IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

THE HON'BLE MR.JUSTICE K. NATARAJAN

MFA No.101029/2016 (MV)
C/w
MFA No.103862/2016 DATED: 23-08-2019

THE NEW INDIA ASSURANCE CO. LTD., VS. BABANNA H. @ BABU AND OTHERS

JUDGMENT

Though the appeals are listed for hearing on IA.No.1/2019 filed by the respondent-cleaner for withdrawal of the amount in deposit in MFA No.101029/2016. With the consent of the learned counsel for the parties, it is heard finally.

2. MFA No.101029/2016 is filed by the Insurer assailing the judgment and award passed by the MACT-II Ballari (for short 'the tribunal) in MVC No.760/2013, whereas MFA No.103862/2016 filed by the claimant for enhancement of compensation assailing the judgment and award passed by the same tribunal.

3. I have heard the arguments of the learned

counsel for both the parties.

4. For the convenience the ranks of the parties before the Tribunal is retained.

5. The claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act) claiming compensation of Rs.10,00,000/- from the respondents. Interalia, contending that on 20.06.2013, the respondent No.2 owner of the vehicle engaged the petitioner for loading and unloading the fertilizer in the tractor-trailer bearing Reg.No.KA-34/T-8796 & 8797 near Eranna Temple, Chanal Cross, Bylur Village, at that time, the respondent No.1 being the driver of the tractor & trailer drove the same in a high speed and in a rash and negligent manner and due to which the tractor over turned and the petitioner fell down and sustained grievous injuries. Thereafter, he immediately shifted to VIMS hospital, Ballari and he was treated as in-patient from 21.06.2013 to 12.07.2013. He has undergone surgery for the fracture of right ulna. Thereafter, he has taken further treatment in private hospital and spent huge amount towards the medical expenses. Due to the injuries sustained, he is suffering from disability and he is unable to attend the coolie

work. Prior to the incident, he was earning Rs.400/- per day as income and now he has lost earning capacity. Hence, prayed for awarding the compensation on various heads.

6. In pursuance to the notice, respondent Nos.1 to 3 appeared through their counsels and filed statement of objections by denying the age, occupation and income of the petitioner as false and further denied rash and negligent driving on the part of respondent No.1 and respondent No.3 contending that a false and frivolous complaint has been foisted against respondent No.1 in order to claim the compensation in collusion with respondent Nos.1 and 2. Further it is contended that tractor is used for commercial purpose and thereby violated the terms and conditions of the policy. The owner is required to take permission from the RTO authorities and the tractor is meant for only agricultural purposes with only one seating capacity. The claim of the petitioner does not come under the policy coverage and contended that respondent No.1 was not holding valid driving license and alternatively contended that the claim of the petitioner is excessive and exorbitant.

Hence, prayed for dismissal of the claim petition.

7. Based on the rival contentions, the tribunal framed the following issues;

> (1) Whether the petitioner proves that, he sustained injuries on 20.06.2013 at 7.30 p.m., near Eranna Temple, Chanal Cross of Bylur Village, when the tractor-trailer bearing Reg.No.KA-34/T-8796 and 8797 being driven by manner so as to endanger human life, turtled down on the road, while petitioner was traveling in the said tractor-trailer as a loader of fertilizer, fell down from said tractor-trailer.
>
> (2) Whether petitioner is entitled to compensation? If so, how much and from whom?
>
> (3) What order or award?

8. To substantiate the contention of the petitioner, the petitioner himself examined as PW.1 and also examined one Dr. Lakshminarayana as PW.2 and got marked 32 documents as Exs.P.1 to P.32. On behalf of respondent No.3, the Administrative Officer of the insurer examined as RW.1 and got marked 12 documents as Exs.R1 to R12.

