurrence of accident the way it is alleged. Thus he justifies the impugned award.

¹ MFA No.7493/2007

² MFA No.1867/2003

³ MFA No.5335/2004

⁴ MFA No.5518/2013

⁵ 2010 AIR SCW 6604



11. Having regard to the submissions of both side and on examining the records, the point that arises for determination of this Court is “whether the impugned order of dismissal of the claim petition of the appellant suffers any illegality or perversity?”.

Analysis:

12. When the claimant came before the Court alleging that the accident occurred due to actionable negligence of the driver of the lorry No.KA.20/7243, the initial burden of proving the same was on the claimant. It is no doubt true that the charge sheet becomes *prima-facie* evidence of occurrence of the accident as alleged, provided the evidence of the claimant does not suffer inherent inconsistencies and contradictions creating doubt about the allegations made in the charge sheet.

13. The Coordinate Benches of this Court in ***Mahadevi W/o. Shrishail Kore & Others vs. Shivaputra & Another***⁶ and ***Veerappa v. Siddappa***⁷, taking judicial notice of unscrupulous persons indulging in rampant malpractices and fraud in the motor accident cases, held that the charge sheet is not the conclusive proof of the occurrence of accident as alleged by the

⁶ M.F.A.No.201689/2016 DD 20.11.2020

⁷ ILR 2009 KAR 3562



claimant. It was further held that the Court has to examine the charge sheet with reference to the other evidence on record and the insurer cannot be compelled to chase the charge sheet to challenge the same. The evidence on record has to be examined in the light of the above judgments.

14. The accident took place on 27.04.2012 at 12 midnight. The statement of the claimant was purportedly recorded on 30.04.2012 i.e., after three days of the accident. In that statement he allegedly implicated the lorry No.KA.20/7243, but Ex.P10 the case sheet produced by the claimant's own witness PW.2 shows that at the time of admission he had given the history of accidental fall from the top of the lorry. In the case sheet history given before the doctor at the time of admission is as follows:

“ Patient is on ganja since a week along with his friends, today he consumed ganja again at 11.30 p.m. and was having fun on a top of lorry and was pushed down from one of his friends, he landed on his right foot and sustained injury to right leg.”

15. PW.2 the claimant's own witness in his cross examination unequivocally admitted that on 24.08.2012 the



claimant was admitted into the hospital with history of suffering injuries due to fall from the lorry. The number of the said lorry was not mentioned at that time. He also admits that the claimant consuming ganja since one week prior to the accident and falling from the lorry when one of his friends pushed him from the lorry was the history given at the initial stage. He also admits that in the case sheet dated 01.05.2012 it is recorded that the claimant was found consuming some substance mixing the same with the liquor. He also admits that the said history pertains to the date and the time of accident.

16. PW.2 also admits that subsequently on 11.05.2012 Manjamma the mother of the claimant filed an affidavit saying that her son suffered the injuries in the accident involving lorry No.KA.04/A-3966 and to correct the records accordingly. The said copies of affidavits are found in Ex.P10 the case sheet which is the claimant's own document. Therefore, there is no merit in the contention that the claimant had no opportunity to explain those documents. The claimant did not re-examine PW.2 to clarify the admission given by him in his cross-examination. Such evidence of PW.2 was fatal to the claimant's case and demolishes the charge sheet Ex.P2.



17. Claimant/PW.1 contended that soon after he fell from the lorry he become unconsciousness and he regained his consciousness in the hospital. If that is the case, his evidence that the lorry was moving in reverse direction and he came under the wheel of the lorry cannot be accepted as he was not the eyewitness to the same. PW.3 who filed affidavit as an eyewitness did not tender himself for cross-examination. Therefore, the Tribunal rightly discarded his evidence. The aforesaid evidence clearly shows that there was an attempt on the part of the claimant to plant lorry No.KA.20/7243. That probabilizes the defence of the respondents that the claimant in collusion with the police and others has got up Ex.P1 the complaint and Ex.P2 the charge sheet to make wrongful gain.

18. When the claimant's own witnesses gave clear admission about the history of fall from the lorry under the influence of narcotic substance and his own document Ex.P10 incriminated the claimant, such evidence binds him. He cannot ask the Court to rely on one part of evidence of PW.2 and Ex.P10 which favours him and discard the other part which incriminates him. He cannot aprobate and reprobate together. This view of ours is supported by the judgment of Hon'ble



Supreme Court in ***Oriental Insurance Company Ltd., V/s***
Premlata Shukla and Others⁸,

19. The Tribunal on thorough application of mind and sound appreciation of the evidence, rightly held that the claimant failed to prove that he suffered the accidental injuries due to actionable negligence on the part of the driver of the lorry No.KA.20/7243 and dismissed the claim petition. The judgments relied upon by the learned Counsel for the appellant are not applicable to the facts of the present case. The appeal deserves no merit. Hence the following order:

ORDER

The appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

PKN
List No.: 1 Sl No.: 34

⁸ (2007)13 SCC476