

**(2010) 03 KAR CK 0003**

**Karnataka High Court**

**Case No:** Miscellaneous First Appeal 9355 of 2006

Sri B. Padmanabha Bhat

APPELLANT

Vs

Yogeesha Shettigar and The  
Manager The New India  
Assurance Company Limited

RESPONDENT

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**Date of Decision:** March 19, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33
- Motor Vehicles Act, 1988 - Section 173

**Hon'ble Judges:** K. Govindarajulu, J

**Bench:** Single Bench

**Advocate:** K. Chandranath Ariga, for the Appellant; G. Narayana Rao, for R2, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

K. Govindarajulu, J.

Respondent No. 1 in MVC 1751/97 on the file of the MACT No. 5, Mangalore, is the appellant in this appeal filed u/s 173 of the MV Act.

2. Parties will be referred to according to their status in the Court below for convenience.

3. Petitioner has filed a claim application contending that on account of the rash and negligent driving of the bus bearing registration No. KA 19 - 9738, he met with an accident and for the pain, suffering and agony sustained by him, he requested the Tribunal to award compensation. Insurance Company-respondent No. 2 entered appearance, filed objections. Thereafter issues were framed. Learned Trial Judge permitted parties to lead evidence. PWs 1 to 3 were examined. Exs. P1 to 10 were marked. In response R1 was examined. Exs.R1 and 2 were marked

4. Learned Trial Judge has answered the following issues with the following reasons.

1. Whether the petitioner has proved that the occurrence of the accident in question was due to rash or negligent driving of the bus bearing No. KA-19-9738?

2. Whether the petitioner has proved that he had sustained injuries in the accident?

3. Whether the petitioner is entitled to compensation and if so to what amount and by whom?

4. What Order/Award?

Reasons:

(1) Issue No. 1 in the Affirmative

(2) Issue No. 2 in the Affirmative

(3) Issue No. 3 - Petitioner is entitled to receive Rs. 1,23,000/- from the 2<sup>nd</sup> respondent

(4) Issue No. 4 - As per final order

5. Learned advocate for Respondent No. 1 contends that Respondent No. 1 is the owner of the bus. He had filed an application for payment of compensation in regard to the damage to the vehicle with respondent No. 2. It is considered by respondent No. 2. Compensation is paid. In spite of it, in the MVC an order is passed against respondent No. 1 asking respondent No. 1 to pay the compensation. In the facts of the case, as respondent No. 2 has collected the vakalath to represent respondent No. 1 in MVC 1751/97, respondent No. 1 was under a bonafide impression that respondent No. 2 would protect his interest. Secondly, he contends that award is passed without contest by respondent No. 1. So, 1<sup>st</sup> respondent had no opportunity to present his case. Therefore, the order of the Tribunal may be set aside and a fresh finding be sought for.

6. In reply, learned advocate for respondent No. 2 contends that in regard to the payment of the money by respondent No. 2 to respondent No. 1 in regard to the bus in question or damages caused to the bus in question, is a different subject. The subject placed before the MACT is a different one. The subject placed before the MACT is whether the driver in question had a valid driving licence?

7. The Court found that the driver did not have a valid driving licence. So, while directing the respondent No. 2 to pay the compensation, has authorized respondent No. 2 to collect money from respondent No. 1. So, the reasoning of the trial Court is proper. Respondent No. 1's contention of throwing the blame on respondent No. 2 cannot be accepted as even assuming such a representation was made and vakalath was taken, there was a duty cast upon respondent No. 1 to find out the result and check the case from time to time. Having not done, respondent No. 1 cannot reagitate the matter. So pray for dismissal of the appeal.

8. In the light of the above the point arises for consideration by the Court is as follows:

(1) Whether the order of the learned Trial Judge in MVC No. 1751/97 authorizing respondent No. 2 to collect money from respondent No. 1 requires interference at the hands of this Court?

The subject placed before the Court is in regard to conduct of a party. In [Nagubai Ammal and Others Vs. B. Shama Rao and Others](#), their Lordships of the Apex Court have considered the subject of action of a person dealing with principles u/s 115 of Evidence Act. Their Lordships have observed as follows:

The maxim that a person cannot "approbate and reprobate" is only one application of the doctrine of election, and its operation must be confined to the reliefs claimed in respect of same transaction and to the persons who are parties thereto.

The principle is further explained with the following dicta:

The principle of election does not forbid a party from claiming the same relief against different persons in different suits in respect of the same property though the grounds of relief are different and inconsistent.

9. In the facts of the case respondent No. 2 pays in regard to the damages to the bus in question, his actions i.e., actions of respondent No. 2 would amount to admitting the accident and admitting the eligibility of respondent No. 1 for the compensation. So, respondent No. 2 cannot reagitate the very same subject and say that respondent No. 2 in an MVC can make out a separate case. If this is permitted it amounts to approbate and reprobate at the same time. So, this Court has to reject the first submission of the advocate for respondent No. 2.

10. In the facts of the case there is no prayer by the learned advocate for respondent No. 1 in the appeal requesting Court to fasten the liability on respondent No. 2. Under Order 41 Rule 33 CPC the appellate Court is authorised "...to pass or make such further or other decree or order as the case may require..." . So the relief can be moulded according to the circumstances. In facts of the case respondent No. 2 in the initial stages, having paid compensation to respondent No. 1, this Court is of the considered opinion that the order of the learned trial Judge in authorizing respondent No. 2 to collect money from respondent No. 1 is not called for.

Secondly, before shouldering such a responsibility on respondent No. 1, a separate issue ought to have been framed and a finding should have been given. No such method is adopted in the facts of the case. So, the submission of the learned advocate for respondent No. 2 that MVC is a separate proceeding, in an MVC case the plea of the driver having or not having valid driving licence is taken and answered by the Court is without any merit, so it is rejected. In the light of the findings recorded, the Court holds that the finding of the learned Judge authorizing

respondent No. 2 to collect money from respondent No. 1 is incorrect.

11. Accordingly, the following order is passed:

ORDER

(1) Appeal is allowed.

(2) The order of the Court below to the extent authorising respondent No. 2 to collect money from respondent No. 1 is liable to be set aside.

(3) In the circumstances parties to bear their own costs.