

(2017) 03 KAR CK 0054
In the Karnataka High Court
Case No : MFA No. 5052 of 2011

Divisional Manager, M/s. National Insurance Co. Ltd.

APPELLANT

Vs

Shanthappa Bin Virappa Hanchi

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Employees Compensation Act, 1923 — Section 2(1)(n), Section 2(1)(n), Section 3
Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2017) AAC 1061

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Sri. E.R. Diwakar, Advocate, for the Appellant; Sri. B.M. Siddappa, Advocate, for the Respondent No. 1; Served Unrepresented, for the Respondent No. 2

Final Decision : Dismissed

Judgement

B. Manohar, J.—The National Insurance Company Limited has filed this appeal challenging the legality and correctness of the judgment and order dated 13-12-2010 passed in WC.No.234/2007 by the Labour Officer and Commissioner for Workmen Compensation, Davanagere District, Davanagere, (for short "Commissioner for Workmen Compensation") fastening liability on them to compensate the claimant.

2. The 1st respondent herein filed a claim petition inter alia contending that he was working as a Hamali in a tempo bearing Registration No.KA-27/6148 belonged to the 2nd respondent herein for last six months. On 7-1-2007, as per instructions of the owner of the vehicle, after loading cotton bales at Attikatte, the claimant was proceeding towards Ranebennur. At that time, the vehicle was stopped in the middle of the road due to heavy loading since the same was proceeding upgradient. The driver of the tempo requested the claimant and another hamali Rudresh to push the tempo from backside. While doing so, in view of sudden jerk of the tempo, the cotton bales loaded in the tempo fell on

the claimant. Due to that, he sustained grievous injuries all over the body. Immediately after the accident, he was shifted to Navodaya Hospital, Davanagere for treatment. Prior to the accident, the owner of the vehicle was paying him salary of Rs.4,000/- per month and bata of Rs.50/- per day. At the time of accident, he was aged about 34 years. In view of the injuries sustained and permanent disability, he cannot do the work as hamali. The police have registered a case in Crime No.1/2007 against the driver of the tempo. The accident occurred during the course and out of employment. Hence, both the owner as well as the Insurance Company of the offending tempo are liable to compensate the claimant.

3. In response to the notice issued by the Commissioner for Workmen Compensation, the owner of the tempo filed written statement admitting that the claimant was working as a hamali in the tempo and he was paying salary of Rs.4,000/- per month. Further, he had sustained injuries on 7-1-2007. Since the policy was in force as on the date of accident, the Insurance Company is liable to compensate the claimant.

4. The Insurance Company filed written statement denying the entire averments made in the claim petition and also disputed the relationship of master and servant between the owner of the tempo and the claimant. No document has been produced to show that the owner of the vehicle was paying salary to the claimant. In the complaint lodged before the jurisdictional police, the claimant himself admitted that one Siddaramaiah Aradhyamatha taken him for the purpose of loading the cotton bales. Hence, the claimant is an employee under the said Siddaramaiah Aradhyamatha. The policy issued was subject to fulfilment of certain conditions. The Insurance Company is not liable to compensate the claimant and sought for dismissal of the claim petition.

5. On the basis of pleadings of the parties, the Commissioner for Workmen Compensation framed necessary issues.

6. The claimant, in order to prove his case got examined himself as PW1 and also examined Siddaramaiah Aradhyamatha as PW2 as well as Dr. Nagabhushan as PW3 and got marked the documents as Ex.P1 to Ex.P10. On behalf of the Insurance Company, the Divisional Officer was examined as RW1 and the insurance policy was marked as Ex.R1.

7. The Commissioner for Workmen Compensation after appreciating the oral and documentary evidence let in by the parties taking into consideration the copy of the complaint, charge-sheet, and other relevant records held that the claimant had sustained injuries in the road traffic accident occurred on 7-1-2007. He had sustained injuries during the course and out of employment. Hence, he is entitled for compensation.

