(2018) 03 KAR CK 0017

In the Karnataka High Court

Case No : Miscellaneous First Appeal No.103190 of 2014

The Divisional Manager Sriram General Insurance Company Ltd. @APPELLANT@Hash Maimunna BI & Ors

Date of Decision : 12-03-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 173(1)
Indian Evidence Act, 1872 — Section 114

Citation : (2018) 03 KAR CK 0017

Hon'ble Judges : KRISHNA S.DIXIT, J

Bench : Single Bench

Final Decision : Disposed of

Judgement

1. This appeal by the insurance company is directed against the judgment and award dated 29.10.2013 rendered by learned Addl. Sr. Civil Judge,

Hospete, in claimantsâ?? M.V.C.No.83/2012 wherein, the Tribunal awarded a compensation of Rs.9,68,000/- in respect of a vehicular accident that

happened on 23.03.2011 resulting into the death of one Mr. Andi Rajasab S/o. Kasimsab.

2. The learned counsel for the appellant-insurance company brings to my notice that the legal heirs of the deceased had filed M.V.C.No.644/2011 on

the file of MACT, Ballari, which came to be allowed by the judgment and award dated 18.02.2012 awarding a compensation of Rs.7,23,500/- with

usual rate of interest and certain conditions as to Bank deposit etc. In support of his contention, the counsel for the appellant draws my attention to the

order sheet in MVC No.644/2011 duly obtained from the MACT, which supports the contention of the appellant.

3. He brings to the notice of this Court that the victims of the accident having been satisfied by the insurance company by making payment in terms of

the award, it also included a term as to Bank deposit. He further submits that the amount that was in long term Bank deposit has also been released by

the concerned Banks on maturity, by order of the Court on 04.06.2014.

4. On the above fact matrix, the counsel for the appellant vehemently pressed into service the judgment of the Apex Court in the case of S.P.

Chengalvaraya Naidu (dead) by LRs vs. Jagannath (dead) by LRs reported in 1994 (1) SCC 1 and draws attention of the Court to para 6 of the

judgment which reads as under:

â??6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud

is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by

anotherâ??s loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property

in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex.B-15) in favour of Chunilal

Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without

disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not

on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We

do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex.B-

15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the

litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as

on the opposite party.â??

5. The fraud on the Court is viewed very seriously right from the days of Chief Justice Lord Edward Coke of England that who roared three centuries

ago that: â??Fraud avoids all judicial acts, ecclesiastical or temporalâ?¦â?¦â?. The counsel is more than justified in seeking the relief on the ground of

fraud on the Court.

6. The counsel for the appellant-insurance company also pressed into service a

judgment of the Apex Court in the case of United India Insurance Co.

Ltd., Vs. Rajendra Singh and others reported in AIR 2000 SC 1165 and loudly reads out paragraph No.13 which reads-

â??13. No one can possibly fault the Insurance Company for persistently pursuing the matter up to this Court because they are dealing with public

money. If they have discovered that such public fund, in a whopping measure, would be knocked off fraudulently through a fake claim, there is full

justification for the Insurance Company in approaching the Tribunal itself first. At any rate the High Court ought not have refused to consider their

grievances. What is the legal remedy when a party to a judgment or order of Court later discovered that it was obtained by fraud?â??

7. The parties are served with the Court notice and postal shara on the postal acknowledgement card dated 21.02.2018 shows that the parties were

duly served with the Court process and still they remained absent. The names of the parties were called out in the open Court. There is no response

and therefore, the Court draws an adverse inference exercising the power under Section 114 of the Evidence Act as to parties remaining deliberately

absent.

8. In Indian Bank Vs. M/s.Satyam Fibres Pvt. Ltd., reported in AIR 1996 sc 2592, another two Judges Bench, after making reference to a number of

earlier decisions rendered by different High Courts in India, stated the legal position thus:

â??â??Since fraud affects the solemnity, regularly and orderliness of the proceedings of the Court and also amounts to an abuse of the process of the

Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that Court. Similarly, where the Court

is mislead by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.â??

9. Counsel for the insurance company submits that the cases of fraud now a days galore and there is a judgment of Apex Court in the case of

Ramakrishan Dharal where cautious warning is administered by the Apex Court and a committee has been formed to look into these fraudulent cases.

Be that as it may.

10. This appeal is entitled to succeed and accordingly it succeeds on the sole ground of fraud played on the M.A.C.T.

11. The judgment and award dated 29.10.2013 made by learned Addl. Sr. Civil Judge, J.M.F.C., Hospete in fraudulent M.V.C.No.83/2012 is set aside

with penal cost of Rs.50,000/-.

12. The Insurance Company shall forthwith initiate criminal action against the claimants and also against all those persons involved in this fraud,

forgery and fabrication.

13. The insurance company is advised to be more cautious hereafter so that such fraudulent claims will not be repeated.

14. The amount in deposit in the Registry of this Court to be refunded to the appellant-insurance company.

