

(2023) 05 KAR CK 0034

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7502 Of 2016, (WC), 4205 Of 2017
(WC)

Branch Manager Shriram General Insurance Company Ltd.
E-8, Epip Riico, Industrial Area Sitapur, Jaipur, Rajasthan

APPELLANT

Vs

Indiramma & Others

RESPONDENT

Date of Decision : 26-05-2023

Acts Referred:

Motors Vehicles Act, 1988 — Section 147
Workmen's Compensation Act, 1906 — Section 2(1), 3, 4, 147, 147(1)(b), 149
Karnataka Motor Vehicles Rules, 1989 — Rule 100
Central Motor Vehicle Rules, 1989 & mash; Rule 2(b), 2(c), 2(h), 100

Citation : (2023) 05 KAR CK 0034

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : H.N. Keshava Prashanth, R. Shashidhara, N.R. Rangegowda

Final Decision : Dismissed/ Allowed

Judgement

H.P. Sandesh, J

1. These two appeals are filed by the claimants as well as the Insurance Company challenging the judgment an award dated 01.09.2016 passed in E.C.A.No.19/2015 on the file of the I Additional Senior Civil Judge and Commissioner for Compensation at Chitradurga (for short 'the Commissioner') questioning the quantum of compensation and also the liability.

2. The factual matrix of the case of the claimants before the Commissioner is that the first and second claimants are the wife and son of the deceased Onkarappa and third claimant is the mother of the deceased Onkarappa. The deceased was working as a coolie (loader and un-loader) in a lorry bearing Reg.No.KA18-9525 under the employment of respondent No.1. On 25.01.2012 at about 6.00 p.m., he along with other hamalies after loading cotton bales at Jagalur, boarded said lorry for unloading and proceeded towards Chitradurga.

When the lorry reached near Bogalerahatti Gate, NH-13 road, Chitradurga taluk, the driver of said lorry drove the same in a rash and negligent manner with high speed and ran over towards road side ditch. As a result, Onkarappa who was sitting on the loaded cotton bales fell down from the lorry and sustained severe injuries and while shifting to the Government hospital at Chikkagondanahalli, he died on the way. PM was conducted at Chitradurga Government hospital and the claimants have performed funeral ceremony, rites and rituals by spending Rs.50,000/-. The claimants further contended that the deceased Onkarappa was very healthy and was getting salary of Rs.6,000/- per month and batta at Rs.100/- per day. Due to untimely death of Onkarappa, the claimants are suffering from mental shock, agony, loss love and affection. Hence, prayed the compensation.

3. In pursuance of notice, respondent Nos.1 and 2 appeared through their respective counsel and filed their separate written statement. Respondent No.1 denied the entire averments and called upon the claimants to prove their claims. Further it is contended that offending lorry is insured with respondent No.2 and the policy was in force at the time of the accident. The amount of compensation claimed by the claimants is highly excessive, abnormal, exorbitant and not in accordance with law. It is further contended he has paid Rs.10,000/- to the claimants for shifting the deceased to the hospital and to his native place for performing funeral ceremony.

4. The learned counsel for respondent No.2 in the written statement contended that the driver of the lorry was not holding a valid and effective driving licence at the time of accident. Even though, respondent No.1 has allowed the driver, who possessed no driving license, to drive hence, has violated the terms and conditions of insurance policy. The relationship between the claimants is disputed contending that they are not the dependants. It is contended that respondent No.1 has used the said vehicle for carrying passengers and the said lorry is meant for transportation of goods but respondent No.1 knowing the said fact, permitted the deceased to travel as gratuitous passenger. Respondent No.1 has not paid premium towards said risk and violated the policy, RC and permit conditions. There is no relationship of employer and employee between respondent No.1 and the deceased. Hence, the Insurance Company is not liable to pay the compensation.

5. The Commissioner having considering the pleadings of the parties framed the issues and allowed the parties to lead their evidence. The claimants in order to prove their case, first claimant got examined herself as PW1 and one witness as PW2 and got marked the documents at Ex.P1 to P10. On the other hand, respondent No.2 examined its Legal Officer as RW1 and got marked the document at Ex.R1. The Commissioner having considered the material available on record answered Issue No.1 as affirmative and granted the compensation of Rs.6,35,370/-and also directed respondent No.2 to pay the compensation. Being aggrieved by the said judgment and award, these appeals are filed.

