

**(2015) 06 KAR CK 0062**

**In the Karnataka High Court**

**Case No : M.F.A. Nos. 4313 and 5284/2011 (MV)**

Bajaj Allianz General Insurance Co. Ltd. and Others

APPELLANT

Vs

Anji and Others

RESPONDENT

---

**Date of Decision :** 29-06-2015

**Acts Referred:**

**Citation :** (2015) 06 KAR CK 0062

**Hon'ble Judges :** S.N. Satyanarayana, J.

**Bench :** Single Bench

**Advocate :** H.R. Renuka, Advocate, for the Appellant; Shripad V. Shastri, Advocate, for the Respondent

---

## **Judgement**

S.N. Satyanarayana, J.—Appeal in M.F.A. No. 4313/2011 is filed by respondent No. 2 - Insurance Company in MVC No. 4697/2007 on the file of the M.A.C.T., Bengaluru, challenging the finding of the Tribunal in fastening liability to pay compensation on it. The claimant in the said claim petition has come up in M.F.A. No. 5284/2011 seeking enhancement of compensation awarded in the said proceedings.

2. Appeal in M.F.A. No. 4313/2011 is posted for admission. The connected appeal, M.F.A. No. 5284/2011, is already admitted on 13.09.2012. Since lower court records are received, at the request of learned counsel appearing for both the parties, the matter is taken up for final disposal.

3. The accident that occurred on 17.03.2007 at about 9:30 a.m. near Secretary Subbarayappa's land on Mayasandra - Medahalli road, Bengaluru, is not in dispute. It is also not in dispute that the said accident is caused by goods Tempo bearing registration No. KA-51-791 belonging to 1st respondent and insured with 2nd respondent before the Tribunal, who is appellant in MFA No. 4313/2011. However, the dispute is with reference to the manner in which the accident has happened and the involvement of the said vehicle vis-?-vis the claimant in MVC No. 4697/2007, namely, Sri Anji @ Anjanappa.

4. The case of the claimant, who is appellant in MFA No. 5284/2011, is that on 17.03.2007 at about 9:30 a.m., when he was walking on footpath along with his colleagues on Mayasandra - Medhalli (Medehalli) road within the limits of Attibele of Anekal Taluk, the said goods Tempo, which was proceeding towards Medhalli, dashed against him. The accident is said to have taken at a distance of about 3 Kms. from the Police Station. Though the accident has taken place on 17.03.2007, the complaint is lodged by one Mahadeva on 21.03.2007 stating that on 17.03.2007 at about 9:30 a.m. when he along with the claimant was walking on the footpath near Secretary Subbarayappa's land on Mayasandra - Medahalli road, claimant was hit by goods Tempo bearing registration No. KA-51-791 resulting in grievous injuries to him. According to claimant, he sustained injuries to both the legs and left hand and he was taken to Sparsh hospital, Hosur road, near Bommasandra. He was treated as inpatient for a period of 25 days from 17.03.2007 to 12.04.2007 in the said hospital. Ex. P6, discharge summary issued by Sparsh hospital states that claimant sustained type III B compound fracture of tibia and fibula at junction of lower 1/3rd and mid 1/3rd with bone loss, he was operated on the same day with interlocking nail and microvascular free latissimus dorsi flap and skin grafting was done 29.03.2007. Subsequently, he has undergone treatment in Bhavana Nursing Home, as inpatient for 32 days from 09.07.2007 to 11.08.2007 and amputation of his left leg below knee leaving a stomp of about 15 cms from knee downward was done on 16.07.2007. Thereafter, claim petition is filed seeking compensation from the owner and insurer of goods carrier, which hit him on 17.03.2007.

