

(2015) 04 KAR CK 0186

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5721/2007 (WC)

National Insurance Company Limited

APPELLANT

Vs

Parasanagouda and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0186

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : A.S. Patil, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.

1. The appellant-National Insurance Company Limited has filed this appeal challenging the judgment and order dated 09.01.2007 made in W.C.A.N.F. 34/2005 passed by the Labour Officer and Commissioner for Workmen's Compensation, Haveri (hereinafter referred to as "WCC, for short).

2. The 1st respondent herein had filed a claim petition contending that on 26.06.2004, while he was working as a hamal in a lorry bearing registration No. KA-37/2526, after loading chillies from the Haveri vegetable market in the said lorry, he was proceeding towards Gangavathi market, due to rash and negligent driving of the lorry by its driver, accident had occurred. In the said accident, he sustained grievous injuries to his head, fracture to left patella and other injuries. He was admitted to the Mundaragi Government Hospital for the first-aid treatment and thereafter to the Haveri Government Hospital. He was getting salary of Rs. 4,000/- per month and batta of Rs. 50/- per day. Due to the injuries and the disability suffered by him, he cannot do the work as a hamal and the accident having occurred during the course and out of employment, he was entitled for compensation.

3. Though the owner of the vehicle was served with the notice, he remained unrepresented and was placed ex parte. The insurance company filed its written statement denying the entire averments made in the claim petition. It was contended that no document was produced to show that the claimant was working as a hamal under the owner of the offending vehicle and, as such, there was no master and servant relationship. Further, no document had been produced to show that the claimant was getting salary of Rs. 4,000/- per month and batta of Rs. 50/- per day and sought for dismissal of the claim petition.

4. The WCC, on the basis of the pleadings of the parties, framed necessary issues. The claimant, in order to prove his case, examined himself and the doctor, who treated him, and also got marked documents as Exs. P. 1 to P. 11. On behalf of the respondents, no witness was examined.

5. The WCC, after considering the oral and documentary evidence, and taking into consideration the police records found that on 26.06.2004, on which date the alleged road traffic accident had occurred, the claimant was working as a hamal in the offending lorry and he sustained injuries during the course and out of employment, hence, he is entitled to compensation. With regard to the quantum of compensation, taking into consideration the evidence of the doctor, who had deposed that on account of the injuries sustained by the claimant to his head and fracture to left patella and the operations undergone by the claimant, he had suffered disability to an extent of 31%. Though the claimant claimed that he was getting income of Rs. 4,000/- per month and batta of Rs. 50/- per day, no document was produced, hence, the WCC taking the minimum wages of Rs. 3,000/- per month paid to a daily wager, the age of the claimant as 28 years, the disability as 31% and applying the relevant factor 211.79 awarded a sum of Rs. 1,18,178/- with 12% interest. Being aggrieved by the said judgment and order of the WCC, the appellant-insurance company has filed this appeal.

6. Shri. S.S. Koliwad, learned counsel appearing for the appellant-insurance company, contended that the judgment and order passed by the WCC is contrary to law. The claimant is not a hamal working under the owner of the offending vehicle because while, in the statement made before the police on 26.06.2004, the claimant has stated that he is a vegetable vendor in the Haveri market and when he was returning home the accident had occurred. The very next day, the claimant has given further statement that he was working as a hamal and that, after loading chillies from the Haveri vegetable market and proceeding to Gangavathi, the accident had occurred. No document has been produced to show that the claimant was working as a hamal under the owner of the offending vehicle and there is no master and servant relationship between them. The owner of the offending vehicle has not supported the case of the claimant. With regard to the quantum of compensation, he further contended that taking into consideration the injuries suffered by the claimant in the accident, the disability assessed by the doctor, the compensation awarded by the WCC is on the higher side and hence, sought for setting aside the impugned judgment and order of the

Tribunal.

7. On the other hand, Shri. A.S. Patil, learned counsel appearing for the 1st respondent/claimant argued in support of the judgment and order passed by the WCC contending that on the date of the accident, the claimant was working as a hamal in the offending vehicle, that after loading the chillies from Haveri vegetable market and proceeding to Gangavathi, the accident had occurred. He also contended that on 26.06.2004, the statement of the claimant was wrongly recorded by the police and subsequently, the very next day, the claimant gave correct statement to the police and hence, the statement given on 26.06.2004 cannot be taken into consideration. The compensation awarded is in accordance with law. Hence, he sought for dismissal of the appeal.

8. I have carefully considered the arguments addressed by the learned counsel for the parties, perused the impugned judgment and order and the oral and documentary evidence adduced by the parties.

9. The records clearly disclose that due to the road traffic accident that occurred on 26.06.2004, the claimant sustained injuries to his head and fracture of left patella and other injuries. The contention of the appellant is that the claimant is not the employee of the owner of the offending vehicle since he himself had made a statement before the police, on 26.06.2004, to the effect that he was working as a vegetable vendor at Haveri Vegetable Market and while returning home the accident had occurred. However, the claimant contended that on the date of the accident, at about 11.45 p.m., somebody recorded his statement that he was a vegetable vendor and subsequently, on the very next day, he has given the correct statement that he was working as a hamal in the lorry. Therefore, the point that arises for consideration in this appeal is whether the claimant is a vegetable vendor or a hamal in the offending lorry. Except the stray statement made on 26.06.2004, there is no material to show that the claimant was working as a vegetable vendor. The claimant in his examination-in-chief and cross-examination has admitted that he is a hamal working under the owner of the offending vehicle. The insurance company also has not examined any independent witness to prove that the claimant is not a hamal working in the offending lorry the WCC, after considering the oral and documentary evidence has held that the claimant is working as a hamal in the said lorry. Hence, the contention of the appellant cannot be accepted. Therefore, it has to be held that the claimant was working as a hamal in the offending lorry.

10. With regard to the quantum of compensation, in the accident, the claimant has sustained head injury, fracture of left patella and other injuries. The claimant has undergone operations for the same. Admittedly, the claimant is working as a hamal. Unless, he has strong legs to stand, he cannot do the work of a hamal. The doctor, who treated the claimant, in his evidence, has stated that the claimant has suffered disability to an extent of 31%. The doctor, who is an expert in the field has examined the claimant and assessed the disability. The assessment of disability by the competent doctor has much weight. The WCC

taking into consideration the income of the claimant as Rs. 3,000/- and taking into consideration the disability of 31% awarded compensation of Rs. 1,18,178/-. I find no infirmity or irregularity in the judgment and order passed by the WCC. The appellant has not made out a case to interfere with the impugned judgment and order. Accordingly, the appeal is dismissed.

The amount in deposit be transferred to the Commissioner for Workmen's Compensation, Haveri.