9. After considering the evidence on record, the Tribunal answered the issue No.1 in the affirmative, issue No.2 partly affirmative, allowed the petition in part and awarded the compensation of Rs.1,26,330/- under various heads together with interest @ 6% by fastening the liability on the Insurance Company as under;

Pain and agony	Rs.20,000/-
Medical expenses including nursing, attendant and extra nourishment	Rs.30,430/-
Loss of income during the period of treatment	Rs.2,500/-
Loss of future earning capacity on account of permanent disability	Rs.71,400/-
Future medical expenses	Rs.5,000/-
Total	Rs.1,26,330/-

10. Assailing the judgment and award passed by the Tribunal, the insurer preferred MFA No.102029/2016 on the ground of fastening of liability and quantum of compensation, whereas the claimant filed MFA No.103862/2016 for enhancement of compensation.

11. The learned counsel for the insurer argued that the very case of the claimant was a false story which is created for the purpose of claiming compensation, even though there wasno accident occurred as alleged by the claimant and respondent Nos.1 and 2. Though the claimant admitted in the hospital and treated as in-patient but he has not whispered about theinjuries sustained by him in the road traffic accident. There is no complaint lodged before the police immediately after the accident and there is long delay of one month in lodging the complaint. The claimant even after discharged from the hospital had not lodged the complaint immediately. The complaint came to be lodged after 18 days from the date of his discharge from hospital and a false complaint has been filed by the claimant in collusion with respondent Nos.1 and 2 to claim the compensation. The Tribunal has not properly appreciated the evidence on record. There was admission made by PW.1/the claimant in his cross-examination that he has not intimated to the treating doctor about the injuries sustained by him was due to accident. Therefore, the claim petition requires to be dismissed. Alternatively, the learned counsel also argued that the quantum of compensation is also on the higher

side and there is breach of policy conditions, driver of the vehicle is not holding valid driving license and he had only LMV (non-transport) vehicle license but the vehicle in question was transport vehicle. Therefore, no liability shall be fixed on the Insurance Company. The fitness of the vehicle is also expired and thereby respondent No.2 violated the terms and conditions of the policy. Hence, prayed for allowing the appeal and also prays for reduction of the quantum of compensation.

12. Per contra, learned counsel appearing for the claimant has supported the findings of the Tribunal in respect of fastening the liability and contended that though there was delay in lodging the complaint but the delay was satisfactorily explained by the claimant. He was under the treatment in the hospital even after discharging from the hospital and he was continuously under treatment. It is the duty of the doctors to intimate the police by sending the medical report to the police but that was not done by the hospital. For the mistake committed by the doctors of the hospital, the claim of the petitioner cannot be rejected for the fault of others. Merely, there was delay in lodging the complaint that itself is not fatal to the petitioner. The driver and

owner themselves admitted the accident though denied negligence on their part. The wound certificate at Ex.P6, reveals that he has sustained injuries under Road traffic accident. The said documents speaks about the accident which is undisputed time. Prior to the lodging of the complaint, the vehicle was having fitness certificate which is invalid and even otherwise the fitness is not required as the vehicle was below 15 years of the age and hence prayed for dismissal of the appeal by the insurer. He further argued in respect of enhancement of compensation that though the claimant was earning Rs.400/- per day but the tribunal has considered only Rs.5,000/- per month which is meager. Even in the Lok Adalath, the notional income of Rs.7,000/- is considered for unskilled labour. The percentage of disability considered by the tribunal is also meager and there is no proper compensation awarded under the conventional heads and thereis no amount awarded in respect of laid up period. Hence, prayed for enhancement of compensation.

13. Upon hearing the learned counsel appearing for both the parties and on perusal of the records, the point that arises for my consideration;

(a) Whether the tribunal was not justified in fastening the liability on the

Insurance Company which call for interference?

(b) Whether the claimants are entitled for enhancement of compensation or requires reduction?

(c) What order?

