

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 23<sup>RD</sup> DAY OF JANUARY, 2020

BEFORE

THE HON'BLE MR.JUSTICE ASHOK S. KINAGI

M.F.A.No.23617/2012 (MV)

BETWEEN

PANDURANG S/O TUKARAM,  
MYAGINKERI, @ MYALINKERI,  
AGE: 48 YEARS,  
OCC: BENDING & CENTERING WORKMAN,  
R/O: MUDHOL, DIST: BAGALKOT.

..... APPELLANT

(BY SRI SIDDAPPA SAJJAN, ADV.)

AND

1. VENKANAGOUDA S/O DEVANGOUDA PATIL,  
AGE: MAJOR, OCC: OWNER OF VEHICLE,  
R/O: AT BASAVANAGAR MUDHOL,  
TALUK: MUDHOL, DIST: BAGALKOT.
2. UNITED INDIA INSURANCE CO. LTD.,  
REP. BY MANAGER,  
KACHERI ROAD, JAMAKHANDI,  
DIST: BAGALKOT.

..... RESPONDENTS

(BY SRI S.S. KOLIWAD, ADV. FOR R-2  
R-1 SERVED)

THIS APPEAL IS FILED U/S 173(1) OF MV ACT, AGAINST THE  
JUDGMENT AND AWARD DATED:09-09-2010 PASSED IN MVC  
NO.481/2004 ON THE FILE OF MEMBER, MACT.NO.VI, JAMKHANDI,  
REJECTING THE PETITION FILED U/SEC.166 OF MV ACT.

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

JUDGMENT

This appeal is filed by the claimant aggrieved by the judgment and award dated 09.09.2010 passed in M.V.C.No.481/2004 by the M.A.C.T.-VI, Jamakhandi sitting at Mudhol, this appeal is filed.

2. The case of the appellant is that the appellant and others were traveling from Mudhol to Yadwad in a trax jeep bearing registration No.KA-29/1689 on 25.11.2003 to attend the work of first respondent. The said vehicle belongs to respondent No.1. The driver of the vehicle drove the vehicle in a rash and negligent manner and lost the control over the jeep and fell it down in a ditch by the side of the road. Because of the accident, the appellant sustained grievous injuries. Immediately he was shifted to Dr.Uday Naik Hospital for treatment. He was admitted in the hospital for 25 days and spent Rs.50,000/- for his treatment. Due to fractural injuries, the appellant is

always in sleeping state of condition. He cannot sit and stand, bend and walk due to injuries sustained in the accident. He was 40 years at the time of accident and getting income of Rs.100/- per day. Due to accident, he is not in a position to work as early he was. The accident was occurred due to rash and negligent driving of the vehicle. The said vehicle is insured with the respondent No.2 as on the date of accident. The appellant filed claim petition before the Tribunal seeking compensation.

3. The respondent No.1 is the owner though appeared did not file written statement. The respondent No.2 appeared and filed written statement denying the contents made in the petition. Respondent No.2 contended that the vehicle involved in the accident and in the FIR the vehicle involved is shown as KA-29/M-1681. Thereafter the vehicle number is changed to KA-29/M-1689. Hence, the petition is not maintainable. The age, income and date and time of the accident were

also denied. Further contended that the driver of the offending vehicle was not having valid and effective driving licence to drive the vehicle and thereby respondent No.1 has violated the provisions of M.V. Act. Hence, sought for dismissal of the petition.

4. The Tribunal on the basis of pleadings of the parties, framed the following issues:

1. *Whether petitioner proves that he sustained grievous injuries on account of accident due to rash and negligent driving of KA-29/1689 by its driver?*
2. *Whether petitioner proves his age and income?*
3. *Whether petition is maintainable as contended by the respondent No.2 in his written statement?*
4. *Whether 2<sup>nd</sup> respondent proves that there is violation of terms and conditions of Insurance Company policy, thereby their company is not liable to pay the compensation?*

5. *Whether petitioner is entitled for compensation? If so at what rate? From whom*

6. *What order or award?*

5. The appellant in respect of his claim examined himself as PW-1 and got marked Exs.P-1 to P-11 and examined one doctor as PW-2. The respondents have not led any evidence but got marked documents as Exs.D-1 to D-3.

6. After recording the evidence and after considering the evidence placed on record, i.e. oral and documentary, the Tribunal held that the appellant has failed to prove that he has sustained grievous injuries on account of accident which occurred due to rash and negligent driving of KA-29/1689 by its driver. It has also held that the claimant was aged about 40 year as per the injury certificate produced by the appellant and further held that the appellant has not produced any record to show his income as on the date of accident. Respondent No.2 has failed to prove that there is

violation of terms and conditions of the policy and thereby company is not liable to pay the compensation. Consequently, the Tribunal rejected the claim petition. The claimant being aggrieved by the said judgment and award, filed this appeal.

7. Heard the learned counsel for appellant and learned counsel for respondent No.2.

8. The point arises for consideration is as follows:

*"Whether appellant has made out grounds for interference with impugned judgment and award?"*

9. It is the case of the claimant that he was traveling in a jeep bearing registration No.KA-29/M-1689 on 25.11.2003 to attend the work of first respondent. The driver of the vehicle drove the vehicle in a rash and negligent manner and lost the control over the jeep and fell it down in a ditch by the side of

the road because of the accident, the claimant sustained grievous injuries and he admitted in the hospital and took treatment and he has produced the records. From the perusal of FIR Ex.P-1 and also a copy of complaint Ex.P-2, it goes to show that nowhere the name of the claimant is mentioned to show that the claimant was traveling in the said jeep. Further the claimant has not examined any other passengers who were traveling in the said jeep. The claimant has not produced any material to show that as on the date of accident, he was traveling in the jeep. In the absence of any material, the Tribunal has rightly held that the claimant has failed to prove that he was traveling in the jeep as on the date of accident.

10. The claimant has produced injury certificate marked as Ex.P-4. Nowhere in the injury certificate it is noted by the doctor that injuries are the result of an accident and admitted to hospital for treatment. This Court is of the opinion that the appellant has not

sustained injuries due to alleged accident. Further he has not produced any document to show that he had sustained injuries as a result of the accident. Hence, I do not find any ground to interfere with the impugned judgment and award passed by the Tribunal. Accordingly, point No.1 is answered in negative i.e., against the appellant. Hence, I proceed to pass the following:

ORDER

The appeal is dismissed.

Sd/-  
JUDGE

Naa