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**(2003) 12 KAR CK 0029**  
**In the Karnataka High Court**  
**Case No : Writ Petition 32922 of 2001**

Manjunath and Another

APPELLANT

Vs

Smt. Yellawwa and Others

RESPONDENT

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**Date of Decision :** 12-12-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2005) ILR (Kar) 1661 : (2004) 2 KCCR 868

**Hon'ble Judges :** R. Gururajan, J

**Bench :** Single Bench

**Advocate :** P.G. Mogali, for the Appellant; L. Srikanth Rao, for R4, Y. Lakshmikanth Reddy, for R1, R2, 3, 5, 7 and K. Suryanarayan Rao, for R-6, for the Respondent

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## Judgement

R. Gururajan, J.—This case reflects the sorry state of affairs in conducting motor vehicles cases before the Motor Vehicles Claims Tribunal. This Court cannot but observe that Motor Vehicles claims Tribunal are constituted for the purpose of providing relief to those who suffer injury or lose their bread earning member. Of late the laudable object of providing rightful compensation to rightful person is given a complete go by and instead several unjustifiable acts are happening in these matters. Time has come for this Court to remind all those who are in charge of the claim compensation cases to be vigilant to arrest unlawful gain by unlawful persons in legal forums.

2. Petitioners in this petition is challenging the judgment and award passed by the District Judge and MACT, Gadag in MVC No. 42/2000. According to petition averments, petitioners mother namely Smt Ningavva was the wife of Sri Bassappa Piddanavar who was working as Head Mastri with R-5. The mother of the petitioner died in 1997. On 30.5.1998, at about 1.45 PM while on duty the father of the petitioners died in an accident caused between the vehicle of respondent No. 5 and another vehicle. The petitioners being the sole heirs of deceased Basappa filed claim petition before the Commissioner for Workmen's

Compensation in WCA No. 126/ 1998.

3. Respondents 1 and 2 claiming to be the wife and daughter of Sri Bassappa Piddanavar filed a claim petition in terms of the Motor Vehicles Act in MVC No. 42/2000. It is stated in the petition that the factum of respondents 1 and 2 filing a claim petition before the Claims Tribunal was not within their knowledge. On coming to know of the same, an IA was filed before the Workmen's Compensation Commissioner to implead respondents 1 and 2. They were also impleaded on 20.12.2000 and were represented by their counsel. They took time to file objections before the Commissioner. Objections were not filed and the matter is still pending before the Commissioner. However, according to petition averments the contesting respondents 1 and 2 suppressing the factum of another case in respect of the very same accident pending on the file of the Workmen's Compensation Commissioner have obtained an award in the claim petition filed before the MACT, Gadag, in their favour. The tribunal in the award has granted a sum of Rs. 1,74,700/- with interest at 6%. This award is questioned in this petition.

4. Notice was issued to respondent. The matter was listed from time to time. The matter was listed on 15.9.2003. No objections were filed at that point of time. This Court after noticing the facts of the case directed the other respondents to file their respective affidavits. This Court also called for records. Accordingly statements have been filed after an order by this Court by R-6 namely the New India Insurance Company and also the contesting respondents.

5. Heard the learned counsel for the parties.

6. Learned counsel for the petitioner invites my attention to the material facts to contend that respondents 1 and 2 are not the legal representatives of the deceased. His further submission is that a claim petition is already pending in respect of this very accident and contesting respondents are parties to those proceedings. Suppressing the factum of pending proceedings before the Workmen's Compensation Commissioner, they have chosen to obtain an award to the detriment of these petitioners and at the cost of Insurance Company. He has placed all the documents before the Workmen's compensation commissioner as well as before the MACT, Respondent No. 6. The divisional manager has filed an affidavit explaining the lapse in not bringing it to the notice of the MACT with regard pending proceedings before the Workmen's compensation commissioner. Learned counsel for the contesting respondent would say that his clients are the real legal representatives. His contention is that this petition is not maintainable in the light of a remedy by way of a Miscellaneous First Appeal.

7. Let me first deal with the preliminary objection of maintainability of a Miscellaneous appeal in such circumstances. It is no doubt true that appeal remedy is available to an aggrieved party challenging the judgment and award of the claims tribunal. The facts of this case would show that these petitions were not admittedly parties to those proceedings and it is their specific case that a

fraud has been played on the Court. In such circumstances, this Court cannot shut its eyes and permit perpetuity of fraud in such cases. I must also notice a latest judgment of the Supreme Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, has noticed the scope of the power under Article 226 of the Constitution of India. The Supreme Court in para 26 rules as under;

"26. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometimes for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."

