

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH



DATED THIS THE 23RD DAY OF JUNE 2021

PRESENT

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR.JUSTICE PRADEEP SINGH YERUR

M.F.A. No.101901/2017 (MV)

Between

Sri Veerabhadraiah Swamy,
S/o Shivamurthy Swamy,
Aged about 52 years,
Occ: Agriculturist,
R/o Dodda Anathapura village,
Sandur taluk, Ballari District-583103.

...Appellant

(By Sri. Y.Lakshmikant Reddy, Advocate)

A n d

1. N.Virupakshi @ Virupakshappa N.,
S/o late Anjinappa,
Aged about 36 years,
Rider of the motorcycle No.34/U-1161,
R/o B.Belgal village, Ballari Taluk
& District-583103.
2. Shivappa K., S/o Kumaraswamy,
Aged about 42 years,

Owner of the motorcycle No.34/U-1161,
R/o 1st Ward, Janatha Oni,
Dodda Anathapur village,
Sandur Taluk,
Ballari district-583103.

3. M/s Oriental Insurance Company
Limited, by its Manager,
Main Road, Parvathi Nagar,
Ballari-583103.

...Respondents

(By Sri. S.V.Yaji, Advocate for R3)
(Notice to R1 & R2 dispensed with)

This MFA is filed under Section 173(1) of the Motor Vehicles Act, against the judgment and award dated 03.03.2017 passed in MVC No.64/2015 on the file of the Member, Motor Accident Claims Tribunal-II, Ballari, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This MFA appeal coming on for Admission this day, **Krishna S.Dixit, J**, delivered the following:

JUDGMENT

This appeal by the claimant calls in question the Judgment & Award dated 03.03.2017 entered by the MACT-II, Ballari, whereby his claim in MVC No.64/2015 having been marginally favoured a compensation of Rs.20,000/- has been awarded with interest at the rate of 7% per annum; the appeal is founded on the ground of inadequacy of compensation.

2. After service of notice, the respondent-insurer having entered appearance through its panel counsel resists the appeal making submission in justification of the impugned award and the reasons on which it is structured *inter alia* contending that the very claim for compensation is fraudulent and therefore, this appeal deserves dismissal with exemplary costs; he further contends that since only a small sum of Rs.20,000/- is awarded by the MACT, no appeal is filed by the insurer, the game being not worth the candle.

3. Brief facts,

(a) The vehicular accident allegedly happened on 30.08.2014 at around 7.30 a.m. on Kudithini-Ananthpur Road in Sandur Taluka of Ballari District; the claimant whilst riding his motorcycle bearing Registration No.KA-34/W-8978 having been dashed down by the offending motorcycle bearing Registration No.KA-34/U-1161, sustained injuries to various parts of the body. His claim petition was stoutly opposed by the insurer by filing the Written Statement.

(b) To prove his case, claimant got examined himself as P.W.1; one Mr.H.S.Ananthamurthy was also examined as P.W.2 through Commission; Dr. Lakshmi Narayana, who had issued the Disability Certificate, was examined as P.W.3; from claimant's side eighteen documents came to be produced & marked as Ex.P.1 to P.18; these *inter alia* comprised of Police Papers & Medical Reports, etc. From the side of insurer although none had entered the witness box, a copy of insurance policy came to be produced and marked as Ex.R1, presumably with consent.

(c) The MACT having considered the pleadings of parties and having weighed evidentiary worth of the material on record has entered the Judgment & Award that are put in challenge by the claimant on the ground of inadequacy of compensation.

4. Having heard the learned counsel for the parties and having perused the original TCR, we decline to grant indulgence in the matter and anguishingly impose heavy costs on the claimant for the following reasons:

- (a) The accident allegedly happened on 30.08.2014 at 7.30 a.m. when the offending motorbike bearing Registration No.KA-34/U-1161 had dashed claimant's motorcycle from behind and as a result thereof he suffered some injuries; all this may be taken to be true, of course with reluctance, since there is no formal challenge to this finding by the insurer by way of appeal or cross-objection; had it been otherwise, we are not sure that we would have sustained this finding; be that as it may.
- (b) Admittedly, claimant had the medical history of coronary problem when the accident happened; because of the alleged injuries caused by the accident, he was treated at the Government College & Hospital i.e., VIMS-Ballari, as an out-patient; the Wound Certificate, dated 30.08.2014, issued by the General Duty Medical Officer at Ex.P.5 specifically states that the "**injuries are simple in nature**"; this opinion was formed by the said Medical Officer after examination & on the basis of **radiological tests**, as is stated in the very Certificate itself; there being no reason to doubt the same, the said opinion has to be treated as the

expert opinion under Section 45 of the Evidence Act, 1872 and therefore, carries a lot of weight, nothing emerging from the record for discounting its probative value.

