

(2016) 11 KAR CK 0057
In the Karnataka High Court
Case No : MFA No. 1170 of 2008 (WC)

Branch Manager, M/s. Oriental Insurance Company Ltd.

APPELLANT

Vs

M. Mallikarjuna

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 2(1)(n), Section 4

Citation : (2017) 1 AirKarR 308

Hon'ble Judges : Mr. B. Manohar, J.

Bench : Single Bench

Advocate : Sri. Y. Lakshmikanth Reddy, Advocate, for the Respondent No. 1; Sri. S. G. Kadadakatti, Advocate, for the Respondent No. 2; Sri. S.K. Kayakamath, Advocate, for the Appellant

Final Decision : Allowed

Judgement

B. Manohar, J. - Oriental Insurance Company has filed this appeal challenging the judgment and order dated 29.10.2007 made in WCA No.272/2005 passed by the Labour Officer and Commissioner for Workmen's Compensation, Sub-Division-2, Bellary (hereinafter referred to as "the WCC" for short) fastening 3 the liability on them to compensate the claim-ant.

2. Respondent No. 1 herein filed a claim petition inter alia contending that he was working as a loader and unloader in the goods auto bearing Reg.No.KA-34/4413 belonging to respondent No.2 herein and the owner of the goods auto was paying him salary of Rs. 150/-per day. On 12.10.2004, as per the instructions of the owner of the vehicle, after unloading the tins at poultry farm and returning to Bellary on Siruguppa Bellary road, near Haunsbhavi, due to rash and negligent driving of the goods auto, it was turned turtle and the claimant has sustained fracture of the left femur, right knee and injuries to other parts of the body. Immediately after the accident, he was shifted to VIMS Hospital, Bellary and he took treatment therein. In view of the injuries sustained and permanent disability he has undergone, he cannot do the work of loading

and unloading. The police have registered a case in Cr.No.294/2004 against the driver of the said goods auto. The accident occurred during the course and out of employment. The said goods auto owned by respondent No.1 and insured with respondent No.2-Insurance Company. Hence, both respondent Nos.1 and 2 are liable to compensate the claimant and sought for compensation of Rs.3,00,000/-.

3. In response to the notice issued by the WCC, respondent No. 1 owner of the vehicle entered appearance filed written statement and admitted that the claimant was working as a loader and unloader in the goods auto and he was paying salary of Rs. 150/- per day. As on the date of accident, the insurance policy is in force and respondent No.2-Insurance Company was liable to compensate the claimant.

4. Respondent No.2-Insurance Company filed its written statement denying the entire averments made in the claim petition and also disputed the relationship of master and servant between the claimant and owner of the vehicle. Further, the claimant was travelling in the goods auto as an unauthorized passenger, hence, the Insurance Company was not liable to compensate the claimant and sought for dismissal of the claim petition.

5. On the basis of pleadings of the parties, the WCC framed necessary issues.

6. The claimant in order to prove his case got examined himself as R W. 1 and got marked the documents as Exs.P1 to P8. On behalf of respondent No.2, one of the officials of the insurance company was examined as R.W.1 and got marked documents as Exs.R1 to R4.

7. The Commissioner after appreciating the oral and documentary evidence let in by the parties and taking into consideration the copy of the complaint, charge-sheet, insurance policy and correspondence between respondent No. 1 and RTO held that the claimant has sustained injuries in the road traffic accident occurred on 12.10.2004 during the course and out of employment and hence, the claimant is entitled for the compensation. With regard to the quantum of compensation is concerned, though the claimant claimed that owner of the vehicle was paying him salary of Rs. 150/- per day, no document has been produced to substantiate the same. The WCC taking into consideration the minimum wages being paid to the loaders and unloaders working in transport vehicles, determined the monthly income of the claimant as Rs.3,900/- and taken 60% thereof. As on the date of accident, claimant was aged about 26 years, hence, applied the relevant factor 215.28. In the accident, the claimant has sustained fracture of the left femur, right knee and injuries to other parts of the body and undergone surgery. The doctor taking into consideration the injuries sustained and suffering undergone by the claimant, assessed the functional disability to an extent of 30% to the whole body. The WCC taking into consideration the monthly income of the claimant as Rs.2,340/-, applying the relevant factor 215.28 and taking the loss of earning capacity to an extent of 30%, awarded a sum of Rs. 1,51,126/- with interest at 12% p.a. Since the insurance policy covers the risk of one employee,

liability was fastened on the Insurance Company to compensate the claimant. Being aggrieved by the judgment and order passed by the WCC, the Insurance Company has filed this appeal.

