
(2016) 10 KAR CK 0092
In the Karnataka High Court
Case No : M.F.A. No. 2162 of 2011 (MV)

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Skoukath	RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 354

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri A.N. Krishna Swamy, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Mrs. S. Sujatha, J.—This appeal is by the Insurance company challenging the Judgment and Order passed by the Motor Accident Claims Tribunal, Chintamani, [Tribunal", for short] in MVC No. 19/2007.

2. Briefly stated the facts are that the 1st respondent, aged about 12 years at the time of the accident instituted a claim petition represented by his natural guardian-mother contending that the 1st respondent and his father were waiting for a bus at Vyjakur gate on 18.10.2006 at about 10.30 a m., at that point of time, an Auto rickshaw bearing No. KA-07/T-5708 driven by its driver in a rash and negligent manner dashed against him causing grievous injuries. The appellant resisted the claim. The Tribunal after evaluating the evidence on record, awarded total compensation of Rs. 63,000/- with interest at 8% p.a. Being aggrieved, the insurer is before this Court.

3. Learned counsel appearing for the appellant assailing the impugned Judgment and award would contend that the accident occurred on 18.10.2006 and a complaint was filed on 19.1.2007. There existed no reason for inordinate delay and the reason assigned for the delay in lodging the complaint was not supported by any documentary evidence. The learned counsel placing much emphasis on

Ex.R1, register maintained by R.L. Jalappa hospital, Kolar, would contend that the 1st respondent was travelling in the goods auto which toppled and resulted in causing injuries to the 1st respondent. One Mr.Chand Pasha, the uncle of the claimant was travelling along with the claimant on 18.10.2006 in the goods auto and after causing or the accident, the said Chand Pasha had taken the claimant to the hospital and narrated to the medical officer of R.L. Jalappa hospital regarding occurrence of the accident. The said Chand Pasha, uncle of the claimant was not examined by the claimant. The delay caused in lodging the complaint coupled with the inconsistencies found in the complaint and the hospital records would indicate that the claimant was travelling as an unauthorized passenger/gratuitous passenger in a goods vehicle. The claimant knowing very well the violation of terms and conditions of insurance policy, manipulated to project the incident in a different way i.e. the claimant standing on the road waiting for a bus along with his father and the offending vehicle dashing against him due to the actionable negligence of the said vehicle. The learned counsel points out that fraud played on by the claimant to extract the accidental claim has to be viewed seriously. This fundamental aspect was lost sight of by the Tribunal despite the same was contended, established and argued. The learned counsel further submits that the offending vehicle was not covered with the insurance policy at the time of the accident. In support of his contention, learned counsel placed reliance on the following Judgments:

- i. United India Insurance v. Rajender Singh (AIR 2000 SC 1165)
- ii. Rajendra Singh v. Vinita Yadav and others (2003 ACJ 782)
- iii. State of Andhra Pradesh v. T. Suraya Chandra Rao (2005(6) SCC 149) and other cases.

4. Despite service of notice on respondents, no representation on behalf of the respondents.

5. Having heard the learned counsel appearing for the appellant and perusing the material evidence on record, the point that arises for consideration is, whether the claimant is entitled for compensation as contended i.e., as a third party sustaining injuries while standing on the road due to the actionable negligence of the driver of the offending vehicle ?

6. In order to answer this point, it is axiomatic to refer to the factual matrix of the case as available on record. In this context, Ex.R1 plays a pivotal role. Ex.R1 is the register extract maintained by R.L. Jalappa hospital where the claimant was taken treatment for the injuries sustained by him due to the alleged accident. This Ex.R1 clearly establishes the history of injuries sustained by the claimant. Scanning through this document, it can be viewed that one Chand Pasha, the uncle of the claimant, accompanied him to the hospital on the fateful day i.e. 18.10.2006, the history of injuries as gathered from the uncle of the minor claimant/patient reveals that the patient along with his uncle was travelling in a goods auto rickshaw which toppled and the minor sustained

injuries. LTM of minor boy was taken as the identification mark and the statements of the uncle of the minor were recorded with his signature. In other words, Ex.R1 bears the signature of Chand Pasha. This crucial witness was not examined by the claimant to discern the truth. It would be inferred that the claimant is suppressing the material facts, particularly, when the specific defence was taken by the appellant/insurer as regards the claimant travelling as a gratuitous passenger.

7. It is an admitted fact that the accident occurred on 18.10.2006 and the complaint was lodged by the father of the claimant on 19.1.2007. It is trite law that no claim can be rejected merely on the ground of delay unless satisfactory explanation is offered for the delay caused in filing the complaint. As could be seen from Ex.P2, certified copy of complaint, it is stated that the complainant delayed filing of complaint due to the assurance given by the elders of the village to settle the dispute but the same is not substantiated by examining any witness on this aspect. Ex.R1 speaks that the claimant, minor boy was travelling in the goods auto accompanied with his uncle, whereas complaint Ex.P2 discloses that the minor boy was standing along with his father at the bus-stop. These inconsistencies are not satisfactorily explained by the claimants. It remains a jumble of facts, unresolved.