5. In the proceedings before the Tribunal, though respondent No. 1 before the Tribunal - owner of goods carrier was duly served, he did not appear and he was placed ex parte. Respondent No. 2 before the Tribunal - Insurance Company filed objections statement contending that the accident has not taken place as contended by the claimant, instead it is in the other way i.e., claimant was traveling as passenger in a goods vehicle and the same got capsized near Subbarayappa's land resulting in certain injuries to him. As such, claimant, who was not an authorized person to travel in goods vehicle is not entitled to seek compensation from the insurer for the injuries suffered in the said accident. Claimant examined himself as P.W. 1 and also examined the Doctor, who assessed his disability as P.W. 2 and got marked documents as per Exs. P1 to P13. On behalf of respondent No. 2, its Assistant Manager was examined as R.W. 1. The defence taken by the Insurance Company was not considered by the Tribunal. The claim petition came to be allowed by the Tribunal by judgment dated 08.07.2008 awarding compensation to the claimant in a sum of Rs. 5,68,600/- payable with interest at 6% per annum from the date of petition till its realization from both the respondents jointly and severally.

6. The said judgment dated 08.07.2008 was subject matter of appeals: MFA No. 10949/2008 filed by respondent No. 2 before the Tribunal - Insurance Company and MFA No. 9523/2008 filed by the claimant. The Insurance Company contended that claimant has suppressed the material fact of he traveling as a

passenger in the goods vehicle at the relevant point of time before the Tribunal. The Insurance Company, in support of its case, produced case sheet page Nos. 1 and 2 of Sparsh Hospital in respect of the claimant, wherein at the time of admission he has given history of injuries as resulting due to overturning of goods vehicle in which he was traveling. In view of the same, a coordinate Bench of this Court by its common judgment dated 26.06.2009, allowed the appeal filed by the Insurance Company and set aside the judgment of the Tribunal dated 08.07.2008 and remanded the matter to the Tribunal for fresh consideration, providing opportunity to both sides to place material in support of their rival contentions. While doing so, this Court dismissed the appeal filed by the claimant for enhancement of compensation.

7. After remand, additional evidence was adduced by the claimant in examining himself once again and also examining Mahadeva, complainant, as P.W. 3 (wrongly mentioned as P.W. 2 in lower court records) to substantiate that the accident has taken place in the manner in which he has stated in the claim petition i.e., while he was walking on the footpath, he was hit by goods Tempo. Additional evidence was adduced by the Insurance company by examining one of the Doctors of Sparsh hospital as R.W. 2, who was duly cross-examined by the claimant. R.W. 2 has produced the accident register (MLC) extract pertaining to the claimant dated 17.03.2007 as Ex. R1.

8. The Court below on re-appreciation of the evidence adduced by the parties including the evidence of P.W. 3 and R.W. 2, proceeded to accept the contention of claimant that he was a pedestrian and was hit by goods Tempo as stated in the claim petition. Accordingly, by judgment dated 10.02.2011, allowed the claim petition in part by reaffirming the judgment rendered by previous Bench of MACT., dated 08.07.2008 in awarding the same compensation of Rs. 5,68,600/- with interest at 6% per annum from the date of the petition till its realization from both the respondents jointly and severally. Being aggrieved by the same, Insurance Company has come up in MFA No. 4313/2011 challenging the finding of the Tribunal fastening liability to pay compensation on it. The claimant has come up in the appeal MFA No. 5284/2011 for the reason that after remand of the claim petition, the Tribunal has not enhanced the compensation as sought by him.

9. Heard the learned counsel for appellant in both these appeals. Perused the lower Court records, which includes pleadings, oral and documentary evidence produced and relied upon by the parties in the Court below. On going through the same, it is clearly seen that the claim petition, which is filed by the claimant in MVC No. 4697/2007, is a manipulated one. The accident dated 17.03.2007 is not in dispute. The dispute is only with reference to status of claimant as to whether he was pedestrian hit by the said vehicle or he was inmate of the vehicle, when the accident took place. Admittedly, the accident has taken place near land of Secretary, Subbarayappa, which is situated on Mayasandra-Medahalli road, away from the place, where the claimant is residing. There is

nothing on record to demonstrate as to why claimant was traveling on that road at 9:30 a.m. along with P.W. 3 - Mahadeva. Though claimant has deposed in his evidence that he was walking on the said road to attend to his work at the instruction of his employer Sathyanarayana, he has not stated as to the nature of business carried on by Sathyanarayana and the details of job assigned by his employer on the date of the accident. The evidence discloses that after the accident took place at about 9:30 a.m. on 17.03.2007, claimant was taken to Sparsh hospital, where he was conscious and he could have given a statement that he was hit by a goods Tempo causing the injuries. As could be seen from the examination-in-chief of P.W. 1-claimant, line No. 7 at paragraph No. 2 in page No. 3 reads as under:

