

(2013) 02 KAR CK 0143
In the Karnataka High Court
Case No : M.F.A. No. 73 of 2009 (MVC)

The Divisional Manager, National Insurance Co. Ltd.	APPELLANT
Vs	
Smt. Alkananda, Sripad, Ambu and Gowrishankar	RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2013) 3 AKR 680

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy, for the Appellant; S.N. Aswathanarayana, Advocate for R-1 and Sri. T. Srinivasan, Advocate for R-3, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—The third respondent - insurance company in MVC No. 231/2007 on the file of MACT, Mysore has come up in this appeal impugning the judgment and award dated 30.8.2008, so far as it pertains to awarding compensation to the claimants for the death of one Srinivas Kulkarni in the alleged road accident said to have taken place on 10.10.2003 in Gulbarga Town. The brief facts leading to this appeal are as under:

Claimants before the tribunal are widow and son of Srinivas Kulkarni, an employee of Baba Atomic Research Centre (for short "BARC"). It is stated that on 10.10.2003 the said Srinivas Kulkarni who was an employee of Baba Atomic Research Centre and permanent resident of Mysore, had gone to visit his parents in his native place Gulbarga and in the evening, he had gone out of the house. At around 7.00 PM, his father received a phone call from the Police Station stating that Srinivas Kulkarni died in a road accident near Aland Check Post on Ring Road, Gulbarga.

2. The said information was received by them at 7.30 PM over telephone. Thereafter, it is stated that his father Sripad Rao Kulkarni went to the place of accident, found that his son was lying dead on the road with injuries to his head

and other parts of the body and it is stated that a complaint was lodged by him informing the police regarding the death of his son, based on which FIR was registered about hit and run case resulting in the death of Srinivas Kulkarni.

3. It is stated that thereafter, police said to have identified the vehicle which caused the accident resulting in the death of Srinivas Kulkarni. Thereafter, proceedings were initiated for prosecuting the driver of the offending vehicle for causing the death of Srinivas Kulkarni. Meanwhile, claim petition was filed seeking compensation for the death of Srinivas Kulkarni by his widow - Smt. Alakananda and his minor son - Sripad, who was aged about 14 years as on that date.

4. The claim petition was initially filed in the Court of MACT, Nanjangud. Subsequently, it was transferred to Mysore and thereafter, evidence was recorded when the said claim petition was in MACT, Mysore. In the said proceedings, the 1st claimant - Smt. Alkananda adduced evidence as PW1 and in support of her claim, marked in all, 10 documents as Ex.P.1 to Ex.P. 10. On behalf of 2nd respondent - Insurance Company, Sri. Dayananda K. Shetty was examined as RW.1 and in all 7 documents were produced and marked as Ex.R.1 to Ex.R.7.

5. Insofar as respondent Nos. 1 and 2 are concerned, though written statement is filed by both of them through the counsel, no evidence was adduced. In fact, no cross examination was conducted on behalf of respondent Nos. 1 and 2. Similarly, claimants witness was also not cross examined by respondent Nos. 1 and 2. Respondents 1 and 2 - the driver and owner of the offending Maruthi Van participated in the proceedings only to the extent of filing the written statement and nothing beyond.

6. The tribunal on appreciation of the oral and documentary evidence available on record, proceeded to allow the claim petition awarding compensation to the claimants in a sum of Rs. 11,20,000/- payable with interest @ 6% p.a. from the date of petition till the date of deposit of entire amount.

7. The 3rd respondent - Insurance Company before the tribunal, being aggrieved by the judgment and award so far as it pertains to saddling the liability to pay compensation on the 3rd respondent - Insurance Company has come up in this appeal impugning the judgment and award on the ground that the entire claim petition is fraudulent based on concocted, forged and tampered documents and the evidence on record is also blatantly false to the knowledge of the deponent. Therefore, the fraudulent claim made by the wife and son of deceased Srinivas Kulkarni should be set-aside in this appeal.

