

(2016) 02 KAR CK 0145

In the Karnataka High Court

Case No : M.F.A. Nos. 30372/2009 (WC), 30374, 30377, 30373, 30375 and 30376 of 2009

New India Assurance Co. Ltd.

APPELLANT

Vs

Maboob and Others

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 2(1)(n)

Citation : (2016) 02 KAR CK 0145

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : S.S. Aspilli, Advocate, for the Appellant; Prakash Yeli, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—1. The New India Assurance Company Limited has filed these appeals challenging the common judgment and order dated 22nd May, 2008 made in WCA/CR Nos. 614 to 619 of 2007 by the Labour Officer and Commissioner for Workmen's Compensation, Raichur (hereinafter referred to as "the WCC for short).

2. The common judgment and order passed by the WCC has been challenged in these appeals. Hence, all these appeals are clubbed together and disposed of by this common judgment.

3. For the sake of convenience, the parties are referred to as in the claim petitions.

4. The necessary facts leading to the filing of these appeals are as under:

"Claimants filed the claim petitions. The common facts and grounds urged in these claim petitions are that the claimant in WCA/CR No. 614/2007 was working as a driver, claimant in WCA/CR No. 615/2007 was working as a cleaner and

claimants in WCA/CR Nos. 616/2007 to 619/2007 were working as loaders in a lorry bearing Regn. No. KA-35/683 belonged to the 2nd respondent. On 22.5.2007, as per instructions of the owner of the vehicle, while they were proceeding from Hospet to Bellary for unloading the goods, a KSRTC Bus bearing Regn. No. KA-34/F-625 came in a rash and negligent manner and dashed against the lorry. Due to that, the driver, cleaner and loaders of the said lorry sustained grievous injuries. Immediately, they took treatment in Primary Centers at Thorangal and Kudathinni and thereafter they took treatment in private hospitals. In view the injuries sustained, they cannot do the work as they were doing earlier and their earning capacity has been reduced in view of fracture of important bones. The owner of vehicle was paying monthly salary of Rs. 4,000/- to the driver, Rs. 3,500/- to the cleaner and Rs. 150/- per day to the loaders. The accident had occurred during the course and out of employment. The vehicle is covered under the insurance policy. Hence, the claimants sought for compensation."

5. In pursuance of the notice issued by the WCC, respondents No. 1 and 2 i.e. owners and policy holder of the vehicle entered appearance and filed written statement admitting that the claimants are the driver, cleaner and loaders of the said lorry. In view of the accident occurred on 22.5.2007 on Bellary - Hospet main road, the claimants have sustained injuries. They disputed the injuries sustained and sufferings undergone by the claimants. They contended that since the vehicle is covered by insurance policy, the insurer has to compensate the claimants and sought for dismissal of the claim petitions as against respondents No. 1 and 2.

6. The Insurance Company filed written statement denying the entire averments made in the claim petitions and also the relationship of master and servant between the owner of the vehicle and claimants. No document has been produced to show that the claimants are working as driver, cleaner and loaders in the offending lorry. The claimants were unauthorised passengers travelling in the goods vehicle. Hence, the insurer is not liable to pay the claimants and sought for dismissal of the claim petitions as against the 3rd respondent - Insurance Company.

7. On the basis of pleadings of the parties, the WCC framed necessary issues.

8. Claimants in order to prove their cases got examined themselves as PWs. 1 to 6 and got marked the documents as Exs.P1 to P20. Dr. Lakshminaraya, who issued the disability certificates was examined as PW7. On behalf of the Insurance Company, none of the witnesses was examined.

9. The WCC after considering the oral and documentary evidence let in by the parties and taking into consideration the MVI report, copy of charge sheet and etc., held that in view of the accident occurred on 22.5.2007, the claimants have sustained injuries. They were the employees of respondents No. 1 and 2 and the accident occurred during the course and out of employment. Hence, they are

entitled to compensation.

10. With regard to quantum of compensation is concerned, the WCC taking into consideration the injuries sustained and sufferings undergone by the claimants, the disability assessed by the doctor and taking into consideration the disability to an extent of 45% in respect of claimants in WCA/CR Nos. 614, 618 and 619 of 2007, disability to an extent of 50% in respect of claimants in WCA/CR Nos. 615 and 617 of 2007 and disability to an extent of 55% in respect of claimant in WCA/CR No. 616/2007, though the claimants claimed that the 1st claimant was getting salary of Rs. 4,000/- p.m, the 2nd claimant was getting salary of Rs. 3,500/- p.m. and other claimants were earning a sum of R.150/- per day, the minimum wages being paid to the driver, cleaner and loaders and applying the relevant factors, awarded compensation as under:

"Rs. 1,55,591/- in respect of claimant in WCA/CR No. 614/2007

Rs. 1,70,786/- in respect of claimant in WCA/CR No. 615/2007

Rs. 1,66,317/- in respect of claimant in WCA/CR No. 616/2007

Rs. 1,50,288/- in respect of claimant in WCA/CR No. 617/2007

Rs. 1,36,866/- in respect of claimant in WCA/CR No. 618/2007

Rs. 1,36,866/- in respect of claimant in WCA/CR No. 619/2007

with interest at 12% p.a. from one month after the judgment."

