

(2013) 04 KAR CK 0048

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 1668 and 4434 of 2009 (WC)

Anandaselvam V.

APPELLANT

Vs

Mohammed Inayat and Another

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 3 ACC 539 : (2013) 4 AKR 636 : (2013) 138 FLR 254 : (2013) 3 KarLJ 412

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : M.C. Umadevamma and Sri O. Mahesh, for the Appellant;

Judgement

S.N. Satyanarayana, J.—Claimant and second respondent in WCA.CR. No. 15/2006 on the file of Commissioner for Workmen's Compensation, Sub-Division 1, Bangalore, have come up in these two appeals impugning the judgment dated 31-12-2008. MFA No. 1668 of 2009 is filed by claimant seeking enhancement of compensation awarded by Commissioner, whereas MFA No. 4434 of 2009 is filed by Insurance Company seeking reduction of compensation awarded by Commissioner on the ground that same is excessive. Brief facts leading to these two appeals are as under:

Claimant said to be cleaner-cum-loader and unloader in lorry bearing No. KA-03/8111 belonging to first respondent and insured with second respondent before Commissioner is said to have suffered injuries in road traffic accident dated 27-4-2006, which has taken place at 5.30 a.m., on that day near Dodderi. It is stated that he was travelling in said vehicle in the course of his employment at the time of accident and because of accident he suffered fracture of right side hip joint, fracture of both legs, his right eye damaged and he suffered other bleeding injuries. Hence, he was admitted to Nelamangala Hospital and thereafter shifted to Victoria Hospital. Subsequently, he filed claim petition seeking compensation.

2. In the proceedings before Commissioner, on appreciation of oral and documentary evidence available on record claim petition was allowed awarding compensation in a sum of Rs. 2,21,004/- payable with interest at 12% p.a., from 30th day of accident till date of deposit of entire amount. Being aggrieved by the same, claimant has come up in one of the appeals contending that because of the injuries suffered in accident he is not in a position to do any work. Therefore, the loss of earning capacity taken at 50% is on lower side and the same is required to be enhanced to 100%. Per contra, Insurance Company has come up in another appeal contending that when Doctor's evidence itself is to the effect that claimant has suffered whole body disability to an extent of 30%, question of taking the same at 50% and awarding compensation is erroneous and the same is required to be modified. It is further contended that in the year 2006 the normal practice in following the wages payable to persons doing coolie work would be anywhere between Rs. 3,000/- p.m. to Rs. 3,500/- p.m. Therefore, question of taking the same at Rs. 4,000/- p.m. is also erroneous.

3. On going through the grounds in both appeals and also on going through the judgment impugned this Court find the following common substantial question of law arises for consideration in these two appeals:

Whether the Commissioner for Workmen's Compensation has rightly assessed the loss of earning capacity of claimant based on the pleadings and documents available on record?

4. Heard the Counsel for appellant in both appeals. Perused the judgment impugned with reference to material available on record. On going through the same the substantial question of law is answered in the negative for the following.--

REASONS

It is seen that accident is not in dispute. So also injuries suffered by claimant in the aforesaid accident. It is further not in dispute that claimant was inmate of lorry in the course of his employment and as such he is entitled to receive compensation from respondents 1 and 2 before Commissioner jointly and severally. However, the point which is required to be seen is what is the evidence available on record. It is seen that in addition to the evidence of claimant, the Doctor who is said to have treated him has given evidence to the effect that claimant has suffered whole body disability to an extent of 30% because of the injuries suffered in the accident. If the opinion of doctor itself is to the extent that whole body disability is 30%, question of taking loss of earning capacity over and above the same does not arise. Even if it could be marginally increased, but not to the extent of 50%. In that view of matter, this Court feel the appropriate percentage of disability would be 40%. Further, the wages of claimant notionally taken in the absence of proof of employment and income is erroneous and the same should have been restricted to Rs. 3,750/-.

5. In the result, the compensation awarded by Commissioner is required to be

reassessed as under:

Rs. 3750/- x 60% = Rs. 2,250/- x 40% = Rs. 900/-

Rs. 900/- x 184.17 = Rs. 1,65,753/-

The claimant is entitled to receive the aforesaid revised compensation with interest at 12% p.a. from 30th day of accident till deposit of entire amount.

Accordingly, the appeal filed by Insurance Company in MFA No. 4434 of 2009 is allowed and the judgment dated 31-12-2008 passed in WCA.CR. No. 15 of 2006 is modified. Consequently, the appeal filed by claimant in MFA No. 1668 of 2009 seeking enhancement of compensation is dismissed.

In view of the appeal of Insurance Company being allowed from out of the amount in deposit the modified compensation along with interest is ordered to be sent to Commissioner for disbursement to claimant and the balance if any is ordered to be refunded to appellant-Insurance Company.