

(2017) 02 KAR CK 0057
In the Karnataka High Court
Case No : M.F.A. No. 2555 of 2011 (WC)

M/s ICICI Lombard GIC Ltd.

APPELLANT

Vs

Shanthaw

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (2017) AAC 941

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Sri. B.C. Skivanne Gowda, Advocate, for the Appellant; Smt. Haleema Ameen for Sri. S. Vishwajith Shetty, Advocates, for the Respondent Nos. 1; Minor rep. by R1, for the Respondent No. 2; Served Unrepresented, for the Respondent Nos. 3 and 4; Service of Notice Held Sufficient V/o Dated: 7/6/2016, for the Respondent No. 5

Final Decision : Dismissed

Judgement

B. Manohar, J.—M/s. ICICI Lombard General Insurance Company Limited has filed this appeal challenging the legality and correctness of the judgment and order dated 15-09-2009 made in WCA/CR-48/2007/F passed by the Labour Officer and Commissioner for Workmen's Compensation, Mangalore (hereinafter referred to as "the WCC" for short).

2. Respondents 1 to 4 herein filed a claim petition contending that the husband of the first claimant and father of claimant No. 2 and son of claimants 3 and 4, deceased Manjunath was working as a cleaner/loader in a lorry bearing Registration No. KA-19/A-74 belonging to the 5th respondent herein. On 10-08-2007, as per the instructions of the owner of the vehicle, the driver had taken the vehicle to the Cement Mixing Plant for the purpose of loading. Due to the rash and negligent driving of the said lorry, it dashed against the compound wall of the Cement Mixing plant, as a result of which, the cleaner/loader of the said lorry was thrown out of the said lorry and sustained grievous injuries,

immediately after the accident, he was shifted to the hospital. However, he died during the course of treatment. In the claim petition, it was contended that the accident occurred during the course and out of employment; the claimants are the dependants of the deceased; due to the rash and negligent driving of the said lorry belonging to the 5th respondent and insured with the ICICI Lombard General Insurance Company the accident occurred. Hence, the owner and insurer are liable to compensate the claimants.

3. In response to the notice issued by the WCC, though the owner of the lorry was served with notice, he remained unrepresented. The second respondent-insurance company filed the written statement denying the entire averments made in the claim petition and also disputed the relationship of master and servant between the claimant and the owner of the vehicle. No document has been produced to show that the deceased was working as a cleaner/loader in the said lorry and the owner of the said-lorry was paying salary to him. Further, as on the date of accident, Chatradhari was not driving of the said vehicle. In order to claim compensation from the insurance company, the claimants have filed this claim petition and sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, the WCC framed necessary issues.

5. In order to prove the case of the claimants, wife of the deceased got examined herself as P.W.1 and got marked the documents as Ex. P1 to Ex. P9. On behalf of the insurance company, a private Investigating Officer was examined as R.W. 1 and the Area Manager of the ICICI insurance company was examined as R.W.2 and the insurance policy and investigating report were marked as Ex. R1 and Ex. R2.

6. The WCC, after appreciating the oral and documentary evidence let in by the parties and taking into consideration the IMV report, copy of the complaint and charge sheet held that the accident occurred during the course and out of employment. As a result of which, the loader/cleaner working in the said lorry was thrown out of the said lorry and died during the course and out of employment. The claimants are the dependants of the deceased and they are entitled for compensation. With regard to quantum of compensation is concerned, though the claimants claim that the deceased was earning a sum of Rs.3,000/- p.m., and getting batta of Rs. 25/- per day, no document has been produced to substantiate the same. The accident occurred in the year 2097. The WCC, taking into consideration the minimum wages being paid to the cleaner during the relevant paint of time has reckoned the income of the deceased as Rs.3,500/- p.m., deducting 50% thereof, and applying the relevant factor 215.28, since the deceased was aged about 26 years as on the date of death, awarded a sum of Rs. 3,76,740/- towards compensation with interest at the rate of 12% p.a. Being aggrieved by the said judgment and order passed by the WCC, the insurance company has filed this appeal.

7. I have carefully considered the arguments addressed by the learned counsel

for the parties and perused the judgment and order, oral and documentary evidence adduced by the parties and other relevant records.

8. The WCC, taking into consideration copy of the complaint lodged by the eye-witness to the accident has held that the deceased was working as a cleaner/loader in the offending lorry and he died during the course and out of employment due to the accident occurred. The claimants are dependants of the deceased and they are entitled for compensation. The WCC based on the oral and documentary evidence adduced by the parties came to the conclusion that the deceased was working as a loader. Though the insurance company has taken a contention that the deceased Manjunath was driving the lorry on the date of accident, no document has been produced to substantiate the same. On the other hand, the eye-witness to the accident had stated that the deceased was sitting next to the driver in the cabin, due to the accident he was thrown out of the lorry and succumbed to injuries.

9. The private Investigating Officer in his evidence stated that the deceased Manjunath was driving the said lorry, he did not possess the valid driving license, however Chatradhari's name was mentioned in the FIR. Further, in the charge sheet also name of Chatradhari @ Gangadhar was mentioned no document has been produced to show that Chakradhari and Gangadhar are one and the same. In the cross-examination also he has clearly admitted that the insurance company is paying fees to him to prepare the report and he do not know which are the documents he had verified while preparing the report. The officer of the insurance company in the cross-examination has clearly admitted that except getting report from the Private Investigating Officer, they have not done anything to ascertain as to who was driving of the lorry as on the date of accident. On the other hand, after the accident, the Supervisor of the Cement Mixing Plant had lodged a complaint, in which, he has stated that on 10-08-2007 while the complainant and one Nithin were standing inside the compound wall of Cement Mixing Plant, a tipper lorry bearing Registration No.KA-19/B-74 driven by one Chotradhari dashed against the compound wall of the factory and the cleaner sitting next to him was thrown out of the lorry and sustained grievous injuries. Immediately after the accident, he took the injured to the hospital, however, he died during the course of treatment. Nithin and Praveen Kumar are the eye-witnesses to the occurrence of the accident. In the criminal case also they were examined as witnesses. Further, the police have also registered a case against Chatradhari. The wife of the deceased in her evidence has clearly stated that her husband was working as a cleaner in the lorry belonging to the 5th respondent. Some of the employees who were examined in the criminal case have also stated that the deceased Manjunath was working as a loader/cleaner in the offending lorry and on 10-08-2007 due to the rash and negligent driving of the said lorry, he was thrown out of the lorry and died. The oral and documentary evidence and the police records have clearly disclosed that as on the date of accident, Chatradhari was driving the said lorry and the deceased was working as a cleaner/loader. All these documents clearly disclose that the deceased died during the

course and out of employment. The claimants being the dependants of the deceased are entitled for compensation.

10. I find no infirmity or irregularity in the said judgment and order passed by the WCC and awarding just and fair compensation. The appellant has not made out any case to interfere with the said judgment and order passed by the WCC. Accordingly, the appeal is dismissed.

The amount in deposit is directed to be transferred to the Civil Judge (Senior Division), Mangalore for disbursement.