

(2015) 12 KAR CK 0159
In the Karnataka High Court
Case No : MFA No. 31621/2011 (MV)

Nabisab and Others

APPELLANT

Vs

Shivappa and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 6, Order 8 Rule 1, 151
Penal Code, 1860 (IPC) — Section 149, 304(A)

Citation : (2016) 1 AKR 825

Hon'ble Judges : A.S. Bopanna and G. Narendra, JJ.

Bench : Division Bench

Advocate : Babu H. Metagudda, Advocate, for the Appellant; Sanjay A. Patil, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

G. Narendra, J.—The appellants are the claimants before the MACT-III Bijapur, in MVC No. 71/2004. Being aggrieved by the judgment and order dismissing the claim petition the claimants are before this Court.

2. The parties are herein after referred to by their rank before the tribunal.

3. The facts of the case are that;

"The case of the claimants is that on 19.01.2003 at about 11.00 a.m. their son Ibrahim aged about 30 years was returning from Suragihalli by walk. As he was walking along the road, the offending vehicle 407 Tempo bearing registration No. KA-28/3877 came from the opposite direction and knocked down their son. It is alleged that vehicle was being driven in a rash and negligent manner and at a high speed and on account of the impact their son Ibrahim suffered grievous injuries and that he was shifted to S.P. Institute of Neuroscience at Solapur, where he was treated by one Dr. Shirish Walsankar and several tests and check-up like scanning, X-ray, Chemical check-up etc., were conducted and despite the treatment given, the condition of their son had not improved and hence the

doctor suggested to them that patient be shifted to Pune for higher treatment and their son was shifted in an Ambulance but enroute their son succumbed to the injuries sustained in the accident. The deceased was working as a High School Teacher and drawing a monthly salary of Rs. 7,300/- and that he was the lone bread winner and the parents have lost their loving and obedient son and a pillar of support in their old age. Their son was a double graduate and had service of at least 28 years and would have achieved remarkable advancement in his career and would have at least become Head Master or even Block Education Officer. That the first respondent is the owner of the vehicle and the second respondent is insurer and vehicle been duly insured and the second respondent is bound to satisfy any award it may be passed. Upon service of notice the first respondent remained absent and is placed exparte. The second respondent appeared through their counsel and filed their written statement. It was contended that the petition is vexatious and frivolous and contrary to law and facts and deserves to be dismissed with cost without going into any merits of the case."

4. It was denied that the offending vehicle was involved in the accident, the age, occupation and income of the deceased was also denied. He denied that the accident occurred on account of the negligence and that the accident was proximate cause of death or that the claimants are dependants of the deceased. That the claim amount is exorbitant and the liability is subject to the permit of the vehicle and driving license of the driver being valid as on the date of the accident. Thereafter, the tribunal by its order dated 15.03.2005 framed three issues;

"1. Whether the petitioners prove that, the deceased Ibrahim died in the accident on 19.1.2003 at about 11:00 hours on Balaganur-Banthanal road, near Suragihalli village due to rash and negligent driving of the Tempo bearing Reg. No. KA-28/3877 by its driver?

2. Whether petitioners are entitled for compensation? If so, how much?

3. What order or award?"

5. By order dated 09.09.2005 the matter was referred to the Lok Adalath and was taken up by the Lok Adalath. Both the parties and the advocates for the parties were present and the parties mutually agreed to settle the claim for a sum of Rs. 5,50,000/- along with interest @ 6%. The said order has been recorded by the Lok Adalath comprising of the Additional District Judge, Bijapur and Conciliator Sri C.V. Kadi. It appears that thereafter the counsel for the petitioner filed an application under Section 151 of CPC for recalling the award passed on 09.09.2005, mutually settling for a sum of Rs. 5,50,000/-. The application was moved seeking for enhancement of the award amount. The Lok Adalath, to which application was referred without going into the legality of such an application appears to have recalled the award dated 09.09.2005 passed by it at the instance of the parties. The Court below also failed to see that neither the

