(2017) 03 KAR CK 0037

In the Karnataka High Court

Case No : M.F.A. No. 10695 of 2011 (WC)

Gangegiri Estate APPELLANT

Vs

K. Jayarama RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Workmens Compensation Act, 1923 — Section 4(1)(c)(ii)

Citation : (2017) 2 LLN 210

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : P.D. Vishwanath, Advocate, for the Appellant; Venkate Gowda, Advocate, for the Respondent No. 1; Sri C Vrushabhendraiah, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

B. Manohar, J.—M/s. Gangegiri Estate by its Manager has filed this Appeal challenging the Judgment and Order dated 26.8.2011 made in WCA/NF-19 of 2007 by the Labour Officer and Commissioner for Workmen''s Compensation, Sub-Division-1. Chikmagalur (for short Commissioner for Workmen''s Compensation'') fastening the part of liability on them.

2. The 1st Respondent here in filed a Claim Petition inter alia contending that he was working as a Coolie under the Appellant herein. On 24.5.2007, as per instructions of the Owner of the Estate, while doing shade lopping, he fell-down from the tree at the height of 30 feet and had sustained grievous injuries. Immediately after the accident, he took treatment in the Hospital. In the said accident, he had sustained fracture of right femur and other injuries to the body. He was aged about 35 years and getting salary of Rs. 4,500 per month. He claimed that the accident had occurred during the course and out of employment. In view of the injuries sustained, he is permanently disabled to do any work. Hence, sought for Compensation from the Owner of estate as well as Insurance Company.

3. In response to the Notice issued by the Commissioner for Workmen''s Compensation, the Owner of Estate entered appearance and filed Written dement admitting that the injured person was working as a Coolie in the estate. On 24.5.2007, while doing shade lopping, he fell-down from the tree and had sustained grievous injuries. He was paying him salary of Rs.79.30 per day As on the date of accident, the Insurance Policy covers the risk of an employee. Hence, the Insurance Company is liable to compensate the Claimant and sought for dismissal of the Claim Petition as against him.

4. The Insurance Company filed Written Statement denying the entire averments made in the Claim Petition and also contended that Policy was in force as on the date of accident. However, liability of Insurance Company was subject to terms and conditions of the Policy. No document has been produced to show that the Claimant was getting Salary of Rs.4.500/- per month.Hence, sought for dismissal of the Claim Petition.

5. On the basis of pleadings of the parties, the Commissioner for workmen''s Compensation framed necessary issues.

6. The claimant in Order to prove his case got examined himself as PW1 and also examined the doctor as PW2 and got marked the documents as Exs.P1 to P6. On behalf of the Insurance Company, the Branch Manager was examined as RW1 and got marked the documents as Exs.R1 to R3.

7. The Commissioner for Workmen''s Compensation after appreciating the oral and documentary evidence let in by the parties, taking into consideration the copy of Complaint, Charge-sheet and Disability Certificate issued by the Doctor held that the Claimant 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 though the Claimant claimed that he was getting salary of Rs.4,500/- per month, no document was produced to substantiate the same. The Owner of Estate has not supported the case of Claimant. In view of that the Commissioner for Workmen Compensation taking into consideration the Minimum Wages being paid to the Claimant, taking the income of Rs.2,091.70 per month i.e. Rs.80.45 per day and taking 60% thereof and applying the relevant factor 197.06 considering the age of the Claimant as 35 years at the time of accident, though the Doctor, who treated the Claimant, assessed the Disability to an extent of 40% to the lower limb and taking the Loss of earing Capacity to an extent of 50%, awarded a sum of Rs. 123,657/- with Interest at 12% p.a. from 25.5.2007. Since there was coverage of Insurance Policy to an extent of Rs.746.26 per month, liability was fastened on the Insurance Company to compensate the Claimant to an extent of Rs.44.117 and the liability to pay the remaining amount with Interest was fastened on the Owner of the Estate. Being aggrieved by the Judgment and Order passed by the Commissioner for Workmen Compensation, the Owner of Estate has Hied this Appeal contending that the Judgment and Order passed by the Commissioner for

Workmen Compensation is contrary to law.

