
(2016) 06 KAR CK 0201

In the Karnataka High Court

Case No : M.F.A. Nos. 23200 and 23201 of 2010 (WC)

Branch Manager, Reliance General Insurance Company Limited APPELLANT

Vs

Shivamurthy Manappa RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (2017) 1 AirKarR 562

Hon'ble Judges : Mrs. Rathnakala, J.

Bench : Single Bench

Advocate : G.N. Raichur, Advocate, for the Appellant; Sri. Hanumanthareddy Sahukar, Advocate, for the Respondent No. 1; Sri. S.M. Kalawad, Advocate, for the Respondent No. 2

Final Decision : Partly Allowed

Judgement

Ratanakala, J.—Both these appeals are directed against the common Judgment and Award dated 31.05.2010, passed in WCA. NF.No.22/2009 and 23/2009, on the file of the Labour Officer and Commissioner for Workmen's compensation, Koppal. In these appeals, the insurance company is challenging the liability fastened on it by the Labour Officer and Commissioner for Workmen's Compensation (for brevity, "the Commissioner") in respect of claims made by two injured-claimants, in the proceedings initiated u/S. 22 of the Workmen's Act (for brevity, referred to as "the Act"). Since, both these appeals arise out of the common judgment, they are heard and taken together for disposal.

2. Briefly stated, the Respondent No.1 in both the appeals filed separate claim petition before the Commissioner, contending that they were working as Hamalis in the lorry bearing registration No. KA-35/A-869 belonging to 2nd respondent and they were getting daily wages of Rs. 150/-. On 02.09.2008 at about 3.45 p.m, as per the direction by the owner of the vehicle, they were proceeding/ travelling in the said lorry to unload ironore near DMS plot situated in forest

area. Due to rash and negligent driving of the vehicle by its driver, the vehicle turtled and both of them suffered grievous injuries. The accident occurred out of and during the course of their employment. Immediately they were shifted to Koodligi hospital, thereafter they took treatment with private medical practitioner. Prior to the accident they were healthy and because of the accident, they are not in a position to discharge their coolie work.

3. The claim was contested by the insurance company, while the owner of the vehicle remained ex parte. The Commissioner, on over all consideration of the evidence adduced before him, allowed the claim petitions filed by the claimants and awarded compensation of Rs.74,872/- in respect of Sri. Shivamurthy and Rs.73,386/- in respect of G. Suresh respectively.

4. Shri. G N. Raichur, the learned counsel for the appellant-insurer, at the first instance, challenges the liability fastened on the insurer on the ground that the insured has not paid the additional/extra premium to cover the risk of the Hamalies and hence, the Commissioner was not justified in fastening the liability on the insurer. Secondly, he contended that the evidence of the Doctor is insufficient, as regards the percentage of functional disability suffered by the claimants and wherefore, as per the judgment of this Court rendered in the case of National Insurance Co. Ltd. v. Murali and others (2010 Kant MAC 152 (Kant)), the compensation amount awarded was on the higher side. That apart, the Doctor who treated the injured-workmen is not examined and hence, the physical disability assessed by the Commissioner at 20% in respect of each of the claimant is exorbitant. Looking to the medical evidence that the claimants have suffered in-juries to elbow joint i.e., dislocation of shoulder joint, the functional physical disability arrived at by the Commissioner at 20% is disproportionate and he requests the Court to reduce compensation reasonably.

5. In reply, Shri. Hanumanthareddy Sahukar, learned counsel for the 1st respondents-claimants in both the appeals vehemently submits that the vehicle involved in the accident is a goods lorry and as per Rule-100 r/w. 226 of the Karnataka Motor Vehicles Rules, 1989, it is permissible for the coolies or employees not exceeding seven persons to travel in a goods vehicle during the course of their employment and they are compulsorily covered as required u/S. 147 of the Motor Vehicles Act, 1988. In the case on hand, the insurer has collected premium in respect of driver and one employee. The claims before the Commissioner was in respect of only two employees. The contention urged by the insurer challenging the statutory liability is beyond the scope of Section 30 of the Act. Section 30 of the Act, controls the grounds that may be urged in an appeal challenging the award of compensation. Further, he submits that though the Doctor has not assessed the functional disability arising out of the total physical disability, the Commissioner was justified in accepting the evidence of the Doctor and assessing the functional disability at 20%. That in view of the judgment of the Apex Court in the case of Oriental Insurance Co. Ltd. v. Siby George and others (2012 ACJ 2126), the claimants are entitled for interest with

effect from 30 days from the date of accident, which is overlooked by the Commissioner and prays for dismissal of the appeals.

6. In the backdrop of the above rival submissions and on perusal of the impugned award, and having regard to the fact that the appeals are heard on merits, the question of law is reformulated as under:

(i) Whether there is a breach of policy condition, exempting the appellant-insurer from indemnifying the owner?

(II) Whether the quantum of compensation awarded requires reassessment?

7. As defined under sub-sections 1 (a) to (e) of Section 30 of the Workmen's Compensation Act, the grounds that may be urged in an appeal against the order of the Commissioner are as under:

(a) an order awarding as compensation, a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under Section 4(A).

