

**(2011) 04 KAR CK 0086**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 12353 of 2006

New India Assurance Co. Ltd.

APPELLANT

Vs

Vijendra Setty, B.G. Sundaresh, B.G. Manjunath and B.G.  
Mohan Gowda

RESPONDENT

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**Date of Decision :** 08-04-2011

**Acts Referred:**

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

**Citation :** (2011) 131 FLR 986 : (2011) 5 KarLJ 504 : (2011) 3 KCCR 347 SN :  
(2011) 3 KCCR 346 : (2012) 1 LLJ 641 : (2012) 1 TAC 265

**Hon'ble Judges :** S.N. Satyanarayana, J

**Bench :** Single Bench

**Advocate :** O. Mahesh, for the Appellant; R. Nagendra Naik, for R1. and S.V.  
Prakash, for R2 to 4, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S.N. Satyanarayana, J.—Second Respondent-Insurance Company in CR-69/2004 on the file of Commissioner for Workmen's Compensation, Shimoga, has come up in this appeal challenging the order dated 31.08.2006 passed in the said proceeding.

2. Brief facts leading to this appeal are as under:

Claimant before the Commissioner contend that he was loader and un-loader in the Tractor - Trailer bearing No. KA-14/T-2593 - 2594 belonging to first Respondent and insured with second Respondent before the Commissioner. On 10.01.2003 he was travelling in the aforesaid tractor along with a load of paddy for the purpose of milling. The said Tractor met with an accident at about 11.30 a.m., on Kouribilu Down Road in Hosanagar Taluk, due to rash and negligent driving of its driver, resulting in fracture of his left knee and also other injuries. Hence Claim Petition was filed by him seeking compensation for the injuries suffered in the aforesaid accident from his employer, first Respondent and second Respondent, insurer of the offending tractor - trailer.

3. In the proceedings before the Commissioner, on completion of pleadings, issues were framed. Thereafter claimant adduced evidence as P.W. 1. In the said proceedings he produced in all ten documents and got them marked as Exs.P-(1)-1 to P-(1)-10. In support of his case, he also got examined one Dr. H.D. Veeranna, Taluk Health Officer of Thirthahalli. On behalf of the Respondents, first Respondent's son and owner of Tractor - Trailer adduced evidence as R.W. 1 and an officer of second Respondent - Insurance Company adduced evidence as R.W.2. On their behalf five documents were produced and marked as per Exs.P-(2)-1 to P-(2)-5.

4. The Commissioner on appreciation of oral and documentary evidence, proceeded to accept that the claimant was working as Loader and Unloader in the Tractor belonging to first Respondent and insured with the second Respondent. That the claimant met with an accident on 10.01.2003 in the course of his employment with first Respondent resulting in injuries to his left leg. It was also held by the Commissioner that the aforesaid injuries suffered by the claimant are caused in the course of his employment with the first Respondent and are directly attributable to his employment. Accordingly the Commissioner proceeded to award compensation to claimant in a sum of Rs. 1,03,948/- payable with interest at 12% p.a., from the date of claim petition till the date of deposit of the same.

5. To arrive at the said compensation, Commissioner took the wages of the claimant at Rs. 2,380/- and the loss of earning capacity at 35% based on the evidence of P.W.2, wherein the said doctor has stated that due to fracture of left patela, claimant has suffered 35% disability to his left limb and that there is restriction of movement of left leg by 10 degrees which has come in the way of his employment and also reduced his earning capacity. Accordingly the Commissioner took loss of earning capacity at 35% and by applying relevant factor arrived at the aforesaid compensation.

6. Second Respondent - Insurance Company being aggrieved by the finding of the Commissioner in accepting the relationship of employee and employer between the claimant and first Respondent and also in accepting the loss of earning capacity at 35% and awarding compensation in a sum of Rs. 1,03,948/- payable with interest at 12% p.a., from the date of claim petition till the date of deposit of the same, has come up in this appeal.

7. This Court on appreciation of grounds of appeal and also the finding of the Commissioner, framed the following substantial questions of law for consideration:

1. Whether the Commissioner for Workmen's Compensation was justified in accepting that there is relationship of employee and employer between the claimant and first Respondent contrary to the evidence available on record?

2. Whether the Commissioner for Workmen's Compensation was justified in taking loss of earning capacity of claimant at 35% in the absence of there being

expert opinion of the doctor as contemplated u/s 4(1)(c)(ii) of the Workmen's Compensation Act?

3. Whether the Commissioner for Workmen's Compensation was justified in awarding interest at 12% p.a., from the date of petition till the date of payment, contrary to the decision of the Apex Court?

8. Heard the counsel for Appellant and Respondents. Perused the grounds of appeal, finding of the Commissioner in the order impugned, in the light of the pleadings, oral and documentary evidence available on record. On re-appreciation of the same, this Court answer the substantial questions of law as under:

Question No. 1: In the negative.

Question Nos. 2 and 3.: In view of first substantial question of law being answered in the negative, second and third substantial questions of law does not survive for consideration,

for the following:

#### REASONS

9. Admittedly in this proceeding, the first Respondent is the owner of the Tractor - Trailer bearing No. KA-14/T-2593 -2594. It is not in dispute that the said Tractor is insured with the second Respondent before the Commissioner, Appellant herein. It is not in dispute that the said vehicle met with an accident on 10.01.2003 when it was transporting paddy for the purpose of milling from Tinkabylu village to Yadur. It is also not in dispute that in the said accident claimant has suffered injuries as stated by him in the claim petition before the Commissioner.

