

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 28<sup>TH</sup> DAY OF JANUARY, 2015,**: BEFORE :****THE HON'BLE MR. JUSTICE N.K. PATIL**M.F.A.NO. 6134 OF 2009 (MV)Between:

Sri. Kumara Nayak,  
S/o. Thangamuthu,  
Aged about 27 years,  
R/at. V.C. Colony, 13<sup>th</sup> Ward,  
Pandavapura, Mandya District,  
Now R/at. D.No.1050,  
Deva Parthiva Road, Chamarajapuram, Mysore-5.

... Appellant

(By Shri. M.S. Nagaraj, Advocate)

And:

1. H. Nagaraju S/o. H. Halegowda,  
Kyathanahalli Post and Village,  
Mysore Taluk & District.  
(Owner & Driver of Yamaha Crux  
Bearing NO.KA-45-E-2096)
2. Bajaj Allianz General Insurance Co. Ltd.,  
No.363, Shrihari Complex,  
Seeth Vilas Road, Mysore.  
(Policy No. OG 07/1705/1802/00002619  
Valid from 2/1/2006 to 1/1/2007)

... Respondents

(By Shri. R.C. Prasanna Kumar, Advocate for R1;  
Smt. H.R. Renuka, Advocate for R2)

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This MFA is filed U/S 173(1) of MV Act, against the Judgment and Award dated: 02/01/2009, passed in MVC No.22/2007, on the file of the Presiding Officer, Fast Track Court-III, Mysore, holding concurrent charge of Fast Track Court-I, Mysore, dismissing the claim petition for compensation.

This MFA coming on for Hearing, this day, the Court delivered the following:

### J U D G M E N T

This appeal by the claimant is directed against the judgment and award dated 2<sup>nd</sup> January 2009, passed in MVC No.22/2007, by the Presiding Officer, Fast Track Court-III, Mysore, holding concurrent charge of Fast Track Court-I, Mysore, (for short, 'Tribunal'), for awarding reasonable compensation on the ground that, the Tribunal is not justified in dismissing the claim petition.

2. The appellant claims to be aged about 35 years and hale and healthy prior to the date of accident, working as an agricultural coolie, earning a sum of Rs.4,000/- per month. It is alleged that the appellant met with an accident at about 7:30 P.M., on 20-09-2006, when he was returning by his bicycle, on the left side of the road on Mandya-Nagamangala Bypass road, about 1 kmt. East of Pandavapura Police Station, on account of rash

and negligent riding by the rider of Motor Cycle Yamaha Cruz bearing Registration No.KA-45/B-2096. Due to the impact, the appellant sustained grievous injuries and was immediately shifted to Government Hospital, Pandavapura and then to K.R. Hospital at Mysore. for further treatment.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of ₹5,70,000/- against the Insurance Company and another. The said claim petition had come up for consideration before the Tribunal on 2<sup>nd</sup> January, 2009. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, dismissed the claim petition, holding that the appellant has utterly failed to prove the occurrence of road traffic accident and the Insurer has proved the violation of the terms and conditions of the policy that would absolve them of their liability to pay the compensation amount. Being dissatisfied with the dismissal of the claim petition by the Tribunal, the appellant has filed the appeal before this Court, seeking award of

reasonable compensation on account of the grievous injuries sustained in the road traffic accident..

4. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant and the learned counsel appearing for Insurer.

5. Learned counsel appearing for appellant at the outset vehemently submitted that, the Tribunal grossly erred in not accepting the case made out in the claim petition, seeking award of reasonable compensation on account of the grievous injuries sustained in the road traffic accident and in fact, the Tribunal has proceeded to assess the quantum of compensation under different heads on account of the injuries sustained by appellant, but dismissed the claim petition, on the ground that there is an entry in the register, mentioning that the appellant fell from the bicycle and sustained the injuries. Further, he submitted that the Tribunal has dismissed the claim petition, holding that the appellant has narrated the accident in different ways on different occasions, but it is a fact that he was very much conscious when

he was admitted in the Hospital. But such statements cannot take away the legitimate entitlement of compensation on account of the injuries sustained by the appellant in the road traffic accident. This aspect of the matter has not been looked into nor considered nor appreciated nor awarded reasonable compensation, on the contrary, erred in dismissing the claim petition on hyper technical grounds. Therefore, the impugned judgment and award passed by Tribunal is liable to be modified, allowing the claim petition, and awarding reasonable compensation on account of the injuries sustained in the road traffic accident.

