

**(2012) 01 KAR CK 0012**  
**In the Karnataka High Court**  
**Case No : MFA. No. 12054 of 2007 (WC)**

Kempa Shetty

APPELLANT

Vs

C. Ramesh D. No. B/41, Panchagavi Matt Opp: Ganapathi  
Sachidananda Ashram, Gowrishankara Nagar Mysore -  
570008 and United India Insurance Company Limited  
Divisional Office Ballal Circle Krishnamurthy Puram Mysore -  
570005

RESPONDENT

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**Date of Decision :** 10-01-2012

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 279, 337

**Citation :** (2012) 01 KAR CK 0012

**Hon'ble Judges :** B. Manohar, J

**Bench :** Single Bench

**Advocate :** Bhuvana, S.P, for Sri T.A. Karumbaiah, for the Appellant; M.U. Poonacha, for R.2, R1 Served, for the Respondent

**Final Decision :** Dismissed

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## Judgement

B. Manohar, J.—Appellant is the claimant, being not satisfied with the order dated 16-11-2006 made in WCA/CR-59/2005/NF passed by the Labour Officer and Workmen's Compensation Commissioner, Mysore, has filed this appeal seeking for enhancement of compensation. In the claim petition it is contended that the claimant was working as a cleaner in the lorry bearing registration No. MYU 7125 belonging to the first respondent with a view to unload the Tobacco goods from the lorry came to the Godown of II, & D Company near Yelwal. At the time of parking the lorry, the accident has occurred. The lorry ran over the left hand of the claimant Immediately he was shifted to the JSS Hospital, Mysore for treatment. He was inpatient in the hospital from 4-3-2005 to 16-4-2005. His left hand was amputated from forearm. The claimant has contended that the accident has occurred during the course of employment and the vehicle is fully covered under the insurance Since the owner of the vehicle failed to compensate the claimant, the claimant approached the Commissioner for Workmen's

Compensation seeking compensation for the loss of his left hand from the forearm.

2. In the claim petition, he has further contended that he was getting a salary of Rs.150/- and batta of Rs.25/- per day. He was hale and healthy, aged about 35 years. During his prime age, he lost his left hand due to the accident occurred that on 4-3-2005. It is further contended that a complaint has been lodged before the Yelwal Police Station and a case was registered as Cr.No. 17/2005 for the offence u/s 279 and 337 of IPC against the driver of the lorry.

3. Pursuant to the notice issued by the Commissioner for Workmen's Compensation, the owner of the vehicle though served with the notice, remained unrepresented. The second respondent-Insurer filed objections denying the entire averment made in the claim petition and disputed the relationship between the employer and the employee and also the accident. However, they have not disputed that the lorry is covered by the insurance policy.

4. On the basis of the pleadings of the parties, the Commissioner for Workmen's Compensation framed the necessary issues and on the basis of the oral and documentary evidence, the Commissioner held that the claimant is a workman comes within the meaning of definition of "Workman" and there is relationship of employer and employee between the claimant and the first respondent. Further held that due to the accident, the claimant had sustained injuries and his left hand was amputated from the forearm.

5. The Commissioner for Workmen's Compensation taking into consideration the age and the maximum income of Rs. 4,000/- p.m., and the amount equal to 60% of the monthly wages, further taking into consideration the disability at 60% and applying the relevant factor of 197.06 has awarded compensation of Rs.2,83,766/- together with interest at the rate of 12% p.a. from the date of accident and also directed the Insurance Company to pay the same within 30 from the date of passing the order. The claimant, being not satisfied with the compensation awarded by the Commissioner for Workmen Compensation has preferred this appeal.

6. Smt. Bhuvana S.P., learned counsel appearing for the appellant contended that the order passed by the Commissioner for Workmen Compensation is contrary to law. Even though the claimant was getting a salary of Rs.150/- per day and batta of Rs.25/- per day, the Commissioner has taken into consideration the income of Rs.4,000/- p.m. which is on the lower side. Further, in tire accident that occurred on 4-3-2005. his left hand was amputated from the forearm. There is 100% disability. But the Commissioner for Workmen's Compensation has taken into consideration the disability at 60% which is contrary to law and sought for enhancement of compensation, taking into consideration the functional disability of the claimant at 100% by allowing the appeal.

7. On the other hand, Sri.M.U.Poonacha learned counsel appearing for the second respondent argued in support of the order passed by the Commissioner

for Workmen's Compensation and contended that u/s 4(1) of the Amended Act, 2000 where monthly wages of workman exceeds Rs.4,000/- his monthly salary for the purpose of clause (a) and (b) shall be Rs.4,000/- only. Hence, in the instant case, the maximum income of the claimant has been taken into consideration and awarded just compensation. Further, the injuries suffered by the claimant comes under Schedule-I. part-II clause (4). Taking into consideration the percentage of loss of earning capacity to the extent of 60% is in accordance with the Act. Hence, the claimant is not entitled for any compensation towards 100% disability for the loss of his left forearm and hence sought for dismissal of the appeal.

8. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the oral and documentary evidence let in by the parties.

9. The records clearly disclose that the claimant was working as a cleaner in the lorry bearing registration No. MYU 7125 belonging to the first respondent. It is also not disputed that on 4-3-2005, the claimant suffered crush injury" to his left forearm due to the accident and subsequently his left forearm was amputated. He was inpatient in the hospital for more than a month. The owner of the vehicle has not disputed the claim made by the claimant and also that he was getting a salary of Rs.150/- and batta of Rs.25/- per day. The Commissioner for Workmen's Compensation has considered Section 4(1) of the Act and has taken the maximum monthly salary of the claimant as Rs.4,000/-, taking into consideration 60% of the salary and also considering the disability at 60%, since the injuries suffered by the claimant are under Schedule-I, Part-II clause 4 of the Act and also applying the relevant factor of 197.06 has awarded compensation of Rs.2,83,766/- with 12% interest. It appears to me that the order passed by the Commissioner for Workmen Compensation is in accordance with law and there is no infirmity or irregularity in the said order. The injury sustained by the appellant is within the scheduled injury, hence he is entitled for the compensation as per the Schedule of the Act. The amputation of the forearm will not come in the way of the appellant from doing any other work. The disability of 60% taken by the Commissioner for Workmen's Compensation is in accordance with the Act. The appellant has not made any case to interfere with the order passed by the Commissioner for Workmen's Compensation. Accordingly, the appeal is dismissed.