
(2015) 02 KAR CK 0288

In the Karnataka High Court

Case No : M.F.A. Nos. 6358 and 8488/2009 (WC)

New India Assurance Co. Ltd. and Others

APPELLANT

Vs

Devaraja and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337, 338
Workmens Compensation Act, 1923 — Section 22

Citation : (2015) 3 ACC 65 : (2015) 4 AKR 632 : (2015) 2 AnWR 712 : (2016) 1 KCCR 118

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—The main appeal, i.e. M.F.A.6358/09 has been filed by the insurer, whereas M.F.A.8488/09 has been filed by the claimant-Devaraj in KAK/KNP/CR. 152/07.

2. Claimant-Devaraj chose to file an application claiming compensation in respect of certain injuries sustained by him while discharging his duties as an employee under the 1st respondent-Sri Venkatesh, owner of a lorry bearing registration No. KA-12-9779. The said claim petition was contested by the 3rd respondent-New India Assurance Company Limited by filing detailed objections. Vide considered order dated 18.5.2009, the Workmen's Compensation Commissioner has awarded in all Rs. 1,22,245/- as compensation with interest at the rate of 12% p.a. after one month from the date of the accident. It is this award which is called in question by the 3rd respondent-insurer on the ground that no evidence is placed on record by the claimant-Devaraj to demonstrate that he was an employee under the 1st respondent-owner of lorry bearing No. KA-12-9779, and that the quantum of compensation so awarded is exorbitant and excessive.

3. Per contra, in the connected appeal, the claimant's contention is that the

quantum of compensation is grossly inadequate qua the injuries sustained by him. According to him, the Commissioner has taken into consideration disability at 30% though the doctor has assessed disability at 45%.

4. Both the cases had been posted for admission and learned counsel for the parties have submitted their arguments.

5. Learned counsel for the insurer in the main appeal, Mr. O. Mahesh has argued that the Commissioner has grossly erred in saddling liability on the insurer. A specific finding has been given to the effect that the claimant was under the employment of Venkatesh-1st respondent before the Commissioner, while the policy of insurance admittedly stood in favour of the 2nd respondent-Nagendra. It is further contended that the Commissioner ought to have seen that no materials were placed by the claimant or Venkatesh or Nagendra to prove as to who was the actual owner, insured or the person in possession and control of the vehicle in question as on the date and time of the accident. It is further argued that the Commissioner has failed to notice that there is no privity of contract between the alleged owner and insurer of the vehicle and as such it is not liable to pay any compensation. It is further argued that there is absolutely no acceptable evidence in regard to the income of the claimant at Rs. 3,000/- p.m. and that he has lost 30% of earning capacity. It is argued that there is absolutely no cogent and corroborative evidence in regard to the loss of future income at 30%.

6. Per contra, learned counsel for the appellant in M.F.A.8488/09 (claimant in KAK/KNP/CR. 152/07) has argued that the Commissioner has ignored the evidence of the expert and has taken disability at 30% only, though the claimant had sustained lacerated wound measuring 4 cm x 4 cm over the dorsum of the left foot, rupture of dorso flexors of anterior tibial vessels and rupture of tendons of muscles. It is argued that the evidence of PW2 has been virtually ignored while assessing disability, and that the income of the injured was Rs. 4,000/- and not Rs. 3,000/- as assessed by the Commissioner.

7. As could be seen from the records, Devaraj was aged 19 years and a resident of Tumkur town. He was stated to be working under the 1st respondent-Venkatesh, registered owner of lorry bearing No. KA-12-9779. It is his case that he was working as a cleaner in the said lorry as on the date of the accident and that on the instructions of the 1st respondent-Venkatesh, he was proceeding from Challakere to Bengaluru. When the said lorry reached a place near Widia factory on Tumkur-Bengaluru road, a tanker lorry bearing registration No. KA-16-A-4833 being driven in a rash and negligent manner by its driver, dashed against the lorry bearing No. KA-12-9779 in which he was traveling as cleaner. As a result of the same, lorry bearing No. KA-12-9779 hit the roadside tree and sustained severe damages. As a result of the accident, he also sustained injuries.

8. It is his case that he was immediately shifted to Sarojini Hospital, Bengaluru, and was treated as inpatient for 10 days. In spite of better treatment given by

the orthopedic surgeon and neuro surgeon, he suffered permanent disability. According to him, the accident occurred during the course of his employment under the 1st respondent. It is his further case that he had been working as coolie under the 1st respondent-Venkatesh six months prior to the date of the accident and was getting Rs. 4,000/- as salary and a bhata of Rs. 50/- perday.

