

(2019) 08 KAR CK 0028

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 102636, 102207 Of 2015 (MV)

Icici Lombard General

APPELLANT

Vs

Beebijan @ Neelavva

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304(A)
Motor Vehicles Act, 1988 — Section 187

Citation : (2019) 08 KAR CK 0028

Hon'ble Judges : S.N . Satyanarayana, J;P.G .M. Patil, J

Bench : Division Bench

Advocate : S .K .Kayakmath, G .S .Mot, Hanumanthreddy Sahukar, S .D.Kulkarni

Final Decision : Dismissed

Judgement

1. The 2nd respondent - Insurer in MVC.No.102/ 2011 on the file of Additional District & Sessions Judge, Gadag has come up in this appeal impugning the judgment dated 07.05.2015 in MFA No.102630/2015. Impugning the very same judgment and award one another appeal is filed by respondent Nos.3 to 6 in MFA No.102207/2015, where they would seek to set aside the judgment so far as it pertains to awarding compensation to respondent Nos.3 , 4, & 5 in the said appeal who are admittedly claimant Nos.1 to 3 in MVC.No.102/2011. These two appeals are taken up for consideration.

2. Brief facts leading to these tow appeals are as under:

The material on record would indicate that on 6. 03.2011 at about 7.00 p.m. a person by name Tippusultan is said to have died in the alleged road traffic accident involving lorry bearing registration No.KA.25/2186 said to be belonging to the 1st respondent before the Court below namely M/s Vijayanand Road Lines by its Managing Director. It is stated that the alleged accident has taken place on 6. 03.2011 at 7.00 p.m. near Dundur involving aforesaid lorry resulting in the death of Tippusultan.

Thereafter a claim petition is filed by five persons who are claimant Nos.1 to 5 in MVC.No.102/2011 on the file of District and Sessions Judge, Gadag. The 1st petitioner Smt.Beebijan @ Neelawwa would claim that she is the widow of deceased Tippusultan, petitioner Nos.2 and 3 are said to be the daughters of the 1st petitioner Beebijan and deceased Tippusulthan and petitioner Nos.4 and 5 are the father and mother of the deceased Tippusultan.

3. The said claim petition is based on two documents namely Ex.P.1 and Ex.P.2. Ex.P.1 is the FIR in Crime No.64/2011 dated 07.03.2011 registered with Gadag Rural Police for the offences punishable under sections 279, 304(A) of IPC read with section 187 of the M.V.Act. The complainant is one Smt.Mumtazbi wife of Nabisab Nadaf who is said to be the sister of deceased Tippusulthan. Ex.P.2 is the complaint which is formally lodged by Smt.Mumtazbi with police on 07.03.2011 at about 12. 45 noon based on which the FIR in Crime No.64/2011 vide Ex.P.1 is registered.

4. It is also seen that there is one another document in the LCR which is said to be the further statement of complainant Mumtazbi registered by the Circle Police Inspector, Gadag Rural Circle on 9. 03.2011. Now coming to the complaint and FIR, they would indicate that, the deceased Tuppusultan had gone to his sister's house in Dunduru Village, Gadag Taluk on 05.03.2011, and on 06.03.2011 at about 8.00 p.m. he is said to have left the house of his sister Mumtazbi to catch a bus to reach Hubli. She would also state that on the same day at about 10. 00 p.m. she called Hubli to verify, whether the said person has reached home or not? She was informed by the wife of her brother that he has not reached Hubli. She would also state that on 7. 03.2011 while she was proceeding towards the field, on the way while crossing the bus-stand, she would notice that her brother was lying on the road near bus-stand with facedown and that he has suffered severe injuries to his head and face. The complainant would state that, she gave him water and he was still alive. Subsequently, she called 108 Ambulance. The Ambulance, which came to the spot, informed her that he is no more. In the complaint she would state that the accident has taken place between 8.15 p.m. on 06.03.2011 and 7.00 A.M. on 7. 03.2011 near Dundur bus-stand. She would also sate that the deceased Tippusultan who is her brother has suffered injuries while climbing into or out of the bus or while standing on the road being hit by some unknown vehicles.

5. It is based on this, the complaint in Crime No.64/2011 is registered for the offences punishable under sections 279 and 304(A) of IPC. In the said complaint one more provision under M.V.Act which is under section 187 is also invoked.

6. When the entire complaint is seen, there is no indication of the manner in which the accident had taken place and there is no reference to any specific vehicle being involved in causing the accident much less the lorry bearing registration No.KA.25/2186. Admittedly, the complaint was lodged at 12.45 noon on 07.03.2011, though she saw the dead body at about 7.00 a.m. Thereafter it is seen that she has given further statement on 9. 03.2011 before the Circle Police

Inspector, Gadag Rural Circle in indicating that, though she had stated that her brother Tippusultan after getting down from the bus near Dundur cross and while he was planning to proceed towards Hubli. In the process of crossing the road, he was hit by lorry belonging to the 1st respondent bearing registration No.KA.25/2186 and according to her the said accident was seen by one Rajesab Kudachi of Annigeri, and based on the said information she has given further statement.

