

**(2016) 11 KAR CK 0058**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 4912 of 2008 (WC)

New India Assurance Co. Ltd.

APPELLANT

Vs

Manjunath

RESPONDENT

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**Date of Decision :** 15-11-2016

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 3

**Citation :** (2017) AAC 372

**Hon'ble Judges :** Mr. B. Manohar, J.

**Bench :** Single Bench

**Advocate :** Sri G.N. Raichur, Advocate, for the Appellant; Sri. H.M. Dharigond, Advocate, for the Respondent No. 1; Sri. T.M. Nadaf, Advocate, for the Respondent No. 2

**Final Decision :** Allowed

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## **Judgement**

Mr. B. Manohar, J.—New India Assurance Co. Ltd., has filed this appeal challenging the legality and correctness of the judgment and order dated 31.01.2008 made in WC:NF-243/2006 passed by the Labour Officer and Commissioner for Workmen's Compensation, Bagalkot (hereinafter referred to as "the WCC", for short).

2. Respondent No. 1 herein filed the claim petition inter alia contending that he was working as a coolie in tom-tom rickshaw bearing No. KA-24/3282 belonging to respondent No. 2 herein On 02.08.2006, while he was proceeding in the said tom-tom vehicle from Sureban to Dharwad, near Govinakoppa village, due to rash and negligent driving of the said tom-tom vehicle, it turned turtle and, as a result, he fell down and sustained grievous injuries all over his body. Immediately after the accident, he was shifted to District Hospital, Dharwad and took treatment therein. In the accident he sustained compound fracture of tibia and fibula and other injuries. He underwent surgery and internal fixation was made. He contended that because of the injuries sustained and permanent disability suffered by him, he cannot do the work of coolie; at the time of

accident he was aged about 20 years; the owner of tom-tom vehicle was paying him salary of Rs. 4,500/- per month; the accident occurred during the course and out of employment and hence, the owner as well as the insurer of tom-tom vehicle were liable to compensate him and sought for compensation of Rs. 5,00,000/-.

3. In response to the notice issued by the WCC, the owner and the insurer of the tom-tom-vehicle entered appearance and filed written statement. The owner of tomtom vehicle admitted that the claimant was working as a coolie in the tom-tom vehicle belonging to him and he was paying Rs. 3,500/- per month. The tom-tom vehicle was covered by the insurance policy and hence the insurance company was liable to compensate the claimant. The insurance company filed its written statement denying the entire averments made in the claim petition and also disputed that there was no relationship of master and servant between the claimant and owner of the tom-tom vehicle. The driver of the tom-tom vehicle was not having a valid and effective driving license as on the date of accident and hence, the Insurance Compaq was not liable to compensate the claimant and sought for dismissal of the claim petition.

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

5. The claimant in order to prove his case, got examined himself as P.W. 1 and the doctor, who issued the disability certificate, was examined as P.W. 2 and got marked the documents as Exs.P1 to P. 18. On behalf of respondents neither any witnesses were examined nor any document was produced.

6. The WCC, after appreciating the oral and documentary evidence let in by the parties, and taking into consideration the IMV report, spot panchanamo, copy of complaint and charge sheet, held that the claimant sustained injuries during the course and out of employment in the accident that occurred on 02.08.2006 and that the claimant comes within the meaning of "workman" defined under Section 2(1)(n) of the Workmen's Compensation Act and hence he was entitled to compensation.

7. With regard to the quantum of compensation, in the accident the claimant sustained compound fracture of tibia and fibula of left leg; he underwent surgery and internal fixation was made. The Tribunal taking into consideration the income of the claimant as Rs. 3,000/- per month, the loss of earning capacity to the extent of 65% and applying the relevant factor 225.22, awarded a sum of Rs. 2,63,507/- with interest at 12% per annum. Since the tom-tom vehicle was covered by the insurance policy, the liability was fastened on the insurance company to compensate the claimant. The insurance company being aggrieved by the judgment and order passed by the WCC fastening liability on it to compensate the claimant has filed this appeal.

8. Sri. G.N. Raichur, advocate appearing for the appellant contended that the judgment and order passed by the WCC is contrary to law; no material has been produced to show that the claimant was working as a coolie in the tom-tom

vehicle belonging to respondent No. 2 herein; further as on the date of accident, the driver of the goods auto was holding the driving license to drive the light motor vehicle from 13.07.2006 to 12.07.2026, and he had not obtained any endorsement on the said driving license authorising him to drive a transport vehicle. The vehicle involved in the accident is a goods vehicle. The person having Light Motor Vehicle driving license is not authorised to drive the goods vehicle. Though the appellant has taken this specific contention during the course of evidence, the WCC overlooked the said contention. The quantum of compensation awarded by the WCC is also on the higher side; and for the fracture of tibia and fibula, the loss of earning capacity taken by the WCC to an extent of 65% is also on the higher side. Hence, the judgment and order passed by the WCC cannot be sustained and sought for modifying the same.

