

(2016) 02 KAR CK 0212
In the Karnataka High Court
Case No : M.F.A. No. 30892 of 2010 (WC).

Divisional Manager, New India Assurance Co. Ltd., Gulbarga	APPELLANT
Vs	
Harle Bhimsha Siddaram and another	RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2016) AAC 1038

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Sanjay M. Joshi, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

B. Manohar, J. - The New India Assurance Company Ltd., being aggrieved by the judgment and order dated 2-2-2010 passed in WCA/CR. No.50/2007 by the Labour Officer and Commissioner for Workmen's Compensation (hereinafter referred to as 'WCC') has filed this appeal.

2. There is delay of 45 days in filing the appeal. Though the respondent No. 1 is served with notice, he remained unrepresented. The appeal was dismissed as against respondent No. 2. The only issue is with regard to the quantum of compensation is concerned.

3. Heard, the advocate appearing for the appellant and perused the judgment and order passed by the WCC.

4. The first respondent herein filed a claim petition contending that, he was working as a hamali in a Tractor and Trailer bearing registration No. KA-32/T-3046-3047 belonging to second respondent herein. On 2-2-2007, as per instructions of owner of the vehicle, after loading toordal, he was proceeding on the said Tractor and Trailer for the purpose of un-loading the toordal towards Gulbarga Gunj. Due to rash and negligent driving of the Tractor and Trailer by its driver, the vehicle was turned turtle, due to the impact, the claimant who was

working as a hamali in the said Tractor and Trailer sustained grievous injuries. He had taken treatment in Ashwini Hospital, Solapur from 3-2-2007 to 14-2-2007. In the accident, he has sustained fracture of Skull bone, injury to the scalp, lower limb of the body. CT Scan report revealed that Scalp haematoma and fracture of skull and his X-ray shows that right hand revealed fracture of 1st metacarpal bone. The doctor assessed the disability to an extent of 35% to the whole body. Though the claimant claim that the owner of the Tractor and Trailer was paying salary of Rs. 4,000/- per month. No document has been produced in this regard. The WCC, taking into consideration income of Rs. 3,000/- per month and deducting 60% thereof, at the time of accident the claimant is aged about 40 years, taking into consideration the relevant factor of 184.17 and disability to an extent of 35% awarded a sum of Rs. 1,16,027/- with interest at 12% p.a.

5. Though the appellant insurance company has contended that the insurance policy is miscellaneous policy, it will not cover the risk of hamali, in view of the judgment reported in ILR 2011 Kar 4139 : (2011 AAC 1142 (Kar) in the case of National Insurance Company Limited v. Maruthi and others, the Tractor and Trailer put together becomes goods vehicle. The hamali and cleaner working under the Tractor and Trailer are statutorily covered by the insurance policy. Hence, insurance company cannot deny the liability. Taking into consideration all these aspects of the matter, the WCC has awarded the compensation.

6. I find that there is no infirmity or illegality in the quantum of compensation awarded by WCC. Apart from that, this appeal was already dismissed against the owner of the vehicle, the question of liability cannot be examined. Accordingly, I pass the following;

ORDER

1. The appeal is dismissed.
2. The amount in deposit be transferred to the Civil Judge Senior Division, Gulbarga.
3. In view of the dismissal of the appeal, I. A. No. 1/2010 and I. A. No. 2/2010 do not survive for consideration and both are accordingly rejected.