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees.

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

8. Admittedly, the vehicle involved in the accident is a goods vehicle and when the insured himself has not disputed employer-employee relationship with the injured-claimants and also occurrence of the accident, the appellant-insurer

cannot now contend that they are not liable to pay the compensation and the grounds urged by them does not fall within any of the sub-sections 1(a) to (e) or provisos of Section 30 of the Workmen's Compensation Act.

9. The question as to whether the coolies/employees are statutorily covered u/S. 147 of the Act was considered by the Division Bench of this Court in *National Insurance Company Limited v. Sri. Maruthi and others* (ILR 2011 Kar 4139) wherein it is held that "by reading Sections 147 and 149, it is clear that the Legislative intent was that the insurer has to compulsorily cover all the risks arising out of and use of Motor vehicle and the liability of the insurer is Co-extensive with that of insured. However, this is subject to the limitations envisaged under Section 147 (1) (b).

10. The commissioner being the primary fact finding Authority, on categorical analysis of the evidence adduced before him, in the absence of contest by the owner has come to the conclusion that the claimants were employed as the coolies with the 2nd respondent and the accident has indeed occurred during the course of their employment, they are covered under the policy. Added to this, the premium of Rs.100/- is collected in respect of the owner/driver and another sum of Rs.25/- was collected towards legal liability to cover the risk of the driver or the persons employed for the operation, maintenance, loading and unloading. Though no extra premium was collected in respect of additional employees, in view of the law declared by the Division Bench of this Court noted supra, they cannot shirk of the statutory obligation towards the claim raised by the injured-claimants. No ground which is beyond the contemplation of Section 30 of the Act is available for them. The vehicle involved in the accident being a goods vehicle and the insurance policy covering the risk of the owner/employer since was in currency as on the date of the accident, the appellant-insurer cannot be absolved from indemnifying the risk of the owner of the vehicle. Under such circumstances, this Court is of the considered view that there was no violation/breach of policy conditions by the insured. Hence, Point No. (i) is answered accordingly.

11. As regards the quantum of compensation, the claimants have produced the disability certificates issued by a private medical practitioner before the Commissioner. As per the medical evidence, Shivamurthy, the claimant in MFA. No. 23200/2010 had suffered malunited dislocation of left shoulder and his temporary/partial physical disability has been assessed at 20%. As regards Sri. G. Suresh, another injured-claimant in MFA. No.23201/2010, apart from simple injuries, he had suffered dislocation of right elbow and suffered partial functional disability at 15-20%. Though the Doctor has not satisfactorily assessed the exact functional disability in relation to the employment, the court can very well visualize the extent of functional disability of the injured. The evidence of the Doctor indicates his assessment of the disability is inaccurate while he describes the same in both the cases as temporary, partial permanent disability to the extent of 15% to 20%. On the basis of the same, assessment of functional

disability at 20% as inferred by the Commissioner is on a little higher side. In my considered opinion it would be just and proper to assess the percentage of functional disability at 15% in each case for computing the compensation payable to the injured-claimants. Thus, Sri. Shivamurthy, the injured-claimant (1st respondent in MFA. No.23200/2010) is entitled to the compensation of Rs.56,154/- ($3000 \times 60 \times 207.98 \times 15/100=56,154/-$), as against Rs.74,872/- awarded by the Commissioner. Sri. G. Suresh, the injured-claimant (1st respondent in MFA. No. 23201/2010) is entitled to compensation I of Rs.55,039/- ($Rs.3000 \times 60 \times 203.85 \times 15/100=55,039/-$), as against Rs.73,386/- awarded by the Commissioner. Point No. (II) is answered accordingly.

12. In the light of the judgment of the Apex Court in the case of Oriental Insurance Co. Ltd., v. Siby George and others (2012 ACJ 2126), the claimants-respondents are entitled to receive the interest from 30 days after accident. As per the judgment of the Apex Court, the interest on the compensation begins to accrue from 30 days of the accident and the award requires to be modified accordingly.

13. In this view of the matter, Both the appeals are allowed in part. While rejecting the prayer of the appellant as regards its liability to pay the compensation and in modification of the impugned common Order dated 31.05.2010 passed by the Labour Officer and the Commissioner of Workmen's Compensation, Ballari in WCA No.22/2009 and 23/2009, it is ordered that Sri. Shivamurthy, the injured-claimant (1st respondent in MFA. No.23200/2010) is entitled to the compensation of Rs.56,154/-, as against Rs.74,872/- awarded by the Commissioner. Sri. G. Suresh, the injured-claimant (1st respondent in MFA. No. 23201/2010) is entitled to compensation of Rs.55,039/-, as against Rs.73,386/- with interest at the rate of 12% per annum payable from 30 days after the date of accident instead of 30 days from the date of Order passed by the Commissioner. The appellant-insurer is directed to deposit the amount including the interest amount payable to the claimants within four weeks from the date of receipt of the certified copy of the order before the concerned Commissioner for Workmen's Compensation.

14. Office is directed to transmit the statutory deposit made by the appellant-insurer along with records to the jurisdictional Civil Judge (Senior Division) forthwith.