

(2008) 09 KAR CK 0062
In the Karnataka High Court
Case No : M.F.A. No. 711 of 2003

New India Assurance Co.

APPELLANT

Vs

Sri Manohar and Sri Basappa Shirappanavar

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Workmens Compensation Act, 1923 — Section 4 A

Citation : (2011) 3 KarLJ 172 : (2011) 4 KCCR 2911 : (2011) 3 TAC 304

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Sharanappa Koliwad, for B.C. Seetharama Rao Associates, for the Appellant; Ashok R. Kalyanashetty, for R.2 in M.F.A. No. 711/2003 and Manjunath Meted, for R.2 in M.F.A. No. 712/2003, for the Respondent

Judgement

K. Ramanna, J.—Both the appeals arise out of common judgment dated 8.11.2002 passed by the Commissioner for Workmens' Compensation, Belgaum in WCA/SR-135/2002 and WCA/SR-137/2002 respectively, whereby the claim petitions filed by Respondent No. 2 were allowed awarding compensation of Rs. 1,72,512/- and Rs. 1,06,121/- together with interest at 12% pa. over and above the amount of compensation as per Section 4-A of the Act Being aggrieved by the said judgment and award, the Appellant being the insurer on whom the liability to pay the compensation amount has been fastened by the Commissioner for Workmen Compensation, has come up with these both appeals.

2. Though the claimants are different, the Appellant herein who is the insurer is one and the same in both the appeals and as the claim petitions arise out of one and the same accident, in order to avoid repetition of facts and law, both the appeals have been taken up together, heard and disposed of by this common judgment.

3. Heard the arguments of the learned Counsel for the Appellant and Respondents.

4. It is argued by the learned Counsel for the Appellant that though the Doctor who examined the claimant in WCA/SR-135/2002 has opined that he suffered 35% permanent physical disability, the Commissioner for Workmens' Compensation has quantified and awarded huge compensation of Rs. 1,72,512/- taking the loss of earning capacity of claimant at 70%, Likewise, awarded a sum of Rs. 1,06,121/- to the claimant in WCA/SR-137/2002 by taking loss of earning capacity at 50% though the Doctor had assessed only 25% permanent physical disability. It is argued that the assessment of compensation is contrary to the medical evidence and the commissioner has not given any acceptable reasons to award compensation holding that claimants suffered loss of earning capacity to the extent of 70% and 50% respectively and interest ought to have been awarded alter 30 days from the date of passing of the award, whereas in both the appeals, the Commissioner has wrongly awarded interest on the compensation amount after 30 days from the date of accident In support of this contention, the learned Counsel for the Appellant has relied on the decisions rendered by the Hon'ble Apex court in the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, , wherein it has been held thus:

that Permanent partial disablement - Compensation - Non-schedule injury-Doctor indicated percentage of permanent partial disablement, functional disability and loss of earning capacity to the extent of 80, 65 and 80 percent in three cases and Commissioner awarded compensation accordingly -Whether the High Court was justified in assessing 100 percent loss of earning capacity without indicating any reason or basis- Held: no; Commissioner's order restored.

Therefore, it is submitted that the appeals be allowed and the judgment and award passed by the Commissioner for Workmens' Compensation be modified by reducing the compensation.

5. On the other hand, learned Counsel for the Respondents-claimants submitted that admittedly claimants suffered permanent partial disability to the extent of 35% & 25% respectively as stated by the medical officer but the result and effect of permanent disability on the avocation of the Appellant is to be taken into consideration. Therefore, the Commissioner has rightly taken the resultant effect of permanent physical disability on the earning capacity on considering the avocation of the Respondents-claimants. Therefore, cogent reasons have been assigned by the Commissioner though the Doctor opined the Respondents-claimaints suffered 35% & 25% permanent physical disability respectively. But he has to consider the effect of permanent physical disability on the avocation of the claimant and therefore the Commissioner came to the conclusion that the claimant has lost 70% & 50% of earning capacity. It is further argued that the interest awarded is also in accordance with law which does not requires any reduction or modification. In support of the his contention, learned Counsel for the Respondent-claimant relied on a decision reported in AIR 2008 SCW 3951 in the case of K. Janardhan v. United India Insurance Company Limited and Anr. AIR 2008 SCW 3951 wherein it has been held thus:

Total disablement-Tanker driver met with accident with tractor- Suffered serious injuries and also amputation of right leg upto knee joint- Can be said to have suffered 100% disability and incapacity-would also be disqualified from even getting driving licence. -Computation of compensation on basis of loss of 100% of his earning capacity would be proper.

