
(2015) 02 KAR CK 0244
In the Karnataka High Court
Case No : M.F.A. No. 21287/2008 (MV)

Shameen Ibrahim Bagawan

APPELLANT

Vs

Sunil Shankar Bhosale and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 02 KAR CK 0244

Hon'ble Judges : P.D. Waingankar, J.

Bench : Single Bench

Advocate : Shantosh Hattikattagi for A.L. Sandrimani, for the Appellant

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—The claim petition under Section 166 of the M.V. Act filed by the appellant/claimant-Smt. Shameem came to be dismissed by judgment and award dated 28.08.2008 in MVC No. 1043/2006 by the Fast Track Court-I and Addl. MACT at Belgaum.

2. The claimant-Smt. Shameem filed a claim petition under Section 166 of M.V. Act alleging that on 29.11.2005 she was waiting for the bus near Nilaji cross bus stop at about 11.30 a.m. At that time, an auto rickshaw bearing registration No. KA-22/4378 came in a rash and negligent manner from Mudga side and dashed against the claimant. As a result of the accident, she sustained grievous injuries for which she was treated in Vijaya Hospital, Belgaum as an inpatient. She underwent surgery. She spent more than Rs. 1,00,000/- for treatment. She also lost her income apart from suffering disability. She filed petition claiming compensation of Rs. 6,00,000/- from respondent No. 1-owner/driver of auto rickshaw and respondent No. 2-insurer of the auto rickshaw.

3. The claim petition was opposed by the insurance company. In its reply, the insurance company contended that the auto rickshaw was not at all involved in the accident and it has been fixed by the claimant in collusion with respondent

No. 1-owner/driver of the auto rickshaw just to claim compensation from the insurance company. It is further contended that no Medico Legal Intimation was forwarded from the Vijaya Hospital to the concerned police station nor the crime came to be registered immediately after the accident. It is after about four months from the date of alleged accident just to get compensation from the insurance company, the claimant filed a private complaint before the Magistrate which came to be referred to police station and the police without there being any material filed a charge-sheet and immediately thereafter the owner/driver of auto rickshaw pleaded guilty before the Magistrate. It is a case of fraud. For all these reasons, the insurance company sought for dismissal of the claim petition.

4. Claim petition came up for consideration before the Tribunal before whom the claimant got herself examined as PW.1 apart from examining Dr. Ravi B. Patil as PW.2. As many as 23 documents came to be marked as Exs. P1 to P23. On behalf of the insurance company, policy was marked as Ex. R1. The tribunal upon appreciation of the evidence recorded a finding that the auto rickshaw in question was not at all involved in the accident and the same has been fixed to make unlawful gain from the insurance company by the claimant colluding with respondent No. 1-owner/driver of the auto rickshaw which resulted in the dismissal of the claim by the impugned judgment and award. Therefore, the claimant is before this Court.

5. I have heard both the learned counsel appearing for the appellant/claimant and respondent No. 2/insurance company. Perused the records in MVC No. 1043/2006 and judgment and award passed by the Tribunal.

6. In view of the contention taken by the parties, the point that would arise for my determination is as under:

"Whether the Tribunal is justified in recording a finding that the auto rickshaw bearing registration No. KA-22/4378 was not involved in the accident in question?" 7. The claimant who has been examined as PW. 1 has reiterated in evidence the case made out by her in the petition. She has produced number of documents. Ex. P7 is the wound certificate issued by Vijaya Hospital, Belgaum, where she was taken immediately after the alleged accident. In Ex. P7 it is stated that she was brought by relatives with history of R.T.A. She had fracture of tibia and fibula (R) and contusion over right leg. She was admitted on 29.11.2005 and discharged on 08.12.2005. Admittedly, no Medico Legal Intimation was forwarded by the hospital authorities on the date of the admission or even thereafter till the date of her discharge. The cause of injury is shown as "caused by hard blunt object". If she was really hit by the auto rickshaw, there was no reason for the hospital authorities to write in the column meant for cause of injury as "caused by hard blunt object". If it was really a case of motor vehicle accident and the claimant was aware of the vehicle which caused the accident, definitely the Medico Legal Intimation would have been forwarded to the concerned Police Station. That has not been done in this case. The complaint was also not lodged either by the claimant or by her relatives who said to have

admitted her to the hospital against the driver of the auto rickshaw during hospitalisation or immediately after her discharge from the hospital. Though she has stated in the petition that after discharge, she had been to Marihal police station to lodge a complaint but the police refused to receive the complaint, it does not inspire confidence of the Court. If it is so she ought to have lodged a complaint before the superior officers. That has not been done. On 10.02.2007 after about 2 1/2 months she presented a private complaint before the Magistrate which came to be referred to Marihal Police, who in turn immediately thereafter filed a charge-sheet against the driver/owner of the auto rickshaw as could be seen from Ex. P6. Immediately after filing of the charge-sheet, respondent No. 1-owner/driver of the auto rickshaw pleaded guilty before the Magistrate and thereby he was convicted. When the police had refused to receive the complaint when she had been to the police station and they filed charge-sheet when the case was referred by the Magistrate itself speaks the hollowness of the charge-sheet. Further, the driver/owner of the auto rickshaw never went to see the claimant while she was in the Hospital nor did he go to the police station to inform the police about the accident. Having not informed the police he goes to the Court and pleads guilty. This conduct of respondent No. 1-owner/driver of the alleged auto rickshaw itself speaks the collusion between claimant and respondent No. 1 just to claim compensation from insurance company. It is a clear case of fraud in order to dupe the insurance company. The Tribunal on proper appreciation of evidence has rightly dismissed the claim petition recording a finding that auto rickshaw was not at all involved in the accident in question but it has been fixed by the claimant in collusion with the owner of the auto rickshaw. I do not see any illegality committed by the Tribunal. The appeal is devoid of merits. Hence, I pass the following order.

The appeal is dismissed.