6. The learned counsel for appellants/claimants in MFA No.4205/2017 vehemently contends that the Commissioner has grossly erred in taking the wages of the deceased at Rs.6,000/-per month though the evidence on record goes to show that the deceased was a loader and un-loader in the lorry and he used to earn more than Rs.6,000/- per month as wages and Rs.100/-per day as batta hence, the same is liable to be enhanced. The contention also raised that the Commissioner has grossly erred in awarding interest at 9% p.a. from the 30th day of the accident till realization and hence, the same is liable to be enhanced. Hence, this Court has to consider the points regarding quantum of compensation as well as with regard to the interest.

7. The learned counsel in support of his argument would vehemently contend that the very contention of the Insurance Company that Rule 100 of Karnataka Motor Vehicles Rules, 1989 (for short 'the Rule 100 of 1989') applies hence, liability on the Insurance Company does not arise and the said contention cannot be accepted since it is only the claim under the Workmen Compensation Act and the Insurance Company is statutorily liable under Section 147 of the Motor Vehicles Act (for short 'the M.V.Act') and also under Section 3 of the Workmen Compensation Act (for short 'W.C. Act'). The counsel also submits that though Insurance Company would contend that there is no relationship of employer and employee, respondent No.1 categorically admitted that deceased was a coolie under him. The counsel also would contend that extra premium was paid and IMT 40 also mentioned in the policy hence, the Insurance Company is liable to pay the compensation contractually and statutorily and the Court also committed an error in granting interest at 9% p.a.

8. The learned counsel for the claimants in support of his argument relied upon the judgment passed in MFA No.10463/2011 and MFA Crob.No.24/2012. The counsel would vehemently contend that in the said judgment it is categorically held that Rule 100 of 1989 is not applicable and also held that coolies who are employees in a goods vehicle are compulsorily covered under Section 147 (1)(b) of the M.V. Act and apart from that premium is also collected hence, the Insurance Company cannot avoid its liability.

9. The learned counsel for the appellant/Insurance Company in MFA No.7502/2016 would vehemently contend that the finding of the Commissioner that there is an employer and employee relationship between the insured and the deceased is nothing but a perverse finding and the same is not based on proper appreciation of the evidence and documents produced before the Court hence, the same is liable to be set aside. It is contended that the police documents clearly demonstrate that the deceased was working as a Hamali in RMC yard at Chitradurga and hence, it is clear that he was not working as a loader and un-loader under respondent No.4 and there was no employer and employee relationship between the insured and the deceased. On the date of the accident, he was traveling only as a gratuitous passenger in the insured goods vehicle along with other persons and therefore, the Commissioner ought to have held that the

deceased was traveling in the insured goods vehicle as a gratuitous passenger. It is also contended that the documents produced by the claimants and evidence on record clearly demonstrate that the deceased was traveling from one city to another city in a goods vehicle against the Karnataka Motor Vehicle Rules and against the conditions of the policy and hence, the Commissioner ought to have fastened the liability on the owner of the vehicle instead of Insurance Company.

10. It is further contended in the appeal that the Commissioner ought to have seen that the documents produced by the claimants and the evidence placed on record which clearly demonstrate that the deceased was traveling on the carriage of lorry and not in the cabin and also contended that he was sitting on the carriage of the lorry which was completely loaded with cotton bales in a dangerous position, which makes clear that this is a clear violation of terms and conditions of the policy, provisions of the Act, permit issued by the RTO authorities and against the Karnataka Motor Vehicles Rules. Hence, the Commissioner ought not to have fastened the liability on the Insurance Company. It is also contended that it is a case of clear violation of Rule 100 of 1989 and at any stretch of imagination, liability should not have been fastened on the Insurance Company and hence, the Commissioner committed an error in considering the factual aspects and also the question of law. Hence, it requires interference by framing the points that whether the finding of the Commissioner is correct in holding that there was a employer and employee relationship between the insurer and the deceased and whether the liability fastened on the Insurance Company is in accordance with law.

11. The learned counsel for the Insurance Company in support of his arguments, mainly contends that the averments made in the claim petition is that the deceased was a co-worker as a loader and un-loader in the lorry. But considering the pleadings and evidence it is clear that he was working as a coolie in RMC yard and not an employee under respondent No.1. The counsel would vehemently contend that he was a paid passenger and material discloses that he was proceeding in the carriage lorry. The Commissioner fails to take note of Rule 100 of 1989, sub-sections 1, 3 and 4 of the said Rules and as per said Rules, the deceased cannot sit and travel on goods vehicle. The counsel also submits that the material discloses that he was traveling from Jagaluru to Chitradurga i.e., from one city to another city and the same is also prohibited under Rule 100 of 1989. The counsel would vehemently contend that the Commissioner has committed an error in fastening the liability on the Insurance Company instead of the owner who violated the terms and conditions of the policy.

