

(2015) 04 KAR CK 0159

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 30509/2009 (WC), 30510/2009 (WC), 30511/2009 (WC), 30512/2009 (WC) and 30513/2009 (WC)

National Insurance Company Limited

APPELLANT

Vs

Durgappa and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0159

Hon'ble Judges : Budihal R.B., J

Bench : Single Bench

Advocate : Manvendra Reddy, for the Appellant; Basavaraj R. Math, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Budihal R.B., J.—Since the common questions of law and facts are involved in all these appeals and the appeals are arising out of the common judgment and award passed by the Commissioner for Workmen Compensation, the appeals were taken together to dispose off them by this common judgment.

2. The brief facts leading to filing of the claim petitions by the respondents/claimants in all these appeals, who filed their claim petitions before the Commissioner for Workmen Compensation, alleging that on 20-5-2005 as per the directions of respondent No. 2 herein, the deceased were proceeding in 407 Tempo bearing Regn. No. KA-32-A-1786 as coolies and cleaner. When the said vehicle reached near Kavital-Lingasugur main road, at about 6-00 p.m., said tempo met with accident and in the said accident Balamma and others sustained grievous and multiple fracture injuries and died due to the said injuries. It is the further case of the respondents/claimants that case in Crime No. 56/2005 came to be registered in Kavital Police Station. It is also their case that the deceased in the respective claim petitions were earning members. Because of the death in the said accident, they were put to loss. Hence on that ground, the claimants in the respective appeals preferred the claim petitions before the Commissioner

under the Workmen Compensation.

3. The respondent-insurance company before the Commissioner, opposed all the claim petitions on the ground that the said vehicle was hired to attend the marriage function and the deceased were also travelling to attend the marriage function and they were not at all the employees of respondent No. 1, the owner of the said vehicle. There was no employer and employee relationship between the deceased and owner of the vehicle when the alleged accident took place. Hence, it is the contention of the insurance company that there is a violation of the terms and conditions of the insurance policy. They traveled in a goods vehicle. Therefore, there is no liability on the part of the insurance company. On the basis of the said contentions, the Commissioner under the Workmen Compensation enquired the matter and recorded the evidence of the parties and after considering the oral as well as the documentary evidence and the pleadings of the parties, ultimately allowed the claim petitions and awarded the compensation amount and it is also held by the Commissioner that the respondent No. 2 insurance company is liable to pay the compensation amount as the vehicle was insured on the date of the said accident. Being aggrieved by the judgment and award passed by the Commissioner, now the insurance company is before this court in all these appeals.

4. Heard the arguments of the learned counsel appearing for the appellant-insurance company in all these appeals and also the learned counsel appearing for the respondents/claimants.

5. Learned counsel appearing for the insurance company during the course of his argument made the submission that one Durgappa is the complainant in this case about the accident, who filed the complaint mentioning that they hired the vehicle in order to attend the marriage function and on the basis of the said complaint of Durgappa the crime has been registered. It is also the submission of the learned counsel appearing for the insurance company that said Durgappa also filed the claim petition before the Motor Accident Claims Tribunal, but the same has been dismissed in M.V.C. No. 308/2006 on the file of Fast Track Court-III at Raichur. It is also his submission that when the claimants before the Commissioner relied upon the said FIR, then whatever the contents of the said FIR are binding on the claimants in this case also and they cannot contend that the contents of the FIR are not binding on them. He made the submission that when the documents on the side of the claimants, though goes to show that the claimants i.e. the deceased with others were travelling in the said vehicle as passengers to attend the marriage function, the insurance company is not at all liable to pay any compensation and it is for the owner of the said vehicle to pay compensation to the claimants. In support of his contentions, learned counsel appearing for the appellant-insurance company relied upon the decisions filed along with the memo of citations dated : 7-4-2015, which are as under:--

"1) M.V. Jayadevappa and Another Vs. Oriental Fire and General Insurance Company Ltd. and Others, (2004) 13 SCC 43

