

The Divisional Manager vs Shri. Kumar S/O Mahadevappa Pujar

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Court : Karnataka Dharwad

Decided On : Apr-26-2025

Judge : Umesh M Adiga

Appeal No. : MFA/100468/2018

Appellant : The Divisional Manager

Respondent : Shri. Kumar S/O Mahadevappa Pujar

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 26TH DAY OF APRIL, 2025 BEFORE THE HON'BLE MR. JUSTICE UMESH M ADIGA M.F.A NO. 100468 OF 2018 C/W. M.F.A. CROB. NO. 100028 OF 2024 (MV-I) IN MFA NO. 100468 OF 2018 BETWEEN THE DIVISIONAL MANAGER, THE NATIONAL INSURANCE CO.LTD., HAVING ITS OFFICE AT RAMADEV GALLI, BELAGAVI, REP. BY ADMINISTRATIVE OFFICER, REGIONAL OFFICE, NATIONAL INSURANCE CO. LTD., ARIHANTA PLAZA, KUSUGAL ROAD, HUBBALLI, PIN-580023. - APPELLANT (BY SRI. S. V. YAJI, ADVOCATE) AND

Digitally signed by 1. SHRI. KUMAR S/O. MAHADEVAPPA PUJAR, VISHAL NINGAPPA AGE 26 YEARS, OCC: AGRICULTURE (NOW NIL), PATTIHAL Location: High R/O. UGARAGOL, TQ. SAUNDATTI, Court of Karnataka, DIST. BELAGAVI, PRESENTLY R/O. Dharwad Bench. AT. MARKANDEYA NAGAR, OPP. APMC YARD, BELAGAVI, PIN-581126.

2. SHRI. KASHAPPA S/O. MAHADEVAPPA PUJAR,

AGE 30 YEARS, OCC: AGRICULTURE (NOW NIL), R/O. UGARGOL, TQ. SAUNDATTI, DIST. BELAGAVI, PIN-581126. - RESPONDENTS (BY SRI. G. R. TURAMARI, ADVOCATE FOR R1; NOTICE TO R2 SERVED) THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S.173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO SET ASIDE THE -2-

JUDGMENT AND AWARD DATED 08.11.2017 PASSED BY THE II

ADDL. SENIOR CIVIL JUDGE AND ADDL. MACT BELAGAVI IN MVC NO.1424/2016 BY ALLOWING THIS APPEAL, CONSEQUENTLY DISMISS THE PETITION AGAINST THIS APPELLANT OR TO MODIFY THE AWARD AGAINST THE APPELLANT AND ETC. IN MFA CROB NO.100028 OF 2024 BETWEEN SRI. KUMAR S/O. MAHADEVAPPA PUJAR, AGE 32 YEARS, OCC. AGRICULTURE, NOW NIL, R/O. UGARGOL, TQ. SAUNDATTI, DIST. BELAGAVI-591126, NOW RESIDING AT. MARKANDEYA NAGAR, OPPOSITE APMC YARD, BELAGAVI-590002.

- CROSS OBJECTOR (BY SRI. G. R. TURAMARI, ADVOCATE) AND

1. THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO. LTD., HAVING ITS OFFICE AT RAMDEV GALLI, BELAGAVI-590003.

2. SRI. KASHAPPA S/O. MAHADEVAPPA PUJAR,

AGE 36 YEARS, OCC. AGRICULTURE, R/O. UGARGOL, TQ. SAUNDATTI, DIST. BELAGAVI-591126. - RESPONDENTS (BY SRI. S. V. YAJI, ADVOCATE FOR R1; NOTICE TO R2 SERVED) THIS MFA.CROB IN MFA NO.100468/2018 IS FILED UNDER

ORDER 41 RULE 22 OF CPC, PRAYING TO MODIFY THE JUDGMENT

AND AWARD PASSED BY THE COURT OF II ADDL. SENIOR CIVIL JUDGE AND ADDL. MACT, BELAGAVI AT. BELAGAVI IN MVC NO.1424/2016 DATED 08.11.2017, ENHANCING THE AMOUNT OF COMPENSATION AND ETC. THIS MISCELLANEOUS FIRST APPEAL AND CROSS OBJECTION PETITION HAVING BEEN HEARD AND RESERVED ON 07.03.2025 FOR

JUDGMENT AND COMING ON FOR PRONOUNCEMENT, THIS DAY, THE

COURT DELIVERED THE FOLLOWING: -3-

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE UMESH M ADIGA) Both these appeals arise out of judgment and award dated 08.11.2017 passed by the II Addl. Senior Civil Judge & Addl. MACT, Belagavi (for short, the Tribunal) in M.V.C. No. 1424/2016. Parties are referred to as per their ranking before the Tribunal.