12. The learned counsel for the Insurance Company with regard to seeking enhancement of compensation would vehemently contend that the very pleading of the claimants before the Commissioner that the deceased was drawing salary of Rs.6,000/- per month and the same was considered hence, no grounds are made out to enhance the compensation. The counsel also vehemently contends that the claiming of batta of Rs.100/- per day cannot be entertained since the

same is not a part of his earning.

13. The learned counsel in support of his argument relied upon the judgment of this Court passed in MFA Nos.9192/2018 and other connected appeals. The counsel would vehemently contend that in this judgment, this Court discussed in detail regarding Section 147 of M.V. Act and also considered Rule 100 of 1989 wherein provisions are made to carry the persons in a light transport goods vehicle and also in the light transport goods vehicle having registered laden weight less than 990 kgs and also any goods vehicle not more than seven provided that the provisions of sub-clauses (ii) and (iii) of the above proviso shall not be applicable to the vehicles plying on interstate routes or the vehicles carrying goods from one city to another city and also this Court discussed the principles laid down in the case of Smt. Bellamma and allowed the appeal filed by the Insurance Company and directed the owner of the offending vehicle to pay the compensation and exonerated the liability of the Insurance Company. The said judgment is aptly applicable to the facts of the case on hand also and prayed this Court to set aside the judgment and award of the Commissioner.

14. Having heard the respective counsel and also on perusal of the material available on record, the following points would arise for consideration of this Court that:

- (1) Whether the Commissioner committed an error in not awarding just and reasonable compensation?
- (2) Whether the Commissioner committed an error in awarding interest at the rate of 9% p.a?
- (3) Whether the Commissioner committed an error in holding that there is a employer and employee relationship between the insurer and the deceased?
- (4) Whether the Commissioner committed an error in fastening the liability on the Insurance Company?
- (5) What order?

POINT NOS.1 TO 4

15. All the points in these appeals are interrelated with regard to the relationship between the employer and employee and quantum of compensation and also the liability hence, they are taken up together for consideration.

16. Before answering the said points for consideration, this Court has to mention in brief the factual aspects. It is not in dispute that the deceased was traveling in a goods vehicle sitting on loaded cotton bales and he fell down from the lorry when the driver of the lorry drove the same towards the road side ditch and he had sustained injuries and succumbed to the injuries.

17. The main contention of the counsel for the Insurance Company is that he was not an employee of respondent No.1 and he has not established the relationship

of employer and employee. In order to consider the contention that there was no relationship of employer and employee, the Court has take note of the material available on record. Respondent No.1 appeared and filed his written statement and in paragraph 1 of the written statement he categorically admitted that the deceased Onkarappa was working as an employee and he was under the employment of respondent No.1 and he was discharging his legitimate duties under employer and employee relationship hence, it is clear that respondent No.1 has categorically admitted that the deceased was an employee under him and also he admits that he used to pay the amount of Rs.8,000/- as a salary including batta and same has not been rebutted. In the cross-examination of PW1 it is suggested that the deceased was not an employee and the same was denied. But no doubt, in Ex.P1 it is mentioned that he was working in APMC Yard as a coolie and no document is produced to show that he was working under respondent No.1 and PW1 though admits that the deceased was proceedings as a passenger, PW1 was not present at the time of the accident. In order to prove the case of the claimants, they have examined one witness as PW2 who is also a co-worker of the deceased. PW2 categorically says that all of them were proceeding in the said lorry after loading the cotton bales from Jagaluru to Chitradurga and accident was occurred due to negligence on the part of the driver of the lorry who drove the same towards road side ditch as a result, the deceased fell down from the lorry. In his cross-examination, he also admits that he was working in the market but he categorically says that he is not working in any shop of the market, but he used to go to work in the lorry and on that date, he was proceeding along with the deceased and other coolies and also he admits that they were carrying 175 cotton bales in the said lorry and all of them sitting on the cotton bales and a suggestion was made that all of them were traveling as passengers and the same was denied. It is suggested that either the deceased or himself not worked under respondent No.1 and the same was denied.

