

(2003) 06 KAR CK 0069

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5056 of 2001

National Insurance Company Limited

APPELLANT

Vs

Siddappa and Another

RESPONDENT

Date of Decision : 06-06-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2003) 4 KCCR 2562

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : S. Srishaila, for the Appellant; S.V. Tilgul, for Respondent 1 and H.V. Shivakumar, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—This appeal is arising out of an order passed by the Commissioner for Workmen's Compensation, Chitradurga in WCA/NFC/CR No. 49 of 1998. The Respondent-1 was the applicant before the Commissioner for Workmen's Compensation. The Respondent-1 Siddappa was working as a cleaner in a lorry bearing No. KA. 25/6551 owned by the 2nd Respondent-Vijayananda Road Lines. On 8.12.1996 he was discharging his duties as a cleaner in the lorry which was proceeding from Bangalore to Hubli. When the lorry reached Palavvanahalli Gate, the Respondent-claimant requested the driver to stop the vehicle in order to attend to the nature call. After attending to the nature call, the Respondent-claimant was about to board his lorry bearing No. KA. 25/6551, at that time another lorry bearing No. TN. 28/3335 which was proceeding on the same road in the same direction dashed against the claimant-Respondent, due to which he sustained injuries all over his body and was admitted to Government Hospital, Chitradurga. The driver of the 2nd Respondent lodged an FIR before the jurisdictional Police stating that the claimant-Respondent-1 has been injured in an accident while discharging his duties as a cleaner.

2. On account of the injuries sustained by him and disability caused to him during the course of his employment, the claimant presented a Claim Petition before the Commissioner. The employer-2nd Respondent in this appeal contended before the Commissioner that the application of the claimant as not maintainable. According to Respondent-2, the claimant has to proceed against the owner and Insurer of lorry bearing No. TN. 28/3335. Similarly, the Insurance Company also contended that the application filed by the claimant as not maintainable, as the lorry of 2nd Respondent had not involved in the accident. The Commissioner after appreciating the evidence adduced by the parties, held that the claimant-Respondent-1 sustained injuries in the accident, while discharging his duties as a cleaner and awarded compensation in accordance with the provisions of Workmen's Compensation Act, 1923, since the 2nd Respondent's lorry was insured with the Appellant, fixed the liability on the Appellant. The Commissioner after considering the nature of injuries and the percentage of disability caused to the claimant and by applying the minimum wages payable to a cleaner as on the date of the accident held that the claimant-Respondent-1 is entitled for a compensation of Rs. 1,74,916/-. The order of the Commissioner is called in question in this appeal by the Insurance Company.

3. In this appeal, the Appellant has mainly concentrated on the question of maintainability of the application of the claimant before the Workmen's Commissioner.

4. According to the Appellant when the claimant-Respondent has sustained injuries in a road traffic accident, the application filed by him before the Commissioner for Workmen's Compensation was not maintainable and he has also contended that the quantum of compensation awarded as on higher side.

5. After hearing the learned Counsel for the parties, what is required to be considered by this Court in this appeal is, when the accident is caused to an employee while discharging his duties due to the negligence of another vehicle, whether an employee can maintain an application under the Workmen's Compensation Act of 1923 or under the Indian Motor Vehicles Act ?

6. The facts in this case are not in dispute. Though the Insurance Company has contended that the claimant-Respondent has not proved the relationship of master and servant between the Respondent-1 and 2, after considering the documentary evidence produced by the claimant-Respondent and looking into the statement of objections filed by the 2nd Respondent, it is clear that there exists a relationship of master and servant between the 2nd Respondent and the 1st Respondent. Therefore, this Court has to hold that the claimant-Respondent-1 was an employee of the 2nd Respondent at the time of the accident and that he sustained injuries while discharging duties as cleaner in lorry bearing No. KA. 25/6551 of the 2nd Respondent.

7. The next question that arises for consideration of this Court is when the Respondent-1 claimant has sustained injuries on account of the accident caused

by the lorry bearing No. TN-28/3335 can maintain an application before the Commissioner for Workmen's Compensation without filing an application under the Motor Vehicles Act claiming compensation against the lorry bearing No. TN-28/3335. When the Respondent-1 has sustained injuries during the course of his employment and such personal injury is caused to him out of the accident arising and in the course of his employment u/s 3 of the Workmen's Compensation Act, 1923, he is entitled to make an application before the Commissioner for Workmen's Compensation. Similarly, when he has sustained injury in a road traffic accident caused by another vehicle though he was discharging duties as a cleaner of the 2nd Respondent is also entitled to make an application before the Claims Tribunal claiming compensation from the owner of the lorry bearing No. TN-28/3335 and its Insurer.

8. From the above facts it is clear that the claimant in such circumstances has got two options. Being an employee of Respondent-2 having sustained injuries in a road traffic accident while discharging the duties can maintain a petition claiming compensation under the Workmen's Compensation Act. Similarly, being a third party having sustained injuries in a road traffic accident, caused by another motor vehicle is entitled to proceed against the owner and insurer of the offending vehicle. In other words, in such circumstances, a person is entitled to invoke either the provisions of Workmen's Compensation Act or the provisions of the Motor Vehicles Act. He can choose or elect any forum which is beneficial to him. However, he is not entitled to invoke the jurisdiction of both the statutes simultaneously. In the instant case, Respondent-claimant has not filed any claim petition under the Motor Vehicles Act claiming compensation by proceeding against the owner of the lorry bearing No. TN-28/3335, claimant having elected to proceed against his employer can maintain an application under the Workmen's Compensation Act. Therefore, the contention of the Appellant/insurance company that application filed by the Appellant before the Commissioner is not maintainable has to be negated.

9. Then the next question that arises for consideration of this Court is whether the quantum of compensation awarded by the Commissioner is on higher side. It has come in the evidence of the claimant that he has suffered a permanent disability of 70% on account of the fracture of left hand. According to P.W.2-Dr. Eswarappa the claimant-Respondent cannot make use of his left hand and there is no strength for the claimant to make use of his left hand for any purpose. Considering the disability caused to the claimant, the Tribunal has held that the earning capacity of the claimant has been reduced to 18% and considering the minimum wages payable to a cleaner on the date of the accident, the compensation has been determined by the Commissioner. Therefore this Court cannot hold that the compensation awarded by the Tribunal is on higher side.

10. In the circumstances, there is no merit in this appeal. Accordingly, the appeal is dismissed. The amount in deposit shall be transferred to the Commissioner for Workmen's Compensation and the claimant-Respondent is entitled to draw the

same.