tribunal nor the conciliator examined the issue as to whether enhancement of the award amount can be a ground for withdrawing the sum accorded before the Lok Adalath. The sum awarded came to be recalled and the matter was referred back to the tribunal for disposal. Thereafter, by order dated 01.02.2006 the petition was listed for evidence. The affidavit in lieu of evidence was filed on behalf of the claimants in the Court on 20.02.2006, PW-1 was examined and Exs. P-1 to P-24 were marked on behalf of the claimants. Neither the respondents nor the counsel were present. Thereafter, on 14.03.2006 the second respondent filed an application for permission to file additional written statement. The said additional written statement was taken on record and further an additional issue was framed i.e. whether the respondents proves that the deceased did not died in the motor accident as stated in the petition. The claimants were permitted to file additional affidavit in view of the additional written statement referred by the second respondent. Further examination of P.Ws. 1 and 2 was completed on 15.03.2006. P.W. 3 was examined on 19.04.2006 and the evidence on behalf of the petitioner side was closed. Thereafter, the evidence on behalf of the second respondent was commenced on 27.07.2006 and R.W. 1 was examined and Ex. R1 was marked. Thereafter, on 18.01.2007 IA-II under Order VIII Rule 1 R/w 151 of CPC along with memorandum of facts was filed a list with fifteen documents was produced by the counsel for the second respondent. IA-III was filed under Section 151 of CPC along with memorandum of facts by the second respondent counsel for recalling of P.Ws. 1 and 3. IA-II and III were allowed by order dated 26.03.2007 and P.Ws. 1 and 3 were recalled for further cross-examination. Thereafter, the petition appears to have been transferred from the Court of MACT-IV to MACT-III on account of an order passed in Misc. A. 41/2008 disposed of vide Order dated 25.04.2009. IA-IV was preferred under Order XVI Rule 6 of CPC praying to issue notice/summons to the President of the Educational Society to produce the Bank accounts, list of teaching and non-teaching staff and the original application submitted by the deceased seeking appointment and also summons to the S.P. Institute of Neuroscience Solapur, to produce the entire case files pertaining to the deceased. Thereafter, by order dated 25.11.2010 a Court Commissioner came to be appointed to examine the treated Dr. Shirish Walsankar, of S.P. Institute of Neuroscience, Solapur. In view of the additional written statement, the said documents have been marked on behalf of the claimants. Hence, the evidence of the claimants was closed after examining P.Ws. 1 to 3 and marking 29 documents Exs. P-1 to P-29 as documents in support of the claim. The second respondent examined the Branch Manager on their behalf and the treated doctor as R.Ws. 1 and 2 and marked Exs. R-1 to R-19 and closed the evidence. In the additional statement a contention was raised first time that the injury was not caused on account of an accident by the offending vehicle but was suffered by the deceased on account of his fall from the Bullock Cart.

6. It was alleged that the petitioners in connivance with the police have managed to convert a Bullock Cart accident into a Motor vehicle accident case. It was

further specifically asserted that

"As a matter of fact, on the date of accident the deceased was on the bullock cart and he fell down from the bullock card and sustained injuries. The Hospital records clearly speak that, the deceased sustained injuries in a cart accident and the vehicle of respondent No. 1 was not at all involved in the accident. The bullock cart accident took place on 19.01.2003 (a private complaint came to be filed on 27.02.2003) and on 27.02.2003 the petitioner No. 1 filed a private complaint under P.C. No. 12/2003 alleging that his son died in a Motor accident and not in bullock cart accident. The P.C. No. 12/2003 was referred to the concerned Police Station and registered with Almel Police Station MAG. Cr. No. 22/2003 and the body of the deceased was exhumed for post mortem. The Investigating Officer under the influence of the complainant and the respondent No. 1, who was residence of same village, charge sheeted the case under Section 304(A) r/w 149 of IPC. So the facts and circumstances of the case clearly show that, filing of the complaint after a lapse of more than a month and involving the vehicle of the same village all made out to lodge the claim under Motor Vehicles Act. Therefore, it is submitted that, the petition be dismissed with costs".