8. With regard to quantum of compensation is concerned, the Commissioner for Workmen Compensation taking into consideration the income of the claimant at Rs.3,000/- per month, taking 60% thereof and disability to an extent of 45% as

assessed by the doctor since the claimant had sustained fracture of shaft of tibia and fibula, applying the relevant factor 199.40, having regard to the age of the claimant awarded compensation of Rs.1,61,514.00 with interest at 12% p.a. Since the insurance policy was in force as on the date of accident, the liability was fastened on the Insurance Company to compensate the claimant. the Insurance Company being aggrieved by the judgment and order passed by the Commissioner for Workmen Compensation has filed this appeal.

9. Sri. E.R. Diwakar, learned Advocate appearing for the appellant - insurance company contended that the judgment and order passed by the Commissioner for Workmen Compensation is contrary to law. To claim compensation under the Employees Compensation Act, 1923 there must be relationship of master and servant between the owner of the tempo and the claimant, whereas no document was produced to substantiate that the claimant was an employee under the owner of the tempo. Further, the claimant himself stated in the complaint lodged before the jurisdictional police that one Siddaramaiah Aradhyamatha had taken him for the purpose of loading and unloading the cotton bales. Hence, the order passed by the Commissioner for Workmen Compensation holding that there is relationship of master and servant between the owner of the tempo and the claimant is contrary to law. Further, the quantum of compensation awarded taking into consideration the functional disability as assessed by the doctor to an extent of 45% is on the higher side. In support of his contentions, he relied upon the judgment of Hon''ble Supreme Court reported in (2014) 14 SCC 243 : (AIR 2013 SC 1125) in the case of Sanjeev Kumar Samrat v. National Insurance Company Limited and others and 2008 ACJ 953 : (2008 (1) AKR 212) in the case of United India Insurance Co. Ltd. v. Shivabasavva and others.

10. On the other hand, Sri Harishkumar learned Advocate appearing for Sri. B.M. Siddappa, learned Advocate for the 1st respondent argued in support of the judgment and order passed by the Commissioner for Workmen Compensation and contended that the claimant was working under the owner of tempo for last six months. Claimant is a resident of Attikatte village. One Siddaramaiah Aradhymatha called the claimant and other hamalies for the purpose of loading and unloading cotton bales at Ranebennur. After loading the cotton bales at Attikatte, they were proceeding towards Ranebennur. At that time the vehicle was stopped in the middle of the road due to heavy loading since the said vehicle was proceeding upgradient. The driver of the tempo requested the claimant and another hamali Rudresh to push the tempo from backside. While doing so, in view of sudden jerk of the tempo, the cotton bales loaded in the tempo fell on the claimant. Due to that, he sustained grievous injuries all over the body. The owner of the vehicle in the written statement has clearly admitted that the claimant was working as a hamali in his tempo and he was paying salary. The evidence led by the parties clearly disclose that the claimant was working as a hamali in the tempo in question. Further, the co-employee, Rudresh has also made a statement before the police that after loading the cotton bales at attikatte, they were proceeding towards Ranebennur and at that time, the cotton

bales fell on the claimant and he had sustained injuries. The Commissioner for Workmen Compensation taking into consideration the oral and documentary evidence held that the claimant is an employee under Section 2(1)(n) of the Employee's Compensation Act, 1923 and he had sustained injuries during the course and out of employment. There is no merit in the contentions raised by the appellant. The judgments relied upon by the learned Advocate appearing for the appellant are not applicable to the facts of this case and sought for dismissal of the appeal.

11. I have carefully considered the arguments addressed by the learned counsel appearing for the parties. Perused the oral and documentary evidence and the judgment and order passed by the Commissioner for Workmen Compensation.