9. Sri P.D. Vishwanath, learned Advocate appearing for the Appellant-Owner of Estate contended that the Judgment and Order passed by the Commissioner for Workmen''s Compensation fastening the liability on the Appellant to pay the part of the Compensation with Interest is contrary to law. The Doctor, who treated the Claimant has assessed the Disability to an extent of 40% to the particular limb. In the cross-examination, he stated that there is Disability to an extent of 30% to whole body, whereas while awarding the Compensation, the Disability to an extent of 50% was taken by the : Commissioner for Compensation is contrary to law. Under Section 4(1)(c)(ii) of the Employees'' Compensation Act, 1923, once qualified Medical Practitioner assesses the Loss of Earning Capacity to a person, the Commissioner for Workmen''s Compensation cannot go beyond the assessment of Disability made by the Doctor. If any party disputes the assessment of Disability made by the Doctor, the Commissioner for Workmen''s Compensation may refer the assessment of Disability to another Medical Practitioner for reassessment. Hence, the assessment of Disability made by the Commissioner is contrary to law. Further, the liability with regard to interest fastened on the Owner of Estate is contrary to law. Hence, the Insurance Company has to compensate the Claimant and sought for modifying the Judgment and Order passed by the Commissioner for Workmen''s Compensation.

10. On the other hand, Sri H.C. Vrushabhendraiah, learned Advocate appearing for the 2nd Respondent - Insurance Company argued in support of the Judgment and Order and contended that the liability fastened on the Insurance Company is only to an extent of Agreement entered between the Insurance Company and the Owner of Estate i.e. Rs.746.26 per month. It is only Contractual Policy. The Compensation awarded by the Commissioner for Workmen''s Compensation taking into consideration the said income is just and fair Compensation. Insofar as the interest portion is concerned, the subject matter is covered by a Judgment of the Hon''ble Supreme Court reported in 2004 ACJ 452 in the P.J. Narayan v. Union of India and others. Hence, the liability is on the Owner of Estate to compensate the Claimant and sought for dismissal of the Appeal.

11. Sri K. Venkate Gowda, learned Advocate appearing for the 1st Respondent argued in support of the Judgment and Order and contended that in pursuance of the Order passed by the Commissioner for Workmen Compensation, the Owner of estate deposited the entire Compensation amount. Hence, the Appeal has become infructuous. In view of the injuries, the Claimant has left the job and his whereabouts is not known. Further, in elaborating his contentions, learned Advocate contended that the Claimant was working as a Coolie under the Appellant. The Claimant while discharging the duty fell-down from the height of 30 feet during the course and out of employment and sustained fracture of femur and other injuries to the body. The Owner of Estate has not disputed the status of Claimant. As provided under the Employees'' Compensation Act, he is entitled for Compensation. The Compensation awarded by the Commissioner for

Workmen Compensation is just and fair Compensation and sought for dismissal of the Appeal.

12. I have carefully considered the arguments addressed by the learned Counsel appearing for the parties and perused oral and documentary evidence and the Order passed by the Commissioner for Workmen''s Compensation.

13. The Substantial Question of Law to be decided in this Appeal is only with regard to quantum of Compensation and Interest awarded by the Commissioner of Workmen Compensation.

14. The records produced by the parties clearly disclose that when the Claimant was working as a Coolie in the Estate, he fell down and sustained grievous injuries during the course and out of employment. The Commissioner for Workmen Compensation has taken into consideration the Minimum Wage being paid to a Coolie working in an Estate reckoned the income as Rs.2,091.70 per month. The Doctor, who treated the Claimant assessed the Disability as required under Section 4(1)(c)(ii) of the Act stating that Loss of Earning Capacity suffered by the Claimant is to an extent of 40%. The Doctor while clinically examining the Claimant held that the Claimant has sustained fracture of shaft right femur. The internal fixation has been made by using OR & IF nailing. In view'' of surgery of femur, he finds it difficult to walk without walker or walking stick and cannot do the work. After two years of the accident, the X-ray was taken and it shows mal-union of fracture of right femur. Taking into consideration the Clinical and Radiological finding, the Doctor assessed the loss of earning capacity to an extent of 40%. However, in the cross-examination, the Doctor stated the disability suffered by the Claimant to an extent of 30% to the whole body. The Doctor has assessed the Loss of Earning Capacity of the Claimant under the Employees'' Compensation Act. Hence, the assessment of Disability made by the Commissioner for Workmen''s Compensation is contrary to law. The Commissioner for Workmen''s Compensation ought to have taken into consideration the Loss of Earning Capacity to an extent of 50% and awarded Compensation. In view of the Judgment of this Court reported in Shivalinga Shivanagowda Patil and others v. Erappa Basappa Bhavihala and others, ILR 2004 Kar. 193, the Full Bench of this Court examined Section 4(1)(c)(i) of the Act and held in Para 25 as under:

