



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 23RD DAY OF JANUARY 2026

BEFORE

THE HON'BLE MRS JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 21131 OF 2013 (MV)

BETWEEN:

SRI. GYANAPPA BASAPPA KURI,
AGE: 37 YEARS, OCC: AGRICULTURE,
R/O. SANGAPUR VILLAGE,
TQ AND DIST: BAGALKOT.

...APPELLANT

(BY SRI. M.C. HUKKERI, ADVOCATE)

AND:

1. YELAGONDA BASAPPA BAGEWADI,
AGE: 37 YEARS, OCC: DRIVER CUM
OWNER OF TRACTOR AND TRAILOR NO.
KA.23/T.A.733, 734, 735,
R/O. HALYAL, TQ: ATHANI,
DIST: BELGAUM.

2. THE BRANCH MANAGER,
UNITED INDIA INSURANCE COMPANY,
CO. LTD., MELLIGERI COMPLEX, BAGALKOT.

...RESPONDENTS

(BY SRI. VITTHAL S. TELI, ADVOCATE FOR R1;
SRI. N.R. KUPPELLUR, ADVOCATE FOR R2)

THIS MFA IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLE ACT, 1988, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD PASSED BY THE MEMBER, MACT-II, BAGALKOT IN M.V.C.NO.336/2011 DATED: 30-01-2013 AND AWARD COMPENSATION AS CLAIMED BY THE APPELLANT, IN THE INTEREST OF JUSTICE AND EQUITY.

BHARATHI
H M



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BHARATHI H M
Location:
HIGH COURT OF
KARNATAKA
DHARWAD BENCH
DHARWAD



THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

ORAL JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This is the appeal filed under Section 173(1) of Motor Vehicles Act, 1988 (for short, 'M.V. Act') challenging the judgment and award dated 30.01.2013 in MVC No.336/2011 on the file of MACT-II, Bagalkot (for short, 'the Tribunal') dismissing the claim petition filed by the claimant.

2. Parties would be referred with their ranks as they were before Tribunal for sake of convenience and clarity.

3. The case of claimant before Tribunal in nutshell is that on 08.03.2011 at about 11.30 a.m. claimant along with his uncle and cousin were waiting in front of Kannada School of Bevoor at about 11.30 a.m. on 08.03.2011 at Bagalkot-Sangam PWD road side for going to Corporation Bank and at that time, the tractor and trailer bearing Reg.No.KA-23/T.A. 733, 734, 735 came from Bagalkor side



with high speed rashly and negligently and only to avoid road humps i.e., speed breakers, the driver has taken the tractor at rough road and lost his control and dashed against the claimant and then the engine of the wheel ran over the claimant and he sustained grievous injuries. Immediately, he was shifted to Kumareswar Hospital, Bagalkot and then, he took treatment in Manipal Hospital and spent huge amount for his treatment. It is further contended that at the time of accident, claimant was 35 years and doing agriculture. After the accident, he is not able to work as he was working earlier. Hence, claimed compensation under different heads.

4. After service of notice, respondent No.1/owner of the tractor-trailer appeared through his counsel and filed his objection statement, wherein he has taken contention that the petition is false, fictitious and contrary to provisions of law and there was no accident as alleged in the petition. If claimant able to establish the accident, then the vehicle in



question is validly insured with respondent No.2 and hence he is not liable to pay compensation.

5. Respondent No.2-Insurer of the vehicle filed its objection statement, wherein respondent No.2 also has taken similar contention taken by respondent No.1 denying the date, place and time of accident and all other averments of the claim petition except admitting that the vehicle in question is validly insured with respondent No.2. Hence, prayed for dismissal of petition.

6. On behalf of claimant, claimant was examined as P.W.1, examined the complainant, who accompanied claimant as P.W.2 and examined the doctor of Manipal Hospital who treated the claimant as P.W.3, got marked Exs.P.1 to P.11 and closed his side before the Tribunal. On behalf of respondents, the doctor, who has issued wound certificate as per Ex.P.5 was examined as R.W.1, got marked the case sheet of claimant as Ex.R.1 and closed their side.



7. After recording evidence of both sides and hearing arguments of both sides, the Tribunal came to the conclusion that the claimant had a fall from the tractor and sustained injuries and has not proved the involvement of tractor as alleged in the claim petition and thus dismissed the claim petition.

8. Aggrieved by the said judgment and award, the appellant/claimant is before this Court.

9. Heard arguments of both sides.

10. Learned counsel for appellant Sri M.C. Hukkeri would submit that the charge sheet is filed against the driver of tractor and complaint is also lodged against the tractor that when claimant along with his uncle and his cousin were standing by the side of tar road, only to avoid speed breakers, the driver of tractor has taken the tractor to the extreme left side of the road and lost his control over the tractor and dashed against the claimant which caused the accident. Immediately on the same day of accident, the



complaint is lodged and criminal law was set into motion. Ultimately, the charge-sheet is filed against driver of the tractor. Hence, only by relying upon a sentence in wound certificate that fall from tractor, the Tribunal has dismissed the claim petition, which is erroneous. Furthermore, claimant along with the complainant who was present at the time of accident was examined on behalf of claimant. They have categorically denied the suggestion that claimant had a fall from tractor and because of that fall, he sustained injuries in the accident. Hence, the Tribunal ought not to have dismissed the claim petition. He would further submit that, at least the claim petition could have been allowed against the owner of the vehicle and the direction to insurer to pay and recover could have been awarded. Hence, prayed for allowing the appeal and to remand the matter to the Tribunal to decide the quantum of compensation.