30. It is certainly one of those cases where there is an abuse of the process of the law and the Courts and the High Court should not have shied away in exercising its jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it."

In the light of the judgment of the Supreme Court and on the facts of this case, I am of the view that a Writ Petition cannot be thrown out on this ground. Moreover, rule has been issued and the petition is pending for nearly three years. In such cases it is not proper for this Court to uphold such objection at the final hearing of the petition. This objection is therefore overruled.

8. Coming to the merits of the case. It is an admitted fact that these two petitioners have filed a claim petition before the workmen's compensation Commissioner. It is equally an admitted fact that the contesting respondents were impleaded before the Workmen's Compensation Commissioner and they are represented by an advocate. It is further admitted that no objections are filed in the pending case and the same is pending. Therefore, it cannot be said that these two petitioners are strangers in the light of pending Commissioner proceedings. It is also to be noticed at this stage that an award has been obtained at the hands of the tribunal on 29.5.2001. Admittedly, the contesting respondents were parties before the Workmen's Compensation Commissioner. They have suppressed the factum of pending proceedings at the instance of the petitioners in respect of this very accident before another competent officer. It is to be noticed that even the insurance company has not chosen to bring it to the

notice of the tribunal with regard to pending proceedings.

9. From the original file made available to me it is seen that the contesting respondent has filed a claim petition initially. The Insurance company has filed its objections but they have not chosen to mention at any point of time with regard to the pending proceedings before the Workmen's Compensation Commissioner. It is also seen from the evidence of PW-1 that she was aged about 25 years at the time of accident and her daughter was 10 years. The learned Judge has taken the age of the deceased as 25 years. There is no consistency with regard to the age. It is also not in evidence that any legal heirs certificate has been produced before the Court. Notwithstanding this lack of material evidence learned Judge has granted compensation to the respondents. It is rather unfortunate that even the insurance company has failed in its duty in not inviting the attention of the learned Judge with regard to this glaring naked contradiction and lack of material for the purpose of compensation. This Court cannot but remind all the parties that compensation has to be given to right person and it cannot be given to all sundry. Parties have to prove their entitlement. There is lack of evidence and lack of consideration in the case on hand. Petitioner has filed Annexure-B a certificate dated 14.12.1998 in the case on hand. In Annexure -C it is seen that the mother of the petitioners was the wife of Ningappa. The contesting respondent has filed a document in this Court Annexure-R1. In Annexure-R1 there is reference to the first petitioner. However in Annexure -R2, the name of the husband of the petitioner's is not shown. Annexure R3 is dated 18.6.2001. This is after the award. Even in the affidavit filed in this court, the contesting respondent has not come out with the truth. They admit that a compensation case is pending before the Labour Officer, Gadag, but however they say that they were not aware as to whether the petitioners were children of late Basappa Piddanavar. This averment runs counter to the proceedings made available to the Court by the petitioner with regard to impleading and with regard to no objection by the contesting respondent before the Workmen's Compensation Commissioner. A combined reading of material filed in this Court and the material already available on record gives an impression to this Court that some mischief is played somewhere. Public money is involved in all these cases.

Therefore in the interest of a right person getting right compensation, this Court has no option but to set aside the award and remit the matter for rededcision. Parties have to place their respective material and the Court is to decide with regard to entitlement and with regard to the fact of pending commissioner proceedings in accordance with law, after hearing and after providing in opportunity to all the parties. Liberty is reserved to the petitioners to get themselves impleaded in the pending compensation proceedings before the tribunal. Tribunal is directed to complete the proceedings within six months from the date of receipt of a copy of this order.

10. Before concluding, I must observe that the insurance company is to be more

careful in dealing with these matters. This case is a solid example and these cases must be an eye opener to the insurance company to be more vigilant in conducting their cases and placing their facts before this Court by way of an affidavit in appeal/writ proceedings. It is only after this Court made their eyes open, they have come out with their affidavits with some explanation. I express my strongest displeasure with regard to the treatment given to this case by the insurance company. On the peculiar facts of this case, I do not want to proceed further in the matter except saying that at least in future the insurance company provides all necessary details to the Court for a proper and fair decision so that unscrupulous elements may not make the compensation Court as a tool for their wrongful gains. Copy of this order be sent to the legal cell of the insurance company for its reference and for remedial action.

Ordered accordingly, No costs.