



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA
MFA NO. 7795 OF 2013 (MV-I)

BETWEEN:

THE BRANCH MANAGER
NATIONAL INSURANCE CO. LTD.
1ST FLOOR, S.S.COMPLEX
B.H. ROAD, SHIMOGA
NOW REP. BY ITS REGIONAL MANAGER
NATIONAL INSURANCE CO. LTD.
REGIONAL OFFICE, SUBHARAM
COMPLEX, 144, MG ROAD
BANGALORE - 560 001

... APPELLANT

(BY SRI.A.N.KRISHNA SWAMY, ADV.)

AND:

1. SMT. SAROJAMMA
W/O MARAPPA
NOW AGED ABOUT 36 YEARS
UTENSILS MERCHANT
SIDDESHWARA COLONY
ANANDAPURAM, SAGAR TALUK - 577 401

2. RAJAPPA K.S.
S/O BANGARAPPA
NOW AGED ABOUT 31 YEARS
ADVOCATE, R/O KALLUKOPPA
BARUR VILLAGE, SAGAR TALUK - 577 401

... RESPONDENTS

(BY SRI.HALESHA R.G., ADV. FOR R1;
SRI.SURESH M. ADV. FOR R2)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 18.06.2013
PASSED IN MVC NO.147/2011 ON THE FILE OF THE
ADDITIONAL SENIOR CIVIL JUDGE, JMFC & MEMBER,
ADDITIONAL MACT-9, SAGAR, AWARDING COMPENSATION OF

Digitally signed by
HARIKRISHNA V

Location: HIGH COURT OF
KARNATAKA



RS.2,41,760/- WITH INTEREST AT 9% P.A. FROM THE DATE OF PETITION TILL REALIZATION.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 18.03.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

In this appeal, the Insurance Company has challenged the judgment and award dated 18.06.2013 in M.V.C.No.147/2011 passed by the Addl. Senior Civil Judge, J.M.F.C. and Addl. M.A.C.T.-10, Sagar ('the Tribunal' for short).

2. Appellant was respondent No.2, respondents No.2 and 3 are the petitioner and respondent No.1 before the Tribunal. For the sake of convenience, the rank of the parties shall be referred to as per their status before the Tribunal.

3. Brief facts of the case are, on 21.09.2010 at about 04:30 p.m., while the petitioner was walking from Anandapura Fish Market to Siddeshwara Colony of Sagar Taluk, a Hero Honda motor cycle bearing Reg.No.KA-15/L-7234 rided by respondent No.1 hit



against the petitioner, due to which she has suffered injuries over head, left foot, fracture of knee, back, hands and all over the body. She was treated at Government Hospital, Anandapura and K.M.C. Hospital, Manipal under hospitalization. After taking treatment, she approached the Tribunal for grant of compensation of Rs.6,40,000/-. Claim was opposed by the Insurance Company. The Tribunal after taking the evidence and on hearing both the parties, allowed the claim petition and awarded compensation of Rs.2,41,760/- with 9% interest p.a. directing the Insurance Company to indemnify the owner of the motor cycle. Aggrieved by the same, the Insurance Company has filed this appeal on various grounds.

4. Heard the arguments of Sri. A.N. Krishnaswamy, learned counsel for the Insurance Company, Sri. Halesha. R.G, learned



counsel for the petitioner and Sri. Suresh. M, learned counsel for the owner-cum-rider of the motor cycle.

5. It is the contention of the learned counsel for the Insurance Company that the rider-cum-owner of the motor cycle is a practicing Advocate at Sagar; the intimation given to the Government Hospital, Anandapura at the first instance clearly indicates that the petitioner has suffered injuries while triple riding the motor cycle and due to self-fall; the said motor cycle was not made as a party to the claim. 12 days after the accident, the motor cycle bearing Reg.No.KA-15/L-7234 has been implicated; the delay in filing the F.I.R. is not explained and it is brought out from PW-3 the brother of the petitioner that immediately after the accident, the petitioner was taken to the Government Hospital, history of the accident has been informed to the Doctor. Therefore, fraud and justice cannot dwell together; the Tribunal did not consider the fraud played by the petitioner



for the sake of compensation; when the motor cycle in question was not at all involved in the accident, the question of its owner paying compensation does not arise and the Insurance Company cannot indemnify a false claim.

6. It is the contention of learned counsel for the owner-cum-rider of the motor cycle that an accident, as claimed by the petitioner, has taken place. Being a practicing Advocate, to facilitate the third-person to get the compensation, no Advocate will come and face the criminal trial knowing the consequence if in the event of conviction; the petitioner is an elderly lady and the delay in filing the F.I.R. has been explained as soon after the accident, the petitioner fell unconscious and she was under hospitalization at K.M.C. Hospital, Manipal, this aspect has been challenged by the Insurance Company and therefore, the Tribunal is right in accepting the explanation and he supported the impugned judgment.



