
(2016) 03 KAR CK 0135
In the Karnataka High Court
Case No : MFA No. 31654 of 2009 (WC)

New India Assurance Co. Ltd., Bijapur	APPELLANT
Vs	
Mayur and others	RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 2(d), 30

Citation : (2016) AAC 1401

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri S.S. Aspalli, Advocate, for the Appellant; Sri S.S. Mamadapur, Advocate, Sri S.V. Biradar, Advocate, Sri Bapugouda Siddappa, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mrs. S. Sujatha, J.— Heard the learned counsel appearing for the parties.

2. This appeal is by the insurer challenging the order passed by the Labour Officer and Commissioner for Workmen's Compensation, Bijapur. The substantial question of law raised by the appellant is as under:

"Whether the Commissioner is justified in entertaining the claim petition filed by the brother not being a minor, as dependent of the deceased contrary to the provisions of Section 2(d) of the Workmen's Compensation Act, 1923 (the "Act" for short)?"

3. Learned counsel appearing for the appellant assailing the order passed by the Commissioner would contend that the brother who was not a minor at the time of the filing of the claim petition is not a dependent in terms of Section 2 (d) of the Act. The Commissioner without noticing this vital aspect, which goes to the root of the matter entertained the claim petition and awarded the compensation, which requires to be set aside considering the facts and circumstances of the case.

4. On the other hand, Sri S.S. Mamadapur, learned counsel appearing for respondent No. 1, supporting the order passed by the Commissioner contends that no defence regarding maintainability was urged by the appellant before the Commissioner and as such the appellant cannot raise a new ground in the appeal that too in the appeal under Section 30 of the Act, wherein, the substantial question of law is required to be considered by the Court.

5. Sri S.V. Biradar, learned counsel appearing for the second respondent/mother supports the respondent No. 1.

6. Sri Bapugouda Siddappa, learned counsel appearing for the respondent Nos. 3 and 4 i.e. widow and child of the deceased would contend that these respondents had filed the claim petition before the MACT, Sangli and the Tribunal has dismissed the petition on the ground that the brother of the deceased had filed the claim petition before the Commissioner and had obtained an order against which the Insurance Company is in appeal before this Court.

7. It is contended that, in view of the dismissal of the claim petition before the MACT, Sangli, the said respondents moved before this Court for impleading themselves and this Court vide order dated 20-8-2015, allowed the impleading application and these respondents are on record as respondent Nos. 3 and 4. Respondent Nos. 1 and 2 without impleading the proper and necessary parties in the claim petition have managed to obtain an order of compensation in their favour denying the rights of the legally entitled parties. It is also contended that in view of the dismissal of the claim petition before the MACT, Sangli and the respondents having been impleaded in these proceedings, the substantial question of law raised by the appellant has to be negated in view of the dependents i.e the widow and child being impleaded.

8. Heard the rival submissions of the parties and perused the material on record.

9. It is noticed that the respondent No. 1 has filed the claim petition before the Commissioner seeking for compensation under the Act. Section 2 (d) of the Act reads thus;

2(d) "dependent" means any of the following relatives of deceased (employee), namely :-

(i) a widow, a minor (legitimate or adopted) son, an unmarried (legitimate or adopted) daughter or a widowed mother; and

(ii) if wholly dependent on the earning of the (employee) at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the (employee) at the time of his death,-

(a) a widower,

- (b) a parent other than a widowed mother,
- (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter (legitimate or illegitimate or adopted) if married and a minor or if widowed and a minor,
- (d) a minor brother or an unmarried sister or a widowed sister if a minor,
- (e) a widowed daughter-in-law,
- (f) a minor child of a pre-deceased son,
- (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or
- (h) a paternal grandparent if no parent of the (employee) is alive;

10. A bare reading of this provision makes it clear that the brother who is not a minor, could not be construed as a dependent of the deceased to claim compensation under the provisions of the Act. It is true that the respondents 3 and 4 have approached the MACT, sangli seeking for compensation on the very same cause of action and the Tribunal has dismissed their claim petition as devoid of merits observing that an appeal is pending before this Court against the order of the Commissioner awarding compensation under the Act. The relationship of the respondent Nos. 3 and 4 with the respondent Nos. 1 and 2 is denied by the respondent No. 2 as recorded by this Court on 26-9-2015. A serious dispute of relationship exists inter-se between the parties. This disputed question of relationship between the parties inter-se cannot be adjudicated and decided in this appeal proceedings under Section 30 of the Act. In the circumstances, it would be appropriate to remand the matter for fresh adjudication before the Senior Civil Judge, Vijayapura to address the issues involved in this matter.

11. Accordingly, without answering the substantial question of law raised by the appellant, order passed by the Commissioner is set aside and the matter is restored to the file of Senior Civil Judge, Vijayapura. The Senior Civil Judge, Vijayapura, shall pass the orders in accordance with law after providing an opportunity of hearing to all the parties, as expeditiously as possible within a period of six months from the date of receipt of certified copy of the order. All the contentions are kept open to the parties.

12. The amount in deposit if any, shall be transmitted to the learned Senior Civil Judge, Vijayapura and shall be kept in fixed deposit until the disposal of the claim petition.

13. In view of the dismissal of the appeal, Misc. Civil No. 153604/2009 does not survive for consideration.

14. Office is directed to send back the records to the Senior Civil Judge, Vijayapura, forth-with.