18. On the other hand, the Insurance Company also examined the Legal Officer as RW1 who contends that as per the police records they were traveling from Jagaluru in the aforesaid vehicle and they are the paid passengers and not a Hamalies of loader and un-loader but in the cross-examination, he admits that policy was in force and he claims that the deceased was an unauthorised passenger and also admits that he has not produced any document to shows that the deceased was an unauthorized passenger. RW1 also produced the document at Ex.P1 i.e., the copy of the policy. In order to prove the fact that the deceased was a paid passenger, no material is placed before the Court as admitted by him and in order to comes to the conclusion that he was not an employee of respondent No.1 also no material is placed. But respondent No.1 categorically admitted that the deceased was working as a coolie under him and he was paying the salary with batta of Rs.8,000/- per month. Apart from that in the complaint which is marked as Ex.P2 is clear that on the date of the accident, all of them were proceeding in the goods lorry by loading the cotton bales to transport the same from Jagaluru to Chitradurga and this complaint was given on

the date of the accident i.e., on 25.01.2012 at 9.45 p.m. and the accident took place at 6.00 p.m.

19. It is also clear from the document that the deceased was working in RMC as a loader and un-loader but the contention of the Insurance Company that he was working at RMC but it is not under the meaning that he was working in any RMC shops and on the date of the accident, he loaded the cotton bales and proceeded in the lorry hence, the very contention that no relationship is established cannot be accepted since no cogent evidence is placed before the Court to show that the deceased was not an employee of respondent No.1 and even Insurance Company is not summoned respondent No.1 to prove the fact that the deceased was not an employee of respondent No.1 Hence, I do not find any force in the contention of the counsel for Insurance Company that there is no relationship of employer and employee.

20. The other contention of the counsel for the Insurance Company that the deceased was a paid passenger and in order to prove the said fact, no material is placed and document at Ex.P1 is very clear that they have loaded the cotton bales and proceeded in the goods lorry and respondent No.1 also admitted that he was an employee under him and apart from RW1 also in the cross-examination categorically admitted that he has not produced any document to show that he was a paid passenger and apart from that Insurance Company took the contention that as per the police records, the deceased was a passenger and same is also averred in the affidavit of RW1. On perusal of police records it discloses that nowhere it is stated that he was a passenger hence, the said contention cannot be accepted.

21. The other point for consideration is with regard to quantum of compensation. It is the claim of the claimants that the deceased was working as a loader and un-loader and respondent No.1 used to pay a sum of Rs.6,000/- per month as coolie and batta of Rs.100/- per day and the written statement filed by respondent No.1 is also clear that including the batta he was paying the amount of Rs.8,000/- per month to the deceased. The Commissioner considered the income of Rs.6,000/-. The counsel for the Insurance Company also brought to notice of this Court that their pleading itself is that the deceased was getting Rs.6,000/- per month and batta cannot be added and the same is only a daily expenses. The Commissioner in the judgment while answering Issue No.2 comes to the conclusion that admittedly there is no documents to show that earning of the deceased as pleaded that he was earning Rs.8,000/- per month and considering the cost of living, notional income of Rs.6,000/- was taken. But when the claim is made under the ECA Act, the Commissioner ought to have taken the statutory income. The accident is of the year 2012 and the statutory income for the said period is Rs.8,000/-. Hence, the Commissioner ought to have taken statutory income of Rs.8,000/- instead of notional income of Rs.6,000/-. Hence, the very contention of the claimants that the Commissioner has committed an error in taking the income, there is a force. Hence, this Court has to revisit with regard to

the calculation of income is concerned.

22. The deceased was aged about 28 years at the time of the accident and in a case of death, as per schedule-I, Section 2(1) and 4 of W.C. Act, 50% of salary has to be taken into consideration to assess the compensation. In terms of Schedule-IV, Section 4 of W.C.Act, the factors to be worked out and for the age of 28 years, the factors would be 211.79 hence, it comes to Rs.8,47,160/- ($8,000 \times 50 \times 211.79 \text{ fraction}/100$).

23. The other contention of the counsel for the claimants that the Commissioner has awarded the interest at the rate of 9% p.a. from the 30th day of the accident till the realization is erroneous. There is a force in the contention of the counsel for the claimants that the Commissioner has committed an error in awarding the interest at 9% instead of statutory interest at the rate of 12% p.a., payable from the 30th day of the accident and the Commissioner has not committed an error having awarded the interest from 30th day of the accident but committed an error in awarding interest at 9% p.a. and the same has to be enhanced to 12% p.a.