7. The additional issue No. 1 was framed on account of the above specific allegation. P.Ws. 2 and 3 are eyewitnesses. The Court after going through the records was of the opinion that issue No. 1 was required to be proved by the claimants and additional issue No. 1 was required to be proved by the second respondent. The tribunal while considering issue No. 1 has noted that there is delay of more than one year in filing the claim petition. The tribunal taking note of the delay of one year was of the opinion that the claimants are not clear as to how the accident had taken place. It has discussed the deposition of P.W. 1, that also relies on the admission of P.W. 2/Kenchappa had informed him over phone that his son had been hit by 407 Tempo vehicle and thus as on the date of the accident itself P.W. 1 was aware that his son had been knocked down by the offending vehicle but he did not prefer to lodge a complaint immediately. The tribunal also did not deem it fit to accept the explanation of recording the delay in filing of the complaint i.e. the complainant P.W. 1 had made a complaint to lodge a complaint after ten days and the police admonished him for having come to lodge a complaint after the long delay of ten days and in view of the delay they refused to accept the complaint. Aggrieved by the refusal of the police, he preferred a private complaint, which came to be referred to the jurisdictional police for investigation and report. The tribunal found this explanation unsatisfactory and hence rejected the same. The tribunal after examining the evidence of P.W. 2 (eyewitness) found the evidence contrary to the pleadings in the petition as it was stated by P.W. 2 that the deceased was sitting in the rear of the bullock cart being driven by one Rajesab and that the offending vehicle which was behind the bullock cart hit the deceased. Hence, the tribunal thought it fit to disbelieve the eyewitness on account of P.W. 2 and discarded the same on the ground that it is difficult to understand the evidence of P.W. 2. The Court tended to disbelieve the evidence of the eyewitness because no damage was caused to

the bullock cart. The Court thereafter concluded that P.Ws. 1 and 3 are not eyewitness and having disbelieved the version of eyewitness-P.W. 2, it concluded that there is no evidence on record of any one for having witnessed the accident and hence held issue No. 1 against the claimants.

8. Thereafter, while considering the additional issue No. 1, it has laid much weight with the deposition of R.W. 2 i.e. the treated doctor of S.P. Institute of Neuroscience to hold additional issue in the affirmative. The tribunal while discussing the evidence of R.W. 2 as held as follows;

"In his deposition he clearly stated that, the deceased Ibrahim was admitted to his Hospital on 19.01.2003 with history of falling from the bullock cart. He clearly stated that, his Assistant issued the wound certificate Ex. R-16. As per the recitals of Ex. R-16, the deceased Ibrahim sustained injuries on account of fall from the bullock cart".

The tribunal also discussed Ex. R-17, which is a notice to local police station by the Hospital about the Medico Legal Case and the said notice is issued by R.W. 2, and that it is clearly stated therein that, the deceased had fallen down from the bullock cart and sustained head injuries.

9. On the basis of Ex. R-19, which is the injury certificate and Ex. R-20, supposed to be report of an investigator, the Tribunal came to the conclusion that the second respondent had demonstrated that no accident involving the offending vehicle had taken place. Ex. R-20 is described by the tribunal as the investigation report by one T. Vasudeva Reddy, (Retired Assistant Commissioner of Police) who had investigated the issue on behalf of the second respondent.

10. After rendering its findings on the above two issues in paragraph No. 15 of the judgment, the tribunal has been pleased to observe and held as follows;

"It is clear that after one month of the accident, the petitioners planned to get compensation from the Insurance Company; they created a story of involvement of the said 407 Tempo vehicle and lodged the private complaint and got it referred to police and got filed charge sheet against the driver of the said 407 Tempo vehicle in collusion with police just to get compensation somehow from the Insurance Company".

