

(2017) 01 KAR CK 0185
In the Karnataka High Court
Case No : 23103 of 2011 (MV)

THE NATIONAL INSURANCE CO. LTD.

APPELLANT

Vs

SMT. PARVATI W/O SANNAPPA BHAT, & ORS.

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 156\(3\)](#), [Section 173\(5\)](#) - Police officers power to Investigate cognizable case - Report of police officer on completion of Investigation

Citation : (2017) 01 KAR CK 0185

Hon'ble Judges : Sreenivas Harish Kumar

Bench : SINGLE BENCH

Advocate : LAXMAN B MANNODDAR, GANAPATI M. BHAT

Final Decision : Allowed

Judgement

1. This appeal is by the Insurance Company (referred to as Insurance Company). It has disputed the very accident and therefore questioned the legality of the Tribunal in awarding compensation to respondent No.1 herein.

2. According to the first respondent who is a claimant (referred to as claimant herein) before the Tribunal, on 23.05.2007, at about 2.00 p.m., she was waiting for a bus near Bellimane Bus stand to go to Yellapura. At that time, a motor cycle bearing Reg. No. KA 31 L 1656, which was being driven in a rash and negligent manner hit her. As a result, she sustained injuries and she was taken to a doctor by name G.P. Kannimane by her husband and from there, she was shifted to Shreyas Orthopedics & Trauma Centre, Hubballi. She was inpatient in that hospital from 23.05.2011 to 29.05.2011. In connection with this accident she claimed compensation of Rs. 2,00,000/- before the tribunal.

3. The respondent Nos. 2 and 3 herein, who are respondent Nos. 1 and 2 before the Tribunal (referred to as respondent Nos. 1 and 2) chose not to contest the claim petition and they remained ex parte. The Insurance Company contested

the case by denying the very accident itself. It further took up a plea that respondent Nos. 1 and 2 are related to the claimant. First respondent is the brother of 2nd respondent, who is son-in-law of the claimant. The claimant suffered injury for some other reason, but the claimant and respondent Nos. 1 and 2 colluded with each other just for the sake of claiming compensation. The police did not register a case soon after the incident. The claimant filed a private complaint in the court of Magistrate 1 1/2 months after the accident. Therefore, the very accident itself is disputed by the Insurance Company.

4. The Tribunal, considering the evidence placed before it, has held that the accident did occur due to rash and negligent manner of driving by respondent No.1. Delay in registration of the complaint itself cannot be a reason for disbelieving the claimant's case. Concluding so, the tribunal awarded an amount of Rs. 47,181/-. Aggrieved by this award, the insurance Company has preferred this appeal.

5. Assailing the findings of the Tribunal, the learned counsel for the Insurance Company argued that according to the claimant the accident took place on 23.05.2007. She was taken to the hospital immediately. No complaint was registered in the police station soon after the accident. Rather the claimant filed a private complaint in the court of Judicial Magistrate 1 1/2 months after the accident although she was discharged from the hospital on 29.05.2007. The respondents 1 and 2 are closely related to the claimant. In these circumstances a clear collusion between the claimant and the respondent Nos. 1 and 2 can be seen. He further raised a point that when the police held investigation on a reference made by the magistrate in a private complaint lodged by the claimant, information according to Sec. 158(6) of Motor Vehicles Act should have been sent the court. Non compliance of this is yet another reason for disbelieving the complainant's case of having sustained injuries in a motor vehicle accident. When she was admitted to hospital, certainly she would have revealed the history in the hospital and the hospital authorities should send medico-legal report to the police. Nothing is forthcoming on record. The doctor who treated the claimant for the first time is also not examined. Therefore in these circumstances the very accident is doubtful. The tribunal should have dismissed the claim petition, and having allowed the petition the tribunal has not only appreciated the evidence improperly but has erred in law also.

6. Per contra, the learned counsel for the claimant argued that the Tribunal has at length discussed the evidence. Mere delay in lodging complaint cannot be a reason for disbelieving the accident. Also for the reason that respondent Nos. 1 and 2 happen to be the relatives of the claimant, it cannot be a ground for disbelieving the accident. The insurance company in fact made an application for summoning Dr. Bellad who treated the claimant at Hubballi hospital. That application was allowed and when the doctor did not turn up responding to the summons of the court, the insurance company did not take further steps to secure the presence of the doctor. The tribunal has placed reliance on Ex.P.3, a

certificate issued by Dr. G.P. Bhat Kannimane in proof of having treated the claimant. This Ex.P.3 shows that there took place a road traffic accident in which the claimant got injured. Therefore, the Tribunal has appreciated the facts and evidence properly and correctly. The compensation awarded by the tribunal is in all respects just. This appeal, therefore, has to be dismissed.