9. On the other hand, Sri.H.M. Dharigond, learned counsel appearing for Respondent No. 1 and Sri. T.M. Nadaf, learned counsel appearing for R2 argued in support of the judgment and order passed by the WCC and contended that as on the date of accident, the driver of tom tom rickshaw was having the driving license. The Hon'ble Supreme Court in H.S. Iyyappan v. United India Insurance Company reported in 2014 ACJ 1944 has held that even though the driver possessing a licence to drive a light motor vehicle but without an endorsement to drive a transport vehicle, the Insurance Company has to compensate the claimant with a right to recover the same from the insured. Further, the quantum of compensation awarded by the WCC is in accordance with law and hence sought for dismissal of the appeal.

10. Having heard the learned counsel appearing for the parties, the points that arise for consideration in this appeals is -

(a) Whether the quantum of compensation awarded by the WCC is in accordance with law? and

(b) Whether the WCC is justified in fastening the liability on the Insurance Company to compensate the claimant?

11. The records clearly disclose that the claimant has sustained injuries in the road traffic accident occurred on 02-08-2006 while working as a coolie in the tom tom rickshaw bearing registration No. XA-24/3282. He claims that he has sustained injuries during the course and out of employment. The insurance policy covers the risk of the said tom tom rickshaw. Hence the Insurance Company is liable to compensate the claimant. However, the Insurance Company contended that the owner of the vehicle entrusted the vehicle to an unauthorised person who does not possess the valid and effective driving license to drive the goods vehicle. The driving license, which was marked as Ex.P8 clearly discloses that the driver of the tom tom rickshaw was having the driving license to drive the Light Motor Vehicle only from 13-07-2006 to 12-07-2026. Though this specific contention was taken by the Insurance Company before the WCC, though the WCC had discussed the matter in this regard particularly while discussing issue

No.3, the liability was fastened on the Insurance Company which is contrary to law. It is the duty of the owner of the vehicle to entrust the vehicle to a person having valid and effective driving licence. In the instant case, the owner of the vehicle had entrusted the vehicle the driver who did not possess the valid and effective driving license to drive the goods vehicle. Hence, the judgment and order passed by the WCC fastening the liability on the Insurance Company to compensate the claimant is contrary to law. The judgment relied upon by the learned counsel for the respondents is not applicable to the facts of the case on hand. In the present case, the driver of the tom tom rickshaw had obtained licence from 13-07-2006 i.e. subsequent to amendment of Section 10(e) of the Motor Vehicles Act, which came into effect from 28-03-2001. The Hon'ble Supreme Court in Iyyappan's case referred to above had dealt with the driving license obtained in the year 1998. Hence, the said judgment is not applicable to the facts of the present case.

12. With regard to quantum of compensation is concerned, in the road traffic accident the claimant has sustained comminuted fracture of tibia and fibula. He was inpatient from 02-08-2006 to 24-07-2006. He has undergone surgery and implants have been inserted. The assessment of disability is not by the treated doctor and assessing loss of earning capacity to an extent of 65% for the fracture of tibia and fibula is on the higher side. Even for amputation of leg belong the knee, the loss of earning capacity is taken as 60%. In the instant case, the treated doctor has not assessed the loss of earning capacity hence that cannot be sustained. Therefore, I am of the opinion that taking into consideration the avocation of the claimant, the loss of earning capacity can be assessed to an extent of 40%, taking the income of the claimant at Rs. 3,000/- p.m., applying the relevant factor 225.22, the claimant is entitled to compensation of Rs. 1,62,158/- as against Rs. 2,63,507/-awarded by the WCC .

13. Since the owner of the vehicle himself has admitted that the claimant was working as a coolie in the offending tom tom rickshaw belonging to him and was paying salary of Rs. 3,500/- p.m., it is for the claimant to enforce his claim against the employer. Since there is violation of conditions of the policy, the Insurance Company cannot be made liable to compensate the claimant. Accordingly, I pass the following:

#### ORDER

1. The appeal is allowed in part. The judgment and order dated 31-01-2008 made in WC/NF-243/2006 passed by the Labour Officer and Commissioner for Workmen's Compensation, Bagalkote is modified. The claimant is entitled to compensation of Rs. 1,62,158/- as against Rs. 2,63,507/- with interest at 12% p.a.

2. The Insurance Company is exonerated from its liability. However, it is open to the claimant to enforce the judgment and order passed by the WCC against the owner of the vehicle.

3. The amount in deposit is directed to be refunded to the appellant-Insurance Company.