

(2010) 09 KAR CK 0087
In the Karnataka High Court
Case No : M.F.A. No. 8247 of 2006

Divisional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Kumar Sheety and B.S. Subramanyam

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Citation : (2010) 09 KAR CK 0087

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : A.M. Venkatesh, for Kanaka, for the Appellant; B.S. Manjunath, for R1, for the Respondent

Judgement

A.S. Bopanna, J.—The Appellant-Insurance Company has called in question the common award dated 15.05.2606 passed in Case No. WCA 100 & 101/2005-06. Since these appeals arise out of the common award, the same are considered together and disposed of by this common judgment.

2. Heard the learned Counsel for the parties and perused the appeal papers.

3. Learned Counsel for the Appellant-Insurance Company while assailing the award would contend that the Commissioner was not justified in reckoning the loss of earning capacity at the rate at which it has been done. It is contended that the very nature of injuries to the claimants would indicate that they continued to work in the same position and at best there could be some discomfort in carrying out their avocation and in any event, the same cannot be considered as loss of earning capacity to the extent stated by the Commissioner. In fact, the Commissioner without assessing the loss of earning capacity, based on the disability stated by the doctor, has reckoned the very disability stated for the purpose of conclusion. Hence, it is contended that the impugned award calls for interference and compensation has to be reduced.

4. Learned Counsel for the claimants, however, seeks to justify the award passed by the Commissioner. It is contended that the Commissioner while considering

this aspect of the matter has made detailed reference to the evidence tendered by the doctor. The doctor after noticing the nature of injuries has stated the disability, the Commissioner, in fact, has noticed the disability as stated by the doctor and has thereafter come to the conclusion that the loss of earning capacity would be to the extent of the disability stated, considering the nature of avocation of the claimant. Hence, it is contended that the award does not call for interference.

5. In the light of what has been contended, a perusal of the award passed by the Commissioner in the background of the records received from the office of the Commissioner for Workmen's Compensation, would indicate that the Commissioner has considered this aspect while answering issue Nos. 1 & 2 which had been raised for consideration. The claimant Sri Prakash contended that he was working as driver and he had suffered injuries to his right hand in the accident which occurred on 04.07.2005. The second claimant Sri Kumar contended that he was working as Cleaner and had sustained injuries to his right shoulder in the said accident. In respect of the injuries and the treatment, the claimants had examined the doctor before the Commissioner. The doctor has stated that the claimant-driver had suffered fracture to his metacarpal bone of the right hand. In so far as the claimant Sri Kumar, it was stated that he had suffered fracture to the right clavicle. In that regard, the doctor no doubt has referred to the medical evidence and has thereafter stated the disability. The disability as stated by the doctor would indicate the same would have to be taken as the disability to the limb since it has not been stated with specific reference to the whole body and thereby the loss of earning capacity which would be caused. In the said background, further the Commissioner has not made a detailed discussion as to how the said disability would result in the loss of earning capacity to the extent as taken by the Commissioner. However, considering the nature of disability stated by the doctor, it appears that the Commissioner has reckoned the very same disability to be the loss of earning capacity which cannot be sustained.

6. In an appropriate case, it would have been proper to direct the Commissioner to re-assess the loss of earning capacity after reconsidering the matter. However, considering the fact that there could be no dispute with regard to the nature of injuries and the avocation of the claimants and also considering the fact that there is no satisfactory material to indicate that the claimants have stopped working in that capacity or to the extent of loss of earning capacity claimed by them, the appropriate compensation that the claimants would have fetched for the said injuries even if the normal grant of compensation by keeping the yardstick as adopted in the case of compensation under the Motor Vehicles Act will have to be kept in view so as to arrive at appropriate loss of earning capacity.

7. If this aspect is kept in view, considering the fact that the claimant Sri Prakash was working as driver and had suffered fracture to the right metacarpal bone and even though he had recovered from the same, It would cause some discomfort

to refrain from working on certain days and as such keeping this aspect, the appropriate loss of earning capacity could be reckoned at 15%. In the case of Sri Kumar, who was working as a Cleaner, considering that he had suffered injuries to his shoulder and the same would also result in some discomfort in carrying on his work as a Cleaner, the appropriate loss of earning capacity could be reckoned at 20%. Keeping the other parameters with regard to the wages and the relevant factor intact as reckoned by the Commissioner, if the compensation is re-calculated, the claimant Sri Prakash would be entitled to Rs. 64,212/- instead of the compensation which has been awarded by the Commissioner. In so far as the claimant Sri Kumar is concerned, he would be entitled to a sum of Rs. 77,500/- instead of the compensation which has been awarded by the Commissioner. Hence the compensation stands reduced to the said extent.

8. The claimants would be entitled to interest on the said amount at 7% from the date of filing the petition before the Commissioner till the date of award and at 12% thereafter. The reduced compensation with the modified interest shall be calculated and paid to the claimants by the Registry and the excess amount shall be refunded to the Appellant.

9. In terms of the above, both the appeals stand disposed of with no order as to costs.