
(2015) 11 KAR CK 0137
In the Karnataka High Court
Case No : M.F.A. No. 30604/2008 [WC]

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

Date of Decision : 18-11-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2015) 11 KAR CK 0137

Hon'ble Judges : G. Narendra, J.

Bench : Single Bench

Advocate : Sanjay M. Joshi, Advocate, for the Appellant; Ratna N. Shivayogimath, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G. Narendra, J.—The appellant before this Court is the insurer of the offending vehicle bearing registration mark No. KA33-3982.

2. The parties are referred to by the ranking before the court below.

3. The facts of the case in brief are as follows:--

The case of the claimant is that she is the mother of one Hasnasab s/o. Abdul Sab Doddamani and that he was employed as a coolie for the purpose of loading and unloading goods into the mini door goods auto bearing registration No. KA-33 3982 on a monthly salary of Rs. 5,000/- and a daily bata of Rs. 50/- and that on 19.6.2006 at about 6.30 p.m. when the deceased was proceeding to the shandy of Nalathwad for the purpose of loading and unloading goods and for transporting the same. The driver of the said mini goods auto drove the vehicle in a rash and negligent manner and caused the accident on the Nalathwad - Surpur road. It is stated that Nalathwad Surpur road was a rough road and the accident occurred due to the bad road condition and that in the accident, her son sustained grievous injuries and though he was taken to Narayanapur Government hospital for treatment, he was pronounced dead on arrival itself. It

is further stated that the medical officer of KBJNL hospital Narayanapur conducted post mortem and issued post mortem report, which is Ex. P5. That the accident was reported to the police by the hospital authorities and have recorded it as a medico legal case. On information from the hospital the police have registered a case in Crime No. 26/06. It is further stated that she was solely dependent on the deceased for her survival and hence she is entitled for compensation as claimed in the petition. She has asserted that her son died while in employment with the first respondent and prayed for total compensation of Rs. 6,00,000/- with interest at 18% p.a.

Along with the claim petition the claimant has also furnished a list of documents viz. The FIR, copy of the statement recorded by the police, copy of the panchanama, copy of the charge sheet, copy of the motor vehicle report, copy of the post mortem report, copy of the registration certificate of the vehicle, copy of the fitness certificate of the vehicle, copy of the driving licence and copy of the insurance policy.

Upon notice, the first respondent appeared before the authority and filed his written statement to the claim petition. In the written statement he has denied that he was paying Rs. 5,000/- p.m. to the deceased. He has admitted that the deceased was employed as a coolie but denied that he was paid Rs. 5,000/- p.m. and has clarified that he was paying a consolidated sum of Rs. 4500/- p.m. and he was not paying any bata either. Thereby he has admitted the employer-employee relationship that was existing prior to the demise of the claimant's son.

The second respondent (appellant herein), Insurance Company, entered appearance and filed its written statement. The second respondent has even denied that the offending vehicle has been insured with it. They have denied the accident. They have denied that the deceased was a coolie and a driver of the offending vehicle getting a monthly wages of Rs. 5,000/- and bata of Rs. 50/- per day. It is stated that the sum claimed as compensation is exorbitant and inadmissible. It is denied that there is a master and servant relationship between the deceased and the first respondent and hence he is not a regular workman under the provisions of the Workmen Compensation Act and Rules. It is denied that the driver of the Goods Auto had a valid and effective driving licence. It is denied that the deceased was a workmen within the meaning of Section 3 of the Act and he was not employed with the insured either as a driver or a coolie. It is asserted that the policy does not cover the risk of coolies and no premium has been paid and further that the claimant is not firm regarding the occupation of the deceased and that the stand taken in paragraphs 3 and 4 of the claim petition are totally different and militate against each other and in view of the inconsistent stand, the claim petition requires to be rejected. Moreover, the deceased was an unauthorized passenger in the goods vehicle and hence the insurer is not liable to compensate when the first respondent has failed to discharge his statutory liability by furnishing full particulars regarding the name and address of the employees from time to time and he has willfully violated the

traffic rules for which the insurer cannot be held liable.

On these grounds the parties were heard and the Authority was pleased to hold that the deceased was an employee under the first respondent and hence he was entitled for compensation and he awarded a sum of Rs. 3,22,920/- as compensation along with interest at the rate of 12% with effect from 14.9.2008.

4. The appellant/second respondent aggrieved by the award preferred the appeal on various grounds. It is primarily contended that the deceased had not died due to the accident while traveling in the auto and that it is a clear case of death having occurred elsewhere and that the claimant has created a story that the death occurred while traveling in the goods auto of the first respondent. It is the grievance that the court below has failed to take note of the fact that in the statement of one Rajasab it is stated that the deceased was standing in the bus-stand. The other contention is, any third party traveling in the Auto is not covered under the conditions of the policy and the other contention is that the first respondent has filed an affidavit admitting the deceased as an employee only to escape the liability. On these grounds the court framed the following substantial questions of law:--

i. Whether the finding of the Commissioner for Workmen's Compensation in holding that at the time of accident the deceased was traveling in the offending vehicle as a coolie under the owner of the offending vehicle and there was relationship of employee and employer between him and the owner of the offending vehicle is sustainable in law?

ii. Whether the finding of the Commissioner for Workmen's Compensation on liability in fastening the same on the insurer of the offending vehicle is sustainable in law?

iii. Whether quantum of compensation and interest awarded by the Commissioner for Workmen's Compensation are in accordance with the provisions of the Workmen's Compensation Act? And

iv. For consideration of any other question of law which may arise for consideration while hearing the appeal.