6. As against this, learned counsel appearing for Insurer inter alia sought to substantiate the judgment and award passed by Tribunal, stating that the same is passed after critical evaluation entire material available on file, including the oral evidence of PWs 1 and 2 and RWs 1 and 2 and documentary evidence at Exs.P1 to P11 and Exs.R1 to R6(a). She further submitted that the seizure Mahazar and spot mahazar coupled with MLC register and oral evidence of RW2 supports the documentary evidence and that the person who first brought the appellant to the

Hospital, has categorically stated that the appellant has fallen down from the bicycle and sustained injuries and that fact is also admitted by the appellant. Therefore, the Tribunal, after due consideration of Ex.P5, the Certificate issued by the Casual Medical Officer, Pandavapura and the original MLC register produced by RW2, Dr. B.T. Shivaram, establishes that the injured appellant sustained injuries on account of falling from the bicycle and not on account of the alleged road traffic accident stated to have occurred at about 7:30 P.M. on 20-09-2006. The Tribunal, after due consideration of the entire material available on file, has recorded a specific finding of fact at paragraphs 15 and 16 of its judgment and arrived at a conclusion that appellant has utterly failed to produce any credible documents in support of his oral statement to prove the injuries sustained in the road traffic accident. Therefore, she submitted that the Tribunal has rightly dismissed the claim petition, which is well founded and well reasoned one. Hence, interference in the same is uncalled for.

7. After hearing the learned counsel appearing for appellant, learned counsel appearing for Insurer, after perusal of the impugned judgment and award passed by Tribunal, and after due consideration of the entire material available on file, the only point that arise for my consideration in this appeal is,

“Whether the Tribunal is justified in dismissing the claim petition?”

8. After perusal of the entire material available on file, it emerges that, the Tribunal, after assessing the oral evidence of PWs 1 and 2 and RWs 1 and 2 and documentary evidence at Exs.P1 to P9 and Exs.R1 and R6(a), has rightly dismissed the claim petition, by recording a specific finding of fact at paragraphs 15 and 16 of its judgment, by giving valid and cogent reasons.

9. On perusal of the reasoning given by Tribunal, it could be seen that, the accident took place around 7.30 p.m. on 20.9.2006. Admittedly it was dark then. Contents of the claim petition reveals that, after his day's work as Coolie, the appellant was returning home, riding his bicycle. When he was so riding, the

first Respondent came and dashed against him. Those pleadings are too very bald to be of any consequence as it does not reveal in which direction the said Respondent came, i.e. from the front side or from the back side. No sketch is produced to substantiate the said statement. It is also uncertain if any sketch existed or otherwise. Mere use of words like rash or negligent or high speed by itself would not be of any consequence. Suffice it to say that those pleadings are wholly insufficient. During the statement made on oath before the court through affidavit, PW1 Kumara Nayaka, the appellant has contended similarly, reproducing the contents of the claim petition, which are bald. Hence, the same is insufficient to create a liability on the Insurer. It is during the course of his cross examination, that the appellant, PW1 says as follows:

“ಅಪಗಾತವಾದದ್ದು ಪಾಂಡವಪುರ ಬೈಪಾಸ್ ರಸ್ತೆಯಲ್ಲಿ ಅಲ್ಲಿ ಒಂದು ಕ್ರಾಸ್ ಇರುತ್ತದೆ. ನಾನು ನಾಗಮಂಗಲ ಕಡೆಯಿಂದ ಬಂದು ಪಾಂಡವಪುರ ಕಡೆಗೆ ಹೋಗಬೇಕಾಗಿತ್ತು. ನಾನು ಬಂದದ್ದು ಅಡ್ಡ

ರಸ್ತೆಯಲ್ಲಿ ಮಂಡ್ಯ ಪಾಂಡವಪುರ ಅನ್ನುವುದು ಮುಖ್ಯ  
ರಸ್ತೆ. ನಾನು ನನ್ನ ಬಲಭಾಗಕ್ಕೆ ಹೋಗಬೇಕಾಗಿತ್ತು.”

