

(2016) 03 KAR CK 0284

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3341/2007 (WC)

Divisional Manager, The New India Assurance Co. Ltd.

APPELLANT

Vs

Thimmanna and Others

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 2(1)(n)

Citation : (2016) AAC 1749 : (2016) 3 AirKarR 152

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Ravindra R. Mane, Advocate, for the Appellant; S.G. Kadadakatti and Lingesh V. Kattimani, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—1. The Insurance Company being aggrieved by the judgment and order dated 16.12.2006 made in WCA/SR/19/2006 on the file of the Commissioner for Workmen Compensation, Sub-Division-2, Belgaum, (hereinafter referred to as "WCC") filed this appeal.

2. The first respondent herein filed claim petition contending that he was working as a Cleaner in lorry bearing No. KA-22-B-6161 belonging to the second respondent herein. On 14.05.2015 as per the instructions of the owner of the vehicle after loading cattle feed at Goregaon, Mumbai proceeding near Khopari village, tire of the vehicle was punctured. Driver had parked the vehicle by the side of the road and cleaner climbed the cabin in order to take additional tire. At that time a tractor bearing No. MH06/K-5358 driven by its driver in a rash and negligent manner dashed against the parked lorry, due to which, the cleaner fell down from the cabin and sustained fracture of L. Vertebra Spine. He took treatment at Gandhi Hospital, Panvel. The accident occurred during the course and out of employment. The insurance policy covers the risk of the cleaner and hence sought for compensation.

3. The owner/driver of the vehicle was served with the notice. In the written statement he contended that the claimant is not working as a Cleaner in the said lorry, however, one Mirji was working as Cleaner. The second respondent-Insurance Company in the written statement denied the entire averments and also contended that there is no relationship of master and servant between the claimant and the owner of the vehicle. Hence, sought for dismissal of the claim petition.

4. The WCC on the pleadings of the parties framed necessary issues. The claimant in order to prove his examined as P.W. 1 and got marked documents as per Ex. P.1 to Ex. P.9. The Doctor who issued the disability certificate as per P.W.2. On behalf of the Insurance Company, none of the witnesses have been examined. However, the insurance policy was got marked as Ex. R.1.

5. The WCC on appreciating the oral and documentary evidence let in by the parties and taking into consideration the spot panchanama, IMV report, copy of the complaint and charge sheet held that claimant has sustained injury in the road traffic accident on 14.05.2015 during the course and out of employment. Hence, the claimant falls within the definition of Section 2(1)(n) of the Employees' Compensation Act. Hence, the claimant is entitled for compensation.

6. With regard to the quantum of compensation is concerned, in the accident the claimant sustained compressed fracture of L. Vertebra Spine. He took treatment in Gandhi Hospital, Panvel. The Doctor who issued the disability certificate has assessed the disability to an extent of 40% after taking into consideration the injuries and suffering undergone. The Tribunal assessed income of the claimant at Rs. 2,500/- per month, functional disability at 55%, the claimant was aged 25 years at the time of accident and hence applied the relevant factor 216.91 and awarded a compensation of Rs. 1,78,950/- with 12% interest. The Insurance Company being aggrieved by the quantum of compensation and fastening liability to compensate the claimant, filed this appeal.

7. Sri R.R. Mane, learned Advocate for the appellant contended that no documents are produced to show that as on the date of accident the claimant was working as cleaner in the said lorry. The owner of the lorry contended that one Mirji was working as cleaner as on the date of the accident and not the claimant. Hence, there is no relationship of master and servant between the claimant and owner of the vehicle. Though the Doctor has assessed disability to the whole body to an extent of 40% but the Commissioner without any reason assessed the disability at 55% and awarded compensation, which is contrary to law.

8. On the other hand, Sri S.G. Kadadakatti, learned counsel appearing for the claimant argued in support of the order passed by the WCC and contended that the owner/driver of the vehicle had lodged complaint before the jurisdictional Police wherein he has clearly stated that Timmanna Mirji is working as cleaner in the said lorry, however, in order to deny the compensation to the claimant, he

contended in the written statement that the claimant was not working as cleaner in the lorry. In support of his contention, the so called cleaner has not been examined by the owner of the vehicle. The petitioner was called as Timmanna Chippalakatti @ Mirji. In order to call him in nick name, he was called as Mirji. Further, taking into consideration the functional disability sustained by the claimant, the Commissioner awarded compensation. Hence, sought for dismissal of the appeal.

9. I have carefully considered the arguments of the Advocates appearing for the parties and perused the impugned judgment and order and also oral and documentary evidence. The records clearly disclose that, he had sustained injuries in the road traffic accident occurred on 14.05.2005. The claimant is the resident of Ramadurga of Belagavi District. He was working as Cleaner in the said lorry. The fact remains that, if the claimant was not working as cleaner in the lorry, then how he sustained injuries is not explained. In the complaint lodged before the jurisdictional Police, the driver/owner himself admitted that Timmanna Mirji is working as Cleaner in the lorry and sustained injuries. The Police records clearly disclose that the tire of the lorry in which the claimant was working as cleaner was punctured. The vehicle was parked by the side of the road in order to remove the spare tire from the cabin and while the claimant climbed the cabin and removing the tire the offending vehicle dashed the lorry. In view of the same, he fell down from the cabin and sustained injuries. The said fact is not disputed by the owner cum driver of the lorry. In addition to the above, the owner of the vehicle though disputed that claimant is not the employee as on the date of the accident, but he has not examined the so called Mirji who was working as cleaner as on that day, as per his version.

10. The claimant has taken treatment at Gandhi Hospital, Panvel for the injuries sustained in the accident. Records produced by the claimant clearly disclose the said fact.

11. With regard to quantum of compensation is concerned, the claimant has sustained fracture of L. Vertebra Spine. He had taken treatment at Gandhi Hospital, Panvel. The Doctor who assessed the disability taking into consideration the injuries sustained and suffering undergone, assessed the disability to the whole body at 40%. U/S 4(1)(c) of the Employees' Compensation Act, the competent Doctor has to assess the disability of the claimant. If the WCC is not agreeable with the said assessment, he has to refer the matter to the some other Doctor to get report. In the instant case, though the Doctor assessed disability to an extent of 40% the WCC taken it at 55% which is contrary to law. The Commissioner is not an expert to assess the disability and hence the assessment arrived at by the Commissioner at 55% cannot be sustained. Hence, it is appropriate to take into the functional disability to an extent of 40%. Hence, the claimant is entitled for compensation of Rs. 1,30,146/- as against Rs. 1,78,950/- awarded by the WCC.

12. With regard to the interest is concerned, as per the judgment of the

Supreme Court, reported in , 2012 ACJ 2126 (Oriental Insurance Co. Ltd., v. Siby George & Ors.), the claimant is entitled for interest at the rate of 12% p.a. from one month after the date of accident. Hence, in the instant case also, the interest is awarded as per the ratio laid down by the Supreme Court. In view of the same, the following order is passed.

ORDER

Appeal is allowed in part. Judgment and order passed by the WCC is modified. The claimant is entitled for compensation of Rs. 1,30,146/- with 12% interest from one month after the accident.

Amount in deposit be transferred to the WCC for disbursement.