

(2010) 06 KAR CK 0078
In the Karnataka High Court
Case No : M.F.A. No. 6474 of 2006

Bajaj Allianz General Insurance Co. Ltd.

APPELLANT

Vs

Satish and Thimmegowda

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 21, 22

Citation : (2010) 06 KAR CK 0078

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

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; B.S. Manjunath and C.K. Sridhar for R1, K.L. Srinivas and O.K. Harish for R2, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—This appeal is filed by respondent-insurance company challenging the order dated 31.3.2008 passed in WCA. No. 45/2005 on the file of the Commissioner for Workmen's Compensation, Chamrajnagar District.

2. The facts leading to this appeal are that the 1st and 2nd respondents herein are respectively driver and owner of goods Auto bearing No. KA-11/4997. 1st respondent herein is claimant, 2nd respondent herein is insured owner in the court below. The 1st respondent in the court below, who is insurer, has filed this appeal. It is the case of claimant that on 30.7.2005 at about 7.30 in the evening he was proceeding towards RMC, Mysore in the aforesaid Auto carrying Ragi bags. When the said vehicle was negotiating the stretch in front of Adichunchanagiri Mutt in Mysore due to rash and negligent driving of the driver of the aforesaid Auto, it turtled resulting in serious injuries to claimant. In the said accident the claimant suffered fracture of left hand resulting in surgery and inserting rod to the fractured hand. Thereafter, claimant filed petition under Workmen's Compensation Act seeking compensation from the owner and insurer of the vehicle.

3. In the court below both respondents entered appearance. The owner tiled statement of objections accepting the relationship of employer and employee between the claimant and himself, the fact of accident, consequent injury to the claimant. However, he took up a contention that his vehicle is insured with 2nd respondent in the court below and it is liable to pay the compensation, if any awarded.

4. The 2nd respondent/insurance company who is appellant herein filed statement of objections. The first and foremost objection was regarding jurisdiction of court below to try the claim petition filed by the claimant. The relationship of employer and employee between the claimant and 1st respondent and the claimant suffering the injuries in the course of his employment were also denied.

5. Based on the aforesaid pleadings, the court below framed in all seven issues. The court below was required to frame an issue regarding jurisdiction, as it was specifically raised in the objections statement of 2nd respondent/insurance company and the court below should have taken up the said issue as preliminary issue and given a finding thereon. Strangely, no issue was framed to that effect, hence, no finding was given. The court below proceeded as if it has jurisdiction to entertain the claim petition filed by claimant, recorded evidence of claimant and the doctor who treated the claimant and also the owner of the vehicle. On behalf of the 2nd respondent a service engineer was examined.

6. On appreciation of the pleadings, evidence and documents available on record the court below partially allowed the claim made by the claimant awarding compensation in a sum of Rs. 1,85,950/-.

7. The insurance company/2nd respondent in the court below being aggrieved by the same has come up in this appeal on the ground that the court below has not taken into consideration the preliminary objection raised by it regarding jurisdiction which will go to the root of the matter. The court below has not looked into the documents available on record, which prima facie show that there is no relationship of employer and employee between the claimant and 1st respondent/owner. There was violation of the terms and conditions of the policy, which is not looked into by the court below.

8. In this proceeding the entire trial court records is secured. After going through the same and after hearing the counsel for the parties the following questions of law arises for consideration in this appeal. They are

1) Whether the Commissioner for Workmen's Compensation, Chamarajnagar had jurisdiction to try the claim petition filed by the 1st respondent herein?

2) Whether the 1st respondent herein has proved that the relationship of employer and employee existed between himself and owner of the vehicle in question?

3) Whether the appellant herein proves that there is violation of the terms and

conditions of the policy issued by it at the time of accident and as such the policy issued was not in force to fasten liability on it?

9. This Court would proceed to answer in negative the first substantial question of law regarding jurisdiction and thereby remand this matter back to Commissioner for Workmen's Compensation Chamarajanagar with a direction to send the petition filed by the claimant for compensation to the jurisdictional Commissioner for Workmen's Compensation i.e., either to Commissioner for Workmen's Compensation at Mysore or Mandya in terms of Sections 21 and 22 of the Workmen's Compensation Act. The Commissioner for Workmen's Compensation at Mysore or Mandya to which ever Commissioner the aforesaid claim petition will be transferred shall hold enquiry afresh and answer all the issues that arise for consideration including the two aforesaid questions of law which are framed in this appeal and left to be answered as additional issues for consideration by the court below for the following reasons:

10. Admittedly the claimant is a resident of Mandya district and the accident had taken place within the limits of Mysore City where the vehicle in question turtled resulting in injuries to claimant. This aspect is clearly borne out of the records i.e., FIR filed before the police, charge sheet and other medical and police documents. In the light of this there was no reason whatsoever for the claimant to file a petition before the Commissioner for Workmen's Compensation, Chamarajanagar for adjudication of his claim. Incidentally, the appellant herein has at the first instance taken up defence before the court below that it has no jurisdiction to try the claim petition filed by the claimant. In spite of that, the court below has deliberately and intentionally neglected to frame a preliminary issue regarding the said aspect and give a finding thereon. On the contrary, the court below has wrongfully assumed jurisdiction in itself to try the claim in the matter where neither the claimant is a resident within its jurisdiction nor the accident having been taken place within its territorial jurisdiction. This clearly gives room to doubt about the intention and integrity of the presiding officer of the court below.

11. This Court would not like to go into that aspect at this stage but mark a copy of this judgment to the Secretary to Government of Karnataka, Labour Department, who is the executive chief of the Labour Department to investigate into this. It may not be out of place to mention that this is not stray case where such a thing has happened. It is noticed by this Court that this is regular feature in all most all courts constituted under the Workmen's Compensation Act, more particularly, the court of Commissioner for Workmen's Compensation at Chamarajanagar which has taken up claims which arise for consideration before other Courts and adjudicate into the said claims. This is a serious misconduct on the part of the presiding officer, who presided the court below. Hence, the Secretary to Government of Karnataka, Labour Department, is hereby directed to enquire into the same and take suitable action against the said officer in this matter and also other officers indulging in this kind of irregularity and report

compliance within six months from this date.

10. With the above observations and directions, the appeal is allowed. The order dated 31.3.2006 passed in WCA. No. 45/05 on the file of the Labour Officer and Commissioner for Workmen's Compensation, Chamarajanagar District is set aside and the matter is remanded back to the Commissioner for Workmen's Compensation, Chamarajanagar to transfer the claim petition to the jurisdictional Commissioner for Workmen's Compensation i.e. either to Mysore or Mandya. Since the appeal is allowed and the order is set aside, the entire amount deposited in this Court by the appellant is directed to be released in favour of appellant.

Registry is directed to send a copy of this judgment to the Secretary to Government of Karnataka, labour Department, to take suitable action in the matter and to send a report to this Court within the time granted by this Court.