14. The case of the claimant before the tribunal was that on 20.06.2013, he was engaged respondent No.2 for loading and unloading the fertilizer and after unloading the fertilizer in the land of one Veeranagouda at about 7.30 p.m., while he was returning in the tractor-trailer bearing registration No.KA-34/T-8796 and 8797 near Eranna Temple, Chanal Cross, Bylur Village, at that time, the respondent No.1 driven the tractor and trailer in a rash and negligent manner and he has lost the control, due to which the tractor and trailer turned turtle and petitioner fell down and sustained injuries. Immediately, he was taken to the VIMS hospital Ballari and was inpatient in the said hospital from 21.06.2013 to 12.07.2013. Therefore, he was unable to lodge the complaint and after discharging from the hospital he lodged

the complaint. In support of his contention, he himself examined as PW.1 and got marked the documents Ex.P1, copy of the FIR, Ex.P2, copy of complaint, Ex.P3, further statement, Ex.P4 final report filed by the police against the driver of the vehicle. Ex.P5, spot mahazar, Ex.P6 wound certificate, Ex.P7, IMV report, Ex.P8, disability certificate, Exs.P9 to P30 the medical bills and prescriptions, Ex.P31 discharge certificate and Ex.P32 X-rays.

15. PW.1, the claimant re-iterated the averments in his evidence filed by the affidavit. The police documents Ex.P1, goes to show that the complaint came to be filed by the injured claimant on 20.07.2013. Admittedly, the alleged accident took place on 20.06.2013 and there was delay of 30 days in filing the complaint, the same is seriously disputed by the insurer as it is false complaint. Ex.P2 is the complaint lodged by claimant and he has given the details of the vehicle and admitted to the hospital immediately after the accident. He wanted to take treatment at Bangalore but no one has taken care of his interest. Therefore, he was treated in the hospital at Ballari and in further statement at Ex.P3, he made

statement before the police. Thereafter, the police investigated the case and seized the vehicle in question and received IMV report as Ex.P7. The medical documents and receipts as per Ex.P6, wound certificate shows the claimant sustained three injuries and injury No.3 fracture injury is grievous in nature. Though the respondent-Insurer contended that there is no whisper and there is delay in lodging the complaint thereby they created a false story. But, Ex.P6, wound certificate shows the victim was brought to the hospital with the history of injuries in the road traffic accident on 20.06.2013 around 7.00 p.m., the examinationwas commenced at 10.30 p.m., on 20.06.2013. The claimant was brought to the hospital and examined by the doctor on the same day i.e. 20.06.2013 and in order to know the nature of injuries, the X-ray was also taken on 21.06.2013 and it was found there was fracture of ulna, the same is referred in the wound certificate. The discharge certificate Ex.P31, reveals he was admitted to the hospital on 21.06.2013 and discharged on 02.07.2013.

Ex.P6, in corroboration with Ex.P31 which reveals that on the same day of accident, the claimant admittedto the hospital and X-ray was taken on the same day. But later, he has admitted to the hospital as in-patient on 21.06.2013. The time of examination at 10.30 p.m. on 20.06.2013. While he was admitted to the hospital as in-

patient, it might be after 12.00 mid night, which was shown as by next day. Therefore, the contention of the learned counsel for the insurer cannot be acceptable that on the same day the claimant was not admitted to the hospital. On the other hand, Exs.P6 and P31, shall be read out together which clearly reveals after the accident he was taken to the hospital and there was reference available in the wound certificate. The claimant sustained injuries with the history of road traffic accident at 7.00 p.m. Therefore, the fact of sustaining injuries by the claimant and admitted to the hospital has been proved by him.

16. The arguments of the learned counsel for the Insurer, in respect of delay in lodging the complaint has been countered by learned counsel for the claimant, merely there is delay in lodging the complaint that itself is not fatal to the case of the claimant. It is well settled law by the Hon'ble Apex Court in catena of decisions providing the treatment to the injured claimant is foremost important than lodging the complaint and even if there was a mistake on the part of the doctors who have not intimated to the police, there cannot be any fault on the part of the claimant in this case though

Ex.P31 shows that he was discharged from the hospital on 02.07.2013 and the complaint came to be lodged on 20.07.2013 and even though there was admission made by PW.1 in the cross-examination of Insurance Company that he has not told to the doctors that he has sustained injury in the accident, but a strong admission will not take away the entire evidence on record which was adduced by way of oral as well as documentary evidence. In this regard, the counsel for the claimant placed reliance on the decision of the Hon'ble Apex Court in the case of ***Ravi v. Badrinarayan and others,*** reported in ***2011 ACJ 911***, wherein the Hon'ble Apex Court has held that even there was a delayof three months in lodging the complaint after the accident, it shall not fatal to the case of the claimants. At para No.20 and 21 the Hon'ble Apex Court has held as under:

