

(2016) 06 KAR CK 0225
In the Karnataka High Court
Case No : MFA No. 23412 of 2009

Choudawa

APPELLANT

Vs

Marappa

RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 3, Section 4

Citation : (2017) AAC 520

Hon'ble Judges : Mrs. Rathnakala, J.

Bench : Single Bench

Advocate : Sri Lokesh Malavalli, Advocate, for the Appellant in MFA Nos. 23412, 23413, 23414 of 2009; Sri K.L. Patil, Advocate, for the Respondent No. 2 in MFA Nos. 23412, 23413, 23414 of 2009; Dispensed With, for the Respondent No. 1 in MFA Nos. 23412, 23413, 23414

Final Decision : Allowed

Judgement

Mrs. Rathnakala, J.—Though these appeals are listed for admission, by consent of both the parties, it is taken up for final adjudication after hearing the both sides.

2. Insurance company has filed M.F.A. Nos.22781/2009, 22782/2009 and 22783/2009 and on the other hand, claimants have filed M.F.A. Nos. 23412/2009, 23413/2009 and 23414/2009 challenging the common judgment and award dated 28.04.2009 on the file of the Labour Officer and Workmen's Compensation Commissioner, Haveri, Haveri District in W.C. Nos. 32, 33 and 34/2007.

3. Since these appeals are arising out of the same accident and a common judgment and award, they are taken up together for consideration.

4. The fact not in dispute at this stage is the respondents/claimants being the legal heirs of deceased persons namely Hanumanthappa, Tirakappa and Cyamappa, who expired in a vehicular accident involving canter lorry bearing

registration No. KA-02/C-3533 on 22.01.2005 filed respective claim petitions under Section 22 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act", for brevity) before the Workmen's Compensation Commissioner, Haveri (for short, "Commissioner"). Their case was that the deceased were working as Hamalies in the canter lorry bearing registration No. KA-02/Complaint-3533; on 22.01.2005, as per the direction of the owner of the canter lorry, they were travelling in the said vehicle from Bombay to Bangalore; near sugar factory of Hiriya, the offending lorry bearing registration No. KA-22/D-3797 came from the opposite side rashly and negligently and dashed against the canter lorry. Due to which, all the three Hamalies suffered fatal injuries and died at the spot. The Hiriya Police registered a case against the driver of the offending lorry. It is the claim of the claimants that the deceased persons were getting salary of Rs. 5,000/- per month with daily Bhatta of Rs. 50/-. The claimants were entirely depending on the income of the deceased persons for their livelihood. The lorry was insured at the relevant point of time with the insurer and thus, they sought for compensation of Rs. 10,00,000/- jointly and severally from the owner and insurer.

5. The owner of the vehicle remained ex-parte and the insurer contested the claim. The insurer disputed the relationship of employee and employer between the deceased and the owner of the lorry and contended that the deceased were unauthorised passengers in the lorry and have not died during the course of their employment. Among other things, during trial the insurer to the effect that he is unable to furnish the names of the coolies as the vehicle was entrusted to a transport company on kilometre basis. The Commissioner on consideration of material placed before, allowed the petitions and awarded compensation at the rate of Rs. 3,76,740/- to the claimants in W.C. No. 32/2007, Rs. 3,22,297/- to the claimant in W.C. No. 33/2007 and Rs. 3,76,740/- to the claimant in W.C. No. 34/2007 with interest at 12% payable from 30 days of the date of the order.

6. Sri K.L. Patil, learned counsel for the appellant-insurer submits that the vehicle in question was hired to a transport company in which the deceased persons were travelling as Hamalies. The owner in his letter at Ex.R-2-5 has not identified the deceased as his employees which was an interstate transport vehicle and it is hit by proviso of Rule 100(I) of Karnataka Motor Vehicle Rules, 1989. Accordingly, no Hamali can be allowed to travel in the interstate transport vehicle. The policy in question covers the risk of only one Hamali and since three claims are made in respect of 3 Hamalies, the claims are liable to be rejected.

7. Sri Lokesh Malavalli, learned counsel for the claimants-appellants submits that having regard to the nature of employment, it cannot be expected from the claimants to produce documentary proof of employment or the wages which the deceased were earning from their employment. In the police records, the deceased are shown as Hamalies. The owner did not appear before the Commissioner to contest the claim or dispute regarding employer and employee relationship except addressing a letter at Ex.R-2(5) to the insurance company,

disputing on the identity of the deceased. In the given circumstances, the Commissioner has properly appreciated the matrix and has held that the deceased were the employees under the owner of the canter lorry. Though the claimants claim that the deceased were earning Rs. 5,000/- per month with daily bhatta of Rs. 3,000/- per month, the Commissioner has assessed the income of deceased persons at Rs. 3,500/- per month. He submits that in the light of explanation to Section 4(1) of the Act, the income shall be assessed at Rs. 4,000/- per month only in the event of salary of the deceased or the injured is more than Rs. 4,000/- per month. Therefore, the compensation may be reassessed by working out of the monthly income as Rs. 4,000/- and award may be modified to that extent and appeals of the insurer deserve to be rejected.

8. In the light of the rival submissions and on perusal of the impugned common judgment and award with the case records, following questions arise for my consideration:

1) Whether there exists "employer and employee relationship" between the owner of the lorry and the deceased?

2) Whether the claimants are entitled for enhanced compensation?

