

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 19TH DAY OF AUGUST, 2019

BEFORE

THE HON'BLE MR.JUSTICE K. NATARAJAN

MFA NO.100374/2015 (MV)

BETWEEN :

SUBHAS
S/O: KALLAPPA DEMAKKANAVAR,
AGE: 55 YEARS,
OCC: AGRIL & BUSINESS,
R/O: SULLA VILLAGE,
TQ: HUBBLI,
DIST: DHARWAD.

... APPELLANT

(BY SRI. R.H.ANGADI, ADV.)

AND

1. THE MANAGING DIRECTOR
KSRTC, CENTRAL OFFICE,
GOKUL ROAD, HUBBLI,
(OWNER OF THE KSRTC BUS BEARING
ITS REG.NO.KA-31/F-1181)
2. THE SELF INSURANCE FUND,
R/BY RESPONDENT NO.1
MANAGING DIRECTOR,
CENTRAL OFFICE, GOKUL ROAD,
HUBBLI.
3. THE MANAGING DIRECTOR
M/S VRL LOGISTICS LTD.,
REGD. AMDN. OFFICE,
NH-4, BENGALURU ROAD, VARUR,
HUBBLI-581207.
(OWNER OF LORRY BEARING
REG. NO.KA-25/B-1106)

4. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE COMPANY LTD.,
DIVISIONAL OFFICE,
N.K.COMPLEX, KESHWAPUR,
HUBBLI.

... RESPONDENTS

(BY SRI. S.L.MATTI, ADV. FOR R1 & R2
SRI HANUMANTH REDDY SAHUKAR, ADV. FOR R3
SMT. PREETI SHASHANK, ADV. FOR R4)

THIS MFA FILED U/S.173(1) OF THE M.V.ACT, 1988,
PRAYING TO KINDLY ALLOW THE APPEAL AND KINDLY SET
ASIDE THE IMPUGNED JUDGMENT AND AWARD PASSED IN
MVC NO.98/2013, DATED 15.10.2014, PASSED BY THE
LEARNED I ADDL. SENIOR CIVIL JUDGE AND ADDL. MACT
HUBBLI AND KINDLY REMAND THE MATTER FOR FRESH
CONSIDERATION AND ETC.

THIS APPEAL BEING COMING ON FOR ADMISSION
THIS DAY, THE COURT DELIVERED THE FOLLOWING:-

JUDGMENT

Though this appeal came up for admission,
with the consent of the learned counsel for the
parties, it is heard finally.

2. This appeal is filed by the appellant
assailing the judgment and award dated
15.10.2014 in MVC No.98/2013 passed by the I
Addl. Senior Civil Judge & Addl. MACT, Hubballi
(for short 'the Tribunal).

3. I have heard the arguments of the learned counsel for the appellant and learned counsel for respondents.

4. For convenience, the ranks of the parties before the Tribunal are retained.

5. The appellant who is petitioner before the tribunal filed claim petition under Section 166 of Motor Vehicles Act (for short 'the Act') claiming compensation of Rs.1,95,800/- interalia contending that on 07.11.2012 at about 9.00 hours the petitioner being the owner and RC holder of the TATA Indica Car bearing registration No.KA-25/MA-3455 while driving his vehicle on Kalaghatagi road, thereafter, when he was returning to Dharwad, by the left side of the road in a slow manner by observing the traffic rules, at that time, a KSRTC bus bearing registration No.KA-31/F-1181 driven by its driver in a rash and negligent manner and over

took the car from backside and dashed to a lorry bearing registration No.KA-25/B-1106 which came from opposite direction and due the accident the vehicle was completely damaged and also a case has been registered by the Traffic Police Dharwad in CrimeNo.181/2012 and charge sheet also filed against the drivers of both lorry as well as bus. Due to the negligent driving of both the vehicles the petitioner-appellant suffered damage to his vehicle. Hence, claimed the compensation.

