
(2016) 10 KAR CK 0037
In the Karnataka High Court
Case No : MFA No. 20944 of 2011 (WC)

New India Assurance Co. Ltd.

APPELLANT

Vs

R. Praveen

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 4(1)(c)

Citation : (2017) AAC 532

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

Bench : Single Bench

Advocate : Shri. Vijay Horatti for Shri. Ravi G. Sabhahit, Advocates, for the Appellant; Shri. Manjunath G. Patil, Advocate, for the Respondent No. 1; Held Sufficient, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Mr. B. Manohar, J.—New India Assurance Company Limited has filed this appeal challenging the judgment and order dated 30.11.2010 made in WCA/CR-483/2008 passed by the Labour Officer and Commissioner for Workmen's Compensation, Sub-Division-1, Bellary (hereinafter referred to as "the WCC" for short) fastening the liability on them to compensate the claimant.

2. Respondent No. 1 herein filed a claim petition before the WCC contending that, he was working as a driver in a bus bearing Reg.No.KA-16/7933 belonging to respondent No. 2 herein. On 12.06.2008, as per the instruction of the owner of the vehicle, while he was proceeding towards Bellary near Obalapur cross, in order to give way to the oncoming lorry, he took the vehicle to the left side of the road, however, lost control over the vehicle and dashed against a road side tree and he sustained grievous injuries. Immediately after the accident, he was shifted to the Rampur Primary Health Centre and took treatment therein. The police registered a case in Crime No. 42/2008. He contended that as on the date of accident, the claimant was aged about 24 years and working as a driver and that due to the injuries sustained in the accident, he could not do the work of a

driver as he was doing earlier and hence, he sought for the compensation.

3. In response to the notice issued by the WCC, respondent No. 2-insurer entered appearance and filed written statement denying the entire averments made in the claim petition and also disputed the relationship of master and servant between the claimant and owner of the vehicle and sought for dismissal of the claim petition as against respondent No. 2-insurer.

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

5. In order to prove his case, claimant got himself examined as P.W.1, the doctor who issued the disability certificate was examined as P.W.2 and got marked documents as Exs.P1 to P8. On behalf of the respondents, one of the officials of the Insurance Company, i.e., Administrative Officer was examined as R.W. 1 and got marked documents as Exs.R2-1 and R2-2.

6. The WCC after appreciating the oral and documentary evidence let in by the parties and taking into consideration IMV report, spot mahazar, copy of the complaint and charge sheet, held that the claimant sustained injuries during the course and out of employment in the road traffic accident that occurred on 12.06.2008 and hence, the claimant was entitled for the compensation. With regard to the quantum of compensation, in the accident, the claimant sustained fracture of forearm and wrist. In view of the fracture, the claimant found it difficult to drive the vehicle and also lifting the heavy objects. The x-ray of the right forearm disclosed that there was mal-union of the fracture. The doctor who examined the claimant assessed the loss of earning capacity to an extent of 25%. The claimant was a driver, the accident occurred in the year 2008. Taking into consideration the income of the driver as Rs. 4,000/- p.m. taking 60% thereof, loss of earning capacity to an extent of 20% and applying the relevant factor 221.37, since as on the date of accident, the claimant was aged about 22 years, awarded a sum of Rs. 1,06,258/- with interest at 12% p.a.

7. Being aggrieved by the quantum of compensation awarded by the WCC, the appellant-Insurance Company has filed this appeal.

8. The contention of the appellant is that the compensation awarded by the WCC taking into consideration the loss of earning capacity to an extent of 20% is contrary to law. It is further contended that, income of Rs. 4,000/- taken by the WCC is also on the higher side. Further, there was negligence on the part of the driver of the bus and hence, the Insurance Company cannot be held liable to compensate the claimant and therefore, sought for setting aside the judgment and order passed by the WCC.

9. The learned counsel appearing for the respondents argued in support of the judgment and order passed by the WCC and sought for dismissal of the appeal.

10. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the impugned judgment and order and other relevant records.

11. The records disclose that the claimant sustained injuries in the road traffic accident that occurred on

The amount in deposit shall be transferred to the jurisdictional court for disbursement.