

(2015) 07 KAR CK 0400

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 7630, 10010, 10009 and 7631/2011 (MV)

Mohammed Ibrahim and Others

APPELLANT

Vs

The New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Citation : (2015) 07 KAR CK 0400

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

Bench : Single Bench

Advocate : M.R. Ryakha, Advocate for B. Siddaramaiah, for the Appellant; A.K. Bhat, Advocates for the Respondent

Judgement

S.N. Satyanarayana, J—Claimants in MVC. Nos. 1254/2010 and 1255/2010 and also third respondent in said proceedings have come up in these four appeals. MFA. Nos. 7630/2011 and 7631/2011 are by the claimants seeking enhancement of compensation and MFA. Nos. 10009/2011 and 10010/2011 are by the insurance company challenging the finding of tribunal in fastening liability to pay compensation on insurance company. Though these appeals have come up for admission, since lower court record is received, at the request of counsel for the parties they are taken up for final disposal.

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

The case of claimants in MVC. Nos. 1254/2010 and 1255/2010 is that on 22.7.2010 while they were walking on road at about 10.00 a.m., near GA Palya Cross, Hebbur hobli, within the limits of Tumkur Taluk they were said to have hit by a motor cycle bearing registration No. KA-06/X.7615 resulting in injuries to both claimants. The claimants are father and son i.e., claimant in MVC. No. 1254/2010, namely Mahammed Hayath is son and claimant in MVC. No. 1255/2010, namely Mhahammed Ibrahim is father. The records would disclose that immediately after accident son was taken to a native Ayurvedic doctor for treatment and father was taken to Siddartha hospital and was admitted there on

the same day. Whereas, the son who was taken to native doctor in a nearby village was also brought back and admitted to Siddartha hospital on the next day i.e., on 23.7.2010. It is stated that both father and son were inpatients in said hospital till 4.8.2010, during which period surgery was conducted to the injuries suffered by claimants. According to claimants, Mohammad Hayath-claimant in MVC. No. 1254/2010 suffered fracture of shaft of right humerus bone and Mohammed Ibrahim - claimant in MVC. No. 1255/2010 has suffered fracture of neck of femur.

3. Curiously enough in this proceeding complaint is filed on 1.8.2010 by the cousin brother of Mohammed Ibrahim stating that his uncle's son Mohammed Ibrahim and his son Mohammed Hayath met with an accident on 22.7.2010 due to rash and negligent driving of motor cycle bearing registration No. KA-06/X.7615 resulting in injuries to both of them. He would give details regarding how and when both of them were shifted to hospital and the treatment that they are taking as could be seen from Ex. P2, the complaint which is registered with Tumkur police on 1.8.2010 at about 11.00 a.m. Based on said complaint, FIR is registered which is at Ex. P1. It is seen that after the discharge of both father and son from hospital, they have filed claim petitions seeking compensation from the owner, insurer and insured of the alleged offending vehicle.

4. In the proceeding before tribunal, the insurance company which had issued policy to the vehicle in the name of second respondent, namely Siddagangaiah entered appearance, filed statement of objections. They have denied the accident as having taken place on 22.7.2010 and would further submit that entire claim is based on fabricated documents. In the said proceeding common evidence is recorded by clubbing both the claim petitions. On behalf of claimants, claimants have adduced evidence as P.Ws. 1 and 2 and one Dr. Sunil has given evidence as P.W. 3 and P.W. 4 in respect of claimants in both petitions. He tries to substantiate the accident as well as injuries suffered by claimants. The insurance company which has raised several objections has effectively cross-examined the witnesses to elicit and demonstrate that the accident has not taken place in the manner in which it is stated and the medical records are all false documents. In the cross-examination of P.W. 3 - Dr. Sunil they have confronted Ex. R1, which is MLC register verification letter issued by Siddartha hospital. With the documents available on record, the tribunal proceeded to accept the accident as contended by claimants and refused to consider the objections raised by insurance company as well as admission of P.Ws. 3 and 4 with reference to accident and entries in the hospital register and proceeded to award compensation to claimant in MVC. No. 1254/2010 in a sum of Rs. 40,216/- and to claimant in MVC. No. 1255/2010 in a sum of Rs. 56,000/-.