24. Now, the question is with regard to the liability is concerned. There is no dispute with regard to the issuance of policy and policy is in force is also not in dispute and the vehicle involved in the accident is a lorry and same is a goods vehicle. The counsel for the Insurance Company vehemently contend that Rule 100 of 1989 is applicable and the employee cannot be carried on the carriage and also further contended that Rule 100 of 1989 stipulates carriage of persons in a goods vehicle is prohibited that no persons shall be carried in a goods vehicle. The counsel also brought to notice of this Court sub-section (ii) and (iii) wherein any other light transport goods vehicle not more than three and in any goods vehicle not more than seven. But in the case on hand, no doubt, the vehicle involved in the accident is a goods vehicle and not the light transport goods vehicle. Proviso is also that provisions of sub-clause (ii) and (iii) of the above proviso shall not be applicable to the vehicles plying on the interstate routes or the vehicles carrying goods from one city to another city.

25. In the case on hand, no doubt, the cotton bales loaded at Jagaluru and transported the same to the Chitradurga. The counsel for the claimants also relied upon the judgment of this Court in MFA No.10463/2011 and MFA Crob.No.24/2012 and in that case, the deceased was a labourer traveling along with other workers in a tractor-trailer and similar grounds are also urged in the said case also and this Court also considered the Rule 100 of 1989 and also considered Section 147 of M.V.Act. Having read the provisions of Rule 2(b), (c) and (h) of Central Motor Vehicle Rules (for short 'CMV Rules') and also Rule 100 of 1989, in paragraph 9 discussed that a conjoint reading of Rule 2(b), (c), (h) of CMV Rules discussed with regard to the said Rule does not restrict to only transport goods vehicle and it is applicable even in cases falling under non-transport goods vehicle also and also considered Section 147 of M.V.Act and extracted the same in paragraph 10 and also considered sub-section (4) of

Section 149 of M.V.Act and comes to the conclusion insurer cannot include any liability by adding any term in the policy format which is specified by the statute. The insurer is liable to compulsorily cover all the risk arising out of and any motor vehicle and the liability of the insurer is co-extensive with that of the insured. It is clear that coolies who are carried in a goods vehicle are compulsorily covered under Section 147(1)(b) of the M.V.Act. No doubt, this Court passed the said judgment in the year 2016 and other judgment of this Court is of the year 2022 and in the recent judgment regarding liability is concerned taken note of Rule 100 of 1989 as well as Section 147 of M.V. Act. But observed in paragraph 17 that Rule 100 of 1989 is not applicable in the present facts and circumstances and the claimants and the owner cannot take benefit of this provision but observed that no extra-premium is paid in respect of coolie. In paragraph 18 taken note of registration of the offending vehicle, the seating capacity is 1 + 1, as per the provision at the most the risk of one person who is traveling in the offending vehicle in the cabin are covered.

26. In the case on hand also admittedly, the vehicle involved in the accident is a goods vehicle that is lorry and hence, the Insurance Company is liable to pay compulsorily to the employees as per Section 147 of M.V. Act and hence, in view of the statutory liability, the very contention of the Insurance Company that company is not liable to pay compensation on the ground that Rule 100 of 1989 is applicable cannot be accepted. The other contention that the deceased was traveling on the carriage and hence, Insurance Company is not liable to pay compensation is cannot be accepted and it is the liability of the Insurance Company statutorily and compulsorily to pay the compensation as per Section 147 of M.V. Act since the deceased was proceedings as a coolie in the goods vehicle and accident was occurred during the course of his employment. Hence, the contention of the Insurance Company cannot be accepted. Hence, I answer all the points accordingly.

27. In view of the discussions made above, I pass the following:

ORDER

(i) The appeal of the claimants in MFA No.4205/2017 is allowed. The judgment and award dated 01.09.2016 passed in E.C.A.No.19/2015 of the Commissioner is modified by granting the compensation of Rs.8,47,160/- with interest 12% p.a from 30th day of the accident.

(ii) The appeal of the Insurance Company in MFA No.7502/2016 is dismissed.

(iii) The Insurance Company is directed to pay the compensation amount with interest within six weeks from today.

(iv) The Registry is directed to transmit the records to the concerned Tribunal, forthwith.

(v) With regard to the apportionment, the order of the Commissioner remains undisturbed.

(vi) The amount in deposit made by the appellant/Insurance Company is ordered to be transmitted to the I Additional Senior Civil Judge and Commissioner for Compensation at Chitradurga forthwith.