- 2) National Insurance Co. Ltd. and Others Vs. Govindamma and Others, (2005) 3 ACC 851 : (2006) ACJ 563 : (2005) 106 FLR 1180 : (2005) ILR (Kar) 3242 : (2005) 4 KarLJ 604 : (2005) 3 KCCR 199 SN
- 3) United India Insurance Co. Ltd. Vs. Hussain Sab and Others, (2006) 4 ACC 557 : (2006) 1 KCCR 107
- 4) 2007 (Part-II) ACC 192 Karnataka High Court between United India Insurance Co. Ltd. v. Hanamanthappa and others (Para 5).
- 5) Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others, (2007) 8 JT 575 : (2007) 148 PLR 93 : (2007) 7 SCALE 725 : (2007) 13 SCC 476 : (2007) 6 SCR 780
- 6) CDJ Law Journal 2008 Supreme Court Page-354, between National Insurance Co. v. Premadevi and others.
- 7) 2009 (Part-I) TAC 420 (SC) between National Insurance Co. Ltd., v. Rathin and others (Para 14).
- 8) 2010 Karnataka MAC 627 between Oriental Insurance Co. Ltd., v. Raghu and others.
- 9) National Insurance Company Ltd. Vs. Smt. Lakshmiddevamma and G.K. Manjunath
- 10) ILR 2012 KAR 228 in the case of M/s. Oriental Insurance Co. Ltd., v. Mookambika and another (Para 14, 18&19)
- 11) 2011 (2) AIR Kar. R 629, in the case of United India Insurance v. N. Prabhakar."

Hence he made the submission that the Commissioner without looking into all these aspects of the matter wrongly appreciated the oral as well as documentary evidence and wrongly came to the conclusion that the claimants before the Commissioner have established that deceased were working as coolies in the said vehicle at the time the accident took place and accordingly he allowed the claim petitions. Hence, he submitted that the judgment and order of the Commissioner which are challenged in these appeals is against the materials placed on record and it is not sustainable in law. Hence he submitted to allow all the appeals and to set aside the judgment and award of the Commissioner to the extent that it relates to the liability of the appellant - insurance company.

6. Per contra, the learned counsel appearing for the respondents/claimants during the course of his argument, made the submission that even though in the FIR, it is mentioned by the complainant that about 40 persons were travelling in the said vehicle to attend the marriage function, but, FIR is not the only document in this case. Immediately after the accident and registration of the FIR, the statement of witnesses were recorded by the police, wherein the witnesses have clearly stated that the deceased in respect of which the claim

petitions are filed were travelling in the said vehicle as coolies along with the other persons who were travelling to attend the marriage function. Hence he made the submission that when such documents are also produced and it is recorded by the police through the mouth of the independent witnesses, such materials can also be taken into consideration in ascertaining whether they were travelling in the said vehicle as passengers to attend the marriage function or they were travelling as coolies as they have contended in claim petition. Learned counsel for the respondents/claimants made the submission that the owner of the vehicle admitted in his pleading that they were working as coolies under him and on the date of the accident also they were working as coolies in his vehicle. Hence the learned counsel submitted that when such evidence is placed on record, the oral evidence of the parties is also to the effect that they were travelling as coolies. The Commissioner has taken into consideration the evidence placed on record and on the basis of which ultimately come to the conclusion that they are working as coolies and allowed their claim petitions. It is his submission that once the appeals were dismissed, when the application was filed, seeking restoration of the appeals by setting aside the dismissal order at that time also in the application, the insurance company pleaded that the insurance policy covers risk in respect of two employees is also pleaded and same is binding on insurance company and now they cannot contend that there is no liability on the part of insurance company. Hence he submitted that the Commissioner has taken all these aspects into consideration and rightly allowed the claim petitions. There is no illegality and hence the appeals be dismissed.

