

(2015) 09 KAR CK 0396

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30626/2009 (WC) and MFA Crob. No. 1020 of 2012

New India Assurance Co. Ltd. and Others

APPELLANT

Vs

Devamma and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0396

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : S.S. Aspalli, for the Appellant; Babu H. Metagudda, Advocates for the Respondent

Judgement

B. Sreenivas Gowda, J—MFA No. 30626/2009 is filed by the insurer of lorry challenging the judgment and award passed by the Commissioner for Workmen's Compensation, Gulbarga District, Gulbarga (Hereinafter referred to as the "Commissioner" for short) on the ground of liability and quantum.

2. MFA Cross-Objection No. 1020/2012 is filed by the claimants seeking enhancement of compensation awarded by the Commissioner.

3. As these appeal and Cross-Objection are arising out of a common judgment and award of the Commissioner, with the consent of learned counsel appearing for the parties, they are heard together for consideration of following substantial questions of law and disposed of by this common judgment.

4. The substantial questions of law that arise for consideration are;

"1. Whether the finding of the Commissioner on liability in fastening the same on the insurer of tractor and trailer is sustainable in law?

2. Whether the quantum of compensation and interest awarded by the Commissioner are in accordance with the provisions of Workmen's Compensation Act?"

5. Sri. S.S. Aspalli, learned counsel for the insurer of offending tractor and trailer submits if the deceased Sharanappa had travelled in the offending tractor and trailer as coolie under the owner of the tractor-trailer, claimant No. 1 wife of deceased while lodging the complaint she would have certainly mentioned the registration numbers of the tractor and trailer in the complaint. According to him, the tractor and trailer in question were not at all involved in the accident and they are implicated to the case for the purpose of getting compensation from the insurer of tractor and trailer. He submits, the Commissioner without considering this has committed an error in fastening the liability on the insurer.

6. Regarding quantum he submits, the income of the deceased assessed by the Commissioner at Rs. 3,000/- per month is more than the maximum amount stipulated under the Minimum Wages Act, consequently compensation awarded by the Commissioner is on the higher side. Therefore, he prays for allowing the appeal as prayed for and dismissing the cross-objections filed by the claimants.

7. Learned counsel appearing for the claimants submits there is no illegality or infirmity in the finding of the Commissioner on liability warranting interference of this Court. Regarding quantum he submits the income of the deceased assessed by the Commissioner is on the lower side, consequently compensation awarded is not just and reasonable. He submits interest is to be awarded at 12% P.A. from 30 days after the accident instead of, from 30 days after the award. Therefore, he prays for allowing the Cross-Objection filed by the claimants and dismissing the appeal filed by the insurer.

8. POINT No. 1:-- Complaint was lodged by first claimant-wife of deceased to the police about the accident and it was marked as Ex. P.1. A perusal of the complaint Ex. P1 would show that on 7.8.2005 Anand S/o Basappa Vanagejje, Dawalappa S/o Maralappa Yenkanchi, her brother-in law (her husband's brother), Channappa s/o Irappa and her husband all are residents of their lane together left their houses to go for coolie as loaders/unloaders under the owner of the tractor and when she was doing house work at 9.00 a.m. her brother-in law Channappa came running and informed her that when all of them were travelling in the tractor to bring wood on Yadrami-Chigaralli road near the land of one Yandi, the driver of the tractor drove the same in a rash and negligent manner and took sudden turn, as a result all of them fell down from the tractor and trailer and the tractor ran over his brother-Sharanappa i.e., the husband of the complainant as a result he sustained grievous injuries and he died on the way to hospital. The contention of the insurer that either in the complaint or in the FIR which were together marked as Ex. P.1 or in the spot mahazar marked as Ex. P.3 or in the inquest mahazar marked as Ex. P.4 neither the registration number of the tractor nor the trailer is mentioned and it is for the first time in the charge sheet the registration number of the tractor and trailer were mentioned. Therefore, he contends tractor and trailer were implicated to the case to enable claimants to secure compensation from the insurer. There is no merit in the said contention of the insurer. One Dashwant Oni, working as Administrative

Officer in the New India Assurance Company Limited, Gulbarga (the insurer of offending tractor-trailer) was examined as RW-2. In para-7 of his examination in chief has stated that deceased was travelling in the vehicle as a fare paid passenger along with others. This admission on the part of R.W. 2 would go to show deceased and others had travelled in the tractor-trailer, then only question remains for consideration is whether they had travelled in the offending tractor and trailer as passengers as stated by R.W. 2 in his evidence or as coolies as contended by the claimants is to be seen. The owner of the tractor-trailer in his statement of objection filed before the Commissioner has admitted that the deceased had travelled in his tractor-trailer as coolie under him. The first claimant wife of deceased who was examined as PW. 1 has reiterated what she has stated in the complaint lodged to the police. Considering this material aspect of the matter, the Commissioner was justified in holding that deceased had travelled in the offending tractor-trailer as coolie under the owner of the tractor-trailer and in fastening liability on the insurer of the tractor-trailer. I have carefully gone through the said finding of the Tribunal on liability and I do not find any illegality or infirmity warranting my interference and hence it is confirmed.

9. POINT No. 2:-- It is the case of the claimants that deceased by working as a coolie in the tractor trailer under the owner of the vehicle was getting wages of Rs. 100/- per day and Rs. 3,000/- per month. It is admitted by the owner of the tractor-trailer in his statement of objection. As such there is no merit in the case of the insurer that deceased was not earning so much wages by working as coolie in the tractor-trailer. There is also no merit in the contention of the claimants that deceased was getting Batta of Rs. 30/- per day in addition to wages of Rs. 100/- per day. The claimants in their claim petition have stated that deceased by working as coolie was getting Rs. 100/- per day and they have not stated anything about Batta.

10. Deceased was aged about 38 years and relevant factor applicable to his age group is 189.56. 50% of salary of deceased is to be taken as his contribution towards his family. If so, loss of dependency works out to Rs. 2,84,340/- (Rs. 3,000/- 50% x 189.56) and same has been rightly awarded by the Commissioner.

11. It is settled principle of law that interest at 12% p.a. is to be awarded with effect from 30 days after the accident instead of 30 days after the award as done by the Commissioner.

12. It is stated by the learned counsel appearing for the parties that the National Insurance Company is made as second respondent in the claim petition as well as in the appeal by mistake and it is placed on record. Hence, the following:

"ORDER

MFA No. 30626/2009 filed by the insurer of offending tractor & trailer is dismissed.

MFA Crob No. 1020/2012 filed by the claimants is allowed in part.

Claimants are entitled for the compensation of Rs. 2,84,340/- awarded by the Commissioner with interest @ 12% p.a. with effect from 30 days after the accident i.e. from 07.09.2005 from New India Assurance Company.

The amount deposited in the appeal of the insurance company is ordered to be transmitted to the Prl. Sr. Civil Judge & CJM, Kalaburagi, who is now appointed as Commissioner by the relevant notification of the Government.

In view of disposal of appeal stay application filed by the insurance company does not survive for consideration and accordingly, it is rejected.

No order as to costs."