

(2011) 03 KAR CK 0357
In the Karnataka High Court
Case No : M.F.A. No. 2235 of 2009

National Insurance Co. Ltd.	Vs	APPELLANT
Sri. Rangappa, Chandregowda and Sri K.R. Subbegowda		RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

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

Citation : (2011) 131 FLR 660 : (2011) 5 KarLJ 268 : (2012) 2 LLJ 685

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

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; K. Govindaraj, for R1, A. Shivarama and Assts. for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—The 3rd Respondent in WCA.NF. 114/2002 on the file of Commissioner for Workmen's Compensation, Chickmagalur has filed this appeal challenging the order dated 13.1.2009 awarding compensation to claimant in a sum of Rs. 1,21,996/-payable with interest at 12% from 30th day of order till date of deposit of entire amount.

2. Brief facts leading to this appeal are:

The case of claimant is that he was working as coolie in coffee estate of 1st Respondent. It is also his case that on 21.3.2002 2nd Respondent Sri. Annegowda, owner of tractor trailer bearing No. KA-18/T-912-913 directed him to load firewood to trailer of said tractor. When the work was being carried out due to detachment of trailer from tractor, trailer turtled down along with load of firewood resulting in injury to claimant. In the said accident claimant lost the small toe of his left leg and injured the other toes of left leg and also suffered fracture to the left foot. According to him, the said accident resulting in the aforesaid injuries took place on 21.3.2002 at about 2 pm. Immediately, thereafter he was sent to Government Hospital in Chickmagalur by the owner of

estate where claimant was treated as inpatient. Subsequently, he filed claim petition against one Chandregowda, owner of coffee estate, another Annegowda, owner of tractor trailer bearing No. KA-18/T-912-913.

3. In the said proceedings 1st Respondent filed statement of objections wherein he denied relationship of employee and employer between claimant and himself. He admits that 2nd Respondent owner of adjacent estate is also owner of aforesaid tractor trailer which is insured with 3rd Respondent. He specifically denied accident as stated by claimant as also relationship. Further, he stated that if any liability is fixed for payment of compensation, owner of tractor trailer, 2nd Respondent and its insurer, 3rd Respondent are liable to pay the same.

4. In the said proceedings, one Subbegowda who was not Respondent at the earlier instance came on record as 4th Respondent and filed objections, wherein he did not admit relationship of employee and employer between claimant and himself. However, he admit that he is owner of tractor trailer. He also admit that he is friend and neighbour of 1st Respondent and denied any accident involving his vehicle. However, he states that in the event Commissioner hold that claimant is an employee under him, claimant is entitled to seek compensation from 3rd Respondent insurance company.

5. Originally claim petition was filed only against Chandregowda, Annegowda. Subsequently, it is seen that on 7.5.2004 claimant by filing an application got one K.R. Subbegowda as 2nd Respondent in place of original 2nd Respondent Annegowda and impleaded National insurance company limited as 3rd Respondent who is insurer of tractor trailer belonging to 2nd Respondent. As on 7.4.2004 it is Chandregowda, Subbegowda and National Insurance Company Limited are Respondents and 2nd Respondent Annegowda was deleted. However, subsequently on 8.12.2006 record discloses about some interim order is passed on that day, wherein Respondents in claim petition are shown as Chandregowda as 1st Respondent, Annegowda as 2nd Respondent and National Insurance Company Limited as 3rd Respondent and Subbegowda as 4th Respondent. The order sheet does not disclose how the deleted Annegowda is again continued as 2nd Respondent. Further, it is seen that Subbegowda who originally filed statement of objections denying relationship, subsequently on 6.1.2006 he amends his objections statement and admit the relationship of employer and employee between himself and claimant and admit that he was employee earning salary of Rs. 60/- per day.

6. With this contradictory pleading Commissioner proceeded to frame issues and record evidence. In the evidence claimant reiterates his pleadings. On behalf of Respondents, son of 1st Respondent adduced evidence wherein he states that claimant is total strange to him. There was no relationship of employer and employee between claimant and his father and at any point of time claimant was working in their estate, which was run by him for past eight years. So far as Annegowda is concerned there is no evidence by him. So far as Subbegowda is concerned in his examination-in-chief he states that he is owner of aforesaid

tractor trailer. Claimant was working under him from one week prior to the date of accident. He was not a regular employee and he was only a temporary employee working on salary of Rs. 60/- per day. However, in cross-examination he denies that he had ever known any person by name Rangappa and that no person by name Rangappa had ever worked with him. Claimant in support of his case examined Dr. M.G. Sridhar, who is not the person who has given treatment. He is the person who has given disability certificate to claimant. He states that claimant has limb disability to an extent of 40% to his left leg.

7. The Commissioner on appreciation of pleadings and evidence available on record, proceeded to accept that there exists relationship of employee and employer between claimant and owner of tractor and claimant has suffered injury in the course of his employment and that he has suffered 40% disability to his left limb, which has resulted in his loss of earning capacity to an extent of 40% and taking the income of claimant at Rs. 3000/- pm., and by applying factor of 169.44 proceeded to award compensation in a sum of Rs. 1,21,999/- payable with interest at 12% from 30th day of order till date of deposit of entire amount. Directed 3rd Respondent insurance company to pay the entire compensation.