> *"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant'scase. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not*

expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

17. In another judgment, in the case of ***Bimla Devi and others v. Himachal Road Transport Corporation and others,*** reported in ***2009 ACJ***

1725, the Hon'ble Apex Court has held that strict proof of accident caused by a particular bus in a particular manner may not be possible to be done by the claimants; claimants were merely to establish their case on the touchstone of preponderance of probability; standard proof beyond reasonable doubt could not have been applied and apparently there was no reason to falsely implicate the driver and conductor of the bus.

18. In another case, in the case of ***Sunita v. State of Rajasthan,*** reported in ***2019 TAC 710***, wherein the Hon'ble Apex Court has held that the Tribunal not bound strictly by pleadings of the parties, standard proof to be borne in mind must be of preponderance of probabilities and not the strict standard of proof beyond all reasonable doubt, strict interpretation of evidence by High Court not warranted, nature of proof required to establish culpability under Criminal Law is far higher than the standard required under the Law of Torts to create

liability.

19. Following the judgments of the Hon'ble Apex Court, this Court, in the case of ***Meenakshamma v. Hanumanthappa,*** reported in ***ILR 1996 KAR 161***, has similarly held that no adverse inference has to be drawn for non-registration of a criminal case. Merely failure on the part of the medical officer to report the accident to the police, no ground to deny the claim. In view of the dictum of the Hon'ble Apex Court in the above said decisions, merely the claimant, while he was under treatment in the hospital for 12 days from 20.06.2013 to 02.07.2013 and later even after his discharge, till 20.07.2013 he has not lodged complaint, that itself is not a ground to suspect the claim of the petitioner, when he himself revealed before the doctor, at the first instance when he was taken to the hospital, that he has sustained injuries in road traffic accident and the accident was caused by the driver of the vehicle, which belongs to the owner who engaged the service of the claimant. The claimant might have thought to amicably settle the dispute among them but when the injury was aggravated and he undergone

surgery, he would have thought to lodge the complaint and delay has been satisfactorily explained by him. The injured was sustaining fracture injuries and no one can expect to lodge the complaint immediately, that too when he has already intimated the same to the doctor at the admission stage itself. It is the duty of the doctor to intimate the police and in turn the police ought to have recorded his statement. The fault of the doctor cannot be a ground to deny the claim of the petitioner. Therefore, I hold that the delay in lodging the complaint has been explained by the claimant and therefore, the claim of the petitioner cannot be suspected. Apart from that though the owner of the vehicle denied the negligence and accident but has not challenged the said findings of the Tribunal by filing any appeal before this Court. Such being the case, the defense taken by the insurer and arguments addressed by the counsel for insurer cannot be acceptable.

20. Learned counsel for the insurer though relied upon the judgment of this Court in the case of Bajaj ***Allianz General Insurance Co. Ltd. by its Manager Vs B.C.Kumar and Yoganarasimha*** reported in ***ILR 2009 KAR 2921***, wherein in the said case it is held that the claim petition filed by the respondent was false one and merely the driver pleaded guilty before the Criminal Court, the tribunal was not

passed the award and required to examine the evidence before it very carefully and put much emphasis on the submission of the claimant that the driver had pleaded guilty. However, in this case Ex.P6, wound certificate clearly goes to show that the claimant was sustained grievous injuries in road traffic accident that was mentioned one month prior to lodging of the complaint i.e. at the undisputed time. Therefore, the arguments advanced by the learned counsel for the insurer cannot be acceptable. Another judgment of the Hon'ble Supreme Court relied upon by the counsel for the Insurer in the case of ***United India Insurance Co. Ltd., Vs Rajendra Singh and Others***, wherein it is held and directed the tribunal to consider claims put forth by claimants afresh after affording reasonable opportunity to appellant. Wherein in the said case the Hon'ble Supreme Court remanded the matter to the tribunal for fresh consideration. The principles laid down by the Hon'ble Supreme Court regarding appreciation of the evidence by the tribunal is not in dispute. Another judgment of the Hon'ble Supreme Court relied upon by the counsel in the case of ***Veerappa and Another Vs Siddappa and Another,*** in ***MFA No.8488/2004,*** wherein it is held that though admission is best piece of evidence, it cannot be accepted as gospel truth. In this case, merely a stray admission made by the claimant that cannot be a ground for accepting the contention of the