11. In effect this finding tantamounts that a fraud had been played upon the Court and it is further buttressed by a categorical finding in the succeeding paragraph.

"In the instant case, the fraud is being played on the Court by placing the bullock cart accident into a Motor Vehicle accident".

It has accepted the contention of the second respondent that matter was settled before the Lok Adalath but the second respondent withdraw from the settlement because subsequently the second respondent got the matter investigated and came to know the fraud is being played by the claimants. Though the second

respondent has categorically asserted that the claimants have practiced a fraud and the said assertion of the second respondent is accepted in toto by the tribunal, nothing further appears to have been done by the tribunal or the second respondent to have the perpetrators of the alleged fraud to be tried and punished for the said offence. Though it has held in paragraph No. 18 of the judgment that answering additional issue No. 1 does not arise, the discussions in paragraph Nos. 14 and 15 are virtually the reasoning in support of the additional issue No. 1.

12. In the light of the above facts and discussion, the issue for consideration is as below;

"1. Whether the judgment and order of the tribunal is sustainable in the facts and material on record in the above case?

2. Whether the findings are inconsonance with the material on record?"

13. We have perused the records i.e. the deposition and exhibits on behalf of the claimants and the deposition and exhibits on behalf of the respondents.

14. It is seen that, the claimants have asserted in the claim petition that their deceased son was returning to the village by walk and that at around 11.00 a.m. the offending vehicle came from the opposite direction and hit the deceased. P.W. 1 the father of the deceased has also deposed accordingly in his examination in chief. On the contrary P.W. 2, who is the eyewitness and has claimed that he was an occupant of the offending vehicle and has stated that the deceased was sitting in the rear side of the bullock cart and the offending vehicle was behind the bullock cart and the offending vehicle dashed against the deceased resulting in the injury and subsequent death. A critical examination of the evidence of P.W. 2 is necessary for adjudication of this case. A perusal of the cross-examination of P.W. 2 demonstrate that nothing has been elicited in the cross-examination to controvert the evidence of P.W. 2. In the cross-examination he has given the reasoning as to how he came to be an occupant of the offending vehicle. He has also stated that, who was driving the vehicle and he has also named the person who was accompanying him in the vehicle. He has denied the suggestion that he was not travelling in the vehicle. He has also denied the suggestion that the vehicle did not pass through the road where the accident is alleged to have occurred. He has also explained that bullock cart was carrying a harvesting machine and the deceased was sitting behind the harvesting machine. He has also elaborated the position of the vehicles. He has clearly described that bullock cart was on the left side and the offending vehicle was right side of the road. He denied the suggestion that the deceased who was sitting in the bullock cart was not visible to the people inside the offending vehicle. He has also clearly asserted that it was only the deceased who suffered injuries and neither bullock nor the cart suffered any damage and he has also stated that no damage was suffered by the motor vehicle.

15. He has further clarified that after the incident got down from the offending

vehicle and came back and found Rajesab (driver of the bullock cart) and the deceased behind bullock cart. That the deceased suffered injuries on the shoulder, leg and head and that the deceased was not talking and within ten minutes thereafter a passenger jeep was stopped and the deceased was shifted to hospital. He has also stated that opinion about the accident was given to the hospital by his co-occupant Kashimsab and that police have not recorded any statement. He has also further stated that it is Kashimsab who rang up P.W. 1 and informed him about the accident. He has denied the suggestion that the deceased fell down from the bullock cart and was not injured by the offending vehicle. This evidence of the eyewitness is sought to be wished away by the tribunal.