5. The first and second substantial question of law are to be decided on the same set of facts. Hence, both are taken together for consideration. Both being interrelated and as the finding on the one would have a bearing on the other, both are considered together.

6. The scope and ambit of a dispute before the Commissioner of Workmen Compensation lies in a very narrow compass. Two parameters are required to be demonstrated for the Authority to exercise its jurisdiction are:--

1) that there existed an employer-employee relationship; and

2) that the injury or death has occurred in the course of employment or in the discharge of duties.

7. Once these two facts are demonstrated then, the Authority is vested with jurisdiction to adjudicate and award a just compensation.

8. In the instant case it was vociferously and vehemently argued by the appellant's counsel that fraud has been practiced. Though such a ground was neither raised in the ground of appeal nor a substantial question of law framed, but in view of the anxiety displayed by the appellant's counsel that injustice is being caused by practicing fraud, this Court has dealt with the issue and heard the appellant even on the ground of fraud.

9. The established principle in practice is that the ground of fraud must not only be specifically pleaded but must also be proved by adducing satisfactory evidence. A perusal of the records both before the Authority or before this Court does not reveal even a plea regarding fraud let alone adducing any cogent material in support of the same.

10. The counsel for the appellant would harp upon the entries in the post mortem report regarding the date. He would point out to the column and state that the entry regarding receipt of the body is 8.30 p.m. on 19.6.2015. With regard to the conduct of the post mortem, the entry regarding date remains the same while the timings is 9.00 a.m. and hence he would state that the death has occurred not at the time stated in the claim petition, FIR or charge sheet but it has occurred earlier.

11. A perusal of the records does not reveal any material that has been placed by the insurer either before the Original Authority or before this Court to demonstrate the said fact but it is an argument that is being constructed apparently on an error committed by the author of the post mortem report. From a reading of the post mortem report as a whole would amply demonstrate that the entry regarding date could only be a mistake due to inadvertence. The postmortem report clearly records the injuries, the state of the body, the setting in of the rigor mortis in the limbs and the size and the extent of the injuries suffered and has categorically concluded and opined that death is due to hemorrhagic shock on account of the injuries suffered in a road traffic accident.

12. The fact also remains that the information to the police was communicated by the hospital, where the deceased was taken, and the hospital has also recorded it as a MLC. The charge sheet is also filed and the police have recorded the statement of Rajasab, who has clearly stated that he is not an eye witness, and the contents reveal that he is only a hear-say witness. In fact, the claimant, who has deposed herself as PWI, has also admitted that the information regarding accident has been communicated to her by the villagers. The second respondent/insurer having categorically asserted that the deceased did not die in the accident, the burden of proving the same was upon them. Having failed to discharge the same, it does not lie in the mouth of the appellant to contend otherwise.

13. In view of the above, though a vehement submission is made to argue on

the ground of fraud, record reveals that neither such plea has been taken nor any material being produced to demonstrate the same. Though the second respondent has marked the FIR, charge sheet, post mortem report etc. as exhibits, they have not chosen to summon and examine the authors of all or any of those records, be it the hospital, doctor or the police officials to demonstrate their case. In that view this Court is of the considered opinion that the plea aforesaid is ill-constructed and must fail and is accordingly rejected at the threshold.

14. As regards the issue of employer-employee relationship, yet again, the second respondent has not adduced any evidence except for his statement. That being so, the issue boils down to the fact whether the statement of witnesses on behalf of the second respondent or the mere say so of the second respondent, can the admission made by the first respondent be upset? In the opinion of this Court, the admission by the first respondent far outweighs the mere say so of the second respondent-insurer.

15. The second respondent/insurer ought to have let in cogent evidence to demonstrate its statement. Having failed to do so, the first substantial question of law is answered against the appellant-insurer. Consequently, the second substantial question of law also is answered against the appellant.

16. The third substantial question of law relates to quantum. The first respondent has clearly admitted that he was paying the deceased a monthly salary of Rs. 4500/-. The insurer has not let in any other evidence. Hence, the finding of the Tribunal fixing the notional income at Rs. 3,000/- p.m. cannot be found fault with. Accordingly the third substantial question of law is also answered against the appellant.

17. Accordingly, the appeal is dismissed as being devoid of merits. Registry is directed to release all the sums in deposit to the claimant forthwith after asserting the identity of the claimant.