
(1990) 07 KAR CK 0094
In the Karnataka High Court
Case No : M.F.A. No. 1144 of 1990

New India Assurance Co. Ltd.

APPELLANT

Vs

R. Shridhara and another

RESPONDENT

Date of Decision : 23-07-1990

Acts Referred:

Citation : (1991) ACJ 204 : (1991) 62 FLR 641 : (1991) ILR (Kar) 933

Hon'ble Judges : M.P. Chandrakantaraj, J;B.M. Ramakrishna, J

Bench : Division Bench

Judgement

Urs. J.

1. This is an insurer's appeal against the award of the Commissioner for Workmen's Compensation, Shimoga.

2. The petitioners before the Commissioner was an employee of the Manner Flaps Manufacturers, Shimoga. While he was working on April 5, 1988 his hand was caught in the machine of his employer and his left hand fingers came to be crushed. He was immediately taken to the hospital at Shimoga known as Macgan Hospital and treated there. He claimed compensation before the first respondent the Commissioner, for injuries suffered in the course of his employment, in connection with the employment. He was getting a sum of Rs. 390/- per mensem as income or Rs. 13/- per day as wages. He had worked for more than 2 years with his employer. He claimed a compensation of Rs. 44,144/-.

3. The claim was resisted by the employer, inter alia, on the ground that the claimant was not being paid Rs. 390/- as wages; he was only working in Malbar Rubber Manufacturers on daily wages of Rs. 10/-. In the month of December 1987, the claimant came as helper at Rs. 12/- per day as wages. The employer denied that his hand got crushed as claimed in the claim petition. It also alleged that he was not careful in the course of his employment. It was only on account of his carelessness his left hand suffered injuries. Therefore, the employer pleaded that the claim petition be rejected.

4. The claimant had arrayed the appellant, New India Assurance Co. Ltd. as the second party before the Commissioner in view of the fact that the manufacturer employer had taken out group insurance policy against miscellaneous accidents in his establishment during the relevant period. Under that policy the manufacturer was assured a sum of Rs. 1,00,000/- maximum covering 4 employees at Rs. 25,000/- per head. It denied all the averments made in the claim petition and added that the claim petition had not been made within the framework of law, i.e., the Workmen's Compensation Act and there was no liability on part of the insurance company because the policy was not issued with reference to the Workmen's Compensation Act. It also denied certain allegations in the claim petition concerning the extent of injury, the treatment and the age of the claimant. On such leadings the Commissioner formulated the following 4 points that fell for determination. They were :

"(1) Whether the claimant was an employee of the first respondent and in the course of such employment suffered an accident resulting in disability pleaded ?

(2) Whether the claimant proves his age and wages ?

(3) If so, what is the extent of disability to the limb proved by the claimant ?

(4) Between the two respondent, who is liable to pay the compensation ?"

5. It was in evidence that the claimant was about 18 years having regard to the medical certificate issued. It was also in evidence that he was treated at the Macgan Hospital and the doctor certified that the claimant having lost use of all the fingers of his left hand due to the crush it received in the machinery, the extent of disability of the limb should be taken at 60 per cent, though he had stated as 65 per cent in oral evidence. He certified the age to be about 18 years. By his own pay-role evidence the claimant proved that he was employed by the first respondent flap manufacturer, that on the relevant date he was working in the factory and it was in the course of his employment that he suffered the injury by accident and that he was not in any way negligent or careless.

6. On behalf of the first respondent, manufacturer employer, the Chief Trustee of the Trust which owned manufacturing unit gave oral evidence. But he did not, in the course of his examination, deny the mutilation the hand suffered. In the result, the case of the petitioner came to be accepted and compensation was fixed at Rs. 24,867.84 on the basis that he drew Rs. 338/- per mensem. He directed that the said amount be paid by the second respondent, insurance company.

7. Aggrieved by the same the present appeal is preferred by the insurance company.

8. Before us the only contention advanced for the appellant by Mr. Suryanarayana Rao was that the insurance company was not liable to pay the compensation awarded in terms of the policy as there was no lis between the company and the workman and therefore there was no liability to make good the

amount. But however, he fairly conceded that the first respondent manufacturer had taken out group insurance coverings his 4 employees in the establishment and liability if any arose only in favour of the assured manufacturer-employer. He made available to the court the statement of objections filed by the insurance company before the Commissioner. We found that no specific plea was taken which could be said to be similar to the contention advanced before this court. Therefore, the Commissioner were by the admitted fact that the first respondent was covered by group insurance policy under which the insurer was liable to make good to the extent of Rs. 25,000/- in respect of any miscellaneous accident suffered by the employees in the manufacturing unit which the insured wanted to pay and we have no doubt about it. Then the liability of the insurance company to pay under that policy cannot be disputed. That the insurance company has different types of policies including the one under the provisions of the Workmen's Compensation Act, is not a defence to absolve itself from paying under the miscellaneous group insurance as in the instant case. That will be helping technical defence which this court will not countenance. In any event, as long as it is clarified that there is no dual liability of the insurance company to the insured as well as the workman, insurance company cannot make a grievance of making payment to the workman.

9. We therefore reject the appeal subject to the clarification made.