
(2011) 03 KAR CK 0308

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6122 of 2005 (WC)

National Insurance Co. Ltd.

APPELLANT

Vs

Sri. Ramamurthy and Smt. Ningamma

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 20, 4 (1) (c) (ii)

Citation : (2011) 6 KarLJ 368

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : Shri. B.C. Seetharam Rao, for the Appellant; Shri. F.S. Dabali, for R1 and R2-served, for the Respondent

Judgement

S.N. Satyanarayana

1. The second respondent - insurance company in C.R. No. 49/2003 and 50/2003 on the file of Commissioner for Workmen's Compensation, Bangalore has come up in these appeals challenging the common order dated 17.03.2005, passed in the aforesaid two claim petitions.

2. Brief facts leading to these appeals are as under:

The claimants Ramamurthy in C.R. 49/2003 and Nagaraju in C.R. 50/2003 contend that they were working as loader and unloaders in tractor trailer bearing No. KA-05-T-2887-2888, belonging to first Respondent and insured with second Respondent, before the Commissioner for Workmen's Compensation.

3. On 14.08.2003 at about 9.00 p.m. when they were carrying fertilizers in the aforesaid tractor trailer in the course of their employment on Uyamballi Kanakapura Main Road, the said tractor met with an accident near Shivaladappa Hill, resulting in injuries to claimants. Thereafter, they were admitted as inpatients in General Hospital, Kanakapura for a period of 20 days to get themselves treated for the aforesaid injuries and subsequently they filed claim petitions against their employer - first Respondent and insurer of the tractor-

trailer, the Appellant herein, seeking compensation for the injuries suffered in the aforesaid accident.

4. In the said proceedings, first Respondent owner of tractor - trailer remained exparte, the 2nd Respondent insurer entered appearance, contested the claim by filing statement of objections. In both claim petitions common issues were framed and common evidence recorded. The Commissioner on appreciation of pleadings and evidence proceeded to hold that there exist relationship of employee and employer between claimants and 1st Respondent and that the claimants have suffered injuries in an accident which has taken place in the course of their employment with 1st Respondent and that they are entitled to receive compensation from Respondents 1 and 2 in a sum of Rs. 2,80,614.60 to Ramamurthy claimant in CR. No. 49/2003 and Rs. 1,74,703.00 to Nagaraju claimant in CR. No. 50/2003 payable with interest at 12% p.a., from 30th day of accident till date of the deposit of the entire amount.

5. The second Respondent - insurance company being aggrieved by the finding of the Commissioner and also the order awarding compensation to the claimants in such exaggerated amounts has come up in these appeals challenging the same, on the ground that the accident itself is doubtful for the reason that the accident is stated to have taken place on 9.00 p.m. at Shivaladappa Hill. The statement of claimants in FIR which has come up at an undisputed point of time, disclose that they were travelling in the tractor-trailer which was carrying size-stones load to Shivaladappa Hill and from that place they were bringing fertilizers. On the way the said tractor capsized resulting in injuries to claimants. According to 2nd Respondent Insurance Company the said statement is incorrect and concocted. It is also contended that the policy issued to the tractor in question is a Agricultural Farmers Package Policy as such the liability to cover the risk of coolies carried therein does not arise, since it is not a transport vehicle the question of paying compensation to them does not arise. It is also contended that there is error on the part of the Commissioner in taking the wages of claimants at Rs. 3,500/- per month, which is contrary to the notified wages to the loaders and unloaders under Minimum Wages Act. That the assessment of loss of earning capacity to claimants at 60% and 40% is contrary to the material evidence available on record.

6. On appreciation of the grounds of appeals and also the finding of the Commissioner in the order impugned, the following substantial questions of law arise for consideration in these appeals:

- i. Whether there is perversion in appreciation of evidence available on record by the Commissioner for Workmen's Compensation?
- ii. Whether the Commissioner for Workmen's Compensation was justified in taking the loss of earning capacity of the claimants @ 60% and 40%, without there being acceptable evidence and opinion by the Doctor, P.W. 2 as contemplated u/s 4(1)(c)(ii) of the Workmen's Compensation Act?

iii. Whether the Commissioner for Workmen's Compensation was justified in awarding interest @ 12% from 30th day of the accident, contrary to the ruling of the Apex Court?

7. Heard the counsel for the Appellant and Respondents. On reappraisal of the pleadings, oral and documentary evidence available on record with reference to the grounds of appeals and also the finding of the Commissioner in the order impugned, the aforesaid substantial questions of law are answered as under:

1st Substantial question of law in AFFIRMATIVE

2nd and 3rd Substantial question of law in NEGATIVE for the following:

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REASONS

8. The claimants in both the appeals are stated to be employees of first Respondent working as loaders and unloaders in tractor-trailer bearing No. KA-05-T-2887-2888, which is insured with Appellant herein. In the instant case, though relationship between the first and second Respondent i.e., owner and insurer of the said tractor-trailor, is accepted as insured and insurer, it is difficult to accept the relationship between claimants and first Respondent. The claimants have not produced any evidence to establish that they were loaders and unloaders, under 1st Respondent in the said tractor and trailer in question, there is nothing on record to show that they were engaged by the first Respondent for the aforesaid work.