7. Having considered the arguments of the learned counsel for the parties and perused the records, the following point can be formulated for discussion :

"Has the tribunal erred in giving a finding that there did take place an accident on 23.05.2007 entailing the claimant to claim compensation?"

8. The tribunal has placed reliance on the FIR with complaint as per Ex.P-1 and certified copy of the charge sheet as per Ex.P-5. Indeed in these two documents there is a mention about the accident having taken place on 23.05.2007. It has given a reason that the respondents have not examined the driver of offending vehicle, and therefore, the claimant's version has to be believed and accepted. The tribunal has considered Ex.P-3, a Certificate issued by Dr. G. P. Bhat Kannimane. In Ex.P- 3 it is mentioned that the claimant Parvathi came to hospital with history of road traffic accident on 23.05.2007 and that she has sustained major injuries. It has been further held by the tribunal that the insurance company got marked Ex.R-2 and it was not proved subsequently. It has also considered Exs.R-4 to R-11, statements of the witnesses given in the criminal case. So relying upon all these documents it is its conclusion that the accident did take place. It has also held that mere delay in lodging complaint cannot be a ground for disbelieving the claimant's case about accident, and to come to this conclusion, the tribunal has referred to a judgment of this Court in *Bajaj Allianz General Insurance Company Limited vs. B.M. Niranjan and Another*, [ILR 2007 KAR 5307].

9. Mere delay in lodging a complaint before the police about the accident, as has been held by the tribunal, cannot be a ground for disbelieving the very happening of the accident. But what is required is when there is delay, the tribunal has to meticulously apply its mind in order to satisfy itself about the truth in the FIR. It cannot be ruled out that for the purpose of claiming compensation, the parties do collude with each other. In this case there is no dispute about the delay in the matter being brought to the notice of the police. Neither the complainant nor any one of her family members reported the accident to the police immediately. The complainant, as she has stated, was admitted to the hospital of one Dr. G. P. Bhat Kannimane, on 23.05.2007 and from there she was taken to Shreyas Orthopedics & Trauma Centre, Hubballi. She was discharged from this hospital on 29.05.2007. Although she was discharged on the said date, but private complaint was not lodged immediately, it was 1 1/2 months later that she made up her mind to lodge a complaint. This is one of the factors which has to be taken into consideration to doubt the truthfulness of the claimant. When she went to the hospital of Dr. G.P. Bhat Kannimane immediately after the accident and narrated history, it is not known

why the said doctor did not send a medico legal report to the police. Rather the complainant produced a certificate issued by the said doctor as per Ex.P-3 to prove that she sustained injuries in a road traffic accident. In the background that the insurance company has seriously disputed the accident, it was necessary for the claimant to have examined the said doctor in order to prove Ex.P-3.

10. Placing reliance on Ex.P-3, the tribunal has held that accident occurred. But, the insurance company produced Ex.R-2 probably a case sheet, issued by Shreyas Orthopedics and Trauma Centre, Hubballi, and in this document nothing is mentioned about the accident. The tribunal has not considered Ex.R-2 because it was marked subject to objections and that it was not proved subsequently. The tribunal might have expected the proof of Ex.R-2 by examining its author. In this regard, what is to be observed is whenever a document is marked subject to some objection, the tribunal or the Court recording the evidence should record the nature of objection raised at the time of marking. Failure to do so leads to misinterpretations as has happened in this case. If the tribunal has not considered Ex.R-2 for the reason that its author is not examined, for the same reason Ex.P-3 could have been ignored as its author is not examined. Be that it may, when Ex.P-3 and Ex.R-2 are considered together, obviously they give rise to doubt the accident having taken place in the manner narrated by the claimant.

11. It can be noticed from the impugned judgment that the complainant herself made a statement before the police that it was one Ganapathi Vishweshwar Bhagwat, who took her to hospital immediately. But in the sworn statement, she says that her husband accompanied her to the hospital. Therefore, there is no consistency in the assertions that the claimant has made. If really it was Ganapathi Vishweshwar Bhagwat, who had taken her to hospital immediately after the accident as he happened to be there at that time, it was necessary for the claimant to have examined this Ganapathi Vishweshwar Bhagwat especially having regard to the plea taken by the insurance company denying the accident itself.

