



NC: 2024:KHC-D:2482
MFA No. 104098 of 2017
C/W MFA No. 104099 of 2017

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 5TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE V.SRISHANANDA

MISCELLANEOUS FIRST APPEAL NO.104098 OF 2017 (MV-I)

C/W

MISCELLANEOUS FIRST APPEAL NO.104099 OF 2017

R

IN M. F. A. NO.104098 OF 2017

BETWEEN:

THE DIVISIONAL MANAGER,
SHRIRAM GENERAL INSURANCE
COMPANY LIMITED, HUBBALLI,
NOW REPRESENTED BY ITS
AUTHORIZED SIGNATORY.

...APPELLANT

(BY SRI. S.K. KAYAKAMATH, ADVOCATE)

AND:

1. SRI. YUNUS @ YUNUSAHAMAD @ MOHAMMADYUNUS
S/O. IMAMHUSSAIN TALIKOTI,
AGE: 21 YEARS, OCC:BUSINESS, VENDING PAN,
R/O. MAHALDAR ONI, BEHIND MASJID,
GARDENPETH, HUBBALLI-580024.

2. SRI. RAMZANKHAN
S/O. ANWARKHAN PATHAN,
AGE: MAJOR, OCC:OWNER OF TATA ACE VAN,
R/O. MAKKA GALLI, SADAR SOFA,
OLD HUBBALLI, HUBBALLI-580024.

...RESPONDENTS

(BY SRI. G.R. TURUMARI, ADVOCATE FOR R1;
R2 DISPENSED WITH)





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MFA No. 104098 of 2017
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THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT 1988, AGAINST THE JUDGMENT AND AWARD DATED 30.08.2017 PASSED IN MVC NO.1222/2014 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, WITH COST IN THE INTEREST AND JUSTICE AND EQUITY.

IN M. F. A. NO.104099 OF 2017

BETWEEN:

THE DIVISIONAL MANAGER,
SHRIRAM GENERAL INSURANCE
COMPANY LIMITED, HUBBALLI,
NOW REPRESENTED BY ITS
AUTHORIZED SIGNATORY.

...APPELLANT

(BY SRI. S.K. KAYAKAMATH, ADVOCATE)

AND:

1. SRI. SHABBIRAHMED
S/O. MAQBOOL AHMED HALDEWALE @ HARDEWALE,
AGE:27 YEARS, OCC:BUSINESS, VENDING PAN,
R/O. NEAR MASJID, PINJAR GALLI,
HUBBALLI-580024.
2. SRI. RAMZANKHAN
S/O. ANWARKHAN PATHAN,
AGE: MAJOR, OCC:OWNER OF TATA ACE VAN,
R/O. MAKKA GALLI, SADAR SOFA,
OLD HUBBALLI, HUBBALLI-580024.

...RESPONDENTS

(BY SRI. G.R. TURUMARI, ADVOCATE FOR R1;
R2 DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT 1988, AGAINST THE JUDGMENT AND AWARD DATED 30.08.2017 PASSED IN MVC NO.1221/2014 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE AND MEMBER ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, HUBBALLI, WITH COST IN THE INTEREST AND JUSTICE AND EQUITY.



THESE MISCELLANEOUS FIRST APPEALS, COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Though the matters are listed for orders, by consent of parties, these matters are taken up for final disposal.

2. Insurance Company is in appeal challenging the validity of judgment and award passed in MVC No.1221/2014 and MVC No.1222/20214 on the file of I Additional Senior Civil Judge and Additional MACT, Hubballi dated 30.08.2017.

3. In the case on hand, admitted facts are as under:

3.1. Claimants being injured persons, in a road traffic accident that occurred on 27.08.2013 at about 3.30 p.m. on Karwar-Hubballi road near Mishrikoti Kadankoppa, laid claims for awarding suitable compensation.

4. Claim petitions on contest came to be allowed in a sum of Rs.77,350/- and Rs.1,19,050/- respectively in respect of claims in MVC No.1221/2014 and MVC No.1222/2014.

5. Insurance Company is challenging the validity of said judgment on the ground that TATA ACE vehicle bearing



registration No.KA-25/EM-7353 has been falsely implicated in the alleged road traffic accident and sought for admitting the appeals and set aside the impugned order.

6. Material evidence on record is in the form of oral evidence of claimants.

7. On behalf of the respondent, officer of the Insurance Company by name Chandrakant Naik has been examined as RW.1. There is one witness examined on behalf of the Court by name Shershah Kammar, who has filed the medical records.

8. Tribunal taking note of the material evidence on record agreed with the case of the claimants and allowed the claim petitions as referred to supra.

9. While dealing with the issue No.1, i.e. with regard to the proof of accident, the Tribunal took into consideration that police records sufficiently indicated involvement of TATA ACE vehicle bearing registration No.KA-25/EM-7353. Driver of the said vehicle is one Suresh has been charge sheeted for the offence punishable under Sections 279, 337 and 338 of the Indian Penal Code, 1860.



10. The only ground on which the Insurance Company is horping upon to advance their case is that there is no eyewitness to the incident. The said aspect of the matter has been taken note of by the learned Trial Judge. Nature or standard of proof that is required to be placed on record in a motor accidental claim is no longer *res integra*.

11. The Hon'ble Apex Court in the case of **Anita Sharma and Others Vs. New India Assurance Company Limited and Another**, reported in **2021(1) SCC 171** has clearly held that the standard of proof is that is required to be adopted in proving the accident in that of preponderance of possibility.

12. In a matter of this nature where an accident takes place in a lonely place, it is highly difficult for the investigation agency to investigate the matter especially by examining the eye witness.

13. If the accident takes place in a busy area or in a urban area it is easy to secure eyewitness to the incident. But when the accident has occurred in the rural area or a road which was not that busy then procuring an eyewitness is a difficult task for more than one reason.



14. Firstly, those who have witnessed the accident might not be interested in setting of the criminal law in motion.

15. Secondly, even if the some persons were come to rescue the injured they may refrain to intimate the police based on their past experience with the investigation agency or general impression they carry about the police.

16. Under such circumstances, expecting an eyewitness to be present in each and every case, is far from reality.

17. Suffice to say, that the driver is the one person who could have thrown some light about the incident apart from the injured persons who are also eyewitnesses to the incident.

18. Unless some material is available on record which would compel the Court to come to a conclusion that there is an active collusion between the injured persons, driver and owner of the vehicle only to lay a false claim of compensation from the Insurance Company by falsely implicating the vehicle, formal proof in the form of police records would be sufficient enough for the Tribunal to come to a conclusion that the claimant has proved his case that he suffered injuries in the road traffic accident.



19. Keeping the above principles in mind, when the material on record is analyzed, the Tribunal has taken into consideration the police records and in the absence of any compelling reasons which would atleast indicate active collusion between the claimants and the owner of the TATA ACE vehicle or the driver, has allowed the claim petitions.

20. Even after re-appreciation of the material on record, this Court does not find any legal infirmity or perversity in recording such findings by the Trial Court.

21. Accordingly, the following order is passed:

ORDER

(i) Appeals are merit less and hereby dismissed.

(ii) Amount in deposit is ordered to be transmitted to the Tribunal for disbursement in accordance with law.

Sd/-
JUDGE