9. Admittedly, the tractor-trailor belonging to the first Respondent is insured with the second Respondent under Farmers Package Policy, which pre-supposes that the vehicle belonging to the first Respondent is required to be used for agricultural activity only. If the said tractor-trailor is required to be used for agricultural activity, the question of engaging the service of loaders and unloaders to the said vehicle on fulltime does not arise. The moment there is an admission to the effect that the claimants are working as loader and unloader in a tractor - trailer, it pre-supposes that the said vehicle is not used for full time agricultural activity. Infact No. agricultural activity requires use of tractor-trailor for carrying goods on regular basis, which requires appointment of loader and unloader on permanent basis.

10. In the instant case, it is stated by the claimants that on 14.08.2003, they were travelling in the said tractor in the course of their employment on Uyamballi Kanakapura main road near Shivaladappa Hill when the said tractor met with an accident. The first available document with reference to that is the FIR, wherein it is stated that on 14.08.2005 at about 9.00 p.m the said tractor-trailer was carrying size-stones to Shivaladappa Hill and from there, fertilizers was being carried. Shivaladappa Hill is situated in the route between Uyamballi and Kanakapura where admittedly there is No. place for vending of fertilizers to be carried from that place to the residence of first Respondent. If the said tractor

was carrying size-stones, definitely it was not used for agricultural purpose at that relevant point of time and to say that fertilizer was available in the said Shivaladappa Hill to be carried to first Respondent's land does not stand to reason in the absence of evidence to demonstrate the same. Except the statement in FIR, there is nothing which supports agriculture activity involving aforesaid tractor-trailer on 14.08.2003. It is stated that on that day, the said vehicle turtled due to rash and negligent driving of its driver. In the FIR the name of the Driver is referred to as Papanna. However, subsequently, at the time of filing charge-sheet, he is referred to with alias name as Shivamadaiah. This may be for the reason that the claimants have produced licence of one Shivamadaiah. Hence, there is possibility that the said Shivamadaiah is given alias name as Papanna to over come the name of Papanna mentioned in FIR at earliest point of time.

11. Regarding injuries suffered by Ramamurthy, claimant in C.R. 49/2003, it is fracture of tibia of right leg and other related injuries. Whereas Nagaraju claimant in C.R. 50/2003 has suffered 3 injuries, abrasion on the temporal region and abrasion on the right cheek and contusion near left eye, each injury measuring from 1/2 an inch to 2 inch. In their evidence it is stated that they were admitted to General Hospital for a period of twenty days for treatment. The medical records namely, the Admission Register extract, discharge summary and treatment given during the period when they were inmates of Hospital is not forthcoming. However, two documents are produced by each of them, one is the Wound Certificate issued by P.W. 2, Doctor Dr. M. Viswaradya, said to have issued immediately after the accident. Another is purported to be an Admission Register extract. Incidentally, the said document is marked as Exhibit P8, which does not contain signature of any person from the hospital. It is a piece of stationary belonging to Government Hospital utilized to create a document to show the injuries suffered by claimants.

12. Dr. M. Viswaradya who has given evidence on behalf of the claimants as P.W. 2 has stated in his evidence that the fracture of tibia suffered by claimant in CR.49/2003, Ramamurthy is treated conservatively by applying POP No. surgery was conducted to set right the alleged fracture. He further state that there is malunion of fracture and shortening of leg by 1/2 inch, due to said fracture. In this behalf an X-ray is produced, which by itself will not disclose the nature and extent of fracture, unless it is supported by the report of Radiologist. Incidentally, opinion of Radiologist is not produced along with X-ray. The said X-ray cannot be relied upon, even otherwise, in as much as, there is No. reference number, date or it does not even say whether it is X-ray of a male or female.

13. The said Dr. M. Viswaradya has given evidence without looking into any of the documents pertaining to the treatment that was given to Ramamurthy or to Nagaraju. His evidence is based on his examination of claimants on 21.05.2004. In that behalf he has also filed two Affidavits in both the claim petitions, the contents of which are admittedly false. He refers to the admission of both the

claimants in the Hospital and each of them staying there for a long period for which there is No. document available on record. In spite of that, he has sworn to false certificate regarding hospitalisation and further treatment being given to them.

