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Court : Karnataka

Decided On : Mar-09-2016

Judge : N.K. Patil & The Honourable Mrs. Justice Rathnakala

Appeal No. : Misc.First Appeal No. 8055 of 2014 (MV)

Appellant : Ramakrishna

Respondent : Revanna and Another

Advocate for Def. : Sri. A. N. Krishnaswamy

Advocate for Pet/Ap. : Sri. Amruthesh C

Judgement :

Rathnakala, J.

1. The appellant/claimant is aggrieved by the judgment dated 6-9-2014 passed in MVC No. 445/2010 on the file of the II Additional District and Sessions Judge and Additional MACT, Hassan (for short, Tribunal) whereby the Tribunal dismissed his claim petition filed under Section 166 of MV Act with cost of Rs. 5,000/-.

This is the second round of litigation between the parties before this Court.

2. The case of the appellant/claimant before the Tribunal was, on 17-11-2009, while he was walking on the left side of Shravanur-Mandagere Road, at that time,

the driver of the Tractor-Trailer bearing registration No. KA-11-T-3780/3781 came in a rash and negligent manner and dashed against him; resultantly, he sustained multiple grievous injuries; he was shifted to Mangala Hospital, Hassan where he was treated as inpatient for five days. He had spent more than Rs. 50,000/- for his treatment. Hence, he filed claim petition claiming compensation of Rs. 20,00,000/- with interest at the rate of 18% p.a. under various heads against 1st respondent/owner of the offending vehicle and 2nd respondent/insurer. The respondent Nos. 1 and 2 contested the claim. After hearing both parties, the Tribunal, on consideration of oral and documentary evidence, dismissed the petition with cost of Rs. 5,000/- vide judgment dated 30-10-2010. The appellant/claimant challenged the said order in MFA No. 1458/ 2011 (MV) before this Court.

On the submission made at the Bar, to afford one more opportunity to the claimant to establish his case by adducing additional evidence, the learned single Judge allowed the appeal in part and set-aside the order of dismissal of the claim petition and remitted the matter back to the Tribunal for fresh consideration. After remand, the claimant/PW. 1, apart from leading his further evidence examined four witnesses and produced additional documents. He was cross-examined by the respondents. There was rebuttal evidence from the side of RW1/Insurer. The Tribunal on a detailed examination of the case as projected, against dismissed the claim petition by imposing the cost of Rs. 5,000/-.

3. Sri Amruthesh C. learned counsel for the appellant/claimant submits that the claim petition was dismissed by relying on the evidence produced by the Insurer that the claimant had taken treatment at Government Hospital, Holenarasipura, on 16-11-2009, by colluding with owner of the vehicle and also in connivance with the police officials created the documents and filed false claim petition. In fact, he had not taken treatment on 16-11-2009. On his requisition, the Medical Officer of the Government Hospital, Holenarasipura had given endorsement to the effect that name of the patient Ramakrishna is entered in the out-patient Register maintained in the hospital pertaining to 9-12-2010, hut the same was not recorded in the inpatient Register and MLC Register. By inadvertence, the copy of the application given by the claimant to the hospital and also endorsement issued by the Surgeon

of said hospital was not produced before the Tribunal. If one more opportunity is granted, the appellant will produce the documents in evidence which will definitely have bearing on the merits of the case, otherwise the appellant would suffer great loss and injustice. In this regard, he has filed IA No. 1/2014 seeking permission to produce additional documents. The judgment of the Claims Tribunal may be set-aside and matter may be remanded for fresh consideration after giving opportunity to the appellant to adduce additional evidence.

4. Sri. A. N. Krishnaswamy, learned counsel for the respondent No. 2/Insurer while opposing the application submits that Revanna/owner of the offending vehicle Tractor-Trailer bearing registration No. KA-11-T-3780/3781 is a brother of the appellant/ claimant. By suppressing the said fact, he filed the claim petition. During the cross-examination, at the first instance, though he denied his relationship with said Revanna/Owner of the offending vehicle, during the course of the subsequent cross-examination, admitted that the accident occurred by the Tractor-trailer belonging to his brother. The document now he intends to produce before this Court could have been produced by him when the matter was pending before the Tribunal after remand. Having not done so, he has foregone his right of leading further evidence - The Tribunal on a detailed analysis of evidence produced by him and disbelieved the case of the claimant. Hence, the appeal having no merits is liable to be dismissed.

5. In the light of the above rival submissions, we have gone through the Lower Court records. During the rebuttal evidence, the Insurance Company had examined its Development Officer who had stated, that on 17-11-2009, at 11 a.m., there was no such accident as alleged by the claimant near Kodihalli cross involving the Tractor/Trailer bearing Registration No. KA-11-T-3780/3781 and on 16-11-2009, the claimant had suffered injuries in an accident involved in some other vehicle and was treated in the Government Hospital with the Hospital Registration No. 110949; on 16-11-2009, by suppressing the said fact and in connivance with 1st respondent had filed a false claim petition. The complaint was lodged after a delay of one day. Ex.R2 is the Outpatient Department Register Extract of 16-11-2009 from Government Hospital, Holenarasipura wherein one Ramakrishna, aged 32 years was treated as outpatient.