7. In support of his contention, learned counsel appearing for the respondents/claimants also relied upon the decision of this Court Dated : 01-08-2014 rendered in M.F.A. No. 31415/2009 (WC) and decision of the Hon"ble Supreme Court rendered in Civil Appeal No. 6220 of 2008 decided on 25-03-2014 in the case of Fahim Ahmad and Ors. v. United India Insurance Co. Ltd. and Ors and another decision of the Karnataka High Court reported in 2014 Kant. M.A.C. 157 (Kant).

8. I have perused the grounds urged in the appeal memorandum in all the appeals, judgment and award passed by the Commissioner under the Workmen Compensation in respect of all the claim petitions and also the oral and documentary evidence adduced in the case before the Commissioner so also the original file secured from the office of the Commissioner and the judgments and the principles enunciated in the said decisions relied upon by the counsels for both sides, which are referred above.

9. Perusing the documents, it is no doubt true that, about the incident one Durgappa lodged the complaint and wherein it is mentioned that vehicle was hired for attending the marriage function and about 40-persons traveled in the said vehicle. On the basis of the said complaint, case was registered in Crime No. 56/2005 of Kavital Police Station. But, perusing the original records secured from office of the Commissioner under Workmen Compensation and perusing the

statement of witnesses recorded by the police which goes to show that it is mentioned in the statement of those witnesses that the deceased in respect of whom the claim petitions are filed were travelling in the said vehicle as coolies. The owner of the vehicle appeared in the matter and he has filed his pleading, wherein also he has admitted that the deceased persons were travelling in the said vehicle as coolies and they were working as coolies under him and he has admitted that they are the employees and there is a relationship of employer and employee between himself and the coolies. I have also perused oral evidence of the parties adduced before the Commissioner, wherein also, it is claimed by the claimants before the Commissioner that the deceased were travelling in the vehicle as coolies. Looking to these material facts, which were placed on record also goes to show that the deceased were travelling in the vehicle as coolies. When such material is also placed before the court, the court has to look into those documents and also the oral evidence and court cannot confine only to the complaint that was lodged by Durgappa. It is no doubt true that the claim petition filed by said Durgappa before the Motor Accident Claims Tribunal has been dismissed because he himself was the complainant. In his own complaint, he has mentioned that they were attending the marriage function, but only on the basis of dismissal of his claim petition, the court cannot come to the conclusion that same is applicable to the other claim petitions filed before the Commissioner under the Workmen Compensation. After perusing the entire material and evidence on record, both oral and documentary, the court has to ascertain what is the cumulative effect, whether they were travelling in the said vehicle as passengers to attend the marriage function as alleged by the insurance company or they were working as coolies in the said vehicle. As it is rightly submitted by the learned counsel for the respondents/claimants that the proper persons to say about deceased who were travelling in the said vehicle is the persons who were travelling along with them in the said vehicle and also the owner of the vehicle under whom they were said to be working as coolies. Perusing the said material, as I have also observed above that the owner of the said vehicle also admitted that they were working as coolies and travelling in the said vehicle as coolies. Under all these circumstances, the Commissioner rightly appreciated the material placed before him and rightly came to the conclusion that, at the relevant point of time, they were travelling in the said vehicle as coolies, in view of the material placed on record, no fault can be found with the finding recorded by the Commissioner that they were travelling as coolies. Therefore, the contention of the insurance company cannot be accepted. Under these circumstances, fastening the liability on the part of the insurance company by the Commissioner while deciding the claim petitions is also in accordance with the material placed on record. I do not find any illegality in the finding recorded by the Commissioner. Therefore, there are no grounds for this court to interfere into the judgment and award passed by the Commissioner.

10. Hence the appeals are hereby dismissed, confirming the judgment and order passed by the Commissioner, fastening the liability on the part of insurance

company.

The amount deposited before this Court be transferred to the concerned Commissioner.

Since the main appeals are dismissed, Misc. Cvl. No. 151084/2009 in MFA No. 30511/2009 and Misc. Cvl. No. 151099/2009 in MFA No. 30512/2009 for stay, does not survive for consideration and accordingly they are also disposed off.