(2013) 02 KAR CK 0145

In the Karnataka High Court

Case No : M.F.A. No. 14428 of 2007 (WC)

Divisional Manager, I.C.I.C.I. Lombard General Ins. Co. Ltd. APPELLANT

Vs

Mudiyappa and Another RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Citation : (2014) 2 ACC 292 : (2014) ACJ 268 : (2014) 2 AKR 720

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : S.K. Kayakamath, for the Appellant; Chandrashekhar P. Patil, for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—The insurance company has filed this appeal, assailing the order dated 25.7.2007 passed by the Commissioner for Workmen''s Compensation, Koppal, (''W.C. Commissioner'' for short) in W.C. No. 305 of 2005 on the point of liability. It is not in dispute that the respondent No. 1-claimant sustained injuries while he was performing his duties as a hamal in respect of tractor-trailer bearing No. KA 37-T 8084 and 8085 on 23.6.2005.

2. It is the case of the respondent No. 1-claimant that on 23.6.2005 while he was discharging his duties as a hamal/coolie in respect of the aforesaid tractor-trailer, while he was bringing a load of firewood to Koppal, when the said vehicle reached Chilavadagi village, the driver of tractor applied sudden brake to the tractor. As a result, the respondent No. 1 fell down and sustained grievous injuries on his right hand and other parts of the body. He was shifted to the government hospital at Koppal, where he was given first-aid treatment and thereafter he was referred to KMC Hospital, Hubli, where he was an inpatient. Contending that he had sustained loss of earning capacity on account of permanent disability, he filed the claim petition before the W.C. Commissioner at Koppal, seeking compensation under the provisions of the Workmen''s Compensation Act, 1923. The claim petition was contested by the insurance

company.

3. In support of his case, the claimant let in his evidence as PW 1 and 9 documents were marked as Exh. P1 to Exh. P9, while the respondents did not let in any evidence, but have produced two documents which were marked as Exhs. R2-1 and R2-2.

4. On the basis of the said evidence, the W.C. Commissioner awarded compensation of Rs. 1,04,228 with interest at the rate of 12 per cent per annum and fastened the liability on the owner and insurer to satisfy the award. Being aggrieved by the fastening of the liability on the insurance company, this appeal has been filed.

5. I have heard the learned counsel for the insurer and the learned counsel for the respondent-claimant and perused the material on record as well as the lower court records.

6. It is contended on behalf of insurance company that respondent No. 1-claimant was travelling on the mudguard of the tractor. As a result of the sudden application of brake by the driver of the tractor, the respondent No. 1 fell down from the tractor. All documentary evidence point to the fact that the respondent No. 1 fell down from the tractor. The trailer was loaded with firewood. The respondent No. 1 having sat on the tractor, there has been a violation of the terms and conditions of the policy issued in respect of tractor and trailer. The risk of an employee sitting on the mudguard of a tractor is not covered under the policy. Hence, the insurance company is not liable to satisfy the award as no person other than a driver is entitled to travel on the tractor. He, therefore, contended that W.C. Commissioner was not right in fastening the liability on the insurer.

7. Per contra, learned counsel for the respondent No. 1, supporting the order of the W.C. Commissioner, has stated that the trailer was filled with firewood. The evidence on record does not disclose as to whether the respondent No. 1 was sitting on the tractor. On the other hand, the evidence of the claimant is that he fell from the vehicle. The vehicle is the tractor and trailer. It is not established that he fell from the tractor or that the respondent No. 1 was sitting on the tractor. Therefore, the W.C. Commissioner was right in holding that the respondent No. 1 is entitled to compensation under the provisions of the W.C. Act as the same is a social welfare legislation meant to compensate victims of road accidents who are employees. He, therefore, would submit that there is no merit in this appeal.

8. In reply, the learned counsel for the appellant-insurer has relied upon decisions of this court to contend that under regulation 28 of the Rules of the Road Regulations, 1989, the driver of the tractor shall not carry any person on the tractor and, therefore, there has been a violation of the terms and conditions of the policy.

