

(2015) 07 KAR CK 0083

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 23951/2009 (WC)

National Insurance Co. Ltd.

APPELLANT

Vs

Ayyanagouda and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

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

Citation : (2015) 07 KAR CK 0083

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : M.Y. Katagi, for the Appellant; M. Kusumakar, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

B. Manohar, J.

1. The appellant-Insurance Company filed this appeal challenging the judgment and order dated 15.10.2009 in W.C.A./NF No. 57/2005 passed by the Labour Officer and Commissioner for Workmen's Compensation, Sub-Division-II, Hubli (hereinafter referred to as "W.C.C." for short), filed this appeal.

2. The first respondent herein filed a claim petition contending that he was working as a coolie in the tractor-trailor bearing reg. No. KA-27/T-5611 and 5612 belonging to the second respondent herein. He was paying salary of Rs. 2,500/- per month and batta of Rs. 15/- per day. On 27.05.2005, as per the instructions of the owner of the vehicle after loading the fodder, the claimant along with other hamalis were proceeding towards Chikeruru road. Due to the rash and negligent driving of the tractor by its driver it met with accident at Mallenahalli cross. Due to the impact the claimant and others sustained injuries. As on the date of accident, the claimant was aged about 20 years. The accident had occurred during the course and out of employment. In view of the same, the claimant has sustained grievous injuries. Initially he had taken treatment at Government

Hospital, Haven. Thereafter, he had taken treatment at Dr. Mahantesh Hanchinal at Dharwad. Police have registered a case against the driver of the tractor and trailer. Hence, the claimant is entitled for compensation.

3. Though the owner of the offending vehicle served with the notice, remained unrepresented. The insurer of the offending vehicle appeared and filed written statement denying the entire averments made in the claim petition and contended that no documents are produced to show that the claimant was working as a coolie in the said tractor. Further, driver of the offending vehicle did not possess valid driving licence as on the date of the accident. Hence, contended that the insurer is not liable to pay compensation and sought for dismissal of the petition.

4. On the basis of the above pleadings of the parties, the W.C.C. framed necessary issues. The claimant in order to prove his case got examined himself as P.W.2 and examined the Doctor who treated him as P.W.4 and got marked the documents. On behalf of the Insurance Company, its Officer Sri Allamaprabhu Kubusad was examined as R.W.1.

5. On the basis of the oral and documentary evidence adduced by the parties and taking into consideration the Police records and other relevant records, the W.C.C. held that due to the rash and negligent driving of the tractor and trailer the accident had occurred. The accident had occurred during the course and out of employment. Hence, the claimant is entitled for compensation. With regard to the quantum of compensation is concerned, in the accident, the claimant has sustained fracture of tibia and fibula. The Doctor who treated the claimant had assessed the disability to an extent of 35%. However, in the cross-examination he admitted that the disability is not more than 12% to the whole body. While assessing the quantum of compensation the W.C.C. taken into consideration the disability to an extent of 40%, income as Rs. 3,000/- per month, applied relevant factor 211.7 and taking age of the claimant as 28 years, awarded a sum of Rs. 1,33,427/- with interest at 12% p.a. Being aggrieved by the quantum of compensation awarded and taking into consideration the disability to an extent of 35% the appellant-Insurance Company has preferred this appeal.

6. Sri M.Y. Katagi, learned Advocate appearing for the appellant contended that, in the road traffic accident the claimant sustained fracture of tibia and fibula. Except the said injury he has not sustained any injury. The Doctor assessed disability to an extent of 35%. However, in the cross-examination he admits that disability to the whole body is 12%. He contends that the W.C.C. ought to have taken the disability to an extent of 12% and awarded the compensation. Under the Workmen's Compensation Act, the disability is to be taken into consideration for assessing the disability u/S 4(1)(c) of the Act. Hence, he sought for modifying the impugned judgment and order.

7. Though the contesting respondents are served they remained unrepresented.

8. I have carefully considered the arguments addressed by the learned Advocate

for the appellant and perused the judgment and order and oral and documentary evidence.

9. The claimant has sustained fracture of tibia and fibula. Though the Doctor who has treated the injured has assessed disability to an extent of 35%, however in the cross-examination he has admitted that disability to the whole body is not more than 12%. The W.C.C. ought to have taken the functional disability and assessed compensation. However, the W.C.C. has taken disability to an extent of 35% which runs contrary to the evidence of the Doctor. The W.C.C. is not an expertise in assessing the disability of the personal injury. Assessment of loss of earning capacity is to be assessed by the medical practitioner having regard to the percentage of loss of earning capacity.

10. In the instant case, the Doctor who treated the injured himself has admitted that the functional disability to the whole body is only 12%. The W.C.C. ought not to have taken the disability to an extent of 35%. Hence, the order passed by the W.C.C. requires to be modified. Taking into consideration income of the claimant as Rs. 1,800/- (Rs. 3,000/- x 60/100), applying the relevant factor of 211.7 and taking into consideration the disability to an extent of 12%, the claimant is entitled for a total compensation of Rs. 45,727/- as against Rs. 1,33,427/- awarded by the Tribunal. Accordingly, I pass the following order.

ORDER

The appeal is allowed in part. Claimant is entitled for compensation of Rs. 45,727/- with interest at 12% p.a. after one month from the date of accident.

The amount in deposit is ordered to be transmitted to the W.C.C., Hubballi, with a direction to refund the excess money, if any, to the appellant.