8. Sri. S. K. Kayakamath, learned counsel appearing for the appellant-Insurance Company contended that the judgment and order passed by the WCC is contrary to law. There is no relationship of master and servant between the claimant and owner of the vehicle. No document has been produced to establish that the owner was paying him salary of Rs.150/- per day. He further submits that the claimant himself made a statement before the police that, he was working as a coolie at Somasamudra village and on 12.10.2004, in order to go to Bellary, he boarded the goods auto and due to rash and negligent driving, the said goods auto turned turtle and he sustained injuries. The statement of the claimant itself shows that he was not working as a loader and unloader in the goods auto and in order to go to Bellary he boarded the goods auto. Copy of FIR and charge-sheet clearly discloses that, while the claimant was travelling in a goods auto, the accident occurred. The charge-sheet has been filed against the driver of the said goods auto. Hence, the order passed by the WCC is contrary to law.

9. On the other hand, Sri. Lakshmikant Reddy, learned counsel appearing for respondent No.1 and Sri. S. G. Kadadakatti, learned counsel appearing for respondent No.2 argued in support of the judgment and order passed by the WCC and contended that the owner of the vehicle filed written statement admitting that the claimant was working as loader and unloader in the goods auto. Further, the additional premium has been paid for the labour working in the goods auto, the Insurance Company cannot disown its liability to compensate the claimant and sought for dismissal of the appeal.

10. I have carefully considered the arguments addressed by the learned counsel appearing for the parties and perused the impugned judgment and order and other relevant records.

11. The point for consideration in this appeal is:

"Whether the claimant is the workman within the meaning of Section 2(1)(n) of the Employees Compensation Act and he is entitled for the compensation?

12. The claimant in the claim petition specifically contended that he was working as loader and unloader in the goods auto belonging to respondent No.2 herein. The owner of the vehicle in the written statement has stated that the claimant was working as loader and unloader in the said goods auto and he has sustained injuries in the road traffic accident occurred on 12.10.2004.

However, the Insurance Company disputed the said contention contending that, no document has been produced to show that respondent No.2 employed the claimant as loader and unloader in the goods auto owned by him. Except the oral assertion, no document has been produced to establish the same. Further, the owner of the vehicle also not stepped into the witness box to prove the

statement made in the written statement by leading evidence. On the other hand, immediately after the accident, the claimant was shifted to the Government Hospital, the MLC was sent to the jurisdictional police and the police came to the hospital and taken the statement of the claimant. In the statement, the claimant has stated that he was permanent resident of Somasamudra village and doing coolie work. On 12.10.2004, he intended to go to Bellary, he boarded the goods auto and the said auto met with an accident and he sustained injuries. On the basis of the said complaint, FIR has been filed against the driver of the said auto. The Insurance Company relied upon the statement made before the jurisdictional police stating that the claimant has sustained injuries in the road traffic accident while travelling in goods auto and hence, it is not open to the claimant to contend that while he was working as loader and unloader he sustained injuries during the course and out of employment. The specific case pleaded is that, he was permanent resident of Somasamudra and he was doing coolie work. On 12.10. 2004, with an intention to go to Bellary he boarded the goods auto and the said auto met with an accident and he sustained injuries. No where in the complaint or in the FIR or the charge-sheet, the claimant has stated that he was working as a loader and unloader in the goods auto. Hence, it is not open to the claimant to approbate and reprobate. The Hon"ble Apex Court in the case of Oriental Insurance Co. Ltd., v. Premlata Shukla and others, reported in 2007 ACJ 1928 , in paragraph Nos. 13 and 14, held as under:

"However, the factum of an accident could also be proved from the first information report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an exhibit as both the parties intended to rely upon it.

Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise."

13. Hence, the claimant cannot rely upon the part of the document and cannot deny the part of the document. The police records are the public documents and the claimant cannot dispute that part of the document. The specific statement made before the jurisdictional police goes against the claimant. At any stretch of imagination, the claimant cannot be treated as loader and unloader in the goods auto. Except the oral assertion, no document has been produced to show that he was working as a loader and unloader in the goods auto. Hence, the judgment and order passed by the WCC is contrary to law and without looking into Exs.P2 and 3. Hence, the judgment and order passed by the WCC cannot be sustained. Accordingly, I pass the following:

ORDER

i) The appeal is allowed. The judgment and order dated 29.10.2007 made in WCA No.272/2005 passed by the Labour Officer and Commissioner for Workmen's Compensation, Sub-Division-2, Bellary is set aside.

II) The claim petition filed by the claimant is dismissed.

III) The amount in deposit shall be refunded to the appellant.