"It is seen that, the doctors have not mentioned the full history as stated by me"

With this, it is clearly seen that the claimant was conscious and he was able to narrate to the Doctor the manner in which the accident took place. The Court below in the judgment dated 10.02.2011 while appreciating the evidence after remand of the matter, has observed in para No. 9 as under:--

"But the second respondent has not made it clear before the Tribunal as to whether this statement was given by the petitioner or his relatives or friend before the hospital authorities if at all the statement was given by the petitioner, whether the petitioner was conscious enough to give the said statement before whom?"

10. It is clearly seen that the Tribunal after remand of the matter, has not appreciated the oral and documentary evidence available on record in the right perspective. On careful scrutiny of the entire evidence on record, it is clear that the accident, which occurred on 17.03.2007, is not reported to Police till 21.03.2007. It is a normal practice in any hospital that when a medico-legal case is registered with them, intimation about the same will be given to the Police immediately and Police would automatically come and record the complaint of the victim or his family members on the very same day. In the instant case, the accident itself is reported to Police after four days and it is reported in such a way that the claimant, who was walking on footpath on Mayasandra -Medahalli road, which is a highway, was hit by the goods vehicle. Another aspect, which is to be looked into is, at highway, possibility of there being a footpath is remote. Nothing prevented the police from drawing up sketch depicting the scene of the accident. The manner in which the complaint is registered and police documents would indicate that there is assistance by the Police and all others connected with the claimant in supporting his false case. No doubt the claimant is victim of an unfortunate motor vehicle accident. The material on record would show that there is involvement of the goods Tempo bearing registration No. KA-51-791, belonging to the 1st respondent before the Tribunal, who is arrayed as respondent No. 1 in MFA No. 5284/2011 and respondent No. 2 in MFA No. 4313/2011, in causing the accident. Though he has entered appearance, he does not take any specific stand as to whether the claimant was traveling as a

passenger in the goods vehicle or was walking as a pedestrian at the time of the accident.

11. Learned counsel for the appellant argued that even assuming that claimant was an inmate of goods vehicle at the relevant point of time, he could be considered as a coolie traveling along with goods, in which case, he is entitled to compensation. There is no pleading to that effect in the claim petition. This line of argument, which is tried to be projected by him for the first time in this appeal, is not supported by any material available on record. In any event, it is clearly seen that an unfortunate accident resulting in amputation of left leg of claimant is sought to be converted into a road traffic accident caused while he was walking on the road, which is shown otherwise in the medical records. The entire medical records are handed over by Sparsh hospital to the claimant to be produced before the Court below, which is rather strange. It is seen that only name of claimant and his age is filled in the out-patient record and everything else is left blank. There are two blank additional sheets provided to claimant. For what purpose, the said blank sheets are provided to claimant is not forthcoming. In the records, which are produced by the hospital, there is no reference to certain particulars, which are relevant. If Ex. R1-accident register (MLC) extract dated 17.03.2007 signed by Medical officer on 18.03.2007 is seen, it could be clearly understood that the claim petition, which is filed on 10/07/2007 based on the wound certificate dated 15.05.2007 (Ex. P4) subsequent to 17.03.2007, is nothing but a manipulated document. Normally, wound certificates are issued either at the time of discharge from hospital or at the time of filing of the claim petitions through Police. The history of injury, which is recorded with reference to the manner in which the accident took place, would be at the time of the admission. Now, there are two documents, which are contradictory in nature: one Ex. R1, accident register (MLC extract), which is with reference to the history recorded by the claimant at the time when he got admitted to the hospital on 17.03.2007 and another is the wound certificate dated 15.05.2007 (Ex. P4), which is issued subsequently. The wound certificate - Ex. P4 clearly indicates that there is manipulation. Though there is an attempt on the part of the claimant to impeach the evidence of R.W. 2 -Doctor, who spoke with reference to the record that is maintained in Sparsh hospital, this Court is not inclined to accept the case put forth by the claimant that accident occurred while he was walking on the footpath and was hit by goods vehicle. On the contrary, this Court will have to accept that the accident has taken place in the manner in which it is recorded at the time of admission of the claimant into Sparsh hospital as per Ex. R1, which is also supported by the evidence of P.W. 1, wherein he has deposed that at the time of his admission, he has given particulars to the Doctor with reference to the manner in which the accident occurred. If these two pieces of evidence are taken into consideration, then this Court cannot doubt the recording in Ex. R1, which is to the effect that claimant sustained injuries when the three wheeler i.e., goods vehicle in which he was traveling toppled.