9. At this stage, there is no dispute to the fact that the claimants are the dependents of the deceased persons who expired in the vehicular accident dated 22.01.2005. The owner of the lorry despite service of notice has not contested the claim. Though the insurer had categorically disputed the relationship of employer and employee between the deceased and the owner, the Commissioner without much discussion, only on the basis of the charge sheet and on the statement of claimant, has held that the deceased were the Hamalies in the canter lorry and that falls within the ambit of the workman under the Workmen's Compensation Act, Rule 100 of Karnataka Motor Vehicle Rules, 1989 regulates carriage of persons in goods vehicle proviso to Sub-Rule 1 allows bona fide employee of the vehicle to be carried free of charge. It is also permissible for a Police Officer in uniform to travel in goods vehicle while on duty in a light motor vehicle having registered laden weight less than (i) 990 kgs not more than one (ii) in any other light transport goods vehicle not more than three (iii) in any goods vehicle not more than seven. Further above subclasses (ii) and (iii) of the above proviso is not applicable to the vehicle plying in interstate vehicle or vehicle carrying goods from one city to another city. The vehicle involved in the accident is registered in Bangalore; it was plying to Bombay and was transporting the couriers. The documents produced by the insurer at Ex.R-1 and 2 series are not at all disputed by the claimants and the owner has remained ex parte. These documents demonstrate that the vehicle was entrusted to a third party/transporter for courier service. Neither the owner nor the transporter admits the relationship with the deceased persons. When the relationship is not admitted by the owner though the case was not contested him, the Commissioner was obliged to examine before adjudicating the claim compensation about the existence of employer and employee relationship which

is overlooked by him. The description of deceased as Hamalies in the charge sheet does not mean that they were working as Hamalies in the canter lorry under the first respondent-Marappa. The finding of fact recorded by the Commissioner is perverse. The insurance policy in question does not admit the risk of 3 Hamalies. The seating capacity of the vehicle was 2+1 it's unladen weight was 3500 kgs. Apart from this claim which went for adjudication, other injured of the same accident had filed claim petition before Tribunal under the Motor Vehicle Act, 1988. The deceased Hamalies are from Haveri District, the lorry is registered at Bangalore and the owner is also from the Bangalore and the vehicle was plying to Bombay in interstate mode. Thus, all would go to establish that claimants were gratuitous passengers but not employees of the owner. Even if it is to be held that the owner since did not dispute the relationship of employer and employee, the insurer cannot be called upon to cover the risk of the owner who allowed gratuitous passengers to travel in his goods vehicle by which he committed breach of the terms and conditions of the contractual obligation under the policy. To that extent, the award needs to be modified.

10. Coming to the question of amount of compensation, much against the evidence adduced by the claimants that the deceased were earning Rs. 5,000/- per month salary with daily bhatta of Rs. 50/-, the Commissioner has assessed the income as Rs. 3,500/- per month by referring to the provisions of Minimum Wages Act and multiplying with the multiplier appropriate to the age of the deceased persons. When the Commissioner does not dispute that the deceased was earning more than Rs. 3,000/- per month as per the provisions of Section 4 of the Act, for the purpose of capitalization, the compensation in respect of death as per Explanation II of Section 4(1) of the Act, monthly income shall be deemed to be assess at Rs. 4,000/- per month only and the compensation ought to have been computed on the basis of monthly income of Rs. 4,000/-. That being so, compensation works out as under:

In W.C. No. 32/2007

Name of the deceased

:

Hanumanthappa,

Income assessed

:

Rs.4,000/-,

Age of the deceased At the time of accident

:

26 years,

Loss of earning capacity

:

100.00%

Multiplier based on the Age of the deceased

:

215.28

$\text{Rs.}2,000 \times 215.28 \times 100/100 = 4,30,560/-$

In W.C.No.33/2007

Name of the deceased

:

Tirakappa,

Income assessed

:

Rs. 4,000/-,

Age of the deceased at the time of accident

:

40 years,

Loss of earning capacity

:

100.00%

Multiplier based on the age of the deceased

:

184.17

$\text{Rs.}2,000 \times 184.17 \times 100/100 = 3,68,340/-$

In W.C. No. 34/2007

Name of the deceased

:

Dyamappa,

Income assessed

:

Rs. 4.000/-,

Age of the deceased at the time of accident

:

25 years,

Loss of earning capacity

:

100.00%

Multiplier based on the age of the deceased

:

215.28

$\text{Rs.}2,000 \times 215.28 \times 100/100 = 4,30,560/-$

11. 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), interest is payable from 30 days of the occurrence of the accident not from 30 days of the impugned order. To that extent, both the quantum of compensation and period from which the interest starts calculating also need to be modified.

12. In the result, I pass the following:

ORDER

(i) M.F.A. Nos. 22781/2009, 22782/2009 & 22783/2009 Filed by the insurance company are allowed;

(ii) M.F.A. Nos. 23412/2009, 23413/2009 and 23414/2009 filed by the claimants are allowed in part;

(iii) The judgment and award dated 28.04.2009 on the file of the Labour Officer and Workmen's Compensation Commissioner, Haveri, in W.C. Nos. 32, 33 and 34/2007 is modified granting compensation of Rs. 4,30,560/- to the claimants in W.C. No. 32/2007, Rs. 3,68,340/- to the claimants in W.C. No. 33/2007 and Rs. 4,30,560/- to the claimants in W.C. No. 34/2007;

(iv) interest at the rate of 12% per annum is payable from 30 days of the date of accident by the first respondent/owner only;

(v) Insurance company is absolved from it's liability to pay the compensation;

(vi) The amount shall be disbursed among the claimants as per the rate ordered by the Commissioner.

13. Registry is directed to refund the amount deposited by the insurance company along with accrued interest and transmit the original records to the jurisdictional Court of Senior Civil Judge.