

(2010) 09 KAR CK 0081
In the Karnataka High Court
Case No : MFA No. 5074 of 2006

H. Javaregowda

APPELLANT

Vs

S.D. Devegowda and The Manager, Royal Sundarams Alliance
Insurance Company Ltd.

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 2 (n)

Citation : (2010) 09 KAR CK 0081

Hon'ble Judges : K.L. Manjunath, J;B. Manohar, J

Bench : Division Bench

Advocate : K.S. Narayanaswamy, for the Appellant; R. 1 is dispensed, for the Respondent

Judgement

B. Manohar, J.—Appellant is the claimant being aggrieved by the award dated 9-12-2005 passed in WCA/NFC/CR-126/2004 by the Commissioner for Workmen's Compensation. Mysore filed this appeal seeking for enhancement of compensation.

2. The brief facts of the case are as follows:

The claimant was working as a loader and un-loader of a Tractor-Trailer bearing registration No. KA-11/T-3953 and T-3954 belonging to the first Respondent. The first Respondent was paying a salary of Rs. 5,000/- p.m. On 17-4-2004 while carrying a load of hay from Somanahalli to Mirle village. Due to the rash and negligent driving of the said tractor-trailer by its driver, the vehicle met with an accident and the claimant sustained serious injuries and he was admitted to K.R. Hospital, Mysore for the treatment. Due to the accident, the claimant has suffered fracture of clavicle bone of right hand and fracture of metacarpal bones. The accident occurred during the course of employment and sought for compensation before the Commissioner for Workmen's Compensation.

3. In pursuance to the notice issued by the Commissioner for Workmen's

Compensation, the owner of the tractor-trailer filed objections admitting that the claimant is working as a loader and un-loader of the said tractor-trailer and the accident took place during the course of employment. Further, he has stated that he was paying a salary of Rs. 4,000/-. Since, the tractor-trailer is covered by insurance, the Insurer is liable to compensate the claimant and sought for dismissal of the claim petition as against the first Respondent.

4. The second Respondent-insurer filed objections denying the entire averments made in the claim petition. However, admitted -that the said tractor-trailer is covered by insurance. The Insurer has contended that it is for the claimant to prove before the Commissioner that he was a workman under the first Respondent and getting a salary of Rs. 4,000/- p.m. and the accident has occurred during the course of employment and sought for dismissal of the claim petition.

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

6. The claimant in order to prove his case examined himself as P.W. 1 and got marked the documents as Ex.P.1 to Ex.P.4. The claimant also examined Dr. J.S. Sagar who has treated him as P.W.2.

7. P.W.1 and P.W.2 have been cross-examined by the Insurer. In the cross-examination, P.W.1 has contended that while carrying load of hay from Somanahalli to Mirle, due to the rash and negligent manner of the driver of the tractor-trailer who met with an accident, he has taken treatment in K.R. Hospital at Mysore. His clavicle bone of right hand and metacarpal bones have been fractured. P.W.2 the Doctor in his cross-examination has deposed that in the accident, the claimant has suffered fracture of clavicle bone and fracture of metacarpal bones. His right hand became weak. He was inpatient in the hospital for 30 days. Due to the fracture he cannot lift heavy objects. The Doctor has assessed the disability at 65%.

8. The Commissioner on the basis of the oral and documentary evidence of the parties and taking into consideration the age, salary drawn by the claimant and the permanent disability suffered by him, awarded compensation of Rs. 1,51,559/- with 12% interest. The Commissioner is of the opinion that the claimant has not produced any material to show that he was getting a salary of Rs. 4,000/- p.m. Hence, in the absence of the same, taking into consideration the Income of the claimant at Rs. 100/- per day, the Commissioner has assessed the salary of Rs. 3,000/- p.m. Since the claimant is aged about 50 years, taking into consideration the permanent disability at 55%, the Commissioner awarded compensation.

9. The claimant being aggrieved by the award passed by the Commissioner preferred this appeal.

10. Sri K.S. Narayanaswamy, learned Counsel for the Appellant contends that the

owner of the vehicle contended that he was paying a salary of Rs. 4,000/- p.m. and the Commissioner has taken the salary of the claimant as Rs. 3,000/- and awarded very meager compensation. Further, the learned Counsel has contended that the Appellant is aged about 50 years. Due to the fracture of clavicle bone of right hand and fracture of metacarpal bones, he cannot lift heavy objects. After 50 years, healing of the fracture takes long time, still the Appellant is suffering injuries due to the accident. He has suffered functional disability of 100%. However, the Commissioner has taken the permanent disability at 55% though the Doctor has deposed that the claimant has suffered 65% and sought for enhancement of compensation.

11. Though Respondents 1 and 2 are served, they remained unrepresented.

12. We have carefully gone through the arguments addressed by the learned Counsel for the parties; perused the award passed by the Commissioner for Workmen's Compensation and also perused the oral and documentary evidence led by the parties.

13. It is not in dispute that the Appellant was working as a loader and un-loader of the tractor-trailer. The said vehicle met with an accident on 17-4-2004. Due to the accident, the claimant has suffered fracture of clavicle bone of the right hand and metacarpal bones. The Police have also registered a case against the driver of the said vehicle. The owner of the vehicle himself has admitted before the Commissioner that he was an employee under him. Hence, it is clear that the claimant is a workman within the meaning of Section 2(n) of Workmen's Compensation Act and the accident has taken place during the course of employment and he is entitled to compensation. Though the Doctor who treated the Appellant has deposed before the Commissioner that the Appellant has suffered permanent disability of 65%. However, he has not assessed the functional disability of the Appellant. The Appellant is a loader and un-loader and aged about 50 years. Due to the fracture of clavicle bone and metacarpal bones of the right hand it has become weak and he cannot lift the heavy objects. He cannot do the work of a loader and un-loader. The Appellant is an illiterate person and in view of the accident, he has suffered functional disability of 100%. However, the Commissioner has taken into consideration the disability of 55% and awarded compensation.

14. With regard to income of the Appellant, though the owner of the vehicle has admitted in his objections that he was paying a salary of Rs. 4,000/- p.m. and nobody has objected the same, the Insurer has also not denied the said contention. The Appellant has also stated that he was getting a salary of Rs. 5,000/- p.m. Once when the owner himself has admitted the salary paid by him, the Commissioner is bound to take the admitted salary drawn by the Appellant. Hence, the order passed by the Commissioner is contrary to law. Salary of the claimant has to be taken as Rs. 4,000/- p.m. out of which 60% has to be taken into consideration and functional disability at 100%. Hence, the claimant; is entitled to compensation of Rs. 3,67,416/- $(4,000 \times 60/100 = 2,400 \times 153.09 \times$

100). Hence, we pass the following:

ORDER

The appeal filed by the Appellant is allowed in part. The Appellant is entitled for compensation of Rs. 3,67,416/- as against Rs. 1,51,559/- awarded by the Commissioner. The Appellant is entitled for interest at the rate of 7.5% p.a. from the date of claim petition till the date of passing the award thereafter at 12% till the date of deposit.

Out of the enhanced compensation, the Commissioner shall deposit a sum of Rs. 1,50,000/- and the interest accrued thereon in any Nationalised Bank for a period of 5 years in the name of the Appellant and the Appellant is permitted to withdraw the interest periodically.