16. Only reason given by the tribunal is that the eyewitness account is contrary to the pleading in the petition. Pleadings are no doubt required to be proved by cogent evidence and evidence more specifically oral evidence is the sum total of, examination in chief and cross-examination, where a fact is proven or not is based on the deposition of the witness and cross-examination. If nothing is elicited in the cross-examination to controvert the version of the witness more specifically eyewitness and it is of such nature i.e. the version trotted out is neither illogical or unbelievable to the prudent mind then such evidence of the witness would partake the character of proof. In the case on hand, the narration of P.W. 2 and his assertions in the cross-examination are neither illogical or unbelievable. He was not subjected to any extensive cross-examination and the cross-examination does not controvert it nor is it contrary to his deposition or examination in chief. That being the case, the rejection of the eyewitness account by the tribunal is unsustainable and contrary to law. If the Court was of the opinion, that the version is improbable it could have put questions to the witness and sought clarifications for the doubts in its mind. This exercise was all the more necessary in view of the fact that thinking of the Court got clouded by the allegation of fraud which in fact, it has ultimately up held. The evidence of P.W. 2 is core to the consideration of issue No. 1. Admittedly, even P.W. 1 has not claimed that he is an eyewitness, his version of the accident is based on the information received from villagers.

17. P.W. 1 has clearly deposed that he was over come by grief by the loss of his only and grownup son and hence he went to the police station after ten days and that the police admonished him for having given a belated complaint and hence he was constrained to approach the Court by way of a private complaint. It is hard to visualize a person who would not be overcome by grief with the loss of his only and grown up son and that to a person who is aged about 60 years. Hence, we are unable to accept the reasoning of the tribunal for rejecting the cause for delay in preferring the complaint to the jurisdictional police.

18. Apart from the above, we have examined the other material on record to see, if the impugned order can be sustained at least on the basis of the pleadings and evidence on behalf of the second respondent. The tribunal has referred to

the evidence of R.W. 2 and Ex. R-16 (wound certificate) Ex. R-17 (true copy of notice), Ex. R-19 (injury certificate), Ex. R-20 (investigation report). A perusal of the deposition of R.W. 2, the treated doctor would show that he has placed reliance on Ex. R-16, described as injury certificate and its contents have become central for disbelieving the claim of the petitioners and concluding that the claim petition is a fraudulent exercise and that too in connivance with the jurisdictional police. Though it is titled as injury certificate, Ex. R-16 does not carry any date and is more in the nature of a case summary of the patient and in fact it is concluded with the following;

"Patient discharged against medical advice" and it commences in the following manner;

"This young gentleman fall from the bullock cart at 9.00 a.m. on the day of Admission, vomited once".

19. From a reading of the sentence, it can be deduced that the word used is in the past tense and the only conclusion that can be drawn is that this document was not prepared at the time of admission and it has been prepared after the discharge of the patient i.e. on the next day or thereafter or at the time of discharge because the document concludes with the statement, patient discharged against medical advice. The injury certificate or wound certificate as is more commonly known, is the one document which comes into existence at the earliest point of time i.e. when the injured is first attended to by a doctor. The tribunal erred in describing and admitting Ex. R-16 as a wound certificate. Ex. R-17 is stated to be the notice of a Medico Legal Case by the hospital to the jurisdictional police station. A perusal of the same does not disclose any date nor the seal and signature of the receiving authority. That being the case, this Court is confounded as to how the tribunal could accept and admit the document. It is also on record that all these documents have been marked subject to objection of the claimant. Ex. R-19 is nothing but a reproduction of R-16. We are unable to acquiesce with the tribunal's finding regarding Exs. R-16 and R-19. The reason being the admission by RW-2, the treated doctor in the cross-examination he has admitted as follows;

"I do not know as to whether I have taken the history. From the records the deceased Ibrahim was unconscious when he was admitted, I tried to talk with the deceased Ibrahim but he did not respond".

"I do not know as to who has given the history of the deceased Ibrahim to my Assistant Doctor".

"Bullock cart"s cradle is two feet upper from the normal surface of the earth".