7. It is on the basis of this, the police would proceed to file charge sheet against the driver of the aforesaid lorry on 23.03.2011. Subsequently, the claim petition was prepared in the name of appellants in MFA No.102207/2015 as claimant Nos.1 to 4 and claimant Nos.1 to 5 in MVC.No.102/2011 as claimant Nos.5 to 9.

8. However, while filing the claim petition, the first four names are deleted and the claim petition is filed by remaining five persons by re-altering the numbers as claimant Nos.1 to 5 instead of 5 to 9. Wherein the 1st respondent is the Managing Director of Vijayanand Road Lines and the 2nd respondent is the appellant in MFA.No.102636/2015, which is the insurer of lorry belonging to the 1st respondent. In the said proceedings, both the 1st respondent and the 2nd respondent would file statement of objections denying the accident and involvement of lorry bearing registration No.KA.25/2186 in the accident. The stock defence which is normally taken by all the respondents insurance company in claim petition that "in the event of accident proved and liability is established, the liability is restricted to act and policy and also the same is required to be paid by the insurer" is taken in this proceedings also. It is seen that too much of importance is given to this, as if, there is admission of involvement of the vehicle by M.A.C.T while deciding that matter.

9. Be that as it may. In the MVC the persons who are initially shown as claimant Nos.1 to 4 in the claim petition are subsequently shown as respondent Nos.3, 4, 5 & 6 and the matter was proceeded, where no objections are filed by respondent Nos.3, 4, 5 & 6 and when the matter went into trial, the 4th petitioner Peersab Husainsab Nadaf adduced evidence as PW.1 and he produced and marked in all 10 documents which are at Ex.P.1 to Ex.P.10. So far as respondents are concerned, one of the officers of the 2nd respondent has adduced evidence as RW.1 and they have produced policy copy and letter of authorization.

10. It is seen before adducing the evidence, the insurance company has also made an attempt to demonstrate before this court by filing a writ petition to bring to the notice of this Court the manipulation in police record which has ended up in false charge sheet being filed against the driver of VRL lorry and claim petition also being filed against the Insurer of the said lorry who was petitioner in W.P.No.64335/2012. However, when the said writ petition was taken up for consideration with other similar matters, the learned Single Judge of this Court dismissed all the writ petitions with following observations:

"11. The Tribunal has to decide the issue framed by it on the basis of evidence adduced before it. The judgment of criminal court and investigation records can be used to corroborate primary evidence adduced before the Tribunal.

12. Above all, this court cannot mechanically issue directions for respondent-investigation or further investigation to CBI or COD, more particularly, when the investigation records of criminal cases and result of criminal cases thereof, have no direct bearing on the issues for determination by the Tribunal."

11. With aforesaid material available on record the Tribunal has proceeded to accept the accident and awarded the compensation to the claimants as if, the death of Tippusultan has taken place in a road traffic accident involving the lorry bearing registration No.KA.25/2186 belonging to 1st respondent - Vijayanand Road Lines before the Tribunal and consequently shifted the liability to pay the compensation on the 2nd respondent in the said claim petition which is appellant in MFA No.102636/2015. In the said proceedings while awarding the compensation and apportioning the same, the Tribunal has not awarded any compensation to respondent Nos.3, 4, 5 & 6 who claimed themselves as wife and children of deceased Tippusultan.

12. It is seen that the said persons in the meanwhile have filed a suit in O.S.No.740/2011, on the file of I Additional Civil Judge and JMFC, Hubli to establish that they are the legal heirs of deceased Tippusulthan and that claimant Nos.1 to 3 in MVC No.102/2011 are not the legitimate wife and children of deceased Tippusultan, by judgment and decree dated 03.12.2015. It is based on that judgment and decree they are trying to impugn the judgment and award passed in MVC.No.102/2011, where compensation is not considered in their favour in spite of securing judgment and decree from the Civil Court.

13. Heard the learned counsel appearing for the parties in both the appeals. The judgment rendered in these two appeals are looked into. It clearly discloses the manner in which the judicial proceedings in this country is taken for granted by set of unscrupulous people. Admittedly, the claim petition in MVC.No.102/2011 is based on two documents which are Ex.P.1 and Ex.P.2 namely the complaint lodged by the sister of deceased Tippusulthan viz., Mumtazbi and the FIR in Crime No.64/2011 registered by Gadag Rural Police. When the complaint and FIR are looked into, it clearly discloses that the dead body of Tippusulthan was seen by his sister at about 7.00 a.m. on 07.03.2011 near Dundur bus-stand. When the contents of the complaint is seen, she would state that the said person had come to her house on 05.03.2011 in the evening and next day on 06.03.2011 at about 8.00 p.m. he left his sister's house stating that he is proceeding to Hubli, where he is said to be having one of his wives and children living in KIMS Quarters.

