

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR.JUSTICE S.VISHWAJITH SHETTY

M.F.A.No.101647/2019 c/w

M.F.A.No.102819/2019 (MV)

Dated: 30-09-2020

THE DIVISIONAL MANAGER, UNITED INDIA INSU
CO. LTD, MARUTI GALLI BELAGAVI
TQ & DIST: BELAGAVI VS. SMT.RESHAMA W/O RAMESH
SUTAR, AND OTHERS

JUDGMENT

S. VISHWAJITH SHETTY, J.,

These two appeals arise from the judgment and award dated 03.01.2018 made in M.V.C.No.1932/2017 by the X Addl. District Judge and Member, Addl. M.A.C.T, Belagavi.

2. M.F.A.No.101647/2019 is filed by the insurer of the offending vehicle challenging the liability and quantum while M.F.A.No.102819/2019 is filed by claimants No.1 to 4 i.e., wife and children of the deceased seeking enhancement of compensation awarded by the Tribunal.

3. Brief facts of the case are, on 15.03.2017, one Ramesh Sutar was riding his motorcycle bearing registration No.MH-12/BE-971 from Alephata towards Kalyan and when he reached near Ganesh Fabrication Garage, another motorcycle bearing registration No.MH-14/EV-3432, ridden by one Ganesh Umaji Gavari in a rash and negligent manner, dashed on the hind side of Ramesh's motorcycle. As a result, Ramesh Sutar suffered grievous injuries. Immediately he was shifted to

Dr.Tokane's Hospital at Alephata wherein he was administered first aid and on advice, he was shifted to Sasun Hospital at Pune on the same day and admitted as an inpatient in the said hospital. Ramesh succumbed to the injuries on 20.03.2017. The brother-in-law of deceased Ramesh by name Praveen Lohar who is an alleged eyewitness to the accident, lodged a police complaint before Alephata Police Station, Pune Rural, Maharashtra on 27.04.2017. A case was registered in Crime No.49/2017 for the offences punishable under Sections 279, 337, 338, 304(A), 427 of IPC and Section 184 and 134(B) of M.V. Act. Wife, children and mother of the deceased filed M.V.C.No.1932/2017 before the Tribunal claiming compensation of Rs.35,00,000/- with interest. The Tribunal by means of impugned judgment and award, totally awarded a sum of Rs.16,55,000/- with interest at 6% p.a. from the date of petition till realization.

4. Learned counsel for the insurer submitted that claimants have not approached the Tribunal with clean hands and they are guilty of playing fraud. He submitted that there is inordinate delay in filing the police complaint which has not at all been explained. The complainant who is the alleged eyewitness has not been examined. The offending motorcycle was not at all involved in the accident in question and the claimants in collusion with the police, have managed to create false records. He submitted that there are no medical records to show that the deceased was admitted in Sasun Hospital Pune and has taken treatment for a period of five days in the said hospital. He also submitted that the quantum of compensation awarded by the Tribunal is on the higher side and therefore he prayed to allow his appeal.

5. On the other hand, learned counsel for the claimants No.1 to 4 submitted, delay in filing police complaint cannot have any effect on a claim petition in a motor accidents claim cases. In support of this contention, he has relied upon a judgment of the Hon'ble Apex Court in ***Ravi Vs. Badrinarayan and others*** reported in ***AIR 2011 SC 1226***. He submitted that the particulars of offending vehicle are mentioned in the complaint and also in the vehicle panchanama at Ex.P-3 and therefore, there is no fraud. He also referred to Exs.P-5 and P-6 and contended that the said documents would clearly go to show that the deceased was admitted in Sasun Hospital on 15.03.2017 and he died in the said hospital on 20.03.2017. He submitted that the notional income of the deceased considered by the Tribunal is on the lower side and even under the conventional heads, compensation needs enhancement and therefore, prayed to allow his appeal.

6. We have considered the rival contentions urged by the parties and also perused the entire material evidence available on record.