20. From a reading of the above, it can be concluded that R.W. 2 attended the deceased when he was brought to the hospital. But he does not remember if he had inquired into the history of the patient (i.e. as to what and how the patient had suffered injury). This is illogical and unbelievable for the simple reason that

the first act of a doctor is to verify the ailment and the causes for the ailment from the patient and in the event the patient is unable to answer, ascertain the facts from the person accompanying the patient.

21. Admittedly, in the case on hand, the deceased had fallen unconscious at the spot of the accident itself and if RW-2 was telling the truth that he has attended upon him when he was brought to the hospital then he would have necessarily enquired with the patient's attendant rather he must have necessarily enquired with the patient attendant before commencing his treatment. On one side he claims to have attended the patient, on the other hand he states that history of the patient was given to his Assistant Doctor i.e. the signatory to Exs. R-16 and 19. If that being the case, then in what capacity or with what authority R.W. 2 spoke about the contents of Exs. R-16 and 19 is not known. A fact that is noticed by this Court is that the examination has been preceded by an interrogatory/questionnaire by the so-called investigator. The version of R.W. 2 is to be disbelieved as a discredited version in view of his consistent approbation and reprobation. In the examination in chief he refers to Ex. R-11 dated 04.04.2006, which is nothing but the reply given by him to the questionnaire/interrogatory by the so-called investigator. He would state that the contents of Ex. R-16 are reflected in Ex. R-11. In the examination in chief he has asserted that the injury have been truthfully recorded which implies that the injuries have been described by the attendant but in the cross-examination he admits that he does not know who has given the case history. He also admits that the author of the injury report is his Assistant Doctor. After the cross-examination he is further examined by the counsel for the second respondent, wherein he has stated that name of the informant is Kasim Allauddin Nadaf. In the further cross-examination, he states that the name of the informant has been written by Dr. Anwar Shaikh i.e. his Assistant Doctor and that he does not know the name of the informant. So not once but twice he has wavered and contradicted himself in the examination and cross-examination and no reliance ought to be placed on the evidence of R.W. 2. More so because he speaks about a document of which he is not the author.

22. The next document which has been seen as a bible by the tribunal is Ex. R-20, which it describes as investigation report. A perusal of the said exhibit would show that it is nothing but the questionnaire/interrogatory by one T. Vasudeva Reddy, resident of Dharmavaram and it is a letter head carrying the name of N.V Investigators, (insurance claims). The said letter is addressed to R.W. 2, is stated to have been addressed on 13.03.2006 and is marked as Ex. R-20, whereas the reply Ex. R-11 is dated 04.04.2006. It is neither explained how it was sent or received nor any postal receipts or any acknowledgement is produced and hence create a doubt in the mind of the Court. It appears to the Court that, there is a possibility of the same being exchanged on a personal level.

23. We find that the tribunal has seriously erred in construing and considering Ex. R-20 as an investigation report and making it the basis for rejecting the

claim. Apart from the above discussion, a perusal of the cross-examination of RW-1 leaves this Court in amazement. R.W. 1 though he speaks of the respondent having engaged an investigator, he admits that he does not know who is the investigator but states that the investigator is from Tamilnadu, whereas Ex. R-11 gives the address of the investigator as Dharamavarm town Anantpur District, (A.P). The tribunal appears to have been carried away by the allegations of fraud rather unsubstantiated allegations of fraud. The tribunal has not looked into the standard of evidence placed before it by the respondents.