6. The tribunal vide judgment dated 30-10-2010, on a categorical observations of quality of the evidence placed on record and also on the way the claimant was prosecuting his case, opined that the claimant and 1st respondent/owner of the vehicle are none other than the siblings, being members of the joint family are in the habit of giving false statements throughout the proceedings and also before the Criminal Court. On the complaint of the claimant, the Police had initiated a criminal case against the owner of the vehicle. The owner of the vehicle had pleaded guilty before the Criminal Court and was convicted and let-off by imposing fine only and they have prayed fraud before the Authority to get the compensation etc. The claimant/appellant now intends to produce a document allegedly from the Surgeon, Government Hospital, Holenarasipura dated 9-12-2010 which does not bear the forward number of the office of the Hospital which issued the said endorsement. Aligning the incidents chronologically, the Tribunal dismissed the petition vide order dated 30-10-2010. MFA No. 1458/2011 was filed in the year 2011 that is to say he was very much in possession of the endorsement dated 9-12-2010. Without whispering anything about this endorsement, he pleaded for one more opportunity to establish his case by producing additional evidence, if any. Acting on his submission, the appeal was allowed in part by setting aside the order of the Tribunal whereby the petition was dismissed and matter was remanded to the Tribunal for fresh consideration. After remand, he adduced further evidence only in respect of partition effected among the members of the family perhaps to impress upon the Court that the owner of the vehicle though was his brother was not the member of the joint family as on the date of the accused. He did not state on oath that he had not suffered any injuries on 16-11-2009 and had not taken treatment at Government Hospital, Holenarasipura on 16-11-2009. He let in further evidence by examining three witnesses i.e., PWs.3, 4 and 6 and attempted to reason out the delay in lodging the complaint to the Police. As per his evidence, since there was negotiation talks between the claimant and owner of the vehicle and said negotiation since failed, there was delay. PWs. 5 and 6 are the witnesses to the unregistered Partition Deed affected among the members of the family on 31-01-2009. The Tribunal disbelieved further evidences so placed by the claimant and held that along with the owner of the vehicle he is playing fraud.

7. On a scrutiny of the quality of the evidence, we have no reason to hold otherwise except to endorse the finding returned by the Tribunal. On his own showing, claimant was a businessman and agriculturist earning more than Rs. 10,000/- per month at the relevant point of time. That is to say, he is a worldly wise person and gave application to the hospital in writing knowing fully well, the nature of rebuttal evidence let-in by the Insurance Company. Now in his affidavit evidence annexed to IA No. 1/2014, he contends that though he handed over the documents to his counsel, these documents were not produced during the evidence and he was under a bona fide impression that the said documents were produced before the Claims Tribunal. He does not come out with the reasons what prevented him from producing the document before this Court in MFA No. 1458/2011(MV). Not only the document he intends to produce, on the very face of it is suspicious but also the reason assigned now for not producing the document before the Claims Tribunal is patently cooked up and untrue. His conduct in taking the Courts for easy ride, is nothing but abuse of the Court and deserves high condemnation. Rightly, the Tribunal has dismissed his claim petition with cost of Rs. 5,000/-.

8. The Apex Court in Advocate General, State of Bihar v. Madhya Pradesh Khair Industries Ltd., reported in AIR 1980 SC 946, referred to Halsbury's Laws of England (4th Edition-Vol. 9, paragraph-38), while considering as to what amounts to abuse of process of the Court quoted the following :

38. Abuse of Process in general. The Court has power to punish as contempt any misuse of the Court's process. Thus the forging or altering of Court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the Court or the Court's officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt.

Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious or oppressive....

Further, the Apex Court held that certain minor abuses of the process of the Court may be suitably dealt with as between the parties, by striking out pleading under

the provisions of Order 6, Rule 16 or in some other manner. Hence, we are of the considered opinion that the appeal deserves to be dismissed with cost of Rs. 5,000/- payable to Respondent No. 2/Insurance Company for misuse of time and energy and for causing inconvenience.

In the light of above discussion, the appeal stands dismissed with cost of Rs. 5,000/-. Respondent No. 2/Insurance Company is entitled to recover the amount of Rs. 5,000/- by filing necessary petition in the same proceedings before the Tribunal. IA No. 1/2014 filed for seeking production of additional documents also stands dismissed.

In view of disposal of the main appeal, IA No. 2/2014 filed for stay does not survive for consideration, hence, stands disposed of.

Appeal dismissed.

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