8. In this appeal, notice was duly served on all the respondents. In this appeal, claimants are first and second respondents and driver and owner are respondent Nos. 3 and 4. Respondent Nos. 1 and 2 are duly represented by counsel. So far as third respondent driver is concerned, he is represented by Sri. T. Srinivasan who did not appear on his behalf and participate in this proceedings when the

matter was taken up for final hearing and fourth respondent though duly served remained unrepresented.

9. In these proceedings, trial court record was secured. Heard learned counsel for the appellant as well as contesting first and second respondent who are claimants before Tribunal. Perused the judgment impugned with reference to pleadings, oral and documentary evidence available on record.

10. On going through the same, this Court is unable to believe the extent of manipulation done in the case by almost tampering all original records in this proceedings. The fact that Srinivasa Kulkarni died on 10.10.2003 is not in dispute. But the manner in which his death has taken place is a matter which is under cloud. It is seen from the records that the death has taken place on 10.10.2003. As seen in the complaint which is written and signed by father of deceased-Sripad Rao Kulkarni, he came to know about the accident at about 7.30 by the Gulbarga Police stating that his son met with an accident at about 7.00 p.m. in front of Aland Check-post on Ring Road. Immediately after coming to know about the same at about 7.30 he went to the spot, saw the dead body of his son and thereafter it is stated that the complaint was prepared and submitted to the police on the same day. A copy of the said complaint is at Ex.P.5.

11. On going through the complaint -Ex.P.5, it is seen that though it is written on 10.10.2003 the same is received by the Police on 12.10.2003 at about 10.00 a.m. as could be seen from the signature put by the Police Sub-Inspector, Rural Police Gulbarga. However though the complaint is received on 12.10.2003 at 10.00 a.m., FIR which is at Ex.P.1 is prepared on the very same day i.e., on 10.10.2003 stating that on 10.10.2003 at about 9.30 p.m. a complaint is lodged by Sripad Rao Kulkarni father of deceased Srinivas regarding the accident having taken place due to hit by some unknown vehicle resulting in the death of his son. With this, what is clear is as on 12.10.2003 even up to 10.00 a.m. neither the police nor Sripad Rao Kulkarni were aware regarding the vehicle which caused the accident.

12. However, surprisingly there is another document which is the motor vehicle accident report said to have prepared by Inspector of Motor Vehicles, RTO, Gulbarga wherein the police on 14.10.2003 have summoned the Inspector of motor vehicles to come and inspect the Maruthi Van bearing Registration No. KA-02-M-4078 said to have caused the accident resulting in the death of Srinivasa Kulkarni and the said report which is at Ex. P. 2 disclose that inspection has taken place on 14.3.2004 between 3.30 p.m. and 4.00 p.m. in front of police Station, Gulbarga wherein it is stated that the said vehicle which was inspected did not have any visible marks or damage on any portion of the said vehicle, it had no mechanical defect and breaks were intact. Nowhere in the claim proceedings there is proof to show how and when the police came to know about the involvement of the aforesaid Maruthi Van bearing Registration No. KA-02-M-4078 causing the accident.

13. Learned counsel appearing for the claimants/respondent Nos. 1 and 2 brought to the notice of this Court that certified copy of two documents which are marked as Exs.P.10 and 11 in C.C. No. 587/2004 which was initiated against the driver of the Maruthi Van bearing Registration No. KA-02-M-4078-Ambu first respondent before the Tribunal. The document at Ex.P.10 is a letter dated 14.10.2003 addressed by one Mohan S/o Ningappa to the Police. Ex. P. 11 is the statement of the said person recorded by the police. Incidentally these two documents though came into existence on 14.10.2003, however the time of recording statement on 14.10.2003 and the time when such letter was delivered to police is not available on record. The police after receiving the said letter and statement on the 14.10.2003, have traced the said vehicle which caused the accident on the same day and called upon the Motor vehicle Inspector to inspect the said vehicle on 14.10.2003 itself. It is seen that the Motor Vehicle Inspector inspected the vehicle and gave report on the very same day. When all these developments have taken place on the same day, the time is deliberately left blank.