11. Learned counsel for respondent No.1, Sri Vitthal S. Teli would submit that respondent No.1 has specifically denied the accident and rash and negligent driving of driver



of the tractor. In the wound certificate and also in the case-sheet, it is clearly mentioned that the claimant had a fall from the tractor and sustained injuries. Hence, rashness and negligence on the part of driver of the tractor is not established. Considering it rightly, the Tribunal has dismissed the claim petition. Hence, prayed for dismissal of the claim petition.

12. Learned counsel for respondent No.2/Insurer Sri.N. R. Kuppellur also submits the above points and further submits that respondent No.2 has examined the doctor who has issued wound certificate as per R.W.1 and he has also submitted the case sheet as per Ex.R.1. In the case sheet and also in the wound certificate, there is specific averment about fall from the tractor and this evidence was given by R.W.1, which is not disputed by the claimant by cross-examining R.W.1. Considering these aspects, rightly the Tribunal has dismissed the claim petition and it requires no interference.



13. Having heard the arguments of both sides and verifying the appeal papers along with Trial Court records, the points that arise for consideration are as follows:

- i) *Whether claimant establishes that he was pedestrian at the time of accident and sustained injury because of rash and negligent driving of driver of the tractor and trailer bearing No.KA-23/TA-733, 734, 735?*
- ii) *Whether the judgment and award of Tribunal requires interference? and*
- iii) *What orders?*

14. Findings of this court of the above points are in '**NEGATIVE**' for the following:

The case of claimant is that on 08.03.2011 at about 11.30 a.m. when he along with his uncle and cousin was waiting on the side of road in front of Kannada School of Bevoor Village at Bagalkot-Sangam PWD Road, the tractor and trailer bearing No.KA-23/TA-733, 734, 735 came with



high speed rashly and negligently and only to avoid speed breakers, the driver of tractor has taken the tractor on rough road and lost his control over the vehicle and dashed against the petitioner and because of that, wheel of the engine of tractor, ran over body of the claimant and caused the accident.

15. In support of his contention, claimant has produced 11 documents. Amongst them, the copy of FIR, complaint and wound certificate i.e., Exs.P1, P2 and P5 are important and material documents to decide whether there was rashness and negligence on the part of driver of the tractor in causing the accident or whether the claimant was negligent, and because of his negligence, he had a fall from the tractor and sustained injuries.

16. On perusal of Exs.P1 & P2, they reveal that the complaint was lodged on the date of accident itself at 04.45 p.m. in the hospital i.e., the statement of P.W.2 was recorded by the I.O. in the hospital and then, he had been



to the police station and registered the case at 05.00 p.m., and thus, he sets criminal law into motion.

17. Ex.P.5 is the certified copy of wound certificate collected by the I.O. from Kumareshwara Hospital, where the claimant has taken treatment initially and it was produced along with charge-sheet. According to this document, the doctor had first seen the claimant-Gyanappa at 12.55 p.m., on 08.03.2011 for injuries alleged to have been caused by fall from running tractor at about 11 a.m., on 08.03.2011, near Bevoor on the way to Kudalasangama and he was accompanied by Subhash Mallappa Kuri, (brother) i.e., P.W.2. The injuries that have been sustained by claimant are mentioned in Ex.P.5.

18. The injuries sustained by claimant are not seriously disputed by respondents. However, their dispute is that only because of negligence of claimant, he had a fall from the tractor and sustained injuries and it is not because



of the rashness and negligence on the part of the driver of the tractor.

19. In this regard, suggestions were put to both P.W.1 and P.W.2 that P.W.1 had a fall from tractor and he sustained injuries and said suggestion is denied by both P.W.1 and P.W.2 in their cross-examination. In this regard, respondent No.2 has summoned the doctor who issued wound certificate as per Ex.P.5 and examined him as R.W.1. In that evidence, R.W.1 has deposed before Court that on 08.03.2011 at 12.55 noon, he examined the claimant at Kumareshwara Hospital and at that time, claimant had told that near Bevoor while going in the tractor, he had a fall and sustained injuries and in this regard, he has issued the wound certificate as per Ex.P.5 and he has also produced the case sheet of claimant as per Ex.R.1. In Ex.R.1 at page No.3, it is clearly mentioned that the patient came to the hospital with the history of fall from tractor on that day at 11.00 a.m., and he was having history of pain and swelling over his left side of hip. Thus, the history stated by claimant



before doctor at the time of examining the patient and at the time of admitting the patient to the hospital is that he has a fall from tractor and not that tractor hit him on the road.

20. The history of incident noted in Ex.P.5 and in Ex.R.1 is noted in those documents in the usual course of the profession of R.W.1 and thus, the history narrated in Ex.P.5 and R.W.1 presumed to be true, unless it is rebutted. Admittedly, no rebuttable evidence is produced by the claimant. Thus, the contention of claimant in claim petition and his evidence is quite contrary to the documentary evidence produced by him and also produced by the doctor as per Ex.R.1. Under those circumstances, definitely, if the claimant himself had a fall from the tractor without any negligence on the part of the driver of tractor, then the owner and insurer of the tractor cannot be held liable to pay compensation to the injuries sustained by claimant in the said accident. Furthermore, tractor is a vehicle used for tilling and ploughing and except driver; nobody could be



permitted to sit in the tractor. Under those circumstances also, if the claimant had a fall from tractor then, definitely the insurer cannot be held liable. Considering these aspects, rightly, the Tribunal has dismissed the claim petition. It requires no interference. Accordingly, the points under consideration are answered in 'negative' and this Court proceeds to pass the following:

ORDER

- i) The appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 is dismissed by confirming the judgment and award passed in M.V.C. No.336/2011 dated 30.01.2013 on the file of the learned M.A.C.T.-II, Bagalkot;
- ii) No order as to costs.

Sd/-
(GEETHA K.B.)
JUDGE

SH:Para 1 to 10
SSP:Para 11 to end
CT-MCK
LIST NO.: 1 SL NO.: 6