9. In the instant case, the appeal has been admitted on 29.3.2011, but no substantial question of law had been framed.

10. Having heard the learned counsel on both sides, the following substantial questions of law would arise for consideration:

(1) Whether the Commissioner was justified in saddling the liability on the appellant in spite of noticing that the respondent No. 1 was travelling on a tractor?

(2) Whether regulation 28 of the Rules of the Road Regulations, 1989, prohibits any person other than the driver from travelling on a tractor?

(3) Whether there existed justifiable reasons for the Commissioner to saddle liability on the appellant ignoring the evidence adduced by the insurer?

(4) Whether the risk of the respondent No. 1 was covered under the terms and conditions of the policy?

11. From the material on record, it is not in dispute that the respondent No. 1-claimant sustained injuries on 23.6.2005, during the course of and arising out of the employment as a hamal/coolie in respect of tractor-trailer bearing No. KA 37-T 8084 and 8085. However, the main question to be considered is as to whether the Commissioner was right in saddling the liability on the insurance company. The point raised before the W.C. Commissioner was that the respondent No. 1 fell down from the tractor when the driver of the tractor applied sudden brake and that there has been a violation of regulation 28 of the Rules of the Road Regulations and, therefore, the W.C. Commissioner could not have saddled the liability on the insurance company.

12. On a perusal of the petition filed by the respondent No. 1 before the W.C. Commissioner at para 3, it is clearly stated that he fell down on the right side from the tractor. Similarly, in the documentary evidence, which have been produced by the claimants in the form of Exh. P1, F.I.R., Exh. P2 statement, Exh. P3 wound certificate and Exh. P5 charge-sheet, it is categorically stated that he fell down from the tractor. While in the oral evidence in the examination-in-chief, it is stated that he fell down from the vehicle. In the cross-examination also, he has stated that he was sitting on the tractor-trailer. The W.C. Commissioner has in fact tried to justify that the respondent No. 1 was sitting on the tractor as the trailer was full of fire-wood and that there was no place for him to sit in the trailer. That apart, in the case of Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others, , it has been stated that when once a document has been produced by a party in order to rely upon a fact, the same document cannot be resiled from, in order to contend otherwise. In the instant case, the documents referred to supra, produced by the claimant, categorically state that the respondent No. 1 fell from the tractor.

13. In this regard, reliance could be placed on the judgment of this court in United India Insurance Co. Ltd. v. Channawwa, M.F.A. No. 7468 of 2002; dated

5.7.2005, which has been followed in Syed Abdul Majeed v. M. Raja, M.F.A. No. 7932 of 2006; dated 11.11.2010 and in the case of Iffco-Tokio General Insurance Co. Ltd. Vs. Smt. Sulochana and Others, . In all these cases, it has been held that the risk of the persons sitting on a tractor is not covered under the terms and conditions of the policy.

14. The judgment in National Insurance Co. Ltd. v. Bhadravva, M.F.A. No. 10139 of 2006; dated 11.11.2011, would not be applicable to the case at hand since the respondent No. 1 has admitted not only in his pleadings, but also in the documentary evidence which has been produced by him that he was sitting on the tractor. Therefore, it was not necessary to further elicit in his cross-examination that he was sitting on the tractor. At this stage, it cannot be contended that he was not sitting on the tractor and that he fell down from the trailer. The W.C. Commissioner was, therefore, not right in fastening the liability on the insurance company in the face of the evidence being contrary. There is violation of regulation 28 of the Rules of the Road Regulations which states that ''a driver when driving a tractor shall not carry or allow any person to be carried on tractor''. Therefore, the W.C. Commissioner''s order requires interference as the substantial questions of law raised herein have to be answered in favour of the insurance company. The Commissioner was not justified in saddling the liability on the appellant as the respondent No. 1 was travelling on the tractor and his risk was not covered under the terms of the policy. In the result, the appeal is allowed. As far as the appellant insurance company is concerned, it is exonerated from its liability. The respondent No. 2 is liable to satisfy the order of the W.C. Commissioner.

The amount in deposit to be refunded to the appellant.

