

**(2007) 08 KAR CK 0025**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No"s. 5681 and 5682 of 2005

National Insurance Company Limited

APPELLANT

Vs

Smt. Parvathi and Another

RESPONDENT

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**Date of Decision :** 08-08-2007

**Acts Referred:**

**Citation :** (2008) ACJ 1183 : (2008) 2 KarLJ 377

**Hon'ble Judges :** Anand Byrareddy, J

**Bench :** Single Bench

**Advocate :** B.C. Seetharama Rao, for the Appellant; Basavaraj Kareddy and Shivamurthy, in M.F.A. No. 5681 of 2005, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Anand Byrareddy, J.—These appeals are considered together as they arise out of the very same accident.

2. The appellant is the insurer in both these appeals challenging the veracity and the bona fides of the claimants, having regard to the peculiar facts of the case and the Tribunal having proceeded to award the compensation inspite of being made aware of the peculiarities.

3. The claimant in the first of these appeals is the mother of a deceased minor boy. The claimant in the second of these appeals is the father of another deceased minor boy. It was alleged that both the boys, were standing by the road side, when they were fatally run over by a speeding autorickshaw driven in a rash and negligent manner and which had turned turtle.

In the claim petition by the mother, her husband, the father of her deceased son was named as a respondent, since he was the driver of the offending autorickshaw. This is one of the peculiarities.

4. The accident was reported to the police by a third party/eye-witness. In the First Information Report, it was stated that a goods carrying autorickshaw, which

was carrying the two deceased boys as passengers, had turned turtle on account of rash and negligent driving, killing the boys. This was amended by a later report to state that the boys were pedestrians who were hit by the speeding autorickshaw that had turned turtle. This is one more peculiarity. The driver of the offending vehicle, who was none other than the father of one of the deceased boys, had significantly remained ex parte. The Tribunal had accepted the claim petitions and awarded like sums of Rs. 1,65,000/- in each of these cases. It is this which is in challenge in both these appeals.

5. The Counsel for the appellant would contend that the Tribunal had overlooked that the appellant was not required to cover the risk in respect of a passenger in a goods vehicle. And that in the face of the true facts and sequence of events, the liability of the appellant was unavailable. It is in order to overcome this and in order to foist the liability on the appellant that there was a blatant manipulation - to supplement the first information report to state the deceased boys were pedestrians and not passengers. This intention is also manifest and explains the peculiarity and the circumstance that the father of the deceased in the first of the above appeals - being the driver of the offending vehicle and who is said to have run away from the scene of the accident and who had significantly remained absent at the proceedings before the Tribunal. The Tribunal having accepted the version of the claimants in all naivety, while glibly observing that the driver who had remained ex parte was the best person to explain the actual details, has proceeded to foist the liability on the appellant. The Counsel for the appellant would therefore seek this Court's interference.

6. The Counsel for the respondents in each of these appeals would vehemently seek to support the awards and would support that the version of the claimants was plausible and has been duly accepted by the Tribunal, the same are in the nature of findings of fact and hence do not warrant interference.

7. From an examination of the record and the sequence of events, it is clear that the Tribunal has clearly glossed over glaring circumstances merely to accept the claim and make the awards, while foisting the liability on the appellant. The peculiar co-incidence of the father of one of the deceased boys being the driver of an offending vehicle having run over his son and his companion, while they were walking along the road as pedestrians is difficult to accept, while it is clearly possible that the driver was carrying the boys as passengers in his vehicle, at the time of the accident. This is also in line with the first information report in the first instance.

8. The appeals are hence allowed and the judgment and award in the above respective appeals are set aside. The amounts in deposit are to be refunded to the appellant.