9. The 3rd respondent-insurer alone has filed detailed written statement admitting that it had issued a policy relating to a lorry bearing registration No. KA-12-9779 which was valid for the period from 25.10.2006 to the midnight of 24.10.2007 and that it had been issued in favour of the 2nd respondent-Nagendra, and not the 1st respondent-Venkatesh. It is further averred that Devaraj was not discharging his duties as coolie under the 2nd respondent-Nagendra at the time of the alleged accident and therefore he was not an employee under the 2nd respondent to claim compensation as per the provisions of the Workmen's Compensation Act. It is further averred that there was no contractual liability between the 1st respondent and 3rd respondent and as such, the insurance company is not liable to indemnify the claimant.

10. The averment of the claimant is that he was working as cleaner under the 1st respondent and as per the instructions of Venkatesh-1st respondent, he was proceeding from Chalkere to Bengaluru in a lorry bearing registration No. KA-12-9779, and the said lorry met with an accident, has been specifically denied. All other averments are specifically denied and the claimant has been called upon to prove the claim petition strictly.

11. Neither Venkatesh nor Nagendra have filed objections to the main petition.

12. On the basis of the above pleadings, the Commissioner has framed the following issues:

"1) Whether the claimant-Devaraj proves that he was an employee under the 1st respondent as per the provisions of the W.C. Act?

2) Whether the claimant proves that he sustained injuries while discharging his duties as an employee under the 1st respondent on 10.8.2007 in a road accident?

3) If so, whether the claimant proves that the percentage of disability insofar as earning capacity is concerned?

4) Whether the claimant proves his exact age and salary that he was getting as on the date of the accident?

5) If so, whether the claimant is entitled for any compensation and if so, at what rate of interest, and from whom he is liable to recover the same?

6) To what order or relief the parties are entitled to?"

13. The claimant-Devaraj himself has been examined as PW1. He has reiterated the contents of the claim petition stating that he was working as a cleaner under the 1st respondent-Venkatesh in his lorry bearing registration No. KA-12-9779,

and that on 10.8.2007 he was proceeding in the said lorry from Challakere to Bengaluru on the instructions of the 1st respondent. He has further deposed that when they had reached near Widia factory, a tanker bearing registration No. KA-16-A-4833 being driven in a rash and negligent manner by its driver, dashed from behind as a result of which the lorry bearing No. KA-12-9779 hit a roadside tree and sustained damages. Consequently he was also injured. He has deposed about the income that he was getting from the respondent as salary and bhata and also treatment he availed for about 12 days as in-patient and further treatment taken from Dr. Shivashankar. He has deposed about the effect of the injuries on his earning capacity.

14. It is very interesting to note that the 3rd respondent-insurer has not at all cross-examined PW1. Cross-examination has been done only by the advocate representing the 2nd respondent-Nagendra in whose favour the 3rd respondent is stated to have issued the insurance policy relating to lorry bearing registration No. KA-12-9779. During the cross-examination done by the learned counsel for the 2nd respondent, PW1 has admitted the suggestions put to him that he was working under the 1st respondent as cleaner and 1st respondent alone was paying him as salary, and that he was not working at any point of time an employee under the 2nd respondent, and that Nagendra was not paying him any salary. It is further admitted that there was no relationship between Nagendra and himself, and that he availed treatment for 10-12 days in Sarojini Hospital, soon after the accident. He has further admitted that the doctor has issued disability certificate one month after the accident and that he had taken treatment from Dr. Shivashankar upto February 2008.

15. It is very relevant to note that the 3rd respondent has admitted about the issuance of insurance policy relating to lorry bearing No. KA-12-9779 and its validity upto the midnight of 24.10.2007. Admittedly the accident took place on 10.8.2007 and the policy was in force on the said date. The very policy stated to have been issued in favour of the 2nd respondent-Nagendra relating to lorry bearing No. KA-12-9779 has not been produced by the 2nd respondent or 3rd respondent. The averment that the policy in question was a comprehensive policy and special premium had been collected to cover the risk of the cleaner, as averred in the petition, is not seriously denied in the written objections filed by the 3rd respondent-insurer.

16. Police records have been produced. A copy of the charge sheet discloses it had been filed against one Shariff, s/o Maqbool Sab, driver of tanker bearing No. KA-16-A-4833. The offences alleged against the said driver are punishable under Sections 279, 337 and 338, I.P.C. relating to the accident that took place on 10.8.2007 in the early morning at 3.30 a.m. There is a specific allegation that the lorry driven by Shariff hit against lorry bearing registration No. KA-12-9779 and as a result of the same, lorry bearing registration No. KA-12-9779 hit a roadside tree and sustained damages, and inmates were also injured.

17. Ex. P2 is the panchnama drawn by the police soon after receipt of FIR. Ex. P3

is the IMV report issued by the inspector of motor vehicles after inspecting both the vehicles in question. Ex. P5 is the wound certificate issued to the claimant-Devaraj by Sarojini Hospital in which he was in-patient. It discloses he had sustained two injuries:

"i) comminuted lacerated injury 4 cm x 4 cm over the dorsum of left foot;

ii) rupture of dorso flexors of anterior tibial vessels and nerves and rupture of tendons of muscles."