7. Per contra, learned counsel for the petitioner has contended that soon after the accident, the petitioner was taken to the Government Hospital Anandapura; as per the advice, the petitioner was taken to K.M.C. Hospital, Manipal; the petitioner was not aware who has furnished the information to the treating Doctor at Government Hospital and any entry made cannot be read against her. It is further contended that there is a clear explanation in the evidence the reasons for the delay in filing the F.I.R.; mere delay in filing the F.I.R. is not a fatal and no person will make such a false claim, that too filing the complaint against the practicing Advocate; if really the owner of the motor cycle was not involved in the accident, he ought to have challenged the criminal prosecution, but the material on record indicates that the owner of the motor cycle though being an Advocate, has faced the criminal trial; under such circumstances, the Tribunal has rightly accepted the evidence and awarded



compensation; in order to avoid the payment of compensation, new contention has been invented in the appeal and he sought for dismissal of the appeal.

8. I have given my anxious consideration to the arguments addressed on behalf of both parties and perused the records.

9. Now the point that arises for consideration is,

"Whether the accident in question was on account of a fraud?"

10. Admittedly, there is a 12 days' delay in filing the complaint as the accident was on 21.09.2010, the complaint was filed on 03.10.2010. Ex.P1 is the F.I.R. along with the statement of one H.C. Shankar, the brother of the petitioner. The averments made in the complaint points out that at 04:30 pm on 21.09.2010, while the petitioner was returning home after doing fish shopping in the fish



market of Anandapura, a Hero Honda motor cycle bearing Reg.No.KA-15/L-7234 came and hit against her, due to which she fell down and sustained the injuries over the head, hands and legs. She was taken to the Government Hospital, Anandapura and as per the advice of the Doctor, she was taken to K.M.C. Hospital, Manipal. Since nobody were available to attend her, he or she could not report the complaint to the Police. Upon filing the complaint, motor cycle in question has been seized and subjected to I.M.V. as per Ex.P4. There were damages noticed on the motor cycle when it was examined on 06.10.2010 at Sagar Rural police Station premises. Ex.P5 is the wound certificate where the history is mentioned as:

*"alleged history of road traffic accident
near Sagar"*

The statement of the petitioner was also recorded during the time of investigation. Respondent No.1



being the rider-cum-owner of the motor cycle has been charge sheeted before the Addl. Civil Judge and J.M.F.C., Sagar for the offence punishable under Sections 279 and 338 of I.P.C. and he has faced the trial for the said offences. The medical records clearly point out that the petitioner was admitted to K.M.C., Manipal on 21.09.2010 and discharged on 03.11.2010. The history furnished to the K.M.C. Hospital shows that the petitioner has sustained injury in a road traffic accident.

11. The main contention of the Insurance Company that when the petitioner was brought to the Government Hospital, Anandapura, the history is so furnished as self-fall. On perusal of Ex.P5, nothing is mentioned as such that the petitioner has suffered injuries due to self-fall while triple-riding. The Insurance Company relies upon Ex.R3 the M.L.C. register extract dated 21.09.2010 in respect of one



Sarojamma W/o Marappa and the history is furnished as:

*"H/o of Fall from the bike while Travelling
(Triple riding) on 21/09/2010.*

Self Fall.

*Fall from their own bike, patient refused
Medico legal case (MLC).*

NIL MLC.

*Sd/-
Manjula"*

When the Insurance Company relying on Ex.R3, it is required to prove the said document through proper evidence. The entry refers the name of Dr. Manjula who is the Medical Officer of Primary Health Centre, Anandapura. RW-1 M.N. Vinayak is the Officer of the Insurance Company and the contents of Ex.R3 required to be proved through Dr. Manjula. No efforts are made to secure her presence. Who gave the information and who brought the injured to the hospital are not forthcoming. Under such circumstances, it is unsafe to rely upon Ex.R3 which



was not even confronted to the petitioner during the course of her cross-examination. Mere production of such document through the Officer of the Insurance Company is not enough to prove its genuineness. Ex.R3 was not confronted either to the petitioner or the complainant who is examined as PW-3. Then, what value can be attached to the said document? In the absence of proof of Ex.R3, the argument canvassed on behalf of the Insurance Company is not persuasive in nature as during the course of cross-examination of RW-1, there is a specific denial as to the genuineness and contents of Ex.R3. Hence, the alleged fraud without any proof will not stand to its reason.

12. Since the Insurance Company is only banking on the theory of falsehood and not challenged the quantum of compensation, it is not proper to dwell into the aspects of correctness of the assessment of compensation made by the Tribunal.



Hence, the appeal is devoid of merits. In the result,
the following:

ORDER

- i) The appeal is ***dismissed***.
- ii) The insurer shall deposit the compensation within 8 weeks from the date of receipt of certified copy of the judgment.
- iii) Amount in deposit, if any, shall be transmitted to the Tribunal along with records forthwith.

**SD/-
JUDGE**

PA
CT:HS
List No.: 1 Sl No.: 1