24. In our view, the tribunal has relied upon incoherent and disjointed evidence to accept the allegation of fraud and arrive at a conclusion for rejecting the claim. The tribunal has neither looked into the authenticity of the material placed before it nor the crucial omissions on the part of the second respondent. The tribunal has not at all considered evidentiary value of Exs. P-1, P-2, P-3, P-4, P-6, P-7 and P-8 which are nothing but the FIR, inquest panchanama, copy of proforma of exhumation of spot panchanama, spot mahazar, M.V. report, P.M. report and charge sheet, which are official documents placed before the jurisdictional Court for securing conviction of the accused. On the one hand the tribunal has discarded the official documents of the police authorities, which have been placed before the Court of law and which has been accepted and acted upon by the jurisdictional Court and have not been discarded as a result of any fraudulent exercise. No finding of fraud has been given by the competent Court. In that view of the matter the tribunal could not have arrived at a conclusion of fraud on the very same material. The final documents prepared by the police authorities has been backed by the witness. In fact, the so-called investigator has also approached the police authorities and the Superintendent of Police by letter dated 25.02.2006 has asserted in unequivocal terms that the prosecution of the driver of the offending vehicle under Section 304(A) of IPC is a result of the conclusions arrived by the investigating authority after a proper investigation and the same is produced as Ex. R-7. Ex. R8 is the letter of the Deputy Superintendent of Police giving a gist of the investigation and the persons examined who are none other than the witnesses examined by the police. Both these exhibits categorically answered the queries raised by the so-called investigator but though the same have been marked as exhibits, the tribunal has not found it fit to examine its contents. The Court ought to have inferred adversely against the second respondent for not having not examined the author of the alleged injury report and also ought to have eschewed the opinion and interrogatories of the so-called investigator from consideration for arriving at a conclusion or finding regarding the maintainability of the claim. It is not the case that the author of Exs. R-16 and 19 was not available. It is also not the case of the second respondent that the so-called investigator was not available for examination. No reason is forthcoming as to why two critical witnesses have been screened and not produced before the Court by the second respondent. A perusal of the documents also does not disclose that the second respondent has placed before the Court any report of the so-called investigator.

25. The analysis would indicate that the evidence available on record has not been appropriately construed by the Tribunal to determine the factum of accident as claimed. At the same time, when a serious dispute with regard to the accident having occurred was raised on behalf of the Insurance Company, the claimant should have also adduced sufficient evidence in addition to what had been adduced. Though the respondents have contended that a fraud had been played in creating a situation about the accident having occurred, reference to the document produced at Ex. R8 would disclose that a Police Officer of the rank of Deputy Superintendent of Police who was earlier CPI, had investigated into the matter. The nature of investigation conducted and the names of the persons whose statements were recorded is indicated in detail based on which the charge sheet was filed. If the statement of such persons is with reference to the accident that had taken place, the said statements and the examination of such persons could also help the Tribunal in reaching a definite conclusion with regard to the accident as claimed. Hence, it would be just and proper to allow an opportunity to the parties to tender such additional evidence so as to resolve the issue.

26. In view of the above discussion, we are of the opinion, that the judgment and order of the tribunal is unsustainable and is liable to be set aside.

27. The counsel for the respondent insurer has placed reliance on several citations viz., 2004 SA Reporter (Civil) 2004 (1), he would rely on head note "B" deals with the settled law that fraud vitiates every solemn act in that fraud and justice never dwells together, which is extracted herein;

"B. "Fraud on Court - Fraud as is well-known vitiates every solemn act - Fraud and justice never dwells together - It is also well settled that misrepresentation itself amounts to fraud-Indeed, innocent misrepresentation may also give reason to claim relief against fraud - An act of fraud on Court is always viewed seriously".

28. In our considered opinion, the said citation is inapplicable to the facts of the case. In fact, the Hon"ble Apex Court has differentiated about innocent misrepresentation and in our opinion the erroneous description of accident by claimants is not a misrepresentation of true facts for the simple reason that they have clearly stated that the information about the accident was given to them by third parties. Hence, that cannot be a ground to vitiate the version of the eyewitness i.e. P.W. 2.

29. The appellants counsel has also relied upon the decision of the Apex Court reported in CDJ 2007 SC 627, in the said citation the Hon"ble Apex Court has held as under;

"The factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence the party bringing the same on record cannot be permitted to turn round and contend that other contents. Contained in the rest part there of had not been proved. Both the parties have relied there upon. It was marked as an Exhibit as both the parties intended to rely upon them. Once a part of it is

relied upon by both the parties the learned Tribunal cannot be said to have committed any illegality in relying upon the other part irrespective of the contents of the document been proved or not".

