

(2011) 11 KAR CK 0163
In the Karnataka High Court
Case No : M.F.A. 10411 of 2007 (WC)

New India Assurance Co. Ltd., Divisional Office NO. 11 7th Floor, Unity Buildings, J.C. Road, Bangalore - 560002 APPELLANT

Vs

N. Subramani @ Subramanya and K. Shashikumar RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 4 (1) (C)

Citation : (2011) 11 KAR CK 0163

Hon'ble Judges : V. Suri Appa Rao, J;N.K. Patil, J

Bench : Division Bench

Advocate : Harini Shivananda, for the Appellant; K.R. Murali Krishna, Advocate for R1 Notice to R2 served, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the Insurer is directed against the impugned judgment, and order dated 16/10/2006 passed in CWC:NFC:CR: NO. 24/03 on the file of the Labour Officer and Commissioner for Workmens" Compensation, Sub Division-1, Bannerghatta Road, Karmika Bhavan, Bangalore - 29 (hereinafter referred to as "the Commissioner" for short), for consideration of the following substantial question of law:

(i) Whether the Commissioner was right in considering disability at 75% in the absence of proper Medical evidence and documentary proof for a non scheduled injury as against the provisions of section 4(1)(C) of the Workmens Compensation Act?

2. By its judgment and order, the Commissioner has awarded a sum of Rs. 3,62,988/- with interest at 12% p.a., from 10.1.2003 till its deposit, on account of the injuries sustained by the claimant in the road traffic accident.

3. The occurrence of the accident on 10.12.2002 at about 10.30 p.m. and the resultant injuries sustained by the claimant are not in dispute. On account of the injuries, claimant has taken treatment and spent considerable amount towards

his medical expenses and other incidental charges. Therefore, he has filed a claim petition before the Commissioner, claiming compensation against the driver, owner and Insurer of the offending vehicle. The said claim petition had come up for consideration before the Commissioner, who in turn, after hearing both sides and after assessing the oral and documentary evidence, taking into consideration the nature of injuries sustained by the claimant and the percentage of disability suffered by him, has allowed the said claim petition in part, awarding a sum Rs. 3,62,988/- as compensation with interest at 12% p.a., from 10.1.2003 till its deposit. Being aggrieved by the said judgment and order, the Insurer has presented this appeal.

4. We have heard the learned counsel appearing for Insurer and learned counsel appearing for claimant.

5. Learned counsel for the Insurer, at the outset, submitted that, the owner of the offending vehicle has played fraud on the Insurance Company and made it appear as though Maxi Cab bearing Reg.NO. KA.21.1162 that was insured with the Insurer is the vehicle involved in the accident in question even though it is another vehicle bearing Reg.NO. KA.01.2148 that belonged to him caused the accident in question by manipulating with the Engine and Chassis numbers, including the registration number and the said vehicle is not insured. Further, she submitted that since the Maxi Cab bearing Reg.NO. KA.21.1162 has not caused the accident in question, the question of indemnifying the claim against II respondent does not arise. But this aspect of the matter has not been looked into or considered by the Commissioner while fastening the liability on the Insurer. Further, she submitted that this Court has disposed of the other two appeals filed by the claimant and Insurer arising out of the same accident in M.F.A.NO. 1476/2006 and M.F.A. NO. 1538/2006 and remitted the said matters to the Tribunal for reconsideration and therefore, the order impugned herein is also liable to be set aside and matter requires reconsideration afresh.

6. As against this, learned counsel for the claimant, inter-alia contended and substantiated the impugned judgment and order passed by the Commissioner. Further, he submitted that, the Commissioner after due consideration of the relevant material available on file has awarded just and reasonable compensation and therefore, interference by this Court is not called for. However, he has not disputed that, the other two appeals filed by the claimant and the Insurer arising out of the same accident have been disposed of by this Court and matters were remitted back to the Tribunal for reconsideration. Therefore, he submitted that, this appeal may also be disposed of and the matter may be remitted back to the Commissioner for reconsideration afresh.

7. After hearing the learned counsel for both the parties and after careful perusal of the materials available on file, the only point that arises for our consideration is:

(i) Whether there is any error on the part of the Commissioner in appreciating

the evidence available on record?

8. As rightly submitted by the learned counsel for the Insurer, the owner of the offending vehicle has owned two vehicles and when the accident has taken place, in a clever manner, made it appears as though Maxi Cab bearing Reg.NO. KA.21.1162 that was insured with the Insurer is the vehicle involved in the accident in question, even though, it is another vehicle bearing Reg.NO. KA.01.2148 that belonged to him caused the accident in question, by manipulating the Engine and Chassis numbers, including the registration number and the said vehicle is not insured. But this aspect of the matter has not been specifically pleaded before the Commissioner by the Insurer, except making an oral evidence. This fact has been realized by the counsel when he came to know that the Investigator/surveyor has submitted his report, after conducting thorough enquiry, stating about the fraud played by the owner of the offending vehicle. Further, it is significant to note that in the appeals filed by the claimant and Insurer in M.F.A.NO. 1476/2006 and M.F.A.NO. 1538/2006 arising out of the same accident, we have taken a view that, since the Tribunal therein has committed an error in not considering the material available on record i.e. the evidence of the Officer of the Company and the Investigator/Surveyor report as per Ex.R1, the matters require reconsideration by the Tribunal and the impugned judgment and order therein is liable to be set aside and accordingly, we have set aside the impugned judgment and order therein and emitted the matters to the Tribunal for reconsideration afresh. Therefore, we are of the considered view having regard to the facts and circumstances of the case as stated above that, the impugned judgment and order is liable to be set aside and matter requires reconsideration by the Commissioner afresh.

9. For the foregoing reasons, the appeal is allowed in part.

The impugned judgment and order dated 16/10/2006 passed in CWC:NFC:CR NO. 24/03 on the file of the Labour Officer and Commissioner for Workmen's Compensation, Sub Division-I, Bannerghatta Road. Karmika Bhavan, Bangalore - 29, is hereby set aside and matter stands remitted back to the Commissioner for reconsideration afresh and to pass appropriate orders in accordance with law, after affording reasonable opportunity to all the parties and to dispose of the same, as expeditiously as possible, at any rate, within a period of six months from the date of appearance of the parties before him.

Both the parties are permitted to file additional evidence by way of filing applications. If such applications are filed by the parties, the Commissioner is directed to receive the same and pass appropriate orders in accordance with law.

The claimant has received Rs. 1,00,000/- in pursuance of the judgment and order passed by the Commissioner and the said amount is subject to the judgment to be passed by the Commissioner.

The Registry is directed to transmit the entire amount deposited by the Insurer to the Jurisdictional Commissioner immediately. The Commissioner is directed to

invest the said amount in the Fixed Deposit in any Nationalized or Scheduled Bank pending disposal of the matter on merits.

Both the appellant and respondents are directed to be appear before the jurisdictional Commissioner on 28th November 2011 at 3.00 p.m., to enable them to take further dates of hearing.

Ordered accordingly.