14. The Affidavit filed by the Doctor gives rise to a basic doubt whether he is a qualified Doctor as he claims to be. The said Doctor claims that he is a Orthopedic Surgeon in Kanakapura Government Hospital. In his Affidavit dated 26.06.2004, which is filed by him in support of the claim of Nagaraju claimant in C.R. 50/2003, he has used the following words "he was treated conservatively by closed reduction". By looking into the Affidavit sworn to by the Doctor, it gives rise to doubt regarding qualification and standing of the said Doctor in making such statement in his Affidavit. The "close reduction" of fracture is possible only in case where surgery is conducted to the area of fracture. When the same is treated conservatively by applying POP question of close-reduction does not arise. How such a thing is possible is a thing, which the Medical Council should decide, after going through the Affidavit filed by the Doctor.

15. In both the claim petitions, the Doctor has referred to the extent of whole-body disability and limb disability suffered by the claimants without reference to the relevant provisions, which governs the procedure in which the disability is required to be assessed as per the guidelines prescribed in Alimco Manual. There is No. such reference made in the Affidavit. However, there is a bald statement to the effect that so far as Ramamurthy is concerned, he has suffered 40% disability to his right leg, which is 20% to his whole-body and so far as Nagaraju, who has suffered two abrasion and contusion, has suffered 20% disability to the said area and 11% to the whole-body. In both the Affidavits, there is No. opinion regarding functional disability to the claimants resulting in loss of earning capacity with reference to the nature of their job, which is required to be stated u/s 4(I)(c)(ii) of the Workmen's Compensation Act.

16. In spite of acceptable medical opinion not being there, as contemplated u/s 4(I)(c)(ii), the Commissioner for Workmen's Compensation who is determined to somehow allow these claim petitions and award maximum compensation to claimants has taken the loss of earning capacity of claimant Ramamurthy in C.R.49/2003 at 60% for fracture of tibia of right leg and in case of Nagaraju in C.R.50/2003 @ 40% for the abrasion and sutures injuries measuring 1/2" x 1" x 1/2".

17. This clearly indicates that the entire exercise by P.W. 2 Doctor Dr. M. Viswaradya and the Commissioner for Workmen's Compensation, Shri. Ramaiah is nothing but scandalous attempt on their part to fraudulently secure compensation to claimants for the non existing injury and fixing the liability to pay the same on the Insurance Company.

18. This Court is continuously observing falsifying of records, magnifying injuries by claimants. The commissioner on the other hand, relying on forged and

concocted documents to award exorbitant awards which has No. nexus with injuries are on raise these days. In the instant case, after holding that the accident itself is doubtful, the nature of employment of claimants with the first Respondent owner of tractor being not established, further alleged injuries said to have suffered by the claimants and their so-called admission to hospital being not proved with acceptable evidence, the claim petitions filed by both the claimants are required to be dismissed. Accordingly, the appeals filed by the insurance company are allowed and both the claim petitions are dismissed.

19. While doing so, this Court feel it is just and necessary in the facts and circumstances of the case to bring to the notice of Principal Secretary, Labour Department to take necessary steps to hold an enquiry against Shri. Ramaiah, Commissioner for Workmen's Compensation, Sub-Division - 4, Bangalore with reference to the proceedings in No. WCA:B-4:NFC:CR-49/2003 and No. WCA:B-4:NFC:CR-50/2003. To ascertain his role in relying upon false, frivolous and concocted documents to award disproportionate compensation to claimants, which does not have nexus to alleged injuries suffered by them. To take appropriate action against him for misusing his official capacity to show favoritism in allowing false and frivolous claims in the said petition.

20. This Court also feel it is necessary that similar enquiry be initiated by Principal Secretary Health Department and also the Medical Council of Karnataka to hold separate enquiry against Doctor M. Viswaradya who was working as Orthopaedic Surgeon, General Hospital Kanakapura as on 14.08.2003 with reference to the false affidavit filed by him in C.R. No. 49/2003 and C.R. 50/2003 regarding nature of injuries suffered by the claimants therein, for issuing false disability certificate for the alleged injuries suffered by the claimant. It is further advised to take appropriate action against the said Doctor in joining hands with the claimants and Commissioner for Workmen's Compensation in falsifying records and in aiding the Commissioner for Workmen's Compensation to award exaggerated amount by way of compensation to claimants.

21. Registry is directed to send copies of these judgment to the aforesaid authorities forthwith along with copies of oral evidence and documents produced and relied in the said claim petition to effectively conduct the enquiry. A copy of this judgment should also be sent to the Principal Secretary to bring to his notice the misuse of the office of Commissioner for Workmen's Compensation by these authorities and also to impress upon him the necessity for implementing amended provisions of Section - 20 of Workmen's Compensation Act in taking away jurisdiction of Commissioners for Workmen's Compensation and to invest the same in Civil Court forthwith.

22. It is also brought to the notice of this Court that 50% of the amount awarded is already withdrawn. In the facts and circumstances of the case liberty is reserved to the Appellant Insurance Company to recover the same from the claimants immediately.