12. The specific case of the claimant is that he was working as a hamali in the vehicle belonging to the 2nd respondent for last six months. He is a resident of Attikatte village. On 7-1-2007 at 5.30 a.m., Sri. Siddaramaiah Aradhyamath had called the claimant and another employee, Sri. Rudresh for the purpose of loading the cotton bales. After loading the cotton bales, they were proceeding towards Ranebennur. At that time, the vehicle was stopped in the middle of the road due to heavy loading of cotton bales since the vehicle was proceeding upgradient. The driver of the tempo requested the claimant and another hamali Rudresh to push the tempo from backside. While doing so, in view of sudden applying the clutch and due to jerk of the tempo, the cotton bales loaded in the tempo fell on the claimant. Due to that, he had sustained grievous injuries all over the body. Immediately after the accident, he was taken to the hospital at about 8.30 a.m. Thereafter, a complaint was lodged at about 12.15 p.m. The police have recorded his statement. Further, the records clearly disclose that the owner of the vehicle filed written statement and admitted that the claimant was working as a hamali in the said tempo and he was paying salary of Rs.4,000/- per month. Further, the owner of the cotton bales examined as PW2 in his evidence also clearly admitted that the claimant was working as a Hamal in the said tempo. The Insurance Company contended that the claimant himself made a statement before the jurisdictional police stating that on 7-1-2007 the owner of the vehicle Sri Siddaramaiah Aradhyamath had called the claimant and Sri Rudresh for the purpose of loading the cotton bales in the tempo. Hence, the claimant is not an employee in the tempo and he is an employee under the said Sri Siddaramaiah Aradhyamath. But the said contention cannot be accepted. Since the claimant was a resident of attikatte village and working as a hamali in the tempo, the said Sri Siddaramaiah Aradhyamath called the claimant for loading the cotton bales on 7-1-2007 at 5.30 a.m., that itself shows that the claimant was working as hamali in the said goods tempo. The claimant has specifically pleaded that he was working as a hamali in the tempo for the last six months. The owner of the tempo had also admitted that the claimant was working in the tempo and he was paying salary of Rs.4,000/- per month. All these materials clearly disclose that the claimant was working as a hamali in the tempo belonged to the 2nd respondent herein and he was not the employee

under Sri. Siddaramaiah Aradhymath. The loading of cotton bales has to be made in the early morning at 5.30 a.m. Sri Siddaramaiah Aradhymath called the claimant and one Sri Rudresh for the purpose of loading the cotton bales in the early morning itself. The said statement will not be a conclusive proof that the claimant is the employee of Sri Siddaramaiah Aradhymath. The Commissioner for Workmen Compensation after appreciating the oral and documentary evidence held that there is relationship of master and servant between the owner of the vehicle and the claimant. The claimant falls under Section 2(1)(n) of the Employee's Compensation Act and he is entitled for compensation. Hence, I find that there is no infirmity or irregularity in the findings of the Commissioner for Workmen Compensation, The judgment relied upon by the learned Advocate appearing for the appellant in Sanjeev Kumar Samrat's case (AIR 2013 SC 1125) (supra) is not applicable to the facts of this case, The Hon'ble Supreme Court in that judgment has clearly laid down a law that statutory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage and it does not cover any other kind of employee and employee engaged by hirer of the vehicle is not the employee of insurer.

13. With regard to quantum of compensation is concerned, in the accident the claimant has sustained fracture of 3rd shaft of tibia and fibula of the right leg. He was treated by way of closed reduction under general anesthesia on 7-1-2007 and later POP cast was applied. He was out of employment for a period of three months. In view of mal-union of fractured portion, the doctor assessed the loss of earning capacity to an extent of 45%. The claimant is a hamali by profession. In view of fracture of tibia and fibula, he cannot carry weight on his head. Though the claimant claimed that he was earning Rs.4,000/- per month and bata of Rs.50/- per day, no document was produced to substantiate the same. In view of that, the Commissioner for Workmen Compensation has taken the income of the claimant as Rs.3,000/- per month, taking 60% thereof and loss of earning capacity to an extent of 45% as assessed by the doctor and applying the relevant factor 199.40 awarded compensation of Rs.1,61,514/-. The compensation awarded is just and fair compensation. A hamali working in a tempo statutorily covers under Section 147(1) of the Motor Vehicles Act read with Rules 100 of Motor Vehicle Rules. Hence, the Insurance Company is liable to compensate the claimant. In view of the said findings, I find that there is no infirmity or irregularity in the judgment and order passed by the Commissioner for Workmen Compensation. The appellant has not made out a case to interfere with the judgment and order. Accordingly, I pass the following:

ORDER

14. Appeal is dismissed.

15. The amount in deposit is ordered to be transferred to the Civil Judge (Sr.Dn.), Davanagere for disbursement.