

(2014) 11 KAR CK 0169

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 20051 and 20334/2009 (MV)

Laxman Sadeppa Dodamani

APPELLANT

Vs

Mutteppa Irappa Hadaginal

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2014) 11 KAR CK 0169

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : Anand S. Bagewadi and Shivaraj P. Mudhol, Advocate for the Appellant; Ravindra R. Mane, Advocate for the Respondent

Judgement

K.N. Phaneendra, J.—The appellants are the unsuccessful claimants in M.V.C. No. 1269/2006 and M.V.C. No. 1270/2005 on the file of the Presiding Officer, Fast Track Court-1, Judge at Belgaum, have preferred these appeals challenging the judgment passed in the said cases dated 25.10.2008.

2. The petitioners approached the trial Court on the allegations that on 22.02.2006, the petitioner in M.V.C. No. 1269/06 Sri Laxman Sadeppa Doddamani along with his brother by name Nagappa Doddamani had been to their lands in their tyre wheeled cart which was fitted with harvesting machine on it which was being pulled by a pair of bullocks. It is contended in the petitions before the trial Court that while both of them were returning to their house at about 4.30 p.m. at that time a Tata 407 Goods Tempo vehicle bearing reg. No. KA-23/4778 being driven by its driver in a rash and negligent manner dashed against the front portion (noga) of the said bullock cart. Due to the impact of the accident, the bullocks ran in a haphazard manner, made the person who was inside the bullock cart to fell down and in turn said bullock cart ran over the said Nagappa, the deceased, who fell down on the ground and sustained severe injuries which were fatal in nature and succumbed to the injuries. It is also the case of the claimants-appellants that the said claimant in M.V.C. No. 1269/06

Laxman Sadappa Doddainani also suffered grievous injuries. The Insurance Company and the owner of the said Tata 407 goods vehicle have made their appearance before the Court. In fact, the owner of the said vehicle has admitted the accident and he virtually not contested the proceedings, on the other hand, he supported claim of the petitioners. However, the Insurance Company has seriously contested the proceedings on the ground that the entire police papers have been manipulated by the petitioners in active collusion with Police and the owner of the Tata 407 vehicle, in order to make a false claim against the Insurance Company.

3. The case has been tried by the learned Fast Track Judge by framing several issues. In my opinion issue No. 1 play a dominant role in this case which reads as under:

(1) Whether the claimant proves that he sustained accidental injuries on 22.2.2006 near the land of Basavva Kudachi of Bhendigeri village due to rash and negligent driving of TATA 407 goods vehicle No. KA-23/4778 driven by its driver?

4. While answering the said issue in the negative learned trial Judge has categorically held that it is a clear case of manipulation of the police records subsequent to the incident, for the purpose of claiming compensation, if possible from the Insurance Company. There is an active collusion between the claimants. Police and the first respondent before him. Ultimately on appreciating the material on record and the evidence of the witnesses, the learned Fast Track Judge has come to the conclusion that the petitioners have not made out any case for entertaining the claim petitions. Hence the said petitions came to be dismissed.

5. I have carefully evaluated the documentary and oral evidence on record. The prime document which was relied upon by the Insurance Company before the trial Court in order to show the manipulation by the Police is Ex. P. 1, which is the first information report lodged by the father of the deceased and the medical certificate of another injured-Laxman Sadappa Doddamani and also the evidence of the witnesses before the Court.

6. On plain looking into these documents it is clear that Ex. P. 1 is the first information report lodged by the father of the deceased Sadeppa Sakrappa Doddamani who has stated in the said complaint that on the date of incident his two sons, i.e., Nagappa Sadeppa Doddamani and Laxman Sadeppa Doddamani, both of them had been to their jawar land in a bullock cart fitted with harvesting machine. The bullocks were very arrogant and they were not properly tied with two pairs of ropes. It is further stated that while coming back, Nagappa was actually riding the said bullock cart and his another son Laxman Sadeppa was inside the said bullock cart. Due to the rash and negligent riding of the said bullock cart Nagappa, the deceased fell down from the bullock cart and in fact the bullock cart ran over Nagappa, who sustained injuries and later succumbed

