

(2017) 11 KAR CK 0024
In the Karnataka High Court
Case No : 21438 of 2010

SMT. SUMATI W/O. SAIRU MEHTA

APPELLANT

Vs

SRI DEEPAK S/O SADANAND JUVEKAR

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 166](#),
[Section 166](#) - Application for compensation

Citation : (2017) 11 KAR CK 0024

Hon'ble Judges : B.A. Patil

Bench : SINGLE BENCH

Advocate : V P KULKARNI, M K SOUDAGAR

Judgement

1. The present appeal has been preferred by the appellant-claimant aggrieved by the judgment and award passed by the II Additional M.A.C.T., Karwar in M.V.C.No.70/2009 dated 22.01.2010.
2. Heard the learned counsel for the parties. Appeal is admitted and with the consent of the learned counsel for the parties, it is taken up for final disposal.
3. The brief facts leading to the case are that on 03.12.2007 at 9.15 a.m., the appellant-claimant, after completion of work of the day, was returning to her house and when she came near the place of accident on Devbhag road, a goods vehicle bearing registration No. KA-30/7123 came with high speed, in a rash and negligent manner and dashed against her. Due to the said impact, she sustained fracture injuries and took treatment in hospital from 03.12.2007 to 16.12.2007. For having sustained injuries and for having spent huge amount for her treatment, she filed a claim petition before the tribunal under section 166 of M.V. Act.
4. In pursuance of notice, the respondents appeared before the tribunal and respondent No.2-insurer filed written statement by denying the contents of the claim petition. He contended that there is no nexus between the injuries and the

accident in question, and a false claim petition was filed only with an intention to claim compensation from the insurer. On these grounds, he prayed for dismissal of the claim petition.

5. On the basis of the above pleadings, the tribunal framed the following: ISSUES

1. Whether the petitioner proves that on 3/12/2007 at 9.15 a.m. while she was waiting towards her residence on Devbagh road, the petitioner met with road accident due to rash and negligent driving of the driver of goods vehicle bearing Reg.No.KA-30/7123?

2. Whether the petitioner proves that because of the said road accident she sustained injuries which are grievous in nature and that she has taken treatment as inpatient for different periods, at different hospitals of different places and that the petitioner has spent money of more than one lakh?

3. Whether the 2nd respondent insurance company proves that its liability to compensation is subject to the validities of D.L. policy conditions, as mentioned in its written statement?

4. Whether the petitioner is entitled for the compensation of Rs.5,00,000/- as sought for? If so, who is to pay the said compensation?

5. What order or Award?

6. In order to prove her case, the petitioner herself got examined as P.W.1 and got marked documents as per Ex.P-1 to P-12. She also got examined four witnesses as P.W.2 to P.W.5. The respondents have not led any evidence but with consent got marked the insurance policy as Ex.R-1.

7. After hearing the parties to the lis, the tribunal passed the impugned judgment and award. Assailing the same, the appellant-claimant is before the Court.

8. The main grounds urged by the learned counsel for the appellant-claimant are that the tribunal has not considered the records though it was contended in the claim petition that the accident occurred on 03.12.2007 and the appellant-claimant did not take treatment immediately because of the reason that some negotiations were going in between the owner of the offending vehicle and herself. She further contended that when negotiations failed, on the next day, she got admitted in hospital for the injuries sustained in the above said accident and thereafter lodged a complaint. For having sustained injuries in the accident, she filed a claim petition before the tribunal, but the tribunal has erroneously dismissed her petition. It is further contended that she sustained fracture injuries and spent huge amount for her treatment and hence she prayed for allowing the appeal and award adequate compensation.

9. Per contra, the learned counsel appearing on behalf of the respondent-insurer vehemently argued and contended that though the appellant-claimant in her claim petition alleged that the accident took place on 03.12.2007, she got

admitted in hospital on 04.12.2007. He further contended that though she was admitted in hospital on 04.12.2007, no intimation was given to the jurisdictional police for having registered MLC case. In the absence of proper explanation about the accident, the tribunal has rightly come to conclusion that there is no nexus between the alleged fracture injury and the accident in question and as such, the tribunal did not accept the evidence led by the appellant-claimant and ultimately dismissed the claim petition. On these grounds he prayed for dismissal of the appeal.

10. I have gone through the submissions made by the learned counsel for the appellant-claimant as well as the learned counsel appearing for the respondent-insurer. It is the specific contention of the learned counsel for the appellant-claimant that the accident took place on 03.12.2007 at about 9.15 a.m. but the records clearly indicates that the injured got admitted in the hospital on 04.12.2007. When she got admitted in the hospital on 04.12.2007, she did not intimate the fact that she suffered the alleged injuries in an accident and even the hospital authorities have not registered any case in MLC register, no intimation was given to the jurisdictional police about the accident and the injuries suffered by the appellant-claimant. Even the hospital records, which have been produced at Ex.P7 also does not disclose the fact that the appellantclaimant was admitted in the hospital because of the injuries sustained in a road traffic accident. There is no document like MLC register maintained by the hospital authorities to substantiate the fact that the appellant-claimant sustained injuries in the alleged accident, which is said to have been taken place on 03.12.2007. The learned counsel for the appellant-claimant has contended that immediately after the accident, there was negotiation between the owner of the offending vehicle and the appellant-claimant and as negotiation was going on, the appellant-claimant could not lodge the complaint immediately after the incident. But even assuming that if there were negotiations going on and after its failure the appellant-claimant was admitted in hospital, no complaint was filed before the jurisdictional police. The appellant-claimant later filed a private complaint as per Ex.P1 on 10.01.2008 that too after nearly lapse of 28 days from the date of the accident for the reasons best known to her. If really she could have suffered injuries in the alleged accident and that negotiation was going on and failed, and thereafter she got admitted in hospital, then under such circumstances, she could have filed a complaint before the jurisdictional police. Non-filing of complaint also creates a doubt with regard to the alleged accident. Even the wound certificate, which was produced as per Ex.P11, indicates that the appellant-claimant was admitted in hospital from 04.12.2007 to 16.12.2007, but in her appeal she has made out a case that she got admitted in hospital on 03.12.2007. When there are inconsistent contentions taken up by the appellant-claimant and as there are no records to substantiate that there was negotiation between the owner of the offending vehicle and the appellant-claimant with regard to the accident and injuries suffered by the appellantclaimant, then under such circumstances, the tribunal has come to a right conclusion and has rightly

dismissed the claim petition. Under the facts and circumstances, it is clear that the appellant-claimant has not made out any good grounds so as to interfere with the order passed by the tribunal for setting aside the same. Keeping in view the above said facts and circumstances, the appeal is devoid of merits and accordingly it is dismissed.