

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2019

BEFORE

THE HON'BLE MR. JUSTICE R. DEVDAS

MISCELLANEOUS FIRST APPEAL NO.3800 OF 2012 (MVC)

BETWEEN:

SRI N. RANGASWAMY
S/O. NANJAPPA D.K.
AGED ABOUT 30 YEARS
OCC: NIL, 11TH CROSS
VIDHYANAGAR
SHIMOGA – 577 201.

... APPELLANT

(BY SRI SHIMOGA NAGARAJ H.H., ADVOCATE)

AND:

1. SRI MANJU
S/O. RAMALINGAM
AGED ABOUT 32 YEARS
R/O HOSAMANE CHANEL AREA
OPPOSITE MAHADESHWARA TEMPLE
SHIMOGA – 577 201
(OWNER CUM DRIVER OF TWO WHEELER
BEARING No.KA-14-W-8799)

2. THE BRANCH MANAGER
THE UNITED INDIA INSURANCE CO. LTD.
A.A. CIRCLE
B.H. ROAD
SHIMOGA – 577 201
(INSURER OF TWO WHEELER
BEARING No.KA-14-W-8799) **... RESPONDENTS**

(BY SRI A.M. VENKATESH, ADVOCATE FOR R2)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MOTOR VEHICLES ACT, 1988 PRAYING TO CALL FOR THE RECORDS, AWARD THE COMPENSATION, SET-ASIDE THE ORDER PASSED BY THE PRESIDING OFFICER, FTC-II AND A.M.A.C.T, AT SHIMOGA, IN M.V.C. No.982/2011 DATED 24.12.2011 OR AS THIS HON'BLE COURT DEEMS PROPER IN THE ADMITTED FACTS SITUATION OF THE CASE, BY ALLOWING THIS APPEAL AND ETC.,

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

R.DEVDAS J., (ORAL):

The claimant before the tribunal is the appellant before this Court. The claim petition filed by the appellant herein was rejected by the tribunal on the ground that the appellant was unable to prove that the vehicle bearing registration No.KA-14-W-8799 (two wheeler) belonging to respondent No.1 herein, was involved in the road accident.

2. The contention of the appellant is that on 09.09.2009 at about 8.30 p.m., the appellant herein was proceeding on his motor cycle bearing registration No.KA-14-R-7373 on Balaraj Urs Road towards Durgigudi in

Shivamogga City. The appellant was proceeding on the left side of the road and while the street dog suddenly crossed the road, the appellant had applied brake. When the appellant applied brake, the vehicle belonging to respondent No.1 herein dashed the vehicle of the appellant from behind and the appellant fell down and sustained grievous injuries including fracture of Tibia, fracture of right maxilla and other aggressions all over his body. The appellant was shifted to Nanjappa hospital, where according to the appellant he lost his consciousness.

3. The complaint was lodged on the very same day at about 11.30 p.m. in the night by the appellant's father. In the complaint, the appellant's father has stated that one Sri Javeed, who is the appellant's friend informed him that his son met with an accident and he admitted him to Nanjappa hospital. Immediately thereafter the appellant's father proceeded to the hospital and saw that his son was undergoing treatment. Thereafter, he came and lodged a complaint before the jurisdictional Police Station stating

that the street dog ran across the road and the appellant, who was driving the vehicle rashly, has fell down and sustained injuries.

4. The next day i.e., on 10.09.2009 at about 8.30 a.m., the appellant's father informed the Police in writing that the version he gave in the complaint on previous date was not correct. It is stated that on 10.09.2009 at about 8.00 a.m., his son regained his consciousness and informed him that while the dog ran across the road, he had applied brake and respondent No.1, who was driving behind dashed the appellant's vehicle and the appellant has fell down. The name and vehicle number of respondent No.1 was shown in the second complaint dated 10.09.2009.

5. The tribunal has closely observed the two complaints and the variance too. The tribunal has observed that the Police, who investigated the incident did not interrogate the appellant. The tribunal has placed emphasis on the fact that there was no other eye witnesses

to the incident. The road in question was crowded and there was no other independent witness is examined. The tribunal has doubted the veracity of the fact that the appellant, who alleged that he had lost his consciousness and immediately after regaining the consciousness was able to give the number of vehicle that was involved in the accident. Moreover, it is seen that in the Wound Certificate, the name of respondent No.1 is found and it is stated that it is respondent No.1, who admitted the appellant to the hospital. The contradictory statement that respondent No.1 admitted the appellant to the hospital, while in the first complaint lodged by the appellant's father, he clearly stated that the person, who informed him about the accident i.e., Sri Javeed told him that he had admitted his son to the hospital.

6. Having heard the learned counsels on both the sides, having gone through the pleadings and the Lower Court Records, this Court finds that the tribunal has rightly laid emphasis on this aspect of the matter that if

the appellant did not know respondent No.1 and if it is believable that respondent No.1 himself admitted the appellant to the hospital, Sri Javeed, the appellant's friend who informed the appellant's father could not have stated that he admitted him to the hospital. It cannot be ignored that if the appellant remembered the vehicle number belonging to respondent No.1, it was highly improbable that how he can ascertain who is the owner of the vehicle and the name of owner of the vehicle immediately after regaining the consciousness.

7. In the second version that was given by the appellant's father, it is noticeable that he did not say that the owner of the offending vehicle admitted his son to the hospital. The other contention of learned counsel for the appellant that respondent No.1 was named in the Charge Sheet and the Police proceeded against him in the criminal case does not impress this Court. It has been noticing that how vehicle which was not involved in the accident made to

look that it was involved in the accident is only for the purpose of claiming insurance.

8. This Court is of the opinion that no fault could be found in the award passed by the tribunal. Therefore, the appeal fails and accordingly dismissed.

**SD/-
JUDGE**

KLV