14. So far as Ex.P. 11 that is the statement of Mohan and complaint which is at Ex.P.3, clearly gives an indication of the handy work of the police in going over board in helping the claimants in planting the vehicle belonging to the second respondent as if it was driven by first respondent at the relevant point of time and he has caused the accident. Unfortunately the manner in which these documents are produced, statements are recorded, inspection report is secured, points a finger at the involvement of police, the haste with which it is done and careless manner in which they have deliberately omitted the time of recording the statement. Independently, if these mistakes are looked into, they may appear to be innocuous and they may not be important. However, if it is seen as a whole, the handy work of the police would be clearly noticed and the pattern in which they have plotted this to help claimant to get compensation in fraudulent way is clearly seen. In fact, this Court has noticed in several proceedings, the police providing this kind of assistance to fraudulent claims is on the rise.

15. The instant case appears to be yet another example for the above said pattern. The speed with which the case is conducted by the police is further seen in the police seizing the offending vehicle on the very same day when the statement is given by eye witness to the accident is recorded i.e., on 14.10.2003. On the same day, the driver of the vehicle is also brought who admits before the police regarding accident caused by him which has resulted in the death of Srinivasa Kulkarni and surprisingly with the statements and admissions being on record, the criminal prosecution initiated against him results in acquittal which is yet another saga which this court does not like to go into, for the reason that, this is the set pattern in all the proceedings where the vehicles are planted to help claimants. Invariably the proceedings in Criminal Court would result in acquittal and this case is not different from others.

16. Thereafter, claim petition is filed. Though the accident is taken place in

Gulbarga claim petition, is filed in Nanjanagud. Admittedly, as on the date of the accident both Srinivasa Kulkarni and his family were residing in quarters provided by BARC in Mysore. The claim petition is filed in Nanjanagud showing as if claimants were residing at Nanjangud. To substantiate the same, respondent Nos. 1 and 2 brought to the notice of this Court that immediately after the accident, claimants were asked to vacate the quarters. Therefore, they started living in Nanjundeswara Temple Matt. Though the 1st claimant states that she was residing in the said Matt, the cause title of the claim petition does not show the address of any matt. It is stated that she is resident of Nanjanagud and does household work and nothing is mentioned about her occupation. In evidence also, claimant No. 1-widow of Srinivasa Kulkarni stated that after death of her husband she did not take up any job and with great difficulty, continued to live at Nanjanagud and the reason why she chose to stay there is not stated.

17. Thereafter, when the matter was before MACT, Nanjanagud issues were framed on 21.10.2006. Thereafter evidence was commenced wherein the first claimant filed her evidence by way of affidavit which was sworn to in Nanjanagud on 27.12.2006. On the same day two other affidavits are also filed one by claimant NO.1 stating that her father-in-law is not interested in perusing this claim petition and that whatever the compensation would be awarded by the tribunal could be taken by her and another affidavit said to have been sworn to by her father-in-law at Nanjanagud on the same day to the effect that he is not interested to claim compensation. In fact at the time of arguments, it was also brought to the notice of the court that Sripad Rao Kulkarni and his wife said to have died within 6 months immediately after the death of Srinivasa Kulkarni. If that is so, the manner in which affidavit has come into existence after the death of Srinivasa Kulkarni and the same being sworn in Nanjanagud is yet another fraud required to be investigated.

18. It is also an interesting thing to note that Sripad Rao Kulkarni has put signature to the complaint in English which came into existence at the earliest point of time i.e., on 10.10.2003 which is at Ex.P.5 whereas the affidavit filed by the 1st claimant before the MACT, Nanjangud on 27.12.2006 bears his signature in Kannada. There is nothing on record to explain as to why Sripad Rao Kulkarni has put his signature in English to the complaint and in Kannada to the affidavit sworn to before Nanjanagud dated 27.12.2006 which is yet another thing which baffles this Court and also gives room for suspicion that said Sripad Rao Kulkarni may not be surviving on the day when the affidavit was sworn to in his name i.e., on 27.12.2006.

