
(2015) 02 KAR CK 0170
In the Karnataka High Court
Case No : M.F.A. No. 125/2010 (WC)

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Bhagyamma and Others	RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 337
Workmens Compensation Act, 1923 — Section 22

Citation : (2015) 02 KAR CK 0170

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : A.N. Krishna Swamy, Advocate, for the Appellant; K.B.K. Swamy, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—Being aggrieved by the fastening of liability on it, the insurer has filed the present appeal challenging the award passed by the Commissioner for Workmen Compensation, Sub-Division-5, Bangalore in case bearing No. WCA/FC/CR-18/2008 dated 31.10.2009.

2. Respondent No. 1 herein was the claimant in the said case. Respondent No. 2 was the registered owner of the vehicle in which deceased was traveling.

3. The facts leading to filing of the claim petition before the Workmen Compensation Commissioner by Smt. Bhagyamma is as follows:

a) The claimant had a son by name Satish @ Gangadharaiah and he was stated to be working as a driver in the Tata Indica Car bearing No. KA-02-D-943 owned by respondent No. 2, Gopi. While proceeding on Bangalore Hassan road, the said car met with an accident on 3.9.2008 near Y.K. Ramaiah circle and he died as a result of the injuries sustained by him.

b) Bhagyamma chose to file a claim petition before the Workmen's Compensation Commissioner relating to the death of her son which took place

near Hemavathiy Cross at Marakondanahalli, Y.K. Ramaiah Circle. The car which was driven by deceased Satish @ Gangadharaiah dashed against a signboard erected by Public Works Department (PWD) and he died on the spot and two other inmates were critically injured. The injured were shifted to a nearby hospital.

c) It is stated that the deceased was being paid Rs. 4,500/- p.m. as salary by Gopi, the owner of the vehicle, and he was hale and healthy. He was stated to be the sole bread winner of the family consisting of his mother.

4. The insurer alone has filed detailed written objections to the main petition. According to the insurer, the deceased who was the driver of Gopi-owner, was proceeding to his native place-Amruthur to attend Gowri festival, and therefore, he was not entrusted any duty by the insured/employer. According to the insurer, his death did not take place during the course and out of employment and hence there was no relationship of employer and employee at the time of the accident.

5. On the above lines, the insurer wanted to avoid liability. According to the insurer, the deceased was not having any driving licence to drive the vehicle and the owner did not possess valid permit to ply the vehicle.

6. Bhagyamma has been examined as PW 1 and has got marked 8 exhibits on her behalf. Sri Krishna Sheernali, senior executive of M/s. Bajaj Allianz General Insurance Company Limited is examined as RW 1. He has got marked two exhibits. Ultimately, the learned Commissioner has allowed the petition by framing the following points for consideration:

- 1) Whether the claimant proves that she was dependent on the deceased-Satish @ Gangadharaiah?
- 2) Whether the claimant proves that deceased was an employee under the 1st respondent as per the provisions of the Workmen's Compensation Act?
- 3) Whether the claimant proves that Satish died while discharging his duties as driver under the respondent-Gopi as employee?
- 4) If so, what was the age of the deceased and what was his monthly income?
- 5) To what reliefs and decree the parties are entitled to?
- 6) Who are liable to indemnify the claimant?
- 7) What order?

Issue Nos. 1 to 3 have been answered affirmative holding that the deceased-Satish was an employee under the 1st respondent, the owner of the car and that he died during the course of employment while driving the car of the 1st respondent as driver. The Commissioner has assessed his monthly income at Rs. 5,200/- and ultimately a sum of Rs. 4,48,000/- has been awarded as compensation.

7. The matter has been admitted to consider the following substantial question of law framed on 22.10.2013:

Whether the Commissioner for Workmen's Compensation has rightly assessed the evidence on record which does not disclose the use of the vehicle by the deceased in the course of employment?

8. Learned counsel, Mr. A.N. Krishnaswamy representing the insurer has vehemently argued that the evidence placed on record discloses that the deceased was proceeding to his native place in the car belonging to the registered owner and not during the course of employment. It is argued that the documentary evidence placed on record would amply prove that the deceased was proceeding to his native place along with his friends from the same village and therefore, he did not die while discharging his duties as driver under the 1st respondent and therefore, there was no relationship of employer and employee at the relevant point of time.

9. The claim petition filed under Section 22 of the W.C. Act discloses that the accident took place on 3.9.2008 near Y.K. Ramaiah Circle near Hemavathi Cross of Marakonahalli village in the wee hours at 3.15 a.m. The fact that Satish died as a result of dashing against the signboard erected by PWD on 3.9.2008 in the wee hours is not seriously disputed. Paragraph 4 of the petition discloses that there were two inmates in the said car and they were also critically injured. It is specifically averred in the petition that deceased-Satish was driving the car belonging to the 1st respondent, that too, at the instance of the 1st respondent and therefore, he died during the course of employment. This material averment in the claim petition has been emphatically denied by the insurer.