10. The Counsel for the first Respondent contended that the appellant himself was rash and negligent in entering the road as he was required to come on to his right side of the road. It was obligatory on his part to wait for the plying vehicles before he could enter the main road, since he had no right of way. The said statements of the appellant is not indicative of any negligence on the part of the vehicle that caused the incident. During such statement only, the appellant also says that said vehicle came from his hind side. That statement would be a piece of evidence without there being pleading. It is true that, there cannot be pedantic interpretation of the evidence on record, - in a summary proceedings of this nature. Counsel for the appellant is also justified in saying that this is a social piece of legislation and such kind of interpretation should not lead to miscarriage of justice. However the evidence on record is not of such nature as to inspire confidence in the trustworthiness of the appellant in

this alleged accident. Suffice it to say that the pleadings and the oral testimony on record are not indicative of any negligence on the part of the rider of the offending vehicle, which was purported to have caused the incident.

11. In fact, the learned counsel for the appellant argued vehemently that the oral testimony of the appellant, PW 1 is being substantiated by the documentary piece of evidence produced and got marked as Ex.P.1 to Ex.P.7, - in the form of police papers. Institutional Investigation by the Police. The Respondent No.1 was prosecuted as per document produced at Ex.P.6, - the copy of the charge sheet. That would in turn, according to counsel for the appellant suffice in maintaining a petition under Section 166 of the Motor Vehicles Act, where the appellant is required to prove actionable negligence. The degree of proof required in matters of this nature are far less than the one contemplated under the criminal law. Hence according to the counsel for the appellant, discrepancies appearing in the case-even if any, need

not be magnified out of all proportions only to defeat the rights of the appellant to claim compensation.

12. However, during the course of the written arguments, according to the appellant, the incident took place on 20.09.2006 at about 7.30 p.m. But then, that complaint was filed by his wife Sheela Kumara Nayak on 28.11.2006 at 10.30 a.m. There is a delay of almost about 68 days or so in filing the said complaint. Copy of the complaint is not produced but the FIR is produced at Ex.P.1. It is through this Ex.P.1 that one comes to know the name of the person who filed the complaint. First of all, there is an unreasonable delay in filing the complaint. That delay has given ample scope for the appellant to engage himself in pre-verification and embellishment, which has materially affected the rights of the appellant, rather adversely. The only person who was expected to explain the said inordinate delay, was the appellant himself. However he does not whisper a word either in pleadings or during the course of his statement made on oath before the Court. Another person who could have possibly

explained the inordinate delay, was his wife Sheela. She also has not been examined before the Court. Unexplained delay has materially affected the rights of the appellant.

13. Further, it could be seen that, immediately after the incident, according to the appellant, he was shifted to the Government Hospital at Pandavapura, where first aid was given to him. Appellant claims it to be an emergency treatment, and then he was shifted to the K.R. Hospital at Mysore. The Wound Certificate is produced at Ex.P.5 and its contents reveal that the appellant was brought to the Hospital by Autorickshaw with a Road Traffic Accident between a Scooter and a bicycle on 20.9.2006 at about 8 p.m. Registration number of scooter was not known. The date of the said document is altered so also a.m. or p.m. Ex.P.5 is a Wound Certificate issued by the Casualty Medical Officer at Taluk Hospital, Pandavapura, who was summoned and examined before the Court, for and on behalf of the Respondent as RW2. That RW 2 Dr. Shivaram had brought the original MLC Register and the relevant entry finds a place at

Page No.61 of that Register. Attention of this RW 2 was drawn to that entry dated 20.9.2006 at 8.30 p.m. Contents there in are in the handwriting of RW 2, which reads thus.