to the injuries. It is not only stated in such a manner but it is in categorical terms, the father of the deceased stated that after seeing the incident himself and one Shekarningappa Kambar, Parappa Hadi and Mallappa Kambar and some other villagers went to the spot and intercepted the said bullock cart and removed the bullocks from the cart and tied them. Thereafter they went to the spot where Nagappa was lying and came to know that the said person died instantaneously on the spot itself. Immediately they sent Laxman, another injured to the Hospital and it appears thereafter the complainant went to the Police Station and lodged complaint. Having lodged such complaint before the Police they must have come to know that they will not get anything if they explain the incident in such a manner to the Court. Therefore, it appears, the further statement of this man was recorded by the Police on 23.02.2006, (on the next day) implicating the goods tempo vehicle bearing No. KA-23-4778 making allegation that on a particular date this goods tempo vehicle had actually dashed against the bullock cart, due to the impact of the accident the bullock cart ran in a haphazard manner, due to which the deceased Nagappa fell down and sustained injuries and succumbed to the injuries. Further, another claimant also sustained injuries. On those allegations the Police have recorded the statements of some of the witnesses, i.e., one Kallappa and one Mallappa Kambar.

7. It is quiet notable herein, the trial Court has observed that these eyewitnesses and also the documents prepared by the Police are concocted at the instance of claimants with active collusion with the owner in order to extract money from the Insurance Company, if possible, which has been turned down by the trial Court. The trial Court, has in fact appreciated the evidence of the witnesses. P.W. 4 is one Maruti Mallappa Kudachi. He has stated that, on 22.02.2006 himself and one Bharmappa Balekundri were proceeding in the goods tempo bearing No. KA-23/4778 and at the time of the accident in fact the said vehicle was being driven in a high speed and dashed bullock cart, due to which the bullocks were afraid and the bullock cart was dragged in a haphazard manner and due to which the accident happened, Nagappa Doddamam sustained grievous injuries and another Laxman Doddamani also sustained grievous injuries. This witness was cross-examined at length by the Insurance Company. It is elicited that he do not know whom the said goods tempo belonged and who was driving the said tempo on the particular date and he never tried to stop driver of the tempo from running away from the spot, even himself or another witness Bharmappa Balekundri also not filed any complaint against the driver nor P.W. 4 has informed the said thing before the Police. The conduct of these witnesses show that they have actually not informed anybody with regard to the incident on that particular date. On the other hand. Ex. P. 1 clearly discloses that on that particular date the complainant never saw these persons or the vehicle involved in the accident. According to his statement either before the Police or before the Court he never stated that these two persons were present on that particular time. On the other hand, in Ex. P. 1 he has categorically stated that, along with him some other persons by name Shekar Ningappa Galabi, Parappa Hadi, Mallappa Kambar and

some villagers were present along with him. They actually intercepted the bullock cart and saw Nagappa died on the spot itself. The evidence before the trial Court by P.W. 4 and P.W. 1 is totally contradictory to Ex. P. 1, which creates a large cleavage between earlier case projected by P.W. 1 and subsequent concocted case pleaded before the Court and evidence being led.

8. Further added to the above said circumstances, it is also seen from the records that this another injured witness Laxman Sadappa Doddamani also went to the hospital on the same day on 22.02.2006. It is very important to examine the medical report of this witness, because of the reason the entire police case has totally taken "U" turn on the next date from 23.02.2006. It is seen from the medical report that is issued by K.L.E. Society's Hospital & Medical Research Centre, Nehru Nagar, Belgaum, the discharge card of Laxman marked at Ex. P. 6 discloses the history was shown as fall from bullock cart on 22.02.2006 and loss of conscious, vomiting, etc. Therefore, these two documents which came up at the earliest point of time immediately after the incident on 22.02.2006 clearly disclose that the history was given explaining how the incident happened and sustaining of the injuries by the injured persons due to fall from the bullock cart. Whatever may be the subsequent concoction of the statement of the witnesses and also the charge sheet being filed against the driver of the said tempo cannot change the earlier version and the Court can't discard the statement already made in Ex. P. 1 by P.W. 2.