5. Being aggrieved by the common judgment and separate award passed in aforesaid two claim petitions the claimants have filed MFA. Nos. 7631/2011 and 7630/2011 seeking enhancement of compensation, whereas third respondent insurance company has filed MFA. Nos. 10009/2011 and 10010/2011 challenging

the liability and also finding of tribunal on issue No. 1 in holding that accident dated 22.7.2010 is caused by the rider of vehicle bearing registration No. KA-06/X.7615 belonging to first respondent insured by previous owner - second respondent and insured with third respondent.

6. Heard the learned counsel appearing for parties in both set of appeals, perused the lower court record as well as finding of tribunal in its common judgment with reference to the grounds of appeal in all the four appeals. On going through the same, the one and only point that arises for consideration in these appeals is whether the tribunal really applied its mind before deciding common issue No. 1 which was framed in both the claim petitions. Admittedly, the accident as stated supra is said to have taken place on 22.7.2010 at about 1.00 a.m., resulting in injuries to claimants. The documents would reveal that the complaint is filed belatedly on 1.8.2010 by one Zaheer Abbas, who is said to be the cousin brother of Mohammed Ibrahim. According to him, he was present at the place of accident when both claimants were hit by the rider of offending motor cycle and it is he and other relatives of him who took Mohammed Ibrahim to Siddartha hospital and Mohammed Hayath to a native doctor in a nearby village and subsequently, bringing Mohammed Hayath back and admitting him also in Siddartha hospital on 23.7.2010. He would clearly speak about the accident being caused by very same bike which is insured with third respondent - insurance company. He would also affirm that though he was aware of accident he did not realize that complaint has to be lodged on the same day. However, the medical evidence available on record would speak otherwise.

7. The learned counsel for insurance company brings to the notice of this Court the document, which is produced by claimants and marked as Ex. P6 dated 23.7.2010, which is issued to Mohammed Hayath, who had visited Dr. Vijaykumar of Vijaya hospital, Banashankari, Kunigal Road, Tumkur with a history of fall from bike and suffering injuries. Infact, the said document which is produced and marked by claimants clearly indicate that fall by bike is altered in scratching the words "bike" and in that place something else is written to show as if it is an accident by motor cycle. But the scratch and rewriting is clearly seen and also clearly demonstrate what was written earlier in that place. This document with reference to Mohammed Hayath was secured by him on 23.7.2010 and marked in the proceedings before tribunal by himself as Ex. P6, which would clearly indicate that injuries suffered by him is not by an accident by the vehicle in question but, it is fall from bike. With this, what could be rightly and legally presumed is that father and son having fell down from the motor cycle and having suffered serious injuries got admitted to hospital.

8. Thereafter, after one week they have manipulated the documents and managed to lodge a false complaint through the cousin of Mohammed Ibrahim. The said fact is further confirmed from the cross-examination of P.Ws. 3 and 4, who is the doctor of Siddartha hospital and who is said to have examined both the claimants. In the cross-examination the said doctor clearly admits that MLC

register which is maintained in Siddartha hospital does not refer to claimants being admitted to said hospital on 22.7.2010 and 23.7.2010 with a history of road traffic accident. As rightly argued by the learned counsel for insurance company, the victims of accident who have suffered injuries when admitted to hospital would indicate that injury suffered by them is in a road traffic accident and as and when it is mentioned as road traffic accident, statutorily the hospital authorities are required to register the same in MLC register maintained by them. Indeed, as admitted by P.Ws. 3 and 4 such a register is maintained in Siddartha hospital also but, the doctor would give a dicey answer saying that he does not know whether it is registered or not while answering a question in cross-examination in MVC. No. 1254/2010. However, while giving answer in MVC. No. 1255/2010 he categorically admits that there is no reference to claimants being admitted to said hospital as victims of road traffic accident. He would further admit that there is no document to substantiate the fact that claimants are victims of road traffic accident.