8. It is significant to note that the complaint was lodged by the father of the claimant on 19.1.2007 whereas the claim petition was filed by the minor claimant represented through his mother, natural guardian. The mother of the claimant was examined as PW-1. Complainant, father of the claimant has not stepped into the witness box. The claim petition first bears the signature of the father of the claimant and the same is erased, subsequently instituted through the mother of the claimant. At this juncture, it is beneficial to refer to the Judgments of the Hon''ble Apex Court and this Court on the issue on hand. In the case of United India Insurance Co. Ltd v. Rajendra Singh (supra), the Hon''ble Apex Court has categorically held that fraud and justice cannot dwell together, it is unrealistic to expect the insurer to resist claim on the basis of fraud at earlier instance without knowledge about fraud. If order is not recalled even after noticing fraud, it leads to serious miscarriage of justice. The Insurance company when it comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation after the award has already been passed, no court or Tribunal can be regarded as powerless to recall its own order if convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

9. In Rajendra Singh v. Vinitha Yadav (supra), it is held that the claimants have not been able to explain the statements which were given by them before the Delhi police on the very day on which they received the injuries, wherein they said that the injuries were caused due to accident of the tractor on which they were travelling. However, the testimony of the claimants and their witnesses established that the accident took place with an ambassador car. In that context,

it is held that the claim set up by the claimants was an absolutely false case and they were not entitled to any compensation. This was a case where the version of the claimants saw the light of the day for the first time, 32 days after the alleged accident when the FIR was lodged.

10. In the case of S.P. Changalavaraya Naidu v. Jagannath reported in AIR 1994 SC 853, it is observed that "fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. A Judgment or decree obtained by playing fraud on court is a nullity and non est in the eyes of law is the settled proposition of law, such a judgment/decree can be challenged in any court even in collateral proceedings.

11. It is settled legal position that fraud and collusion vitiates even the most solemn proceedings in any civilized system of jurisprudence. Lord Denning in Lazarus Estates Ltd. v. Beasley observed at Queens Bench pages 712-713 All England Report page 345-C-D) "No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

12. The Division Bench of this Court in the case of "Veerappa and Another v. Siddappa and Another" reported in ILR 2009 KAR 3562 has categorically held thus:

"15. *Fraus et jus nunquam cohabitant*. Fraud and justice never dwell together, is a pristine maxim which has never lost its temper over all these centuries.

Fraud avoids all judicial acts, ecclesiastical or temporal A Judgment or decree obtained by playing fraud on the Courts is a nullity and non est in the eyes of law. 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 practised 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".

It is further held thus:

"The experience has shown that this branch of law is slowly getting into the hands of unscrupulous people who are making a mockery of judicial process. A disturbing trend of unholy alliance among the police, the doctors, the lawyers and some times even the Insurance company, to siphon out the public money, and make an unlawful gain is fast emerging. It is also gaining respectability and persons who indulge in such practices are acclaimed as most successful in their respective profession. This is a dangerous trend, if unchecked would undermine the judicial process. As the existing law is inadequate to check this malady, the Courts not only have to be careful in adjudicating such claims but also find ways to prevent such abuse. They have to balance the interest of these accident victims and their legal heirs on one side, by giving them just compensation at

the earliest, thus giving effect to the mandate of the parliament, and on the other hand, to see that the very process is not abused and exploited by a handful of persons, who have attained specialization in this field, to make personal gains at the cost of the exchequer. An onerous responsibility lies on the Courts. Therefore, it is imperative that a strong message is to be sent to the abusers of the judicial process to discourage them from indulging in such practices as well as the consequences of such abuse may result in foisting the liability exclusively on the insured-owner of the vehicle."

13. Considering the aforesaid principles of law and background of facts, it is manifestly clear that it is a case of dubious concoction having made with sinister object of extracting the claim as the claimant if found to be travelling as a gratuitous passenger in a goods vehicle, was not entitled to compensation for breach of terms and conditions of the insurance policy. The long time gap between the occurrence of the accident and the filing of the complaint would be the reason for ingeniously designing a device to make a claim for which the claimant was not legally entitled to.

14. For the foregoing reasons, the appeal filed by the appellant-insurer is allowed. The impugned Judgment and award is set-aside. The appellant is at liberty to recover the quantified compensation from the registered owner of auto rickshaw, 2nd respondent herein.

Amount in deposit shall be refunded to the appellant-insurer forthwith.