7. The accident in question allegedly had taken place on 15.03.2017. Complainant, who is the brother-in-law of the deceased is also an eyewitness to the accident, but was not examined by the claimants. For the reasons best know to him, he has not lodged any police complaint immediately after the accident. The deceased was shifted to nearby hospital at Alepatha and thereafterwards on the very same day, he was shifted to Sasun Hospital, Pune. In the said hospital, he expired on 20.03.2017. No medical

records are produced to show that the deceased was treated in Sasun Hospital from 15.03.2017 to 20.03.2015. Ex.P-5 is the intimation issued to the police from the hospital regarding death of deceased and Ex.P-6 is the post mortem report. On a perusal of Ex.P-5 and P-6, it is very clear the case was treated by the hospital as a "Medico Legal Case".

8. Any case of injury or ailment where attending doctor after noting down the brief history about the cause and on clinical examination of the patient, considers that investigation by law enforcement agencies is warranted to ascertain and fix responsibility regarding the said injury or ailment he shall treat the said case as Medico Legal Case and thereafter proceed in accordance with law. A decision to label a case as a Medico Legal Case is a sound professional judgment. The attending doctor after eliciting history, noting down particulars of the patient, his companion if any, and after clinical examination, thinks it fit that investigation by law enforcement is necessary, then he shall treat the case as a Medico Legal Case. All hospitals/medical officers are required to maintain a Medico Legal Register in which history about the injury or ailment, personal particulars of the patient, identification marks, particulars of accompanying person will have to be noted. Once the attending doctor decides to treat the case as Medico Legal Case, immediately he is required to inform the jurisdictional police as provided under Section 39 of Cr.P.C., failure to do so, may result in a prosecution under Sections 176 or 202 of IPC.

9. In a Medico Legal Case, in the event of death, the corpus will not be handed over to the

relatives, by the attending doctor or hospital. On the other hand, corpus will have to be handed over to the police and police after medico legal formalities, shall hand it over to the relatives. Section 174 of Cr.P.C. provides that on receipt of information from the police with regard to death due to suspected unnatural causes, the executive Magistrate is required to hold an inquest of the corpus and thereafterwards send the same to the hospital for the purpose of postmortem examination for establishing the cause of death. An unnatural death case is required to be registered and the Magistrate is required to investigate to know the apparent cause of death. The said officer shall record the statements of the close relatives of the deceased if any, investigate and submit a report which is called unnatural death report stating the cause of death. Depending upon the cause of death, police are required to close the case or register a FIR. Investigation under Section 174 is for the purpose of ascertaining whether death is natural or unnatural. It is not an investigation as contemplated under Section 157 of Cr.P.C. Once the police decides to register FIR, only then investigation shall be proceeded as provided under Sections 154 and 157 of Cr.P.C.

10. The case on hand, was admittedly treated as a Medico Legal Case. On perusal of Exs.P-5 and 6, it is very clear that Sasun Hospital authorities had intimated Haveli Police, Pune about the death and the body of the deceased was handed over to Haveli Police, who in turn, had requested the hospital authorities to conduct postmortem examination of the body to know the exact cause of death. Once a case is treated as Medico Legal Case, then definitely the jurisdictional police come into picture and a case of unnatural death is reported to the Magistrate, who shall

thereafterwards proceed as provided under Section 174 of Cr.P.C. The complainant who is the brother-in-law of the deceased is the alleged eyewitness and in the normal circumstance, he is expected to accompany the injured to the hospital. Neither the complainant nor his sister, who is the wife of the deceased Ramesh have given any statement to the police or to the Magistrate with regard to the cause of injury to the deceased. If at all any statement was made by them, then definitely the police would have registered a FIR. The claimants have not placed on record any material before the Tribunal in this regard. On the other hand, after a delay of 43 days, the complainant has lodged a police complaint before Ale cross police on 27.04.2017. The said police who have filed a charge sheet have not bothered to collect any information either from the hospital or from Haveli police station to whom the body of the deceased was handed over by the hospital. The delay in filing the police complaint is not at all explained by the complainant.