9. In this background, the second question that arises is how Siddartha hospital could issue Ex. P5 - wound certificate of Mohammed Hayath on 16.8.2010 stating that he has suffered injuries in a road traffic accident and similar certificate to Mohammed Ibrahim vide Ex. P33, thereby indicating that hospital has intentionally and knowingly issued two false wound certificates indicating that the persons referred to therein have suffered injuries in a road traffic accident when admittedly there is no such reference in MLC register maintained in said hospital. During cross-examination of P.Ws. 3 and 4, the counsel for respondent-insurance company has confronted a letter to him marked as Ex. R1, which is issued by the medical record officer of very Siddartha hospital where P.Ws. 3 and 4 was working, the contents of letter which is just two lines read as under:

"We are verified our MLC Register, Sri. Mohammed Hayath & Mohammed Ibrahim, the patient not entered in MLC register on above said date."

When the said letter is confronted to P.Ws. 3 and 4, he was at loss of words and he did concede that said patients were not admitted as inpatients coming to said hospital with a road traffic accident history, thereby admitting that the wound certificate issued from his hospital vide Ex. P5 and P33 are fabricated and false documents.

10. When Exs. P5 and P33 are admitted as false documents and when Ex. P6, the document relied on by claimants itself would indicate that injury to Mohammed Hayath is due to fall from bike, how the tribunal could ignore the same and accept that claimants have suffered injury in a road traffic accident involving the vehicle insured with third respondent before tribunal is uncomprehensible. This Court find that either the presiding officer of tribunal was deliberately trying to turn a blind eye to the documents, which are brought to its notice or was of the opinion that when this is the manner in which majority of claim proceedings are being conducted then, why single out one particular claim and deny compensation to claimants. Whatever it is, the manner in which the

claim proceedings is conducted by tribunal is deplorable. It is not befitting the responsibility that is attached to it.

11. This Court has been observing that every third or fourth claim is a false and frivolous one with documents being fabricated, vehicles being planted, services of police being purchased, doctors lending false evidence to support such kind of false claims in trying to convert the entire claim proceedings into a murky and unholy business. However, it is unfortunate that the Motor Accident Claims Tribunals even after coming to know of such unholy practices are accepting the same and not taking suitable action to curb the same when it has knowledge of such unholy practice being implemented in a particular case. In a given case, when the evidence on record is brought to the notice of the tribunal to demonstrate that aforesaid methods are adopted, the tribunal shall mercilessly reject such claim. This Court feel that this claim is yet another fraudulent case where fall from motor bike resulting in injury to father and son i.e., claimants in the instant claim proceedings is converted into a road traffic accident to secure compensation for them. Though the compensation awarded by tribunal in these claim proceedings are meager, it is the dent which is made in demonstrating the tribunals to look foolish enough to believe such false documents and fall prey to the fraud in awarding compensation to claimants and being part of this fraudulent exercise, is more dangerous to the system.

12. With the aforesaid observations, this court would set aside the common judgment and separate awards passed by the tribunal in MVC. Nos. 1254/2010 and 1255/2010 and consequently, dismiss both the claim petitions. In the result, the appeals filed by claimants in MFA. Nos. 7631/2011 and 7630/2011 are dismissed and the appeals filed by respondent - insurance company in MFA. Nos. 10009/2010 and 10010/2010 are allowed. While doing so, this Court also feel that mere dismissal would not lessen the hoards of false claims and deter the gang of fraudsters, who are behind this in successfully manipulating the same, which involves people from various profession in encouraging the aforesaid criminal act. It can be curbed only when this Court comes heavily on them with an Iron fist.

13. To begin with that this court imposes cost of Rs. 25,000/- each on claimants for falsifying the documents and seeking compensation by filing such false cases. The cost imposed should be deposited by the claimants within six weeks from this day. If they fail to do so, the registry shall take appropriate steps for recovery of the same, if necessary by arresting and sending them to civil prison. Further, registry is directed to bring to the notice of Medical Council of India about the manner in which the hospitals are supporting such fraudulent activity, for example in this case is Siddhartha hospital, which has supported false claim of claimants in MFA. Nos. 7360 and 7631 of 2011 and the doctor, who knowing fully well that this is not an MLC case had the audacity to come before the Court and give false evidence to the court, thereby showing disrespect to the judicial proceedings, therefore the Medical Council should be directed to take action

against the hospital and the doctor to curb such practice.

In view of the appeals filed by insurance company in MFA. Nos. 10009 and 10010 of 2001, the amount in deposited is ordered to be released in favour of appellant therein.