

(2012) 10 KAR CK 0035

In the Karnataka High Court

Case No : M.F.A. No. 4756 of 2009 (WC)

National insurance Co. Ltd.

APPELLANT

Vs

Devu Poojari and Others

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Citation : (2013) 136 FLR 648 : (2013) LLR 153

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : M.U. Poonacha, for the Appellant; G. Ravishankar Shastry, Advocate for Respondent Nos. 1 and 2 and Sri K. Chandranath Ariga, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—The insurance company has filed this appeal raising the following substantial questions of law:

(a) Whether the court below has committed an error in holding that the deceased Dinesh Poojary died during the course and arising out of his employment with the 5th respondent insured.

(b) Whether the court below has committed an error in not noticing the fact that there is no casual connection between the employment of the deceased and his death.

(c) Whether the court below overlooked the material contradictions and inconsistencies in the evidence on record while coming to the conclusion that the deceased Dinesh Poojary died during the course of and arising out of his employment insured.

(d) Whether the court below has committed an error in holding that the accident/incident has taken place on account of the user of the Tipper Lorry bearing Reg. No. KA19-A-6023.

(e) Whether the Commissioner has committed an error in holding that the deceased was getting a salary/wages of Rs. 4,000 p.m., and awarding compensation amount of Rs. 4,48,000 on the said basis in the absence of cogent and proper evidence on record.

The learned counsel for claimants is absent, I have heard Sri. M.U. Poonacha, learned counsel for insurance company and Sri. K. Chandranath Ariga, learned counsel for 5th, respondent.

2. It is established from the evidence on record that deceased Dinesh Poojary was the cleaner of insured vehicle (Tipper bearing registration No. KA-19/A-6023). On the fateful day, at about 11.00 a.m., the deceased was engaged in loading mud from hillock to the tipper. When the mud was being loaded from hillock by using JCB to the tipper, a portion of hillock caved in and the deceased was buried under mud and stones. After removal of mud and stones, he was found dead.

3. Sri. M.U. Poonacha, learned counsel for insurance company would submit that the deceased was working as a cleaner of the insured vehicle (Tipper bearing registration No. KA-19/A-6023) and he was engaged for the purpose of loading or unloading the mud; the accident did not take place when the insured vehicle was under use.

4. The submission made by the learned counsel for insurance company is contrary to the view taken by Division Bench of this Court in the case of The New India Assurance Co. Ltd. Vs. Smt. Channamma and Others, The Oriental Insurance Co. Ltd. Vs. Smt. Mariamma and Others, and The Branch Manager, New India Assurance Co. Ltd. Vs. Smt. Mallamma, Puttamallaiah and Shahabuddheen,

5. In view of what has been held in the above decisions, mere fact that the insured vehicle was stationary when the accident took place and the deceased was not doing any work as a cleaner will not exonerate the insurance company from its liability. The word "cleaner" of the vehicle has to be given extended meaning to cover the risk of cleaner who is primarily engaged for use and maintenance of vehicle. Therefore, the submission of learned counsel for insurance company cannot be accepted.

6. The learned counsel for insurance company would submit that interest should have been awarded after 30 days from the date of award. This submission is contrary to judgment of the Supreme Court in Civil appeal No. 5669/2012 dated 31.7.2012 (in the case of the Oriental Insurance Co. Ltd. v. Siby George and Others) wherein, the Supreme Court has held that interest becomes payable after 30 days from the date of accident. Therefore, the contentions raised by the insurance company cannot be accepted. In view of this, I pass the following:

ORDER

The appeal is dismissed.

The amount deposited by the insurance company shall be transferred to the Commissioner for Workmen's Compensation.