

(2016) 03 KAR CK 0067
In the Karnataka High Court
Case No : MFA No. 21414 of 2008.

Branch Manager, National Insurance Co. Ltd., Hubli

APPELLANT

Vs

Attamohammad and another

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (2016) AAC 1279

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Laxman B. Mannoddar, Advocate, for the Appellant; J. Basavaraj, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J. - The National Insurance Company Limited filed this appeal challenging the judgment and order dated 13-8-2008 made in WCA/CR/226 and 267/2006 passed by the Labour Officer and Commissioner for Workmen's Compensation, Sub-Division-1, Bellary (hereinafter referred to as "the WCC").

2. Since the common judgment and order passed by the WCC is challenged in these two appeals, both the appeals are clubbed together and disposed of by this common judgment.

3. The first respondent in these two appeals were working as drivers in a lorry bearing registration No. HR-38/N-065 belonging to the second respondent in both the appeals. On 15-9-2006, as per the instructions of owner of the vehicle, after loading potatoes at Bangalore, while they were proceeding towards New Delhi to unload the potatoes, on 16-9-2006 at about 5.00 a.m., near Banavikallu, on NH-13, a lorry bearing registration No. KA-01/AB-6888, suddenly applied the break. In view of that, the lorry in which the claimants were travelling, dashed against the other lorry. Due to that the two drivers i.e. both the claimants and the cleaner of the offending lorry sustained grievous injuries. Immediately after

the accident, they had taken treatment at Government Hospital, Kudligi and thereafter they had taken treatment at Private Hospitals at Bellary. In view of the accident and fracture of the limb, they are permanently disabled to do the work of drivers. Prior to the accident, the owner of the vehicle was paying them salary of Rs. 4,000/- p.m. and batta of Rs. 50/- per day. The accident occurred during the course and out of employment. The insurance policy covers the risk of the employees in the vehicle and hence sought for compensation.

4. In pursuance of the notice issued by the WCC, though the owner of the vehicle served with notice, he remained unrepresented. The second respondent in the claim petitions, i.e. Insurance Company filed written statement denying the entire averments made in the claim petitions and disputed the relationship of master and servant between the claimants and owner of the vehicle, no documents have been produced to show that owner of the vehicle was paying them salary of Rs. 4,000/- p.m. and batta of Rs. 50/- per day and sought for dismissal of the claim petitions.

5. On the basis of the pleadings of the parties, the WCC framed necessary issues. The claimants in order to prove their cases, examined themselves as RW. 1 in each of their claim petitions and the doctor who has issued the disability certificate was examined as P.W. 2 and got marked the documents as Ex. PI to Ex. P10. On behalf of the respondents, none of the witnesses were examined. However, insurance policy of the vehicle was marked as Ex. RI.

6. The WCC, after appreciating the oral and documentary evidence let in by the parties and taking into consideration spot mahazar, MVI report, copy of the complaint and charge-sheet held that the claimants have sustained injuries in the road traffic accident occurred on 16-9-2006 at about 5.00 a.m. The accident occurred during the course and out of employment. Hence, the claimants are entitled for compensation. At the time of accident, the claimant in WCA No. 266/2006 was aged about 26 years and he has sustained fracture of distal end of femur and fracture of tibial condyle and other injuries. The claimant in WCA No. 267/2006 was aged about 35 years and sustained fracture of right forearm and right condyle. The movement of the right elbow was restricted. The doctor who had issued the disability certificates assessed the loss of earning capacity to an extent of 40% and 45% respectively. The WCC taking into consideration the income of claimant in WCA No. 266/2006 as Rs. 4,000/- p.m., taking 60% thereof, applying the relevant factor 215.28 and taking into consideration loss of earning capacity to an extent of 40% awarded sum of Rs. 2,06,668/-. Insofar as the claimant in WCA 267/2006 taking into consideration income as Rs. 4,000/- taking 60% thereof, applying the relevant factor 197.06 since he was aged about 35 years, taking into consideration functional disability to an extent of 45%, the WCC awarded a sum of Rs. 2,12,824/- with interest at 12% p.a. Since, the vehicle is covered by insurance policy and drivers of the vehicle were possessing valid and effective driving license as on the date of accident and the accident occurred during the course and out of employment fastened the liability on the

Insurance Company to compensate the claimants. Being aggrieved by the judgment and order passed by the WCC, fastening liability on them to compensate the claimants, the Insurance Company has filed these two appeals.

7. I have carefully considered the arguments addressed by Sri. Laxman B. Mannoddar, the learned counsel for the appellant and Sri. J. Basavaraj, learned counsel appearing for respondent No. 1 in both the appeals, perused the impugned judgment and order.

8. Though the appellant-Insurance Company had taken a contention that there is no relationship of master and servant between the claimants and the owner of the vehicle, and that the assessment of disability is not in accordance with Section 4(l)(c)(ii) of the Employee's Compensation Act, they have not stepped into the witness-box to prove their contention by leading evidence. However, occurrence of the accident on 16-9-2006, injuries suffered by the two drivers and a cleaner of the offending lorry is not disputed by the Insurance Company. The dispute raised is with regard to relationship of master and servant. Admittedly, the claimants are from Haryana State and the vehicle is also from Haryana State. After loading potatoes at Bangalore while they were proceeding towards New Delhi, the vehicle meet with an accident at Bellary district. The Police records clearly disclose that the claimants who are the drivers in the said lorry sustained injuries. Hence, it has to be held that the claimants are workmen within the meaning of Section 2(1)(n) of the Employees Compensation Act.

9. With regard to disability is concerned, the claimant in WCA No. 266/2006 sustained fracture of distal end of femur and fracture of tibial condyle and other injuries. The injuries sustained come in the way of nature of the work he was doing. The claimant in WCA No. 267/06 had sustained fracture of right forearm and fracture of the condyle. There is a restricted movement of right elbow. Admittedly the claimant is a driver by profession. In view of the accident, it is difficult to do the work of driver. The accident comes in the way of their profession. The doctor, who has issued disability certificate after looking into the X-ray and the injuries sustained, assessed the disability to an extent of 40% and 45% respectively. I find no infirmity or irregularity in the said finding. The appellant has not lead any evidence to dispel the assessment of disability made by the qualified doctor. I find the compensation awarded by the WCC is in accordance with the provisions of Employees Compensation Act. The appellant has not made out a case to interfere with the judgment and order passed by the WCC. Accordingly, both the appeals are dismissed upholding the judgment and order passed by the WCC.

10. The amount in deposit is directed to be transferred to the Civil Judge (Sr. Dn.), Bellary.