19. Further subsequent to filing of the said affidavits on 27.12.2006 it is seen that the Tribunal has raised objection regarding maintainability of the petition before MACT, Nanjanagud and has called upon the claimant to produce proof of her residence in Nanjanagud vide its order dated 18.1.2007. However when objection was raised regarding jurisdiction by the third respondent before MACT, Nanjanagud, she sought for the matter to be continued at MACT, Nanjangud itself

as she is residing at Nanjangud. As could be seen from the LCR produced before the court, an order was passed to produce proof of her residence. However, claimants did not produce proof of her residence in Nanjanagud instead she agreed for transfer of claim petition to Mysore. In that background an order came to be passed by MACT, Nanjanagud in transferring the said claim petition to MACT, Mysore. It is only after the matter was transferred to MACT, Mysore, cross examination was commenced on 20.2.2008 and thereafter continued on 11.4.2008 in MACT, Mysore.

20. If the said cross examination on 11.4.2008 is looked into, again there is an attempt on the part of 1st claimant to mislead the Tribunal by giving false evidence. In the said accident she admits that nobody in the family knew how the accident took place and she admits that she had not visited the place where the accident took place and in the said proceedings she says that from the date of the death of her husband she has not secured any job and even as on 11.4.2008 she has remained unemployed and surviving on pension. In the cross examination, she admits that after six months from the date of the accident, her mother-in-law died and within another few days her father-in-law also died. When admittedly her mother-in-law and father-in-law died within few months from the date of accident how her father-in-law could file an affidavit sworn to before Notary in Nanjangud in the year December 2006, exactly after 2 years 9 months after the accident, is something for which there is no explanation. On the other hand, there is a clear admission on the part of the claimant that the affidavit which is filed by her before MACT, Nanjangud on 27.12.2006 is a fraudulent document as per the evidence given by her on 11.4.2008. It is further seen that on the very same day, she also stated that she has not secured job on compassionate ground from BARC which is contrary to another document on record which is at Ex.R.7 issued by BARC signed by its Assistant Personnel Officer. This being a document from the Government office cannot be disbelieved which clearly shows that on 5.11.2004 Smt.Alakanand S. Kulkarni wife of Srinivasa Kulkarni is provided employment as second Division Clerk in BARC on monthly salary of Rs. 8,024/- and the appointment is on compassionate grounds which document clearly goes to show that claimant is a pathological liar would go to any extent either to create document or to give false evidence before court which amounts to perjury. This woman in the greed to seek compensation corrupted the jurisdictional police in joining hands with her in creating and concocting documents. She has filed forged documents before the Court and given false evidence which amounts to perjury cannot be ignored.

21. The manner in which entire proceedings is conducted before the Tribunal is also obnoxious inasmuch as entire record before the Court is tampered. Learned counsel for the appellant and respondents have taken certified copies of certain documents which are shown to the court one of that is certified copy of vakalaths filed at the initial stage on 31.8.2004 on behalf of claimants admittedly by one M.K. Patil, Advocate giving his address as M.K. Patil, Advocate, C/o Mysore Bar Association, Mysore. The said document which is on record in LCR as on today

disclose that thereafter name of one Sangappa Patil is added clandestinely showing his address as Gulbarga Bar Association, Plot No. 62, Gulbarga. To include the name of Sangappa Patil who is practicing Advocate at Gulbarga no order is passed by MACT, Nanjangud. Similarly for respondent Nos. 1 and 2, one Smt. Sangeetha Desai of Gulbarga has filed vakalaths as per the certified copy of said document. However, in lower court record in the original vakalath wherever name of Sangeetha Desai is mentioned, it is scratched and name of Smt. M.S. Sudhamani, Roll No. 693/87, Nanjangud is mentioned and the signature is also scratched and in the said place signature of S.J. Hussain of Gulbarga has come into picture and his address is care of M.S. Sudha, Nanjangud Bar Association, Nanjangud. So far as corrections to the original records of these vakalaths is concerned, it is not supported by any judicial order passed by MACT, either in Nanjangud or Mysore when said claim petition was pending between its date of presentation that is on 28.10.2004, till date of disposal of said claim petition. Originally Claim petition was in MVC No. 60/2004 on the file of MACT, Nanjangud. Later when it was transferred to MACT, Mysore, it was numbered as MVC. No. 231/2007 on the file of MACT, Mysore. All these corrections in the original record maintained by the court is tampered, defaced and then corrected without even the knowledge of MACT, Mysore or Nanjangud. This clearly shows fraud committed by the persons behind this claim mafia. It is seen that their tentacles have reached the Court premises also where they could have access to the original records of the court which they think they could tamper. In fact in the present case they have succeeded in doing so. This shows the nature and manner in which present claim petition is filed and presented by the claimant with connivance of the police and the mafia which manipulate this claim at every stage in creating and forging documents, planting vehicle and witness to support the fraudulent claim to enable the claimant to receive compensation.

