

(2006) 10 KAR CK 0068
In the Karnataka High Court
Case No : M.F.A. No. 1515 of 2002 (WC)

National Insurance Co. Ltd.	Vs	APPELLANT
Gaisuddin Khan and Another		RESPONDENT

Date of Decision : 28-10-2006

Acts Referred:

Citation : (2006) 10 KAR CK 0068

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : A.M. Venkatesh, for the Appellant; G.A. Srikante Gowda and Murali Babu, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—The circumstances under which this appeal has been preferred by the insurance company shocks the conscience of this court.

2. Learned Counsel for the appellant, Mr. A.M. Venkatesh, submitted at the outset that the insurance company is questioning the award of the Commissioner dated 29.12.2001 by which award compensation of Rs. 2,44,620 has been granted to the respondent No. 1 herein and the submission of the learned Counsel is that the very same claimant was granted an order earlier on 14.2.2000 wherein the Commissioner had awarded a sum of Rs. 2,41,992 as compensation. Thus, there is a clear case of fraud played by respondent No. 1 on the insurance company and unfortunately the Commissioner for Workmen's Compensation also did not take note of the fact that the respondent had earlier taken the benefit of the award passed on 14.2.2000. Therefore, by referring to both awards which have been annexed to this appeal, learned Counsel submitted that the impugned award dated 29.12.2001 is therefore liable to be set aside on the above ground alone.

3. Learned Counsel for the respondent-claimant does not dispute the two awards having been passed in favour of the very same respondent No. 1. It is very

unfortunate that respondent No. 1-claimant after having received the award in his favour and also having received compensation as per the submission made by the appellant's counsel, has once again moved the Commissioner for Workmen's Compensation and succeeds in getting an award in his favour.

4. Learned Counsel for respondent No. 1-claimant contended that the award that was passed on 14.2.2000 is in respect of the accident that took place on 28.12.1998 whereas the present award impugned in this appeal pertains to the accident that took place on 11.9.1999. I am unable to agree with the said submission made by the learned Counsel because when the first award was passed on 14.2.2000, the Commissioner had recorded a finding that the claimant had suffered 100 per cent loss of earning capacity. Such being the nature of award passed at the first instance, it is not understandable as to how the very same claimant who had lost 100 per cent earning capacity was able to again get back to his work and sustain another injury in another accident on 11.9.1999.

5. I am, therefore, convinced of the fraud played by respondent No. 1 on the appellant insurance company and I have no hesitation, therefore, in allowing the appeal filed by insurance company. But at the same time, respondent No. 1 cannot be allowed to go scot-free for having made the insurance company waste its precious time in this second round of litigation and at the same time wasting the time of the court also. As such I deem it fit to impose costs of Rs. 10,000 (rupees ten thousand) on respondent No. 1 and the same shall be paid to the appellant insurance company.

6. Apart from the above, I am also constrained to make an observation here that the Commissioners for Workmen's Compensation should bestow their attention to cases of such nature and whenever claim petitions are filed by claimants, the Commissioner concerned will also have to take an undertaking from the claimants that they have not preferred any claim petition earlier and that no award has been passed in their favour. Unless such conditions are imposed, cases of this nature arising in future cannot be prevented.

7. I am, therefore, of the considered opinion that all the Commissioners dealing with cases under Workmen's Compensation Act must be made aware of such happenings, and hence the Registrar General of this court is directed to send a copy of this judgment to all the Commissioners in the State who deal with cases under the Workmen's Compensation Act, for their guidance so as to prevent any fraud being played by any claimant claiming compensation for the injuries sustained by him in an accident.

8. In the result, the appeal is allowed. The impugned order is set aside and respondent No. 1-claimant shall pay costs of Rs. 10,000 (rupees ten thousand) to the appellant insurance company within four weeks from the date of this order. The amount deposited by the insurance company shall be refunded to it.