6. In pursuance of the notice, the respondents filed objections and resisted the claim petition.

7. Based upon the pleadings, the tribunal framed the issues and posted the matter for evidence.

8. It is further stated by the counsel for the appellant that the appellant-petitioner led the evidence by filing the affidavit and got marked

three documents. When the case was posted for further examination-in-chief the appellant had not led evidence and not marked any other documents. Therefore, the tribunal considered the evidence of the claimant as nil and posted the evidence of respondent Nos.1 and 2 who led the evidence and got marked three documents. The respondent Nos.3 and 4 not let in any evidence. After considering the evidence on record, the tribunal has dismissed the claim petition by judgment dated 15.10.2014, holding that the petitioner-appellant herein failed to prove his case. Assailing the judgment and award, the claimant filed this appeal before this Court.

9. The counsel for the appellant contended that, in spite admitting the accident by the respondents, by producing the order of conviction of the driver of the lorry and the judgment produced by respondent No.1 to prove

the accident before the tribunal, due to some ill-health, the claimant was not able to appear before the tribunal and adduce his further evidence and produce the documents to prove his case. However, the tribunal hurriedly passed the judgment expunging the evidence of the claimant and considered as no evidence and dismissed the petition which is not correct. Further it is contended that because of ill-health when he was failed to appear before the tribunal that itself is not a ground to hold that there is no evidence to show that the vehicle was not met with an accident and sustained the damages. Therefore, the learned counsel prays for remanding the matter back to the tribunal for fresh consideration by giving an opportunity to lead evidence.

10. Per contra, learned counsel appearing for the respondent-Corporation supported the judgment of the tribunal and contended that in

spite of granting sufficient time, the tribunal has no other option to dismiss the claim petition. He further contends that there is no documents to produce in spite of sustaining the damages to the vehicles. Therefore, there is no need for remanding back and prayed for dismissing the appeal.

11. Learned counsel appearing for respondent Nos.3 and 4 contends that in case this Court remands the matter back to the tribunal, an opportunity may also be granted to the insurer to contest the case before the tribunal.

12. Upon hearing the learned counsels appearing for the parties and on perusal of the records, the point that arise for my consideration;

- (a) Whether the tribunal is not justified in dismissing the claim petition filed by the claimant which calls for interference?

(b) What order?

13. On perusal of the available evidence on record, the accident dated 07.11.2012 has not been disputed by the driver of the lorry which was pleaded guilty and charge sheet was filed by the police as against both the drivers of bus as well as lorry. The respondent No.1, produced the judgment of acquittal passed by the Magistrate in the criminal case registered against both the drivers. Such being the case, when the accident itself is admitted by the parties, the tribunal ought not to have held point No.1 that the accident was not proved and vehicle was not damaged. The factum of accident was not properly appreciated by the tribunal. Apart from that, though the claimant adduced the evidence both oral as well as document Exs.P1 to 3, he was not tendered for the cross-examination and in view of non-tendering for

cross-examination, the tribunal expunged the evidence of petitioner. Once the evidence of the petitioner was expunged, the tribunal could have not posted the matter for respondents' evidence and pass the judgment on merits but the tribunal ought to have dismissed the petition for non-prosecution. Therefore, considering this aspect of the matter, without going to the merits of the case, the findings of the tribunal is perverse and against the documents and oral evidence adduced by the parties before the tribunal therefore the judgment is liable to be set aside, without expressing any opinion on the merits of the case. Accordingly, I pass the following;

ORDER

The appeal is allowed. The judgment and award dated 15.10.2014 in MVC No.98/2013 passed by the tribunal is hereby set aside and the matter is remanded back to the tribunal to

dispose the matter in accordance with law, after giving an opportunity to the petitioner as well as the respondents. Liberty is also granted to all the respondents to lead any additional evidence.

However, it is observed that the claimants are not entitled for any interest on the compensation from the date of filing appeal till disposal of this appeal.

All the parties shall appear before the tribunal without expecting any further notice on 16.09.2019. The tribunal is also directed to dispose the matter within a period of two months from the date receipt of copy of this order.

Office is directed to transmit the LCR and copy of the order forthwith.

**SD
JUDGE**

msr