11. The judgment of the Apex Court in ***Ravi's*** case (supra) relied upon by the claimants would not be applicable to the facts of the present case. In the said case, the owner of the offending vehicle had appeared before the Tribunal and admitted that he knew about the accident and involvement of his vehicle in the accident. In this case, the owner of the vehicle has remained absent. No material has been placed before the Tribunal to show as to what has happened to the criminal case filed against the rider of the offending motorcycle. The Investigating Officer who filed the charge sheet has also not been examined. From the material on record, *prima facie* it appears that the claimants have suppressed the material facts and have managed to lodge a complaint before Ale Cross Police,

who in turn, without holding proper investigation, have filed a charge sheet implicating the offending vehicle.

12. The Hon'ble Apex Court in ***United India Insurance Co. Ltd. Vs. Rajendra Sigh and others*** reported in ***(2000) 3 SCC 581*** has held as under :

16. *Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.*

17. *The allegation made by the appellant Insurance Company, that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to a serious miscarriage of justice.*

18. *In the result, we allow these appeals, set aside the impugned orders and quash the awards passed by the Tribunal in favour of the claimants. We direct the Tribunal*

to consider the claims put forth by the claimants afresh after affording a reasonable opportunity to the appellant Insurance Company to substantiate their allegations. Opportunity must be afforded to the claimants also to rebut the allegations.”

13. In the case of ***Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd.*** Reported in ***(1996) 5 SCC 550***

the Hon'ble Apex Court has held as under:

22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court

has the inherent power to recall its order. (See: Benoy Krishna Mukerjee v. Mohanlal Goenka; Gajanand Sha v. Dayanand Thakur; Krishnakumar v. Jawand Singh; Devendra Nath Sarkar v. Ram Rachpal Singh; Saiyed Mohd. Raza v. Ram Saroop; Bankey Behari Lal v. Abdul Rahman; Lekshmi Amma Chacki Amma v. Mammen Mammen.) The court has also the inherent power to set aside a sale brought about by fraud practiced upon the court (Ishwar Mahton v. Sitaram Kumar) or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh; Tara Bai v. V.S. Krishnaswary Rao.)

14. The Hon'ble Apex Court in **S.P. Chengalvaraya Naidu (dead) by LRs. Vs. Jagannath (dead) by LRs and another** reported in **(1994) 1 SCC 1** has held as under:

"A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

15. On an overall perusal of the material available on record, we find force in the argument of the learned Advocate for insurer that the claimants have played fraud and filed a belated complaint and managed to get a charge sheet filed. It has come to our notice that on the basis of such fraudulent investigation reports, discharge summaries, supporting medical

documents issued by certain hospitals to claimants fraudulent claim petition are filed, which is nothing but an abuse of process of law and this needs to be curbed. Once fraud is alleged and proved, the judgment and order so obtained cannot be permitted to be on record even for a moment.

16. The plea with regard to fraud in normal circumstances cannot be taken by the insurer at the inception. The fraud played by the parties gets unraveled only after the material documents come on record. As stated earlier, we are of the *prima facie* view that the claimants are guilty of material suppression and they have not approached the Tribunal with clean hands. "Fraud" unravels everything. Any attempt to overreach the courts or abuse the process of law should be dealt with iron hands and all culprits in such cases are required to be brought under law. Failure to do so will have adverse effect on the judicial delivery system and it will virtually be a mockery of the system.

17. In the facts and circumstances of this case, if we fail to afford an opportunity to the insurer to substantiate their contention with regard to fraud, it might certainly lead to serious miscarriage of justice. Therefore, the impugned judgment and award passed by the Tribunal is set aside and the matter is remanded to the Tribunal with a direction to permit the parties to file additional statements if any, lead further evidence, and thereafterwards dispose of the case in accordance with law as expeditiously as possible. Accordingly, appeal filed by the claimants is dismissed and appeal filed by the insurer is allowed.

18. In view of disposal of these appeals, pending Interlocutory Applications, if any, do not survive for consideration and the same stand disposed of.