10. Admittedly the 1st respondent-owner did not participate in the proceedings initiated by the claimant. Ex. P1 is a copy of the FIR in Crime No. 130/08 by Amruthur police station within whose jurisdiction the accident took place. Case came to be registered on the basis of the first information lodged by Chandrashekar, s/o. Ramanna, resident of Kadashettihalli village, Kunigal taluk. It is mentioned by him that a native of Kadashettihalli village by name Shekar, s/o. Bhadraiah was proceeding in his car bearing registration No. KA-02-D-943 from Bengaluru to attend Gowri festival and the car dashed against the PWD signboard erected near Y.K. Ramaiah Circle. As a result of it, he died and the inmate-Shekar sustained severe injuries. Therefore much reliance is placed by the insurer to drive home the point that the deceased was proceeding to his own native village in the car belonging to Gopi to attend Gowri festival and therefore the death did not take place during the course of employment.

11. It is true that ultimately charge sheet came to be filed against the deceased-Satish by police for the offences punishable under Sections 279 , 337 and 304A , I.P.C. by K.R. Chandrashekar, s/o. Ramanna who has also attested the spot mahazar. K.V. Chandrashekar, s/o. Bhadraiah was injured in the accident and Ramesh, s/o. Kosaiah is stated to be the eyewitness.

12. It is useful to refer to the evidence of Krishna Sheernali, a responsible representative of the insurer who is examined as RW 1. In his affidavit filed in lieu of examination-in-chief on 27.7.2009, he has specifically deposed that the deceased-Satish was going to his native place-Amruthur for attending Gowri festival along with his relative and he dashed against the signboard and died due to the injuries suffered by him. The FIR has been marked as Ex. P1 and it discloses that the native place of the deceased was Kadashettihalli; whereas RW 1 has deposed that the deceased was proceeding to Amruthur. RW 1 has been cross-examined at length by the learned counsel for the claimant. During the course of his cross-examination, he has specifically deposed that he has no personal knowledge about the accident. He has further deposed that the matter has been got investigated by M/s. Silverstar Agency. He has further deposed that no information was got about K.R. Chandrashekar, from the police. It is his case that he came to know about the facts of the case on the basis of report of investigating agency and he cannot give much details without looking to the same. RW 1 has not furnished any documentary evidence to show that Amruthur was the native village of deceased-Satish @ Gangadharaiah.

13. On the other hand, PW 1 has emphatically denied the suggestion put to her that her son was proceeding in the car belonging to Gopi towards his native village to attend Gowri festival. Nothing has been culled out from the mouth of PW-1 as to the name of the native village of the deceased. She has even feigned ignorance about the name of the person who was stated to be with her son when the alleged accident took place. On the other hand, she has asserted on oath during cross-examination that her son was proceeding in the car at the instance of the 1st respondent-Gopi-owner of the car. On the other hand, she has deposed that he was taking passengers in the car.

14. Learned counsel for the insurer has relied on a decision of the Hon"ble apex court rendered in the case of Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, . What is held in the decision is that to come within the W.C. Act, the injury or accident must arise both out of and during the course of employment. The words, according to the Hon"ble apex court, "in the course of employment" mean "in the course of work which the workman is employed to do which is incidental to it." The words "arising out of employment" are understood to mean that "during the course of employment the injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not have otherwise suffered."

15. What is further clarified in the said decision is that if the accident had occurred on account of the risk which is incidental to the employment, the claim for compensation must succeed, unless, the worker has exposed himself to added peril by his own imprudent act."

16. Admittedly the deceased was a driver working under the 1st respondent-Gopi which fact is not seriously disputed. Nothing came in the way of the insurer to

have examined the first informant or eyewitness in respect of its case. The FIR discloses that the deceased was proceeding to Kadashettihalli along with his friends, whereas from the examination-in-chief of RW 1, it is clear that he was proceeding to Amruthur and the said assertion is on the basis of information received from the investigator. On the basis of the broad preponderance of possibilities, the Commissioner has come to the conclusion that the deceased was discharging his duties as the driver under the 1st respondent at the relevant point of time and no acceptable evidence is placed on record to show that he was proceeding on his own to his native place. Thus the decision relied on by the learned counsel for the insurer-appellant would not be of much assistance.

17. Admittedly the deceased was born on 18.10.1987 and was quite young. The materials placed on record in regard to the probable income of the deceased is based on broad preponderance of possibilities and the entire focus of the appeal is towards the non-existence of relationship of employer and employee at the relevant point of time. Viewed from any angle, no good grounds are made out to interfere with the well considered order passed by the Commissioner in regard to the death of Satish which took place during the course of employment under the 1st respondent-Gopi who is the registered owner of the vehicle in question. The assessment of compensation is based on proper materials placed on record. Hence the appeal is liable to be dismissed.

18. In the result, I pass the following order:

ORDER

The appeal is dismissed. Parties to bear their own costs.