

(2014) 12 KAR CK 0233

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 22555 of 2012 [MV]

Shriram General Insurance

APPELLANT

Vs

Yamanappa Irappa Madar

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0233

Hon'ble Judges : Mohan M. Shantana Goudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : Suresh S. Gundi, Advocate for the Appellant; Harish S. Maigur and Rajendra C. Desai, Advocate for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—This appeal is by the insurer of the goods vehicle bearing registration No. KA-24/1633 belonging to the 2nd respondent herein.

2. On 20.03.2010, when the claimant was going in the aforementioned goods vehicle from Bidargaddi to Belgaum Market with Maize bags, the vehicle turned turtle by the side of the road, since the driver lost control of the vehicle. Due to the impact, the claimant sustained multiple grievous injuries.

The Tribunal having concluded that the claimant is not a gratuitous passenger travelling in the goods vehicle, but was travelling in the goods vehicle along with his goods, awarded compensation of Rs. 22,34,360/- in all under various heads. The Tribunal on that basis has fixed the liability on the insurer/appellant herein to pay the compensation.

3. Though, it is a case of the claimant that he was proceeding in the goods vehicle along with Maize bags for selling the same in Belgaum Market, the scene of offence Mahazar clearly reveals that the vehicle was carrying Tamarind bags and not Maize bags. The claimant, not only has pleaded in his claim petition that he was carrying Maize bags in the Goods vehicles, but also has deposed so in his examination-in-chief before the Tribunal. However, in the cross-examination, he had taken "U" turn by deposing that he was carrying Tamarind bags and not

Maize bags. Thus, change of version by the claimant, as mentioned supra, is an after-thought and only to overcome the Panchanama and true facts, which is drawn on the spot.

4. The Tribunal in paragraph No. 29 of the Judgment has taken a strange stand ignoring the admissions made by the claimant. The Tribunal has wrongly concluded that the insurance company has not denied that the claimant was proceeding with Maize bags in the goods vehicle. But, as a matter of fact, in the cross-examination, the claimant has deposed thus:

"10. It is true that I filed MVC 1703/10 before Addl. MACT, Bailhongal, through another Advocate. I did not give any instruction to the Advocates who filed the present case and also MVC No. 1703/10. I was bringing tamarind belonging to me in the said goods vehicle in the said goods vehicle [sic] KA-24-1633 on the ill fated day. I do not know that the police visited the scene of the accident and drew the mahazar at the spot noting therein as to what was found inside the goods vehicle which was involved in the accident. It is true that in my evidence I have stated that I was bringing maize crop in the said goods vehicle at the time of accident. I say that I was not bringing any maize, alleged in the petition, in the above goods vehicle at the time of accident. I only say that I was bringing tamarind. I had purchased tamarind from one Irappa Patted of Budarkatti. There was no documents evidence in the above sale of tamarind in my favour by the said Irappa Patted. I can examine the said Irappa Patted, who sold tamarind to me as the witness in this case. It is not true to suggest that I have falsely stated that I was bring tamarind in the said goods vehicle on the date of the accident."

(Emphasis supplied)

5. From the aforementioned version, it is clear that the claimant has deposed falsely that he was proceeding with Tamarind bags. As aforementioned, not only in the claim petition, but also in examination-in-chief, the claimant has stated that he was proceeding in the goods vehicle along with his Maize bags. Nowhere he has pleaded or deposed in examination-in-chief that he was carrying Tamarind bags. But, subsequently, at the time of his cross-examination, the claimant has deposed that he was carrying Tamarind bags along with him in the goods vehicle. It is specifically deposed by him that he was not carrying Maize bags as alleged in the petition and that he was carrying Tamarind bags. In view of the same, it is clear that the claimant has not appeared before the Tribunal with clean hands. Only to get the insurance coverage, a false stand is taken by the claimant to the effect that he was proceeding in the goods vehicle along with his goods.

6. As aforementioned, the Tribunal has not at all appreciated and has ignored the said deposition of the claimant, as quoted supra, at the time of taking decision. Hence, the same has resulted in miscarriage of justice. In view of the same, the appeal filed by the insurance company needs to be allowed.

Accordingly, the same stands allowed. It is made clear that the appellant/ insurance company is not liable to pay compensation to the claimant. On the

other hand, the owner of the goods vehicle bearing No. KA-24/1633 shall pay the compensation to the claimant.

The amount in deposit before this Court shall be refunded to the insurance company.