

(2016) 03 KAR CK 0120

In the Karnataka High Court

Case No : MFA Nos. 21146, 21145, 21149, 21147, 21148/2008, 21150/2008
(WC)

Branch Manager Oriental Insurance Co. Ltd.

APPELLANT

Vs

K. Imtehz and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 2(1)(n), Section 4(1)(c)(ii)
Penal Code, 1860 (IPC) — Section 279, Section 338

Citation : (2016) 03 KAR CK 0120

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : G.N. Raichur, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

B. Manohar, J.—1. The Oriental Insurance Company has filed these appeals challenging the judgment and order dated 23-06-2008 made in WCA NO.601 to 606 of 2005 passed by the Labour Officer and Commissioner for Workmen's Compensation, Sub-Division-II, Bellary (hereinafter referred to as "the WCC for short) fastening the liability on them to compensate the claimants.

2. The common judgment and order passed by the WCC is challenged in these appeals. Hence all the appeals are clubbed together and disposed of by this common judgment.

3. The claimant in WCA No. 601/2005 is the driver and claimant in WCA No. 602/2005 is the cleaner and claimants in WCA Nos. 603 to 606 of 2005 are hamalis working in the lorry bearing registration No. KA-35/D-999 belonging to the second respondent.

4. On 14-12-2005 as per the instructions of the owner of the vehicle, after loading mines powder at V.S. Laad Mines and proceeding towards Kariganur, near Vaddarahalli, the driver of the vehicle lost control over the vehicle and it turned

turtle. Due to that the driver, cleaner and hamalis working in the said lorry sustained grievous injuries to all parts of their body. Initially they had taken treatment in Govt. Hospital at Thorangal and thereafter they had taken treatment at private hospital. It is contended that prior to the accident, they were very healthy, earning and maintaining their family. Due to the injuries sustained in the accident, they cannot do the work as they were doing prior to the accident. The owner of vehicle was paying them salary of Rs. 4,000/- p.m. At the time of accident, the claimants were aged between 20 to 25 years. The police have registered a case against the driver of the lorry in Crime No. 237/2005 for the offences punishable under Section 279 and 338 of IPC. The accident occurred during the course and out of employment. The insurance policy covers the risk of the employees working in the said lorry. Hence sought for compensation.

5. In pursuance of the notice issued by the WCC, though the owner of vehicle entered appearance, he has not filed any written statement. The second respondent Insurance Company in the claim petition filed written statement denying the entire averments made in the claim petitions and also disputed the relationship of master and servant between the claimants and owner of the vehicle. Further, as on the date of the accident the driver did not possess the valid and effective driving license. Hence, the insurer is not liable to compensate the claimants and sought for dismissal of the claim petition.

6. On the basis of pleadings of the parties, the WCC framed necessary issues. The claimants in order to prove their case examined themselves as P.W.1 to P.W.6 and got marked the documents as Ex. P1 to Ex. P16. Dr. Laxminarayan who treated the claimants and issued disability certificate was examined as P.W.7. On behalf of the respondents, the Insurance Company examined one of their officers as R.W. 1 and insurance policy of the said lorry was marked as Ex. R1.

7. 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 due to the road traffic accident occurred on 14-12-2005, the claimants have sustained injuries. The documents produced by the claimants clearly disclose that as on the date of accident, they were working as driver, cleaner and hamalis in the said lorry. The accident occurred during the course and out of employment. Hence the claimants are entitled for compensation.

8. With regard to quantum of compensation is concerned, in the accident, the claimant in WCA No. 601/2005 has sustained fracture of right leg and fracture of left hand. The doctor who has issued the disability certificate has assessed the functional disability to an extent of 30%. At the time of accident, the claimant was aged about 23 years.

9. The claimant in WCA No. 602/2005 is concerned, in the accident he has sustained fracture of left clavicle and right knee and other injuries to the body.

The doctor has assessed the functional disability to an extent of 30% and he was aged about 24 years, as on the date of accident.

10. The claimant in WCA No. 603/2005 is concerned, in the accident he has sustained fracture of right calcaneum bone and right shoulder and he was working as hamali in the offending lorry. The doctor has assessed the functional disability to an extent of 35% and he was aged about 30 years, as on the date of accident.

11. The claimant in WCA No. 604/2005 is concerned, in the accident he has sustained fracture of right hand and Lt. 5 and other injuries to the body. The doctor has assessed the functional disability to an extent of 30% and he was aged about 28 years, as on the date of accident.

12. The claimant in WCA No. 605/2005 is concerned, in the accident he has sustained fracture of left clavicle and right leg and other injuries to the body. The doctor has assessed the functional disability to an extent of 30% and he was aged about 20 years, as on the date of accident.

13. The claimant in WCA No. 606/2005 is concerned, in the accident he has sustained fracture of right wrist and shoulder and other injuries to the body. The doctor has assessed the functional disability to an extent of 30% and he was aged about 38 years, as on the date of accident.