11. Appellant - Insurance Company being aggrieved by the quantum of compensation awarded by the WCC taking into consideration the disability assessed by the doctor has filed these appeals.

12. Sri S.S. Aspalli, learned Advocate appearing for the appellant - Insurance Company in these appeals contended that though the claimants sustained fracture of shoulder and clavicle bone, the doctor assessed the disability to an extent of 45% to 55% is contrary to law. The disability assessed by the doctor, who is not the treated doctor, is on the higher side. Hence, the learned Advocate sought for modifying the judgment and order passed by the WCC.

13. On the other hand, Sri Prakash Yeli, learned Advocate appearing for the claimants argued in support of the judgment and order and contended that the WCC taking into consideration the injuries sustained and sufferings undergone awarded the compensation. While awarding the compensation, though the owner of the vehicle admitted that he was paying salary of Rs. 4,000/- p.m. to the driver, Rs. 3,500/- p.m. and Rs. 150/- per day to the loaders, the WCC has taken the minimum wage being paid to the driver, cleaner and loaders, which is contrary to law. The WCC cannot take the lesser income. Further the disability assessed by the doctor taking into consideration the injuries sustained and sufferings undergone by the claimants is in accordance with law. The appellant has not made out a case and sought for dismissal of the appeals.

14. I have carefully considered the arguments addressed by the Advocates appearing for the parties and perused the judgment and order, oral and documentary evidence let in by the parties.

15. The records clearly disclose that the claimants in these appeals have sustained injuries in the road traffic accident that occurred on 22.5.2007 during the course and out of employment. The claimants were the driver, cleaner and loaders of lorry bearing Regn. No. KA-35/683. The documents produced by the claimants and the owner of the vehicle clearly disclose that the claimants are the workmen within the definition of Section 2(1)(n) of the Employees' Compensation Act, 1923 (for short "Act").

16. The only issue to be decided in these appeals is whether the quantum of compensation awarded by the WCC is in accordance with law?

17. The main contention of the appellant is that the compensation awarded by the WCC taking into consideration the disability assessed by the doctor is on the higher side. In the accident, the claimants have sustained minor injuries and fracture of bones. The fracture of bones and injuries sustained do not amount to disability to an extent of 45% to 55% and the compensation awarded is also on the higher side. The records disclose that the claimant in WCA/CR No. 614/2007 has sustained fracture of left shoulder, lateral 1/3rd, hairline fracture of 2nd and 3rd cervical vertebra and other injuries to the body. However, the doctor, who has issued the disability certificate, taking into consideration the injuries sustained and sufferings undergone has assessed the functional disability to an extent of 45%. Insofar as the claimant in WCA/CR No. 615/2007 is concerned, he has sustained fracture of right shoulder, lateral 1/3rd fracture of left foot and fracture of tarsal bone. The doctor taking into consideration the injuries sustained and sufferings undergone has assessed the disability to an extent of 55%. However, the WCC has taken the disability to an extent of 50%. Insofar as the claimant in WCA/CR No. 616/2007 is concerned, he has sustained fracture of calies bone and tarsal. The doctor has assessed the disability to an extent of 60%. However, the WCC has taken the disability to an extent of 55%. Insofar as the claimant in WCA/CR No. 617/2007 is concerned, the claimant has sustained injuries, fracture of right hand, fracture of ulna and fracture of right side knee cap. The doctor has assessed the disability to an extent of 55%. However, the WCC has taken the disability to an extent of 50%. Insofar as the claimant in WCA/CR No. 618/2007 is concerned, the claimant has sustained fracture of middle 1/3rd of ulna, fracture of patela and fracture of 2nd and 3rd ribs. The doctor has assessed the disability to an extent of 50%. However, the WCC has taken the disability to an extent of 45%. Insofar as the claimant in WCA/CR No. 619/2007 is concerned, the claimant has sustained the fracture of tibia and fibula of right leg and other injuries to the body. Though the doctor has assessed the disability to an extent of 50%, the WCC has confined to only 45%.

18. Under the Employee's Compensation Act, 1923, taking into consideration the permanent partial disability resulted from the injury, the doctor has to assess the

permanent total disability of a person. Under the Motor Vehicles Act, the functional disability of a person will be assessed by the doctor. In the instant case, the claimants were working as driver, cleaner and loader and unloader of the lorry. In view of fracture of hand, tibia and fibula, there will be functional disability. Hence, they cannot carry weight. Taking into consideration the functional disability of the employees, the doctor has assessed the disability of the person. It is relevant to note here that though the claimants were working as driver, cleaner and loader and unloader and the owner of the vehicle has admitted that he was paying salary of Rs. 4,000/- p.m. to the driver, Rs. 3,500/- p.m. to the cleaner and Rs. 150/- per day to the loader and unloaders, the WCC has taken the minimum wages being paid while assessing the compensation. However the claimants have not challenged the said finding. Taking into consideration all these aspects of the matter, the WCC has awarded just compensation. The appellant has not made out a case to interfere with the same.

Accordingly, all these appeals are dismissed.

The amount in deposit made before this Court is directed to be transferred to the Civil Judge (Sr. Dn.) Raichur for disbursement of the said amount.