9. Of course there is no hard and fast rule that the Police may during the course of investigation find that some other person has committed the offence and there is chance of filing charge sheet against the person who has actually committed the offence. But there should be some explanation by the complainant as to why he has made such statement before the Police in such a manner at the earliest point of time. If the evidence of P.W. 2 recorded by the trial Court is properly understood, P.W. 2 has explained as to how the incident happened, but not that he came to know about the incident through somebody. There is absolutely no explanation as to why he has given such Ex. P. 1 before the Police at the earliest point of time and how he could overcome such admissions made in Ex. P. 1 when he has categorically admitted that he has lodged first information report before the Police. I can understand if P.W. 2 was not at all the eyewitness to the incident and he came to know about the incident through somebody later. On meticulously reading of Ex. P. 1 at the cost of repetition I say that he has disclosed that he himself was the eyewitness to the incident along with one Shekar Ningappa Galabi, Parappa Hadi, Mallappa Kambar and other villagers. But claimants have not examined those witnesses before the Court in order to say that the incident has actually happened in the manner explained by them after the subsequent statement being given by them before the Police. Therefore, looking to the above said facts and circumstances it appears there is a collision between the first respondent and the claimants before the trial Court in order to swipe out money of the Insurance Company which is a public money, if possible, to make themselves a wrongful gain. Such an attitude of the complainant should

not be encouraged.

10. In this background learned counsel for the Insurance Company has cited some rulings of the Apex Court reported in *Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others*, wherein the Apex Court held;

"First Information Report and its admissibility, offending vehicle not traced claim petition dismissed by Tribunal on the ground of analyzing the material on record including the First Information Report, driver not guilty of rash and negligent driving. Findings of the High Court, the FIR legally not proved, driver of tempo should be held guilty of rash and negligent driving when accident occurs owing to rash and negligent driving, resulting in injury or death by third party, driver liable to pay compensation, liability of owner also, under 1988 Act, Insurance Company to indemnify owner, when vehicle insured in case of third party with regard to Sub-section (2) of Section 147 rejected. Factum of accident cannot be proved by FIR. Proof of rashness and negligence on part of driver of vehicle sine qua non for maintaining application under Section 166 of Motor Vehicles Act. Admissibility of document - objections to be raised at appropriate time, if not raised and document allowed to be marked, with consent of both parties, then cannot be permitted to raise contention that contents of documents had not been proved, and thus should be relied upon."

11. Applying the above dictum to the facts on hand, the first information report which is marked at Ex. P. 1 is in fact produced by the petitioners themselves before the trial Court. When it is their own document, which is marked they cannot say that contents of the said document are false. It is the proof of the contents of the document once it is admitted by P.W. 2 having lodged the same before the Police and it bears his signature. Therefore, there is no need for the Insurance Company to prove their contention independently, when positive evidence is available before the Court. It is the burden on the petitioners to show that the contents of Ex. P. 1 was false and the statement made before the Police subsequently are true and correct. Such an effort has not been made by P.W. 2. Therefore, Ex. P. 1 can be relied upon and rightly relied by the learned Judge of the trial Court.

12. In another ruling reported in *Veerappa and Another Vs. Siddappa and Another*, , wherein this Court has held that:

"fraud and justice never dwell together. An attempt on the part of the first respondent/owner to collide with the claimants with the fond hope of saddling the Insurance Company to pay compensation wherein the owner of the vehicle has admitted the accident and had no objection for award of compensation. Even though the owner of the vehicle in unmistakable terms, has admitted the incident, that admission has no value in the eye of law. He has admitted something about which he has no knowledge and, which he has not seen. It is clear that the said admission is made with the sole object of getting compensation to the claimants as it is the Insurance company which will pay, and

not the owner. Though admission is the best piece of evidence, it cannot be accepted as gospel truth. The court can insist on proof of facts, if the admission is not satisfactory."

13. In view of the above said dictum of this Court which is in a straight jacket manner applicable to the facts and circumstances of this particular case. In this case also, the owner of the alleged offending vehicle contested the proceedings and virtually he has colluded with the claimant in order to lay a false claim against the Insurance Company. Such type of attitude of claimant as well as the owner of the vehicle should not be encouraged and the same is to be deprecated.

14. In view of the above said facts and circumstances of the case and also decision of the Apex Court and the High Court, in this case I am of the considered opinion that there is an attempt to play fraud on the Court by the claimants as well as the owner of the vehicle. Such an attitude, in my opinion is not encouraged and the same is curbed by this Court.

15. Under the above said circumstances, I do not find any valid reasons to interfere with the judgment of the trial Court and the same is liable to be upheld. Hence, the appeals deserve to be dismissed. Accordingly, appeals are dismissed.