12. The second line of argument, which the counsel for the claimant - appellant

in MFA No. 5284/2011, tried to project in this appeal is that claimant should be considered as a coolie traveling along with the goods in the goods vehicle and compensation should be awarded to him. The said contention cannot be accepted for the reason that in the first instance, claimant has not demonstrated before the Court that he was traveling in the vehicle as coolie along with goods. There is nothing on record to show that goods vehicle carrying certain goods belonged to the employer of claimant, namely, Sathyanarayana. Also, the said employer has not been examined by claimant to substantiate the same. With this, it is clearly seen that an unfortunate accident, which has resulted in amputation of claimant's left leg is sought to be converted into a claim petition, wherein it is stated that claimant was hit by goods vehicle belonging to 1st respondent while he walking on the footpath and as such, he is entitled to compensation as third party. Since the said case is not properly appreciated by the Tribunal, this Court hold that the finding of the Tribunal, more particularly, at paragraph No. 9 of its judgment in disbelieving the evidence of R.W. 2 - Doctor is erroneous and contrary to Ex. R1 - accident register (MLC) extract. Evidence of R.W. 2 corroborates the case of Insurance Company that the entire claim petition is manipulated.

13. In that view of the matter, the finding of the Tribunal fastening liability on the appellant in MFA No. 4313/2011- Insurance Company to pay compensation to the claimant is liable to be set aside.

14. Now, coming to the appeal filed by the claimant in MFA No. 5284/2011, it is seen that claimant was aged about 28 years as on the date of the accident. Though it is his contention that he was working as a coolie under his employer, namely, Sathyanarayana, he has not produced any document to support the same. In that view of the matter, Tribunal has taken that he was working as a freelance coolie at the relevant point of time. Since the accident is of the year 2007, in the absence of proof of his avocation and income, has taken his income notionally at Rs. 3,000/- per month. Considering the fact that claimant suffered amputation of his left leg below knee, Tribunal has taken permanent physical disability sustained by him at 35% to the whole body and has awarded compensation of: Rs. 70,000/- towards pain and suffering; Rs. 2,01,600/- towards future loss of earning; Rs. 50,000/- towards use of artificial leg; Rs. 25,000/- towards loss of future comforts; Rs. 25,000/- towards disfigurement; Rs. 1,75,000/- towards medical expenses; Rs. 6,000/- towards loss of income during the period of treatment; Rs. 6,000/- towards attendant charges and Rs. 10,000/- towards food and nourishment. The compensation awarded to the claimant in a sum of Rs. 5,68,600/- under the said heads appears to be just and proper. In that view of the matter, this Court find that no justifiable grounds are made out to enhance the compensation.

15. Accordingly, appeal filed by the Insurance Company in MFA No. 4313/2011 is allowed. The finding of the Tribunal in the judgment and award passed in MVC No. 4697/2007 dated 10.02.2011 in reaffirming the liability of Insurance

Company to pay compensation to claimant is hereby set aside. The appeal filed by the claimant in MFA No. 5284/2011 is dismissed. In view of the appeal filed by the Insurance Company in MFA No. 4313/2011 being allowed, the amount deposited by the appellant - Insurance Company is ordered to be released in its favour. However, dismissal of the claim petition as against Insurance Company would not absolve the liability of respondent No. 1 in MFA No. 5284/2011, the owner of goods vehicle, in which claimant was traveling at the relevant point of time. Therefore, claimant is at liberty to proceed against the owner for realization of the compensation awarded.