2. Brief facts of the case are that on 23.09.2015 claimant was going as a pillion rider on motorcycle bearing Reg. No. KA-24-L-0192 (offending motorcycle) belonging

to respondent No.1. At the time of accident respondent No.1 was riding the vehicle on Yadravi-Ugargol main road in a rash and negligent manner and ran over the ditch as a result, he fell down from the motorbike and sustained

grievous injuries. He spent huge amount for medical expenses

award compensation of rupees ten lakhs. -4-

3. Respondents No.1 and 2 filed objections denying the contentions of the claimant. Respondent No.1 further stated that offending motorcycle was insured with respondent No.2 and in the event if compensation is awarded, respondent

No.2 directed to pay the same.

4. Respondent No.2 contended that its liability is restricted to terms and conditions of policy of insurance and holding of valid and effective driving licence to ride the said class of vehicle by respondent No.1. It denied other averments stated in the petitions and prayed to dismiss the claim petition.

5. Based on the rival contentions, the Tribunal has framed necessary issues.

6. The claimant in support of his case examined two witnesses as PW1 and PW2 and marked 42 documents as Exs.P.1 to P.42. Respondent No.2 examined one witness as RW1 and marked one document as Ex.R.1. The Tribunal after hearing both the parties and appreciating -5- the pleadings and evidence on record, partly allowed the petition awarding compensation of Rs.1,70,900/- on all the heads. Being aggrieved by the same the insurer filed M.F.A. No. 100468/2018 whereas claimant has filed MFA CROB No. 100028/2024.

7. I have heard arguments of both sides.

8. The learned counsel for the appellant-insurer as well as the respondent-claimant argued in line with their respective contentions taken in the appeal memorandum as well as cross objections.

9. The main contention of the insurer-respondent No.2 is that the said motorcycle was falsely implicated in this case. Claimant himself was riding the said vehicle and he had no driving licence. He lost control over the vehicle and fell down. Had he informed this fact to the Police then he may not get compensation. Therefore he has fabricated story that his brother, i.e., respondent No.1, was riding the motorcycle in rash and negligent manner -6- and caused accident. There is a delay in registering the

FIR. From the oral and documentary evidence, one can infer that he has given false evidence before the Court. With these reasons prayed to set aside the impugned

judgment and dismiss the claim petition.

10. The learned counsel for the claimant submits that

undisputedly respondent No.1 is chargesheeted, Respondent No.1 admitted in the written statement that accident was caused due to bad condition of the road. They are sufficient to believe the case of the claimant. Merely delaying in lodging the complaint is not a ground to doubt the accident. The said delay is properly explained. With these reasons he prayed to allow the cross objections by enhancing the compensation.

11. Following questions arise for determination.

(i) Whether the Tribunal is justified in holding that the accident had taken place due to the negligence of respondent No.1? -7-

(ii) Whether the Tribunal has awarded just compensation and interference in the said finding is required?

12. Point No.1: The case of the parties is stated in the

above paragraphs and no need to repeat it. It is not in dispute that claimant and respondent No.1 are brothers. Claimant contends that when he was going with his brother in the motorcycle, he met with an accident and sustained injury. He also stated that his brother was riding vehicle negligently. Respondent No.1 did not dispute the same. A criminal case was registered against the respondent No.1 for the accident in question. These

facts prima facie prove that accident occurred as narrated

in the chargesheet as well as evidence of PW1.

13. It appears the insurer is disputing the accident on the ground that there is delay of two days in registering the FIR. Whether the said delay is properly explained is a question to be considered. It is settled law that merely delaying in lodging the FIR is not a ground to doubt the -8-

accident. Ex.P.2 is the complaint given by the claimant, which would show that on 25.09.2015 at about 12 noon on the information of the concerned hospital, the

Police went to the hospital and recorded statement of claimant around 12 noon and on that basis registered the FIR in Crime No. had taken place around 7.30 p.m. on 23.09.2015.

14. Ex.P.5 is the medical certificate given by the General

Hospital, Savadatti. It also shows that claimant went to the said hospital on 23.09.2015 at around 8.15 p.m. According to the claim petition accident occurred on the same day at 8.15 p.m. In Ex.P.5 history of injury is also mentioned. Ex.P.7 also reveals that claimant met with accident on 23.09.2015 near Savadatti taluk at 7.30 p.m. These materials are sufficient to believe that accident occurred as narrated by PW1.

15. In Ex.P.7 it is mentioned that he fell from the bike. It is not in dispute that respondent No.1 rode the motorcycle on a ditch because of which claimant fell down -9-

from the motorcycle. He must have mentioned the said fact to the concerned person in the hospital and same was noted by another person. Only on the said basis it cannot be held that accident had not taken place as narrated by PW1.

