

(2016) 03 KAR CK 0116
In the Karnataka High Court
Case No : MFA No. 22785 of 2011 (WC)

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Neelakantappa and others	RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 4

Citation : (2016) AAC 1397

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Sri Ravindra R. Mane, Advocate, for the Appellant; Sri Madanmohan M. Kannur, Advocate, Minors, R/By M/G, Decd, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—The New India Assurance Company Limited has filed this appeal, challenging the judgment and order dated 2-12-2009 made in WCA/F-84/2007 passed by the Labour Officer and Commissioner for Workmen's Compensation, Haveri (hereinafter referred to as "the WCC" for short) fastening the liability on them to compensate the claimants.

2. The claimants are the father, mother, wife and children of deceased Prabhakar. They filed a civil petition contending that the deceased Prabhakar was working as a cleaner in the tipper lorry bearing registration No. KA-29/3930 belonging to the 4th respondent herein. As per the instructions of the owner of the vehicle on 22-4-2006, after unloading Appeal partly allowed. 2016 AAC 1397 (KAR) the dambar drums on Hamsabhavi-Chikkerur Road, the vehicle met with an accident, due to the rash and negligent driving of the said lorry by its driver. As a result of which, the deceased fell down and sustained grievous injuries and subsequently, succumbed to the same. The claimants claim that at the time of death, the deceased was aged about 30 years and getting salary Rs. 200/- per day and bata of Rs. 50/- per day. The claimants are the dependents of the deceased and the family has lost the bread earner. The accident occurred during the course and out

of employment. As on the date of accident, the insurance policy was in existence and hence sought for compensation of Rs. 10,00,000/-.

3. In pursuance of the notice issued by the WCC, owner of the vehicle admitted that the deceased was working as a cleaner in the lorry belonging to him. The deceased died due to the road traffic accident occurred on 22-4-2006. Insurance policy covers the risk of the vehicle as on the date of the accident. Hence, sought for dismissal of the claim petition as against him.

4. The second respondent-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 claimant and owner of the vehicle and contended that the driver of the tipper did not possess the valid and effective driving license. In order to claim compensation, the claim petition has been filed and sought for dismissal of the same.

5. On the basis of the pleadings of the parties, the/WCC framed necessary issues. The third claimant examined herself as P.W.1 and got marked the documents as Ex. P.1 to Ex P4. Sri. S. Shivaprakash, in official of the Insurance Company was examined as R.W.1 and insurance policy of the vehicle was marked as Ex.R1.

6. The WCC after appreciating the oral and documentary evidence let in by the parties and taking into consideration the documents produced by the parties held that due to rash and negligent driving of the tipper lorry, Prabhakar who was working as a cleaner in the tipper died in the road traffic accident. The accident occurred during the course and out of employment. The claimants are the dependents of the deceased and they are entitled for compensation. Though the claimants claim that the deceased was getting salary of Rs. 200/- per day and bata of Rs. 50/- no document has been produced to substantiate the same. The WCC taking into consideration minimum wages being paid to the cleaners during the relevant period, had taken the income of the deceased as Rs. 3,500/- p.m., taking 50% thereof, as per the post-mortem report taking the age of deceased as 35 years applying the relevant factor 197.06 awarded a sum of Rs. 3,44,855/- with interest at the rate of 12% p.a. from one month after the accident. Since the vehicle is covered by insurance policy and driver of the offending vehicle was having valid and effective driving license, the liability was fastened on the Insurance Company to compensate the claimants. Being aggrieved by the said judgment and order passed by the WCC, the appellant-Insurance Company filed this appeal.

7. The only two contentions urged by the appellant in this appeal is that quantum of compensation and the income of the deceased taken by the WCC at Rs. 3,500/- p.m. which according to the learned counsel for the appellant is contrary to law. Further the interest awarded at the rate of 12% p.a. from one month after the accident is also contrary to the judgment of this court and sought for setting aside the judgment and order passed by the WCC.

8. Sri Madanmohan M. Kannur, learned counsel appearing for the respondents 2 and 3 argued in support of the judgment and order.

9. The only point that arise for consideration in this appeal is whether the quantum of compensation awarded by the WCC taking into consideration income as Rs. 3,500/- p.m., and also awarding 12% p.a., interest from one month after the accident is in accordance with law?

10. So far as the payment of interest is concerned, the issue is no more resintegra in view of the judgment of the Hon''ble Supreme Court in the case of Oriental Insurance Company Limited v. Siby George and others reported in AIR 2012 SC 3144 the Hon''ble Supreme Court clearly held that claimant is entitled to interest at 12% p.a., from one month after the accident.

11. With regard to quantum of compensation is concerned, admittedly the accident occurred in the year 2006, the cleaners in the transport department were being paid the minimum wages of Rs. 3,500/- p.m. during the relevant period. Hence, WCC has taken the minimum wages of Rs. 3,500/- p.m., and awarded compensation in terms of the provisions of the Employees Compensation Act. I find no infirmity or irregularity in the said finding off the WCC. The judgment and order passed by the WCC is in accordance with law. The appellant has not made out a case to interfere with the same. Accordingly, the appeal is dismissed.

12. The amount in deposit is directed to be transferred to the Civil Judge (Sr. Dn.), Haveri for disbursement.