

(2016) 08 KAR CK 0047

In the Karnataka High Court

Case No : M.F.A. Nos. 23831 of 2009 C/w. C.W. M.F.A. Nos.23833, 23834 & 23835 of 2009 (WC)

New India Assurance Co. Ltd.,

APPELLANT

Vs

Tippesi

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 4(1)(c)(ii)

Citation : (2016) 3 LLN 683

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : G.N. Raichur, Advocate, for the Appellant; J. Basavaraj, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

S. Sujatha, J.—All these Appeals arise out of the same accident against the common Judgement passed by the Commissioner for Workmen's Compensation, Sub-Division-1, Bellary, (the Commissioner for short). Hence, all the matters are heard together and disposed of by this common Judgement.

2. Briefly stated the facts are :

That the Claimants approached the Commissioner seeking Compensation for the injuries sustained by them while they were travelling in the vehicle bearing Registration No. KA-34-A-4761, on the directions of the Employer. It was contended that the Claimants were working as Cleaner and Hamalis, they met with the accident arising out of and in the course of employment with the Respondent No. 2. The claim made by the Claimants was contested by the Insurer. The Commissioner, after appreciating the evidence on record awarded Compensation of Rs.1,18,773 in the subject matter of M.F.A. No. 23831/2009, Rs.1,17,891 in the subject matter of M.F.A. No. 23833/2009, Rs. 1,20,901 in the subject matter of M.F.A. No. 23834/2009 and Rs.1,23,523 in the subject matter

of M.F.A. No. 23835/2009. The Appellant/Insurer, being aggrieved by the quantum of Compensation awarded by the Commissioner as being excessive is before this Court.

3. Learned Counsel for the Appellant/Insurer would contend that all the injuries sustained by the Claimants were simple in nature. The Doctor examined as PW 2, has assessed the Loss of Earning Capacity at 30% in the case of Anjineppa, Lalappa, Kenchappa and 25% in the case of Tippiasi arbitrarily, not based on any material evidence. The standardised format of the Disability Certificate, not even bearing the date, issued by the Doctor ought not have been considered by the Commissioner as the basis to determine the Loss of Earning Capacity.

4. Per contra, learned Counsel for the Claimants supporting the impugned judgement and Order contends that the Commissioner has no other option except to rely upon the Medical Expert's opinion to assess the Loss of Earning Capacity which has been rightly done by the Commissioner and as such, no fault can be found with the assessment made by the Commissioner.

5. Having heard the rival submissions of the parties and on perusal of the material on record, the only Substantial Question of Law that arises for consideration in this batch of Appeals is whether the Commissioner was justified in assessing the Loss of Earning Capacity at 30% in the case of Anjineppa, Lalappa, Kenchappa and 25% in the case of Tippiasi ignoring the Wound Certificates ?

6. It is evident from the Exhibits such as Wound Certificate and Disability Certificate in each case i.e., as regards M.F.A. No. 23831/2009 is concerned, the relevant Wound Certificate and the Disability Certificate are marked as Exs. P5 & P6 respectively. These documents clearly establish that the injuries suffered by the Claimant Tippiasi was right shoulder hairline fracture of clavicle at mid 3rd. The Disability Certificate issued by the Doctor PW 2 based on this Wound Certificate reveals 35% Permanent Partial Disability.

7. As regards M.F.A. No. 23833/2009 is concerned, Ex.P11 is the wound Certificate and Ex.P12 is the Disability Certificate. Ex.P11-Wound Certificate discloses the nature of injuries sustained by the Claimant as right shoulder dislocation. The Disability Certificate reveals 35% Permanent Partial Disability.

8. As regards M.F.A. No. 23834/2009 is concerned, Ex.P2 is the wound Certificate and Ex.P3 is the Disability Certificate. Ex.P2-Wound Certificate discloses the nature of injuries sustained by the Claimant as right wrist blunt injuries, low back ache, right leg abrasion and from the X-ray report right radius 3rd hairline fracture. Ex.P3-Disability Certificate reveals 35% Permanent Partial Disability.

9. As regards M.F.A. No. 23835/2009 is concerned, Ex.P8 is the wound Certificate and Ex.P9 is the Disability Certificate. Ex.P8-Wound Certificate discloses the nature of injuries sustained by the Claimant as right leg ankle lower 3rd fibula hairline fracture. The Disability Certificate reveals 35% Permanent Partial

Disability.

10. These documents would reveal the nature of injuries sustained by the Claimants and the disability assessed by the Doctor-PW2. Though, the assessment made by the Doctor would be the relevant factor to assess the loss of working capacity of the Workman as per the provisions of Section 4(1)(c)(ii) of the Act, the assessment cannot be blindly accepted, if the nature of injuries sustained by the injured and the assessment made are not on proportionate basis. It is the responsibility of the Commissioner to judiciously scrutinise the Disability Certificates issued by the Doctor to ascertain as to whether the disability assessed is based on the nature of injuries. As it is seen from the Wound Certificates, all the injuries sustained by the Claimants are more or less simple in nature. At the most, hairline fracture is the grievous injury suffered in all these cases. The impact of such hairline fracture would not be so grave to impede the working capacity of the Workman. The Commissioner blindly accepting the Disability Certificates and assessing the Loss of Earning Capacity based on the assessment made by the Doctor not proportionate to the nature of the injuries, is wholly unsustainable.

11. Given the circumstances, this Court is of the considered opinion that it would be just and appropriate to determine the Loss of Earning Capacity of the Claimants based on their avocation/occupation, viz., Hamalis and Cleaner vis-a-vis nature of injuries sustained by them. This Court finds it just and reasonable to determine the Loss of Earning Capacity at 15% in the case of Anjinappa, Tippeshi and Lalappa and 10% in the case of Kenchappa.

12. Thus, the Total Compensation awarded by the Tribunal shall be modified as under :

Name of the Claimant

MFA Nos.

Salary

Age

Relevant factor

Loss of EC

Compensation

Thippeshi, Cleaner

23831 of 2009

3600

23

219.92

15%

$3600 \times 60\% \times 219.95 \times 15\% = \text{Rs.}71,263$

Kenchappa, Hamali

23833 of 2009

3120

29

209.92

10%

$3120 \times 60\% \times 209.92 \times 10\% \times 29,297 = 39,300$

Anjinappa, Hamali

23834 of 2009

3120

26

215.28

15%

$3120 \times 60\% \times 215.28 \times 15\% = 60,450$

Lalappa, Hamali

23835 of 2009

3120

23

219.95

15%

$3120 \times 60\% \times 219.95 \times 15\% = 61,761$

13. The Substantial Question of Law is answered accordingly.

14. The Claimants shall be entitled to the modified Compensation of Rs.71,263 in M.F.A. No. 23831/09, Rs.39,300 in M.F.A. No. 23833/09, Rs.60,450 in M.F.A. No. 23834/09 and Rs.61,761 in M.F.A. No. 23835/09, with Interest at 12% p.a. on the modified Compensation after 30 days from the date of the accident till the date of deposit.

15. The Appeals are disposed of in terms of the above.

16. The amount in deposit shall be transferred to the jurisdictional Tribunal for

disbursement. The excess amount in deposit, if any, shall be refunded to the Appellant-Insurer forthwith.