
(2016) 03 KAR CK 0321

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 22375 of 2009

Manager, United India Insurance Co. Ltd., Hospet

APPELLANT

Vs

Smt. Durgamma Shankarappa and another

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 3, 30

Citation : (2016) AAC 1746 : (2016) 3 AirKarR 130

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : C.V. Angadi, Advocate, for the Appellant; Chandrashekhar P. Patil, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—The United India Insurance Company has filed these two appeals challenging the judgment and order dated 26.02.2009 passed in WCA Nos. 73 & 74/2007 passed by the Labour Officer and Commissioner for Workmen's Compensation, Koppal (for short "the WCC?").

2. The common order passed by the WCC is challenged in these two appeals. Hence, both the appeals are clubbed together and disposed of by this common judgment.

3. The 1st respondent in these appeals are the claimants. They filed claim petitions contending that their husband were working as hamalies in a lorry bearing registration No. KA-36/A-3699 belonging to the 2nd respondent herein. On 12.05.2002 on the instructions of the owner, after loading cement bags in the lorry while they were proceeding towards Sindhnoor, due to rash and negligent driving of the driver of the said lorry near Kannari cross, the said vehicle met with an accident and turn turtled as a result of which two hamalies working in the said lorry sustained grievous injuries and died on the spot. The claimants contended that the accident occurred during the course and out of employment.

The owner of the vehicle was paying salary of Rs.6,000/- p.m. to both the hamalies. The husband of the claimant in WCA No. 73/2007 was aged about 50 years and husband of the claimant in WCA No. 74/2007 was aged about 55 years at the time of accident. The vehicle was covered by the Insurance Policy and hence, they sought for the compensation.

4. Pursuant to the notice issued by the WCC, though the owner of the vehicle was served with notice, he remained unrepresented. The 2nd respondent-Insurance Company in the claim petitions filed the written statement denying the entire averments and also contended that as on the date of the accident, the offending vehicle was not covered by the Insurance policy and that the driver of the offending vehicle did not possess a valid driving license as on the date of the accident. Further, no documents had been produced to show that there was relationship of master and servant between the husband of the claimants and owner of the vehicle and no document was produced to show that owner was paying them a salary of Rs.6,000/- p.m. Accordingly, the claim petitions filed by the claimants under the Workmen's Compensation Act were not maintainable and sought for dismissal of the claim petitions.

5. On the basis of the pleadings of the parties, the WCC framed necessary issues. The claimants in order to prove their case examined themselves as PWs-1 and 2 and got marked the documents as Exs.P. 1 to 7. On behalf of the respondents, none of the witnesses were examined nor any document had been marked.

6. The WCC on the basis of the oral and documentary evidence let in by the parties, taking into consideration the IMV report, spot panchanama, copy of the complaint and charge-sheet held that the deceased died in the road traffic accident that occurred on 12.05.2002 near Kannari cross during the course and out of employment and hence, there was relationship of master and servant between the husband of the claimants and the owner of the vehicle. Hence, it held that the claimants are entitled for the compensation.

7. With regard to the quantum of compensation is concerned though the claimants claimed that the owner of the vehicle was paying Rs.6,000/- p.m. as salary to their husband, no document had been produced. The WCC taking into consideration the minimum wages being paid to the coolies at the relevant point of time, fixed the income as Rs.3,000/- p.m. and deducting 50% thereof, applying the relevant factor of 153.09, awarded a sum of Rs.2,29,635/- in WCC No. 73/2007 and taking into consideration the income as Rs.3,000/- p.m., deducting 50% thereof, applying the relevant factor of 135.56 since the deceased was aged about 55 years, awarded a sum of Rs.2,03,340/- to the claimant in WCA No. 74/2007. Since the vehicle was covered by the Insurance Policy and the driver of the offending vehicle was holding a valid and effective driving license as on the date of the accident, liability was fastened on the Insurance Company to compensate the claimants. The Insurance Company being aggrieved by the order passed by the WCC, has filed these two appeals.

8. Sri. C.V. Angadi, learned counsel appearing for the appellant-Insurance Company in these appeals contended that the judgment and order passed by the WCC is contrary to law. No document had been produced to establish that the deceased were working as hamalies in the said lorry. The owner of the vehicle also has not supported the case of the deceased. On the date of accident, 27 persons were travelling in the said goods vehicle wherein 5 persons died and remaining 22 persons got injured. Hence, it has to be held that the deceased were travelling as unauthorised passengers in the goods vehicle. Hence, the Insurance Company is not liable to compensate the claimants and sought for dismissal of the appeal.

9. On the other hand, Sri. Chandrashekhra P. Patil, counsel for the respondents in each cases argued in support of the judgment and order passed by the WCC and contended that the deceased were working as hamalies in the lorry belonging to the 2nd respondent herein. As per the instructions of the owner of the vehicle, after loading cement bags in the said lorry while they were proceeding towards Sindhnoor on 12.05.2002, in view of rash and negligent driving of the driver of the said lorry, the lorry turn turtled as a result of which two hamalies working in the said lorry died. The claimants stepped into the witness box and proved their case. The appellant cannot now urge a new ground which was not urged before the WCC and sought for dismissal of the appeals.

10. I have carefully considered the arguments addressed by the counsel for the parties, perused the judgment and order and oral and documentary evidence. The record clearly disclosed that the deceased were working as hamalies in the lorry belonging to the 2nd respondent herein. The specific case pleaded by the claimants is that on 12.05.2002 after loading cement bags, while they were proceeding towards Sindhnoor for the purpose of unloading, in view of bad condition of the road, the vehicle turn turtled. The two hamalies working in the said lorry died on the spot. On the claim petition filed by the claimants, the WCC after examining the matter in detail found that on the date of accident, the husband of the claimants were working as hamalies in the said lorry. The accident occurred during the course and out of employment and the claimants are the dependants of the deceased. Hence, they are entitled for the compensation.

11. The contention of the Insurance Company is that as on the date of the accident. 27 persons were travelling in the goods vehicle. Out of 27 persons, 5 persons died and other 22 persons got injured. Hence, it has to be held that the claimants are unauthorised passengers in the goods vehicle. The Insurance Policy did not cover the risk of unauthorised passengers. Hence, the Insurance Company is not liable to compensate the claimants. However, such contention was not urged either in the written statement or in the evidence. The appellant-Insurance Company has not stepped into the witness box and plead their case. Unless the appellant takes a specific contention and proves the said fact by leading evidence, they cannot urge a new ground in the appeals. If the appellant

would have taken such a contention before the WCC, the WCC would have framed necessary issues. It is on the part of the claimants to prove the said issues. The Insurance Company has not taken such a contention before the WCC. The WCC had no occasion to examine the said fact. Hence, the appellant cannot take a new ground in these appeals.

12. Though the claimants claim that the owner of the vehicle was paying Rs.6,000/- to their husband, the WCC taking into consideration income as Rs.3,000/- p.m., taking into consideration their age and applying the relevant factor has awarded the compensation. I find no infirmity or irregularity in the quantum of compensation awarded by the WCC. I find no substantial question of law to be decided in these appeals. The appellant has not made out a case. Accordingly, both the appeals are dismissed.

13. The amount in deposit before this Court be transferred to the Court of Civil Judge, Sr. Dn., Koppal.

14. In view of dismissal of the appeals, Misc. Cvl. 105169/2009 and 105163/2009 are disposed of.