"(i) The Commissioner under the Workmen Compensation Act cannot assess the Loss of Earning Capacity without the assistance of the assessment made by qualified Medical Practitioner regarding loss of assessment or in disregard of the assessment of a qualified Medical practitioner. But, if the assessment made by the qualified Medical Practitioner is disputed by any one of the parties, the Commissioner is competent to sit in Judgment over the assessment of the qualified Medical Practitioner and pronounce upon the same if material by way of assessment of another qualified Medical Practitioner is placed and he is accepting the said assessment having regard to the nature and extent of the disablement and the Loss of Earning Capacity, he can disregard the earlier assessment of the

Medical practitioner disputed by the parties."

Hence, in view of law laid down by the Full Bench of this Court, the Judgment and Order passed by the Commissioner for Workme Compensation taking the Loss of Earning Capacity to an extent of 50% requires to be modified.

15. Insofar as the interest portion is concerned, the Hon''ble Supreme Court in a Judgment reported in P.J. Narayan v. Union of India and others, 2004 ACJ 452 , held as under:

"1. This Writ Petition is for the purpose of directing Insurance Company to delete the Clause in the Insurance Policy which provides that in case of Compensation under (he Workmen Compensation Act, 1923, the Insurance Company will not be liable to pay Interest. We see no substance in the Writ Petition. There is no Statutory liability on the Insurance Company. The Statutory liability under the Workmen Compensation Act is on the Employer. An insurance is a matter of Contract between the Insurance Company and the insured. It is always open to the Insurance Company to refuse to insure. Similarly they are entitled to provide by Contract that they will not take on liability for Interest. In the absence of any Statute to that effect, Insurance Company cannot be forced by Courts to take on liabilities which they do not want to take on. The Writ Petition is dismissed. No order as to Costs."

In view of law laid down by the Hon''ble Supreme Court, Employer is liable to pay Interest.

16. Insofar as rate of Interest is concerned, as per the Judgment reported in Oriental Insurance Company Ltd. v. Siby George and others, 2012 (12) SCC 540, the Hon''ble Supreme Court laid down the law that the Claimant is entitled for interest at the rate of 12% from one month after the accident. In the instant case, awarding the Interest from the date of accident is contrary to law. Taking into consideration the income of Claimant as Rs.2,091.70 per month taking 60% thereof, applying the relevant factor 197.06 and taking into consideration the Loss of Earning Capacity to an extent of 40%, the Claimant is entitled for Compensation of Rs.98,927" (2091.70 x 60 x 197.06 x 40/100). Out of the said amount, liability of the Insurance Company is to an extent of Rs. 44,117 and the remaining amount of Rs.54,810 has to be compensated by the Owner of Estate with Interest at 12% p.a. on entire amount of Compensation from one month after the accident till the amount is deposited.

17. Accordingly, pass the following:

ORDER

1. Appeal is allowed in part. The Judgment and Order dated 26.8.2011 passed in WCA/NF-19 of 2007 on the file of the Labour Officer and Commissioner for Workmen''s Compensation, Sub-Division-I, Chikmagalur, is modified. The Claimant is entitled for Compensation of Rs. 98,927 with Interest at 12% p.a. from one after the accident till deposit of the said amount. The liability of the

Insurance Company is Rs.44,117. The remaining amount with Interest is to be paid by the Appellant.

2. The excess amount, if any, is ordered to be refunded to the Appellant.