22. In this proceedings, the 1st claimant is not an innocent person. When she has admitted herself that her parents-in-law died within few months from the date of death of her husband how she could file affidavit of her father-in-law before MACT to the effect that he would give up all his claim in the compensation would go to show the extent to which she could stoop for compensation. Greed and avarice seems to have no boundary. In the instant case it has transcended all the barriers of decency, dignity. The claimants have stooped to the level of creating documents tampering the court records to which some of the Advocates also have clandestinely supported.

23. In fact Sri. S.N. Ashwathanarayana, learned counsel appearing for the claimants, who is known for his honesty in presenting the case before the court was astonished and shocked when these malpractices were brought to his notice by the court. However he tried to present this case pleading for his clients for whatever it is worth. Unfortunately, this Court is not in a position to believe that his client is an honest person who is seeking compensation for the death of her husband in a road traffic accident. This is classic case where unfortunate death of an individual is tried to be converted into road traffic accident for getting

unlawful enrichment.

24. In the course of arguments Sri. S.N. Ashwathanarayana, learned counsel for the claimants also tried to substantiate with all earnestness that his client could be still right and still she could be entitled to receive compensation by relying on judgment of the Supreme Court in the case of Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, wherein Their Lordships have held that strict proof of accident caused by a particular bus in a particular manner cannot be established by claimants and that has to be established by preponderance of probabilities. In the normal circumstance this Court would accept this as guide line for deciding claim petition and award just and proper compensation to the family members of the victim of accident but not in a case where it reeks of fraud.

25. He also relied another judgment in the case of Kusum Lata and Others Vs. Satbir and Others, wherein it is stated that taking the victim for medical aid at the first instance is normal human conduct instead of noting down number of offending vehicle is also accepted with all humility by this Court. But the facts and circumstances in aforesaid both cases are different from present case where there was witness to those accidents. In the case of Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, the bus which caused the accident was seized at the place of the accident and in Kusum Lata's case referred to supra, eye witness was subsequently examined. Here is a case where neither the vehicle was seized at the place of accident nor there are any eye witness to the accident. The so called eye witness who gives evidence in criminal petition, has chosen not to appear and give evidence before the MACT. All this would clearly show that facts and circumstances of the case on hand and the aforesaid cases are totally different from one and the other and have no bearing and they are of no avail to the counsel for the claimants. In that view of the matter, this court being helpless to accept that indeed the deceased died in road traffic accident involving Maruthi Van bearing Registration No. KA-02-M-4078 belonging to second respondent, driven by first respondent at the relevant point of time and insured with the third respondent. On the contrary, evidence available on record clearly discloses that vehicle belonging to the second respondent before the Tribunal said to be driven by first respondent is a planted vehicle which is done by the 1st claimant with active connivance of the police and also counsels who appeared for them from Gulbarga in foisting this claim petition by creating documents and also tampering the documents in the court record. In that view of the matter, the appeal filed by the third respondent - Insurance Company is allowed. The claim petition in MVC. No. 231/2007 on the file of MACT, Mysore is dismissed. In view of the appeal being allowed, the amount in deposit is ordered to be released in favour of appellant - Insurance Company.