30. In the instant case the tribunal has not at all looked into the documents, which the Hon"ble Apex Court has held can be considered for proving the factum of the accident and in fact the finding of the tribunal is contrary to the law laid down by the Hon"ble Apex Court in the above citation.

31. The counsel has placed reliance on another judgment reported in 2009 (6) AIR KAR 349, in the case of Bajaj Allianz General Insurance Co. Ltd., v. B.C. Kumar and Another, that is the case where the claimant claimed to have attended and got treated in a particular hospital to support that claim, documents by another hospital were produced. It is not so in the case on hand and the same is inapplicable to the facts and circumstances of the case.

32. The appellant has also relied upon the judgment reported ILR 2009 KAR 3562, rendered by a co-ordinate bench which propound that fraud and justice never dwell together and fraud vitiates the proceedings. The division bench has held that,

"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".

It is one of the reason why this Court has deemed it fit to intervene with the findings rendered by the tribunal. As stated supra the Court having stated that it was not possible to accept the version of P.W. 2, it ought to have put such questions as it deemed necessary and seek such clarification. In the case on hand, the tribunal has not made any such exercise and finding rendered by this Court is supported by the said judgment.

33. The other citation relied upon is the one reported in North West Karnataka Rd. Transport Corp. Vs. Gourabai and Others, , a case where it was demonstrated by medical evidence that the fall occurred in the house and the Court relied upon the entries in the wound certificate and the conclusion was arrived at based on the evidence of the doctor who had admitted and attended to the deceased at the hospital and where it was recorded that the deceased had suffered injury on account of fall from the height of 8 to 10 ft in his own house and the said fact was not looked into by the tribunal and High Court, which was marked as R1 and the said Ex. R1 was signed by the person who gave the information and when the said exhibit was disputed the Hon"ble Apex Court held as follows;

"This clearly overlooks the fact that the doctor will not be a signatory on a piece of paper mentioning something which is not correct. In the case on hand, it is admitted by the treating doctor (R.W. 2) that he does not know who the informant is and that the alleged injury certificate is written by his Assistant, that it is who he has treated the patient and to compound these inconsistencies the

alleged injury certificate neither names the informant nor is there any signature of the informant on the said document. Hence, the said citation is inapplicable to the facts of the case and on the contrary would support the case of the claimants".

34. In the light of the facts of the said case, it can be put against the respondents because the alleged injury certificate neither names the informant nor is it counter signed or acknowledged by the informant. In view of the above discussion, we hold that the judgment and order of the tribunal in MVC No. 71/2004 is unsustainable and is liable to be interfered with and is accordingly set aside.

35. The impugned judgment and order is set aside and appeal is allowed. This Court does not deem it proper to proceed further to assess and award damages in view of the fact that the said aspect of compensation has not at all been considered by the tribunal and that being a fact finding exercise ought to be done by the tribunal. The matter requires reconsideration, the dichotomy in the material on record to be relooked afresh in the light of the fact that the second respondent has made serious allegations of fraud. In fact they have alleged on several occasions that fraud is perpetrated by claimants in collusion with the jurisdictional police and the claim petition is a result of the collusion between the police and claimants. In fact in paragraph No. 15 of the judgment the tribunal has categorically held that there is collusion and a fraud has been played upon the Court. In that view of the matter, the findings assigned are of serious implications and the tribunal dealt with it in a very light manner. In view of the same, we deem it proper to remand the claim for fresh consideration. In the light of the above discussion the tribunal shall reconsider the evidence after giving an opportunity to the parties to adduce such further material if desired to by the parties and shall arrive at a conclusion after considering the existing material and also such other material and if the tribunal arrives at a conclusion that fraud has been practiced it shall initiate such appropriate action as mandatory under law.

Appeal is accordingly disposed of.