14. Though the claimants have claimed that the owner of the lorry was paying them salary of Rs. 4,000/- p.m., no document has been produced to substantiate the same. In view of that, the WCC has the salary of the driver as Rs. 4,000/-, taking 60% thereof, considering the disability to an extent of 30%, applying the relevant factor 219.05, awarded a sum of Rs. 1,58,364/-. In respect of cleaner is concerned, taking his income as Rs. 3,600/- p.m., taking 60% thereof, considering the disability to an extent of 30%, applying the relevant factor 218.47, the WCC awarded a sum of Rs. 1,41,569/-. In respect of claimant in WCA No. 603/2005, taking the income of the claimant as Rs. 2,600/- p.m., taking 60% thereof, considering the disability to an extent of 30%, applying the relevant factor 207.98, the WCC awarded a sum of Rs. 97,335/-. In respect of claimants in WCA No. 604/2005, WCA No. 605/2005 and WCA No. 606/2005 taking the income of the claimants as Rs. 2,600/- p.m., taking 60% thereof, considering the disability to an extent of 25%, 25% and 20% respectively and applying the relevant factors 211.79, 224.00 and 189.56 respectively, the WCC has awarded a sum of Rs. 82,598/-, Rs. 87,360/- and Rs. 59,143/- respectively, with interest at the rate of 12% p.a. Being aggrieved by the judgment and order passed by the WCC, the appellant-Insurance Company has filed these appeals.

15. Sri. G.N. Raichur, learned counsel appearing for the appellant contended that the judgment and order passed by the WCC is contrary to law. The insurance policy covers the risk of 4 + 1, whereas the 4 coolies and driver and cleaner were travelling in the said vehicle. Hence, the insurer is not liable to compensate the additional person. The WCC ought not to have accepted the disability assessed

by Dr. K. Lakshminarayan, since he is not the treated doctor as per the provision under Section 4(1)(c)(ii) of the Employees Compensation Act and the same is contrary to law. No document has been produced to show that the claimants are the workmen within the meaning of Section 2(1)(n) of the Employees Compensation Act. Hence, sought for setting aside the judgment and order.

16. On the other hand, Sri. Y. Lakshmikanth Reddy, learned counsel appearing for one of the claimants argued in support of the judgment and order passed by the WCC and sought for dismissal of the appeals.

17. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the impugned judgment and order, oral and documentary evidence.

18. The records clearly disclose that the claimants are the driver, cleaner and hamalis in the lorry bearing registration No. KA-35/D-999. They have sustained injuries in the accident during the course and out of employment. The occurrence of the accident and the injuries sustained by the claimants is not disputed by the appellant. The appellant has disputed the relationship between the claimants and owner of the vehicle and also with regard to quantum of compensation and liability of the Insurance Company to compensate the claimants. The records produced by the parties clearly disclose that the claimants have sustained injuries in view of the accident occurred at Kariganur. The specific case of the claimants is that after loading mines powder at V.S. Laad Mines, the accident occurred. The owner of the vehicle also did not dispute that the claimants are his employees. The documents produced clearly disclose that the claimants are the employees of owner of the vehicle. Hence they are entitled for compensation.

19. With regard to liability of the Insurance Company is concerned, the insurance policy covers the risk of the employees working in a lorry. Rule 100 of the Motor Vehicle Rules contemplates that in a goods vehicle, six employees are statutorily covered. In the instant case, driver, cleaner and four hamalis were travelling in the said goods vehicle. They were statutorily covered by the insurance policy. Hence, the Insurance Company has to compensate the claimants, though it was contended by the appellant-Insurance Company that the liability of the Insurance Company is only for four coolies and a driver.

20. With regard to quantum of compensation is concerned, though the claimants claim that they were getting salary of Rs. 4,000/- p.m., the WCC had taken into consideration the income of driver as Rs. 4,000/-, cleaner as Rs. 3,600/- p.m. and so far as hamali is concerned, income was taken at Rs. 2,600/- p.m. Though the doctor assessed the disability at higher side, the WCC had taken into consideration the disability to an extent of 30% in respect in WCA Nos. 601 to 603 of 2005 is concerned and disability to an extent of 25% in respect of WCA Nos. 604 & 605 of 2005 and 20% insofar as claimant in WCA No. 606/2005 awarded the compensation. Looking into the permanent disability they have suffered, the assessment of disability taken by the WCC cannot be higher side.

Under the Employees Compensation Act, while awarding the compensation, the functional disability of the person has to be taken into consideration. In view of fracture of right leg and left hand, the driver of the lorry will suffer the functional disability to an extent of 30%. So far as the cleaner is concerned, he has sustained fracture of left clavicle and right leg. The fracture will come in his way of functioning as a cleaner. The hamalis undergo similar disability in view of the fracture of right shoulder and leg and fracture of L-5 bone. The Commissioner taking into consideration all these aspects of the matter, though the doctor assessed to disability to higher extent in respect of the some claimants, the WCC had taken lesser disability awarded compensation. I find no infirmity or irregularity in the finding of the WCC in considering the functional disability of the claimants. The compensation awarded by the WCC is in accordance with law. The appellant has not made out a case to interfere with the said judgment and order. Accordingly, I pass the following:

ORDER

All the appeals are dismissed.

The amount in deposit before this Court is directed to be transferred to the Civil Judge (Sr.Dn.), Bellary for disbursement.