14. The contents of the complaint would indicate that the deceased Tippusultan left the house of his sister at about 8.00 p.m., on 06.03.2011, came to the bus-

stand to take a bus to proceed towards Hubli. However, in the subsequent portion of the complaint she would state, on 07.03.2011 at about 7.00 a.m. when herself and her son proceeding towards their field enroute the Dundur bus-stand, they would notice the body of Tippusultan lying facedown on the road. When they went near the same, she would notice that he was injured in the head and face and she would state that he was alive and she fed water to him at about 7. 00 a.m. Thereafter, it is stated that she called for Ambulance. By the time Ambulance came, he had died. When the entire sequence in the complaint is seen, it is clear that, it is a bundle of lie and that no portion of that could be remotely considered as true. The aforesaid statement is in the complaint which was filed by her at about 12.45 noon on 07.03.2015.

15. However, within two days the matter would change completely where the Circle Police Inspector, Gadag Rural Circle would record further statement of the complainant stating that, subsequently she came to know that, her brother who left her house, boarded a bus and thereafter he got down the bus at Dundur bus-stand to catch some other vehicle to reach Hubli and in the process of crossing the road he was hit by a lorry belonging to the 1st respondent - Vijayanand Road Lines. She would state that the said information was given to her by a person by name Rajesab Kodachi of Annigeri.

16. It is on the basis of this further statement charge sheet is prepared and filed. However, when the matter came up for trial in the claim proceedings, nobody gave evidence with reference to which vehicle caused the accident and who has seen it. The so called eyewitness Rajesab Kudachi was not even brought before the Court. In spite of glaring anomaly in the manner in which the accident is described, the manner in which the claim petition is filed, it is surprising that a person sitting as District and Sessions Judge has miserably failed to appreciate the evidence available on record or in the contrary, this Court would presume that he succumbed to accept the falsehood demonstrated before him as true for the reasons best known to him.

17. Be that as it may, in the set of facts as stated in the claim petition and documents at Exs.P.1 and P.2, it would be height of stupidity to accept that the accident has taken place between 8. 15 p.m. of 06.03.2011 and 7.00 a.m. of 7. 03.2011 in the bus-stand of Dundur. It would indicate that, within said time the body of Tipusultan was not seen by anybody; it waited for the presence of his sister to come and identify him; and to state that he was alive even after more than 12 hours of the accident; that he was alive and he breathed his lost in her presence as if it would happen in Bollywood movies. The stupid manner in which the said lie is projected before the Court would indicate that there are no limits and boundaries to project hardcore lie as gospel truth with sole intention to secure compensation on the said falsehood is challenged in this appeal.

18. When entire material available on record is seen, it clearly discloses the manner in which the courts are taken for granted and manner in which the parties would tell lie before the Court as if the courts neither have brain nor

sense to analyze the truth behind such statement. In fact in the instant case they have succeeded in establishing that the Court below could fall prey to their trick in not able to separate the grain from the chaff, when false claim was proved before it. In any event, the manner in which the MVC.No.102/2011 is decided by a Member of M.A.C.T is not in good taste, more particularly, when the accident itself is not proved, when the involvement of the vehicle is not established, the eye witnesses are not before the Court to demonstrate that; in such circumstance the narration of manner in which the accident has taken place would remotely infuse confidence in the mind of any person of normal common sense to accept that the accident has really taken place.

19. However, the Tribunal appears to be having extraordinary sense of perception in believing that the said accident having taken place in the manner as explained in the claim petition.

20. In that view of the matter, this court is of the considered opinion that the said judgment passed in MVC.No.102/2011 is required to be set aside and consequently the claim petition in MVC.No.102/2011 is required to be dismissed by allowing the appeal filed in MFA No.102636/2015 by 2nd respondent - Insurer in the said claim petition.

21. Now coming to the 2nd appeal i.e., MFA.No.102207/2015, which is filed by respondent Nos.3 to 6 in MVC.No.102/2011 is concerned, since alleged accident resulting in the death of Tippusultan not being established, liability to pay compensation by the owner and insurer in the said claim petition not being established and consequently the claim petition being dismissed, the question of considering the appeal filed by the respondent Nos.3 to 6 in the said claim petition to consider their claim for compensation in the said proceedings does not arise for consideration. Accordingly, the said appeal is also dismissed.

22. In view of the appeal filed by the insurer being allowed, the amount in deposit is ordered to be returned to the appellant-Insurer.