“ಈ ಪ್ರಕರಣದ ಅರ್ಜಿದಾರನಾದ  
ಕುಮಾರನಾಯಕ ಅನ್ನುವವನು ನಮ್ಮ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ  
ದಾಖಲಾದಾಗ ಪ್ರಗ್ನಾವಸ್ಥೆಯಲ್ಲಿ ಇದ್ದ ಆತನನ್ನು  
ಆಸ್ಪತ್ರೆಗೆ ತಂದ ವ್ಯಕ್ತಿಗಳು ಆತ ಸೈಕಲ್ ಮೇಲೆ ಬಿದ್ದು  
ಗಾಯ ಹೊಂದಿದ್ದ ಅನ್ನುವ ಕಾರಣ ನಾನು ಅದೇ ರೀತಿ  
ಬರೆದಿದ್ದೆ.”

14. Further RW 2 says that the injured narrated the incident in a different way and as such, he scored the earlier portion and wrote the later portion. In the earlier portion, extracted above it indicates that the appellant got injured during a fall, while riding his bicycle. It is of significance to appreciate that the appellant was very much conscious, when he was admitted to the Hospital and when such statements were being recorded by the Doctor, RW 2.

15. Further, it can be seen that, if there were to be an element of truth in what is being stated by RW2, then, it becomes obvious that RW 2 was aware of the fact that, it was a medico legal case. In that event, there was an obligatory duty cast on RW 2, to have reported the same to the jurisdictional Police about such a case, and about such a person being examined there at their Hospital. Till the date of registering the case on 28.11.2006, Police had no information whatsoever about this incident taking place on 20.9.2006. Admittedly RW 2 had not reported to the jurisdictional Police. Therefore, it fails to prove the Road Traffic accident taking place and notwithstanding the Police papers, prepared subsequently like Ex.P.1 to Ex.P.7, they tend to be collusive in nature. Incidentally, it also needs to be appreciated that the copy of the complaint is not filed, but a copy of the FIR is filed at Ex.P.1. In column No.9 of the said FIR, the particulars of the complaint are given, which reveals the vehicle number, but not the name of the rider. That may be certainly natural in certain set of facts and circumstances of the case, may be including the

present one. But then, it is of great significance to note that reference to that vehicle number was not the result of any investigation by the Police. It just appears in that record, namely the complaint and the FIR, after the two months. That vehicle number was alleged have been given to the said Sheela Kumar Nayak by her husband namely the appellant. The appellant on oath whispers not a word as to how he came to know of the vehicle number. The very basis for registering the case is in the field of umbra, touching that vehicle number. In the absence of acceptable evidence in that regard, the claim petition against the Respondents would not be maintainable. Existence of the valid Insurance Cover is proved by the document at Ex.R.2, the Insurance Policy. Ex.R.1 is the authorization letter, authorizing RW 1 to depose for and on behalf of the Respondent No.2. Ex.R.3 (Same as Ex.P.3) and Ex.R.4 is the seizure mahazar and the sketch respectively, -prepared by the Police. Ex.P.5 is the copy of the notice issued to the Respondent No.1 under RPAD, by Respondent No.2, calling upon the Respondent No.1 to furnish the necessary requisites. But the Respondent No.1 has failed to

reply in that regard. Mere existence of Insurance Cover by itself would not make that offending vehicle and its owner liable to pay the compensation amount, for the reasons set out above, more so, in the event of such Respondent No.1 colluding with the appellant. Therefore, the Respondent No.1 has failed to participate in the proceedings and has not cross examined the witness PW 1 and PW 2. That apart, the said Respondent has failed to enter the witness box and make a statement on oath before the Court. Therefore, the Tribunal recorded a finding of fact that the appellant has failed to prove the road traffic accident and the Insurer has proved the violations of terms and conditions of the policy that would absolve them of their liability to pay the compensation. The said reasoning given by Tribunal is after critical evaluation of the oral and documentary evidence available on file and hence interference in the same is uncalled for.

16. Therefore, having regard to the facts and circumstances of the case, the appeal filed by appellant is liable to be dismissed as being devoid of merit. Accordingly, it is dismissed.

Office to draw award, accordingly.

In view of disposal of main matter, I.A.No.1/2013 does not survive for consideration and is disposed of as having become infructuous.

**SD/-  
JUDGE**

BMV\*