16. RW2 knows nothing about accident except stating

that on the basis of records, the accident had taken place due to negligence of the claimant. What was the source of information to believe that claimant was riding the motorcycle at the time of accident is not explained. In his cross examination he pleads ignorance to almost all the questions asked to him. Therefore he is not a competent witness to rebut the evidence of PW1.

17. Police Officer is competent authority appointed under

the Criminal Procedure Code to investigate the case and submit the charge sheet. There are no materials to show that in collision with the owner and the claimant, he filed the charge sheet. In the cross examination of PW1 nothing is brought out to show that claimant was riding - 10 - the motorbike without knowledge of riding it; He lost control over the vehicle and fell down and sustained

injuries. Contentions of insurer are on the basis of presumptions and assumptions. There is no legal evidence to believe the story of insurer. In view of these reasons the contention of the respondent-insurer is not acceptable. The Tribunal rightly held that accident occurred due to negligence of respondent No.1 and answered the issue. It does not call for interference.

18. Point No. 2: The claimant sustained cut lacerated

wound over left hand with zone II flexor tendon injury of left middle finger; fracture of both bones of nasal and other multiple injuries. Ex.P.5 show the said injuries. It is

corroborated by Ex.P.7. He took treatment as inpatient from 24.09.2015 till 30.09.2015. He underwent surgery and thereafter also he took follow up treatment in the hospital. Considering the same, the amount of compensation and awarded towards pain and suffering is at lower side and needs enhancement. He produced - 11 - medical bills at Exs.P.9 to P.37. They were considered by the Tribunal while awarding compensation towards medical expenses.

19. The claimant examined PW2 who has given the

disability certificate. According PW2 claimant has been suffering from permanent disability to an extent of 10% due to cut and lacerated wound over the left hand along with zone-II flexor tendon injury of the left middle finger of the left hand and 20% due to comminuted fracture of nasal bones. The Tribunal considering the same assessed permanent disability to an extent of 7% to the whole body. Claimant sustained fracture of nasal bone as well as metatarcel bone of the middle finger which may not lead to permanent disability to an agriculturist. Therefore the disability assessed by the Tribunal under the head loss of future earning capacity due to disability is erroneous and needs to be interfered. Instead of that he is entitled for compensation under the head loss of amenities and future unhappiness.

20. The Tribunal has taken notional income of the claimant as Rs.7,000/- per month since he has not produced any reliable evidence before the Tribunal to prove his income. As per the chart prepared by the Karnataka State Legal Services Authority notional income of the victim of the accident of the year 2015 could be considered as Rs.8,000/-. That could be applied to the fact of the case. The income of the claimant could be taken as Rs.8,000/- per month.

21. The Tribunal has assessed age of the claimant as 24

years on the basis of medical records as well as PUC marks sheet, which can be accepted and the age of the claimant could be taken as 24 years at the time of accident.

22. The Tribunal on the basis of receipts produced by the claimants awarded medical expenses, which do not call for interference by this Court. - 13 -

23. The Tribunal awarded lesser compensation under the

head pain and suffering; loss of income during laid up period and loss of amenities, special diet, conventional charges and attendant charges. The same requires to be enhanced.

24. For the aforesaid discussion, the compensation amount is re-determined as under:

1. Pain and suffering 35,000.00

2. Medical expenses 43,000.00

3. Loss of income during laid up 24,000.00 period (Rs.8,000/- x 3)

4. Loss of amenities and future 40,000.00 unhappiness

5. Attendant charges, special diet, 25,000.00 etc. Total 1,67,000.00 Amount awarded by the Tribunal 1,70,840.00 Reduction 3,840.00 In view of the above discussion, question No. 2 is answered partly in the affirmative and I proceed to

pass the following order.

ORDER

(i) The appeal in M.F.A. No. 100468/2018 and the Crob. No. 100028/2024 are partly allowed; - 14 -

(ii) Judgment and award dated 08.11.2017 passed by

the II Addl. Senior Civil Judge & Addl. MACT, Belagavi in M.V.C. No. 1424/2016 is modified. The claimant is entitled for compensation of Rs.1,67,000/- as against Rs.1,70,840/- awarded by Tribunal with interest at the rate of 6% p.a. from the date of claim petition till its realization;

(iii) Respondent No.2-insurer is directed to deposit the compensation amount before the Tribunal within a period of six weeks from the date of award;

(iv) Deposit and release of the compensation amount

shall be in terms of the award of the Tribunal. Whatever amount deposited by the insurer shall be transmitted to the Tribunal for disbursement. Send back the trial Court records along with copy of the judgment to the trial Court. Sd/- (UMESH M ADIGA) JUDGE bvv /ct-an List No.: 2 SI No.: 1

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