Therefore, the Commissioner has rightly taken the loss of earning capacity at 70% & 50% in respect of the claimant in WCA/SR-135 & 137/2002.

6. It is further argued by the learned Counsel for the Appellant that the admissions made by the claimant in WCA/SR-135/2002 discloses that after the accident, his licence is renewed and hence he is capable of driving the vehicle. Therefore, he does not suffer any loss of earning capacity or loss of future earnings on account of the injuries. So also it is argued that the compensation awarded to the claimant in WCA/SR-137/2002 is on the higher side.

7. Having heard the arguments of the learned Counsel on both sides, the point that arises for consideration is;

Whether the judgment and award passed by the Commissioner for Workmens" Compensation, Belgaum is just and proper? If so, whether it requires any interference?

8. I have carefully scrutinised the entire evidence and also the judgment referred by the learned Counsel for the Appellant.

9. It is seen that the claimant-Basappa who has been arrayed as Respondent No. 2 in MFA. No. 711/2003, has sustained injuries while working as a driver in a vehicle bearing registration No. KA-22/3010 of Respondent No. 1 and he has sustained injuries on account of turtlement of the vehicle. As per the evidence of Dr. Angadi, the claimant suffered 35% of permanent physical disability, whereas the Commissioner without assigning any reasons has come to the conclusion that he lost 70% of earning capacity. There is no amputation as such, but has sustained six injuries. So also the Commissioner for Workmens" Compensation has come to a wrong conclusion in taking the loss of earning capacity of claimant in WCA/SR/137/02 at 50% though the Doctor has deposed before the Court that he suffered 25% of disability.

10. In order to come to a different conclusion, regarding the percentage of disability offered by the expert, the Commissioner must offer reasons, but no such reasons has been assigned. In the case of the decision referred by the learned Counsel for the Respondent, there was amputation of right leg of the driver of a bus, which is total 100% disability. In the instant case, no such amputation of limbs was made. Therefore, the law laid down in the aforesaid decision referred to by the learned Counsel for the Respondent cannot be made applicable to the case on hand. Therefore, considering the facts and circumstances of the case, the Respondent-claimant- Basappa is entitled to compensation towards loss of earning capacity to the extent of 35% only, but not

70%. Therefore, he is entitled to compensation of Rs. 86,256/- taking into consideration that he was getting an income of Rs. 1,174/- together with interest at 12% p.a. from the date of adjudication of the award i.e., 8.12.2002 but not 30 days after the date of accident Therefore, the appeal MFA. No. 711/2003 is to be allowed in part.

11. Likewise in MFA. No. 712/2003 wherein the Doctor has deposed that the claimant Pandu suffered 25% permanent physical disability, the Commissioner has taken loss of earning capacity at 50% though the Doctor has opined that claimant suffered 25% disability but has not assigned any reasons in coming to that conclusion, there is no materials placed on record to come to the conclusion that claimant-Respondent-2 has suffered loss of earning capacity, more than the disability assessed by the Doctor, therefore, the claimant in WCA/SR-137/2002 is entitled to Rs. 53,061/- together with interest at 12% p.a. from the date of adjudication of the award i.e., 8.12.2002.

12. Accordingly, the appeals are allowed in part. The judgment and award dated 8.12.2002 passed by the Commissioner for Workmens" Compensation in WCA/SR-135/2002 and WCA/SR-137/2002 respectively is hereby modified. The claimants - Respondent No. 2, are entitled to compensation of only Rs. 86,256/- and Rs. 53,061/-respectively as against Rs. 1,72,512/- and Rs. 1,06,121/- awarded by the Commissioner. The claimants-Respondent No. 2 are entitled to interest on the compensation amount at 12% p.a. only from 8.12.2002 till the date of payment.

Excess amount if any deposited by the Appellant shall be refunded to it.