- (c) Later, the claimant moved to Narayana Institute of Cardiac Sciences at Bengaluru wherein he had admittedly undergone coronary related operation & treatment in a long hospitalization; in his affidavit-evidence, at para 2, 3 & 4, he has stated that the said accident resulted in "*severe injuries over chest, head, forehead, nose, face, abdomen, hands & legs*" and that all this happened only because of the accident which has "*decreased his life span due to heart injury*"; all this is false, to say the least; neither in his claim petition nor in his affidavit evidence, he has mentioned anything about his pre-existing heart ailment; as already mentioned above, he had not suffered any injury to the chest, much less heart nor to any vital organ; had it been otherwise, the Wound Certificate at Ex.P.5 would have mentioned the same; there is no reason for the Government Doctor in VIMS to write a false or wrong certificate; that is not the case of claimant, either;

(d) Even in the cross-examination, dated 09.06.2016, he falsely asserts that he suffered the heart ailment only because of the accident though the medical records of the Heart Hospital even remotely do not whisper about it; on the contrary, Dr. Lakshmi Narayana K., whom he had examined as P.W.3 himself has stated that the heart ailment of the kind i.e., blockages do not occur abruptly; this apart, by no stretch of imagination, it can be stated that blockages in the heart could happen by the kind of the vehicular accident. A perusal of deposition of the claimant given as P.W.1 not only does not generate confidence but appears to have been designed for extracting huge money from the insurer; this is nothing short of perjury.

(e) The claimant has also suppressed the reimbursement of huge expenses incurred by him for the heart treatment under "Yashashvini Co-operative Health Care for Farmers" a welfare Scheme of the Government, both in his claim petition & affidavit evidence; in his cross-examination, he has not denied the receipt of money but he only feigns

ignorance as to the same having been not mentioned in the claim petition; it is said that, truth somewhere & somehow trickles out, and that has happened in this case; Ex.P.9A is the final bill issued by the Heart Hospital; it mentions the Corporate Sponsorship as "Yashashvini Co-operative Farmers Health Care Trust" with Account No.1043; thus, the claimant being a "clandestine liar" cannot be believed at all; he has designed his case on fraud, fabrication & duplicity and therefore, he is liable to be non-suited vide ***S.P. Chengalvaraya Naidu (dead) by L.Rs. V. Jagannath (dead) by L.Rs. and others, AIR 1994 SC 853.***

5. As to **Dr. Lakshmi Narayana K., of Prakash Clinic, Ballari**, & his evidence vide P.W.3 being unworthy of credence,

a) the claimant had examined this doctor as P.W.3 in support of his case; it is submitted at the Bar that his 'Sanad' has been suspended on the ground of malpractice; it is also there in his cross-examination; we have noticed several other cases, huge in number wherein he has deposed as a Medical Witness in accident cases; in his cross-examination, dated

07.01.2017, he contradicts the version of the claimant-P.W.1 that the claimant had not visited his hospital personally; he also admits claimant having undergone the operation/treatment for coronary blocks; he also admits having not stated the factors based on which he has issued the Disability Certificate at Ex.P.8; any prudent Medical Practitioner would have mentioned these things including the coronary disease; he has prepared his Disability Certificate dated 17.03.2016 in such a clandestine way that the alleged disability of the claimant is occasioned by the injuries sustained by him in the accident; this is nothing short of perjury, to which claimant is also a party.

b) About a century ago, the Privy Council had angrily lamented that, in our system, perjury was being committed day in & day out with impunity; the Apex Court in ***Swaran Singh Vs. State of Punjab (2000)5 SCC 668*** had expressed it's anguish as under:

“Perjury has also become a way of life in the Law Courts. A trial Judge knows that the witness is telling a lie and is going back on his previous

statement, yet he does not wish to punish him or even file a complaint against him. ... "

In **Mahila Vinod Kumari Vs. State of Madhya Pradesh (2008)8 SCC 34**, it was observed, "... *The evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively, it is desirable for the Courts to use the provision more effectively and frequently, than it is presently done...*".

This case reminds us what Shakespeare wrote in Richard III as under:

*"My conscience hath a thousand several tongues,
And every tongue brings in a several tale,
And every tale condemns me for a villain.
Perjury, perjury in the highest degree;
Murther, stern murther, in the direst degree;
All several sins, all us'd in each degree.
Throng to the bar, crying all "Guilty, guilty!"*

(c) We are pained to see cases of the kind coming in considerable numbers nowadays; something has to be done to eradicate the evil of perjury, fraud & fabrication; a mere non-suiting of the unscrupulous litigants by throwing their case papers out through the court window would be

militantly insufficient; something more drastic needs to be devised, so that message reaches out loudly to the unscrupulous class; in this case, we are made to spend more than an hour of valuable time in turning every page of the original Trial Court Record that runs into 656 pages, keeping other older cases at a bay; it is a sheer waste of huge public time & money occasioned by this perjured case of the appellant; this is not a happy thing to happen; we are of the considered view that this appeal should be dismissed with exemplary & penal cost of Rs.1,00,000/-.

In the above circumstances, this appeal being thoroughly frivolous is liable to be & accordingly, dismissed with a cost of Rs.1,00,000/-(One lakh rupees only). It is open to the respondent-insurer to recover this amount *minus* Rs.20,000/- (compensation amount) by putting this order in execution as if it is a decree.

Liberty is reserved to the insurer to take up civil and criminal proceedings for the act of perjury perpetrated by the claimant i.e. P.W.1 and Dr.Lakshmi Narayan K., i.e. P.W.3, who

had issued the Disability Certificate at Ex.P.8, in accordance with law; it hardly needs to be stated that the delay brooked in taking such proceedings is liable to be discounted because of pendency of this appeal for all these years.

We place on record our appreciation for the learned panel counsel Mr. S.V.Yaji who has successfully resisted this appeal with meticulous preparation and alacrity.

SD/-
JUDGE

SD/-
JUDGE

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