counsel for insurer and rejecting the entire case of the claimant. These judgments are morefully helpful to the claimant rather than the insurer. On the other hand, the judgment of the Hon'ble Supreme Court relied upon by the claimant stated supra and in view of the findings and discussions made above, I hold merely there is a delay in lodging the complaint of 30 days after the accident and even 18 days of discharge from the hospital that itself is not a ground to reject the entire case of the claimant when he has produced oral as well as documentary evidence. When the owner of the vehicle himself taken the plea due to the unavoidable circumstances to avoid the buffalo came on the road and to avoid the accident, he lost control over the vehicle and vehicle turned turtle. It is also noted if at all the respondent Nos.1 and 2 colluded together with the claimant they could have admitted the guilt and could have not filed any statement of objections to the petition and might have remained ex-parte. But here in this case, the owner has contested the case by filing objection, when such being the case, the arguments addressed by the learned counsel for insurer cannot be acceptable.

Therefore, I hold the tribunal has not committed any illegality or error in fastening the liability on the owner and the insurer of the vehicle in question jointly & severally. Hence, point No.1 is answered in favour of the claimant and as against the insurer.

21. The next controversy is in respect of quantum of compensation awarded by the tribunal, the claimant has stated that he was earning more than Rs.2 Lakhs p.a. and was self-employed. However, he has not produced any documents to prove his income. The tribunal has considered Rs.5,000/- per month, which is meager since the accident was occurred in the year 2013. Even for a coolie this Court is used to consider Rs.7,000/- p.m. as notional income and hence Rs.7,000/- is considered as his income per month. As regards to the disability the claimant has examined PW.2 one Dr. Lakshminarayana, who deposed that after the clinical examination he has assessed that the claimant was suffering from partial permanent disability at 20% and nothing has been elicited

by the counsel for the respondent-Insurer to disbelieve the evidence of doctor. However, it was not elicited what was the disability towards the whole body. Normally, when the percentage of disability is issued in respect of particular part or limb, when it is compared to whole body, it must be 1/3rd. Therefore, I propose to consider 7% of the disability towards the whole body. If 7% is taken the loss of earning capacity of the claimant comes to Rs.490 (7000 x 7%) x 12 x 17 = 99,960/-.

22. The tribunal has awarded Rs.20,000/- towards pain and agony, in my opinion, the said amount shall be retained. The medical expenditure has been calculated by the tribunal is Rs.21,428/- and the same is retained. However, the tribunal has not awarded any amount towards food, nourishment and incidental and other expenses. If the claimant was admitted for more than 12 days and later he might have taken the treatment in private hospital, I propose to award a sum of Rs.10,000/- towards food, nourishment and incidental expenses.

23. The tribunal has also not awarded any amount towards the loss of income and towards laid up period. If a sum of Rs.7,000/- per month

is considered for four months, it comes to Rs.28,000/-. Hence, the claimant is entitled for the enhanced compensation as under;

Loss of earning capacity	Rs.99,960/-
Medical expenses	Rs.21,428/-
Pain & suffering	Rs.20,000/-
Food nourishment And incidental expenses	Rs.10,000/-
Laid up period	Rs.28,000/-
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Total	**Rs.1,79,388/-**

24. Consequently, the appeal filed by the Insurer MFA No.101029/2016 is liable to be dismissed and the appeal filed by the claimant MFA No.103862/2016 is allowed in part. The claimant is entitled for the compensation of Rs.1,79,388/- against Rs.1,26,330/- awarded by the tribunal together with interest at 6% fromthe date of petition till realization.

The amount in deposit by the insurer is directed to be transmitted to the tribunal. The order of deposit made by the tribunal is undisturbed.

In view of the disposal of the appeals,

pending application/s if any does not survive for consideration. Hence, IA's are dismissed.