10. Now the point that is required to be decided is whether the claimant was working as loader and un-loader under the first Respondent, owner of Tractor - Trailer, whether he was travelling in the Tractor - Trailer in the course of his employment, whether injuries suffered by him is in the course of his employment and arising out of employment. To analyse this, pleadings and documents available on record is required to be looked into. Before the Commissioner, several documents are produced and marked by the claimant, among them Ex.P-1 is FIR, which was lodged by the claimant himself on 10.01.2003 i.e., on the date of accident. The said complaint was lodged on that day at about 7.00 p.m.

11. Admittedly the accident has taken place in Kouribilu Town in Hosanagar Taluk. Contents of Ex.P-1 discloses that on 10.01.2003 at about 7.00 p.m., claimant has lodged an FIR, wherein it is stated before the police that on 10.01.2003 at about 10.30 a.m., he noticed the Tractor - Trailer of first Respondent was proceeding towards Yadur for getting the paddy milled. The claimant sought permission of first Respondent to load six bags of his paddy to

get it milled at Yadur. When he was travelling in the Tractor along with his paddy, the Tractor - Trailer met with an accident at 11.30 a.m., near Kouribilu Down Road. Perusal of Ex.P-1 clearly disclose that the claimant is an agriculturist and he never worked as loader and un-loader with the first Respondent in the Tractor - Trailer belonging to him.

12. At the time of filing of charge sheet also, it does not say that the claimant was travelling in the said vehicle as loader and un-loader. Infact in the charge sheet, which is at Ex.P-7 in column No. 10(d) claimant is referred to as an agriculturist, residing in Tinkabylu. It is only at the time of filing the Claim Petition, suddenly the status of the claimant gets converted into that of loader and un-loader. At this juncture, it is necessary to observe that, even assuming for the sake of argument that the claimant is loader and un-loader, he would not be entitled to seek any compensation from the second Respondent - Insurance Company for the reason that the Tractor - Trailer in which he was travelling at the time of accident was covered by the farmers package policy, which does not cover the risk of the persons being carried in the said vehicle other than for agricultural activity. Admittedly for agricultural activity, a loader and un-loader is not required. The word "loader" presupposes that the said vehicle is being used for commercial activity and not agricultural activity. The trailer attached to it is occasionally used for carrying manure or mud to field or for carrying agriculture produce to the house or to the market and other related agricultural activity. For the said purpose, agricultural coolies working in the field would assist the owner for loading and unloading, he need not have to specifically appoint any person as loader and unloader, unless the said vehicle is used for purpose other than agricultural activity.

13. In a Tractor - Trailer, which is insured with the agricultural policy, there is no need to appoint loader and unloader at any point of time. Therefore the presence of designated loader and un-loader in Tractor - Trailer cannot be taken as that of agricultural coolie travelling in the said Tractor. Not only in this case, in series of cases, this Court has observed that whenever a person suffer injury with reference to the Tractor - Trailer, irrespective of fact whether he is agriculturist, trader, businessman or landlord, he will automatically designated either as coolie or loader of the Tractor - Trailer irrespective of his social and economic status. It is rather surprising that the Commissioner who deals day in and out with these claims, does not have common sense to analyze these things based on the facts available on record. As could be seen in the instant case there is nexus between the claimant, first Respondent and the Commissioner in deliberately ignoring Exs.P-1 and P-7, namely FIR and charge sheet, which prima facie disclose that the claimant was never a coolie or loader in the said Tractor -Trailer at any point of time.

14. In spite of said fact being borne out on record, first Respondent shamelessly files Statement of Objections admitting the averments made by the claimant contending himself to be loader working with the first Respondent. If the first

Respondent is so pleased, he is at liberty to pay the compensation awarded by the Commissioner. First Respondent's accepting the claimant as loader and un-loader will not make him a loader or coolie will not automatically indemnify his liability to pay compensation to claim.

15. in the instant case the statement of the claimant which has come into existence within eight hours of the accident discloses that there was no relationship of employee and employer between the claimant and first Respondent. The first Respondent and the Commissioner have shamelessly joined hands in colluding with the claimant to ensure that he gets compensation at the hands of second Respondent, though the second Respondent in strict legal sense is not liable to satisfy his claim in the proceedings before the Commissioner.

16. With the aforesaid discussions, the appeal filed by the Insurance Company is allowed. Impugned order passed by the Commissioner in CR-69/2004 on the file of the Commissioner for Workmen's Compensation, Shimoga, is set aside.

17. However, liberty is reserved to claimant to receive compensation from first Respondent since he admitted the relationship of employee and employer between the claimant and first Respondent. Registry is directed to mark a copy of this order to the Secretary, Labour Department and Labour Commissioner to bring to their notice the scandalous activity of Commissioner in collusion with the claimant and the owners of Tractor - Trailer with the sole intention of defrauding the Insurance Company.

18. In view of the appeal being allowed, amount in deposit is ordered to be refunded to the Appellant - Insurance Company.