8. The 3rd Respondent insurance company being aggrieved by the aforesaid order in holding that there is relationship of employer and employee between claimant and Subbegowda, owner of aforesaid tractor trailer has come up in this appeal challenging the aforesaid finding of Commissioner and also awarding compensation to claimant in a sum of Rs. 1,21,996/- and saddling liability to pay same on it.

9. On appreciation of grounds of appeal and finding of Commissioner in the order impugned the following substantial questions of law arise for consideration in this appeal;

1) Whether Commissioner was justified in holding that there exist relationship of employee and employer between claimant and 2nd Respondent Subbegowda owner of tractor trailer bearing No. KA-18/T-912-913?

2) Whether Commissioner was justified in accepting evidence of Doctor, PW.2 to the effect that claimant suffered 40% limb disability and consequently holding loss of earning capacity to an extent of 40% without there being any opinion from Doctor with regard to that?

Heard the counsel for Appellant and Respondents. On reappraisal of pleadings, oral and documentary evidence available on record this Court answers 1st substantial question of law in the negative and holds that 2nd substantial question of law does not survive for consideration in the light of finding given on 1st substantial question of law for the following:

REASONS

10. Admittedly, claim petition is filed by claimant against two persons initially i.e., one Chandregowda and another Annegowda. Chandregowda is said to be

owner of Kundur Estate and Annegowda is said to be owner of aforesaid tractor trailer. However, in between claimant gives up 2nd Respondent Annegowda and implead one Subbegowda contending that Subbegowda is owner of said tractor trailer and same is insured with 3rd Respondent.

11. In the claim petition he states that he is employee under Respondents. He does not specifically say under whom he was working as coolie. He does not say he was either working with Chandregowda or Annegowda at the first instance. Subsequently, amending claim petition he takes a specific stand that he is employee under Subbegowda, who is owner of tractor trailer. When he himself is not certain under whom he was working at the relevant point of time, Commissioner ought to have framed an issue about employment of claimant with aforesaid persons.

12. Initially, it is seen that Chandregowda, Annegowda and Subbegowda denied relationship of employer and employee between them and claimant. However, subsequently, Subbegowda by filing amendment application in the year 2006 i.e., four years after claim petition was filed admit that claimant was working with him as employee as on the date of accident and that was only for a period of about one or two weeks and that too it was not a steady job and he was only temporary employee on daily salary of Rs. 60/-.

13. However, when it comes to evidence, he goes back again on his earlier statement wherein he files his written statement, wherein he admit relationship of employee and employer between claimant and himself. Subsequently, on 14.3.2008 when he submits himself for cross-examination he denies relationship of employer and employee between himself and claimant and goes to the extent of saying that at no point of time he ever had any coolie by name Rangappa working under him. With this it is clearly seen that there is concerted exercise on the part of claimant and Commissioner to some how fix somebody to be the employer of claimant.

14. In addition to this claimant and Commissioner also takes assistance of one Dr. Sridhar who has neither treated claimant nor knows anything about the alleged injury suffered by him. He gives a false medical certificate to the effect that claimant has suffered injuries in the accident which is caused due to use of tractor belonging to Subbegowda and said injury has caused 40% disability to his left leg. He does not give any opinion as contemplated u/s 4(1)(c)(ii) of Workmen's Compensation Act which require the Doctor to give opinion regarding what would be loss of earning capacity the said injury has caused. In the absence of same Commissioner takes up responsibility on his broad shoulders and again comes to assistance of claimant in fixing loss of earning capacity generously at 40% without there being acceptable evidence in support thereof and proceeded to award compensation in favour of claimant.

15. The entire oral and documentary evidence available on record clearly discloses that there is unholy nexus between claimant and Respondent/owner of

tractor trailer Commissioner and Doctor who has given evidence in support of claimant to some how see that claim petition filed by claimant is allowed and compensation is awarded fixing liability exclusively on 3rd Respondent when there is specific denial of employee and employer relationship between owner of tractor trailer and claimant and succeed in passing the false, frivolous and unscrupulous order which is being challenged by 3rd Respondent in this proceedings.

16. On going through the finding of Commissioner it is seen that it is yet another unsuccessful attempt on the part of Commissioner to some how fasten liability to pay compensation on 3rd Respondent insurance company when there is no liability primarily on the owner of tractor trailer to compensate the claim. Therefore, this Court holds that there is absolutely no justification to sustain the impugned order. Accordingly, 1st substantial question of law is answered in the negative. In view of the answer to 1st substantial question of law 2nd substantial question of law does not survive for consideration.

17. In the result, the appeal filed by 3rd Respondent is allowed. The impugned order dated 13.1.2009 in NF. No. 114/2002 on the file of Commissioner for Workmen's Compensation, Chikmagalur is set aside.

In view of the appeal being allowed, the amount in deposit be refunded to the Appellant.