12. As aforementioned, the accident was not reported to the police immediately. There is no dispute about lodging a private complaint 1 1/2 months after the claimant was discharged from the hospital. It appears that the Magistrate referred the private complaint to investigation according to Section 156(3) of the Code of Criminal Procedure. It is not understandable as to why the police did not give intimation to the insurance company as required under Section 158(6) of the Motor Vehicles Act after registering FIR. The reason why information must be sent to the police by the insurance company is spelt out very clearly by the Hon"ble Supreme Court in the case of General Insurance Council and others v. State of Andhra Pradesh and others [2007 ACJ 2006]. What is held in this decision is as below:

"6. There is substance in the plea of Mr. G.N. Vahanvati, learned Solicitor General for the petitioner that if action in terms of Section 158 (6) is taken, it will rule out filing of false claim petitions and the job of the Claims Tribunals will become

easier. It is stated by learned counsel that a large number of cases alleging sufficient injuries are being filed long after the accidents and this is adding to the pendency of the claims petitions. If action in terms of Section 158 (6) is taken, it will reduce considerably the filing of false claims. It has been highlighted in the writ petition as follows:

"26. Some salient facts which have emerged from a detailed study on a macro level and which are relevant for the purposes of the instant writ petition may be noticed:

26.1 As on date there are about 1.5 million cases pending in different Tribunals/ High Courts/Supreme Court;

26.2 About 4 lakh new cases involving injury/death under the Motor Vehicles Act, 1988 are reported every year;

26.3 Claims under the Motor Vehicles Act, 1988 are reported after about 7 months from the date of accident;

26.4 Delay in reporting the claim promotes exaggeration and frauds;

26.5 Delay in reporting the claim makes investigation and fact verification extremely difficult;

26.6 Adjudication of cases take about 3 to 5 years;

26.7 Petitioners Insurance Companies suffer on account of higher claim cost on account of delay in the adjudication of the claim petitions.

26.8 Strict implementation of Section 158(6) shall ensure speedier reporting to Insurance companies which in turn will ensure expeditious and efficient settlement of claims."

7. The language used in sub-section (6) of Section 158 mandates the police officer to forward a copy of the report to the Claims Tribunal having jurisdiction and to the concerned insurance company "as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under Section 158 is completed by a police officer."

8. Use of the expression "as soon as" implies that there has to be promptitude in action. To do a thing "as soon as possible" means to do it within a reasonable time, with an understanding to do it within the shortest possible time. [Per Dysant, J. in *King's Old County Ltd. v. Liquid Carbonic Can. Corporation Ltd.*, (1942) 2 WWR 603]. "As and when" and "as soon as" are almost synonymous. Whenever these expressions are used in respect of time and place, they denote contemporaneous notion. "As soon as" and "forthwith" both are to be normally understood as allowing reasonable time, but latter is more peremptory than the former. But urgency is the hallmark of both expressions. Expression "as soon as" may be stretched to mean "as soon as" practicable. It has to be forwarded with promptitude.

9. Since there is mandatory requirement to act in the manner provided in Section 158(6) there is no justifiable reason as to why the requirement is not being followed."

So giving information under Section 158(6) of M.V. Act is mandatory to obviate any false claims.

13. Mere delay in lodging complaint should never be a reason for disbelieving the claimant's case. In fact the tribunal has come to this conclusion. But whenever there is delay the tribunal must carefully examine the case. Especially in this case clear collusion between the claimant, and the respondents No.1 and 2 can be demonstrated. Respondents No.1 and 2 are closely related to claimant, of course this cannot be a reason also. But, in this case respondents No.1 and 2 remained ex parte before the tribunal. In this appeal the claimant, and the respondents No.1 and 2 have been represented by same counsel. When there is conflict of interest between the claimant and respondents No.1 and 2, the same counsel cannot appear for them. Therefore, this fortifies the specific plea of the insurance company that there is collusion for the sake of claiming compensation from the insurance company as the insurance was in force in respect of the motor cycle that may be belonging to respondents No.1 and 2 or either of them. Thus, it has to be concluded that making a private complaint belatedly can be an afterthought, Respondents No.1 and 2 might have joined hands with the claimant for helping her claim compensation from the insurance company. Hence, the delay matters in this case and at this juncture it may be useful to refer to judgment of this Court in the case of Manju v. Mathue K.P. and Another, M.F.A. 2829/2009 (D.D. 03.01.2011). In this decision, it is clearly observed by this Court as below :

" 10. The learned counsel for claimant would submit that jurisdictional police after investigation filed charge sheet against 1 - respondent. Therefore, the Court will have to presume that accident had occurred in the manner stated by claimant. The filing of charge sheet under section 173(5) Cr.P.C., may give rise to a presumption. However, that is not decisive on the issue. If the Court finds evidence adduced by parties and material placed by parties are sufficient to hold that charge sheet filed by police is a fabricated document, the claim petition cannot be sustained."

14. So in view of the above discussion, it has to be concluded now that the tribunal has erred in appreciating the facts as also evidence before it to come to a conclusion that the accident did occur, and therefore, the claimant was entitled to compensation. Hence, answering the point raised for discussion in affirmative, I proceed to pass the following :

ORDER

i. Appeal is allowed.

ii. The Judgment and Award dated 24.09.2010

passed in M.V.C. No. 62/2008 by the

Member, Addl. M.A.C.T., Yellapur, is set aside. The claim petition is dismissed.

iii. The amount deposited by the Insurance Company is hereby ordered to be returned to the Insurance Company.

iv. There is no order as to costs.