The above injuries are grievous in nature. Ex. P5 also speaks about the incident that occurred in the early morning on 8th Mile Circle, N.H.4. Ex. P6 is the discharge summary issued by Sarojini Hospital. It discloses he was admitted on 10.8.2007 and discharged on 18.8.2007. He had undergone repair of tendons and applying and POP had been applied on 11.8.2007. He had been asked to come for dressing and review after 3 days. He had paid in all Rs. 21,350/- as hospital charges.

18. In a petition filed by the claimant under Section 22 of the Workmen's Compensation Act, he is expected to prove that he sustained injuries while discharging his duties as an employee under the employer, and during the course of employment, he sustained injuries. It is not suggested to PW1 by the learned counsel for the 2nd respondent that the 2nd respondent-Nagendra was not the owner of the vehicle in question. On going through the entire evidence of PW1, it is very clear that the 1st respondent was the registered owner of the lorry in which he was traveling and the same was hit by the lorry driven by Shariff-accused in Crime No. 269/07 on the file of Peenya Traffic police station, Bengaluru-560 058. Admittedly Shariff was driving a tanker bearing registration No. KA-16-A-4833 and it hit the lorry bearing No. KA-12-9779 which was ahead of it on the highway. The injuries sustained by the claimant was during the course of employment as he was proceeding from Challakere to Bengaluru on the instructions of the 1st respondent.

19. It is understandable as to why the insurer has neither cross-examined PW1 nor produced any document to demonstrate that the 2nd respondent was the absolute owner of the lorry in question and the policy had been issued in favour of the 2nd respondent. In fact, in the very claim petition filed under Section 22 of the W.C. Act it is specifically mentioned that the 1st respondent was the owner of lorry bearing No. KA-12-9779 and that the 2nd respondent was the policy holder of the said lorry.

20. The learned Commissioner has specifically held that the claimant-Devaraj was working as a cleaner under the 1st respondent relating to lorry bearing registration No. KA-12-9779 and that he had sustained injuries in the accident that took place on 10.8.2007 during the course of employment under the 1st respondent and that disability was to an extent of 30%.

21. If the insurance company had issued the policy of insurance without

ascertaining the exact ownership of the vehicle, the claimant cannot be found fault to that effect. There is acceptable evidence in respect of the ownership of the 1st respondent-Venkatesh relating to lorry bearing No. KA-12-9779 and the claimant being an employee under him. Even otherwise, no evidence is adduced on behalf of the insurer to explain as to why the policy was issued in favour of the 2nd respondent-Nagendra, though the lorry actually belonged to the 1st respondent-Venkatesh.

22. Even if it is accepted that the 3rd respondent-insurance company had issued the insurance policy in question in favour of the 2nd respondent-Nagendra on the ground that he was the registered owner, the subsequent transfer of the vehicle in favour of the 1st respondent-Venkatesh will not enable the insurer to avoid liability on the ground that the insured had not intimated about the transfer of ownership of the vehicle to any other person. In this view of the matter, the approach adopted by the learned Commissioner cannot be found fault with.

23. Insofar as the quantum of compensation is concerned, the learned Commissioner has assessed income at Rs. 3,000/- p.m. Admittedly the accident is of the year 2007 and the claimant was hardly 19 years then. The maximum income that could have been assessed for the relevant year would be Rs. 4,000/- p.m. In the light of the tender age of the claimant and the nature of work he was discharging, the learned Commissioner has rightly assessed the monthly income of the injured at Rs. 3,000/-. The assessment is based on broad preponderance of probabilities and nothing is placed on record to interfere with the exercise made by the Commissioner.

24. The doctor who treated the injured has not been examined. He would have been the best person to speak about the injuries suffered and the extent of disability. Dr. Shivashankar has chosen to give disability certificate on 19.8.2008. Admittedly x-ray No. 1087 showed no fractures. This would go to show that he had completely recovered because of the treatment availed by him. Though Dr. Shivashankar, the author of the discharge certificate is examined as PW2, he has specifically deposed in his cross-examination that he has not placed any medical records examined by him at the time of issuing disability certificate. He is not connected with Sarojini Hospital in which the claimant was treated as in-patient for 10 days. He has not produced any document to demonstrate that the injured had come for follow-up treatment under him. What is the basis for giving an opinion that it takes a long time for him to recover, is not stated. Since the injured was quite young, there was a likelihood of complete recovery in a short period, more particularly when there was no fracture.

25. The evidence of a doctor will have to be assessed as any other evidence and there is no presumption to the effect that the evidence of a doctor is gospel truth. The principles to this effect have been succinctly enunciated in the case of Mayur Panabhai Shah Vs. State of Gujarat, . In this view of the matter, the compensation assessed by the learned Commissioner, keeping in mind disability at 30% insofar as future earning capacity is concerned, is perfectly justified.

26. Hence, no grounds are made out either by the claimant-Devaraj or by the insurer to interfere with the impugned award. Accordingly both the appeals are dismissed. Parties to bear their own costs.