

(2006) 11 KAR CK 0081
In the Karnataka High Court
Case No : M.F.A. No. 8566 of 2004

Branch Manager, United India Insurance Co. Ltd.

APPELLANT

Vs

Chandrashekara and Another

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2006) 11 KAR CK 0081

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : M.U. Poonacha, for the Appellant; Babu H. Metagudda and G.G. Chagashetti, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—This appeal by the insurance company is directed against the order passed by the Workmen's Compensation Commissioner, Bijapur awarding a sum of Rs. 58,565 to respondent-claimant by putting the liability on the appellant insurance company to pay the said compensation. The main grievance of appellant is that the claimant had played fraud on the court by suppressing the real fact and, therefore, only on the sole ground of fraud, the order of the Commissioner is liable to be set aside.

2. Elaborating the submissions in this regard, learned counsel for the appellant submits that the claimant took up the stand before the Commissioner for Workmen's Compensation that he was a coolie and that he sustained injuries in the accident which took place on 3.1.1998. Following the injury sustained in the accident the claimant could not carry on his coolie work. Based on the evidence let in by the parties, the Commissioner awarded the compensation in the above sum to the claimant.

3. Learned Counsel for appellant submitted that claimant took up the stand that he was a coolie while pursuing the claim petition filed through a counsel before

the Workmen's Compensation Commissioner, whereas the very same claimant through the very same counsel also filed a M.V.C. petition before Claims Tribunal at Bijapur in M.V.C. No. 740 of 1998 and in that petition he had urged that his occupation was "business" and he was drawing a salary of Rs. 5,000 per month. Therefore, referring to the claim petition filed by the claimant before the M.A.C.T., which document was marked before the Commissioner as Exh. R2A it is submitted that the claimant has played fraud on the court and has tried to abuse the process of law and thereby suppressing the M.V.C. petition filed before the M.A.C.T., Bijapur and suppressing his occupation mentioned therein the claimant files the present claim petition before the Commissioner for Workmen's Compensation contending that he was a coolie and gets the compensation awarded to him. Therefore, the entire order of the Commissioner stands vitiated because of the very conduct of the claimant.

4. On the other hand, learned counsel for the respondent-claimant submitted, firstly, that no substantial question of law is involved in this appeal and, secondly, the claim petition that was filed before the M.A.C.T., Bijapur could not have been taken into consideration by the Commissioner for Workmen's Compensation and rightly the Commissioner ignored the said claim petition filed before the M.A.C.T. at Bijapur and, therefore, placing reliance on the decisions in Mataji Bewa and Others Vs. Hemanta Kumar Jena and Another, ; Oriental Insurance Co. Ltd. Vs. Pathani Sethi and Another, ; United India Insurance Company Limited, Bhadravathi Vs. Jhonsa and Others, and 1998 (II) LLJ 764, the learned counsel for the claimant contended that the appeal is not maintainable as no substantial question of law is involved and, secondly, the Commissioner has rightly ignored the materials placed before the M.A.C.T. at Bijapur by the claimant.

5. Having thus heard the submissions of both the sides, the first point that requires to be answered is, "whether a substantial question of law is involved or not in this appeal"?

6. So far as this point is concerned, it is the case of appellant insurance company that there exists no employer and employee relationship between the insured and the claimant. Secondly, it was submitted that the claimant had played fraud on the court. In my considered opinion in order to lay the foundation for claiming compensation under the Workmen's Compensation Act, it is incumbent on the part of the claimant to establish that there exists employer and employee relationship between him and the insured and this is the requirement of Section 3 of the Workmen's Compensation Act and when the question raised is with regard to liability of the employer and the employer and employee relationship, such a question is undoubtedly a substantial question of law as it goes to the root of the very claim petition filed by the claimant. Therefore, all the rulings referred to by the learned counsel for the respondent No. 1 in my considered opinion are based on the facts and circumstances of those cases and insofar as the case on hand is concerned, as the appellant insurance company has disputed the very employer and employee relationship, in my view, this appeal involves a

substantial question of law and, hence, I answer this point accordingly.

7. Coming to the compensation part of the case, the appellant company has placed Exh. R2A before the Commissioner to drive home the point that the claimant had filed the claim petition in M.V.C. No. 740 of 1998 and in the claim petition he has specifically stated that his occupation is "business". Having taken such a stand, the claimant could not have turned around and say that he is a coolie, before the Workmen's Compensation Commissioner. This conduct of the claimant itself goes to show that somehow or the other he is bent upon getting the compensation. Such a conduct of the appellant requires to be despised and the inference to be drawn from the said conduct is that claimant had played fraud on the court and has abused the process of law. Therefore, on this ground alone the order of the Commissioner will have to be set aside and the Commissioner also committed a serious error in not even referring to the document Exh. R2A produced by the insurance company, but on the other hand, allows the claim petition filed by claimant. Fraud vitiates the whole process.

8. In the result, the appeal is allowed and the impugned order of the Commissioner for Workmen's Compensation in so far as fixing the liability on the appellant insurance company is set aside and the amount in deposit shall be refunded to the appellant insurance company.