

(2016) 03 KAR CK 0095
In the Karnataka High Court
Case No : MFA No. 31095 of 2012(WC)

Branch Manager, New India Assurance Co. Ltd., Gulbarga

APPELLANT

Vs

Dinesh

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 4

Citation : (2016) 4 AirKarR 811

Hon'ble Judges : Mrs. S. Sujatha. J.

Bench : Single Bench

Advocate : Notice, for the Respondents No. 2; Manjunath M. Shetty and Uday P. Honguntikar, Advocates, for the Appellant; Sachin Mahajan, Advocate, for the Respondents No. 1

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha. J. - The insurer is in appeal assailing the order passed by the Commissioner for Workmen's Compensation at Raichur.

2. Briefly stated the facts are; Respondent No. 1 was working as a cleaner with respondent No. 1 in a vehicle i.e. tanker bearing registration No.KA-32/A-1846. It transpires that, on 28.06.2008, at the time of loading ash from Shakti Nagar, ACC Syclyone, the respondent No.1 tried to clean the ash fallen on the tanker, at that time, the driver of the tanker started the vehicle, thereby the claimant/respondent No.1 lost his balance and fell down and suffered injuries. He was admitted immediately in Shakti Nagar RTPS Hospital and then he was treated in private hospital. Respondent No.1 filed the claim petition before the Tribunal under the provisions of Workmen's Compensation Act, 1923 (the "Act" for short). The Commissioner after appreciating the material evidence placed on record has awarded the compensation of Rs.2,92,004/- with interest at 12% p.a. Being aggrieved by the said order the insurer is before this Court.

3. This Court at the time of admitting the appeal has framed the following

substantial question of law.

"Whether the Commissioner for Workmen's Compensation committed an error in holding the disability of the claimant to an extent of 65%?"

4. Learned counsel for the appellant would contend that the injuries suffered by the claimant is only fracture of C5 vertebra, which does not find place in the scheduled injuries. The disability certificate issued by the doctor/PW.2 would not be suffice to establish that the claimant has sustained 65% disability. The Commissioner without appreciating the evidence available on record in a proper perspective, blindly accepted the disability certificate at Ex.P-9 and awarded the exorbitant compensation of Rs.2,92,004/- contrary to the provisions of the Act vis-a-vis the injuries suffered by the claimant.

5. On the other hand, the learned counsel appearing for respondent No. 1/ claimant would contend that the disability certificate at Ex.P-9 clearly indicates the disability to the extent of 65% to the whole body. The doctor who is the author of disability certificate was examined as PW.2 and no substantial material is placed by the appellant to discard the evidence of PW.2. In the circumstances, the Tribunal is justified in relying on Ex.P-9 and assessing the quantum of compensation, which cannot be found fault with.

6. I have heard the rival submissions advanced by the learned counsel appearing for the parties and perused the records.

7. Ex.P-9, the disability certificate discloses the disability at 65% to the whole body and permanent in nature. The disability certificate is supported by the evidence led by PW.2, no substantial evidence is led by the appellant to contravert either the disability certificate or the evidence led by PW.2. In the absence of any plausible material available on record, no evidence can be disbelieved only on assumptions and surmises. The Commissioner has proceeded on the expert opinion of the doctor to determine the compensation in terms of Section 4(1) (b) of the Act, which cannot be found fault with. PW.2, in his evidence has categorically stated that the claimant had grievous spinal injury due to fracture of vertebra and contusion of cord, despite the treatment, he has weakness in Right upper and lower limbs, altered sensations in this part, hypotonia of muscles, developed deformity of foot, unstable gait, unable to do his daily duties like shaving, changing the clothes, bathing etc., himself, finds squatting difficult, eats with left hand only, no heat sensations on affected part etc., disability is accepted at 65%.

8. This evidence is not contravened by the appellant in any manner. In such circumstances, I am of the considered opinion, that the substantial question of law framed in this appeal deserves to be answered in the negative in favour of the workman and against the appellant.

9. Accordingly, the appeal stands dismissed.

10. Amount in deposit, if any, shall be transmitted to the jurisdictional Tribunal and

the Tribunal shall reimburse the amount to the claimant.