

(2011) 03 KAR CK 0375
In the Karnataka High Court
Case No : MFA No. 2451 of 2009 (WC)

New India Assurance Company Limited	APPELLANT
Vs	
G.M. Kumar and Another	RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 10

Citation : (2013) ACJ 779 : (2012) 133 FLR 433 : (2012) ILR (Kar) 2700

Hon'ble Judges : S.N. Satya Narayana, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; Subramanya, Advocate for R1, R2-
Notice Dispensed with, for the Respondent

Final Decision : Allowed

Judgement

Satyanarayana, J.—The 2nd respondent-insurance company in CR-No. 5/2006 on the file of Commissioner for Workmen's Compensation, Sub-Division-III, Bangalore has come up in this appeal challenging the Order dated 20.8.2008 passed therein. Brief facts leading to this appeal are:

The claimant before the Commissioner state that he was working as cleaner in Canter bearing No. AP-02-V.4129 belonging to first respondent and insured with second respondent before the Commissioner. That he was travelling in the said canter on 26.11.2005 in the course of his employment. At about 9 A.M., when the said canter was proceeding on Devanahalli - Vijayapura Road near Kurubarakunte Cross, a Bus bearing No. KA-07/4836 proceeding ahead of canter in which claimant was travelling stopped abruptly. Hence the driver of canter lost control and hit the said vehicle. In the accident claimant suffered fracture of shaft of right femur, head injury and injury over right arm and other grievous injuries. Immediately after accident he took treatment in Devanahalli Government Hospital. Later, he was admitted to Bowring and Lady Curzon Hospital, Bangalore. In that behalf a criminal case is also registered in Crime No. 181/2005 in Devanahalli Police Station. Thereafter, he filed claim petition seeking

compensation from the owner and insurer of car for the injuries suffered in the said accident.

2. In the proceedings before Commissioner, on service of notice both first and second respondents entered appearance. 1st respondent filed objections admitting ownership of vehicle and relationship of employer and employee between herself and claimant and also other petition averments. It was also stated that in the event of petition being allowed and compensation awarded liability to pay the same is required to be fastened on insurance company who was insurer of said vehicle.

3. 2nd respondent filed objections admitting issue of policy in respect of vehicle involved in accident. However, relationship of employer and employee between 1st respondent and claimant, alleged accident and claimant suffering injuries as stated in the claim petition were denied. It was also denied that due to injury suffered by claimant is unable to do work as cleaner or any other manual work. Based on the aforesaid pleadings, Commissioner proceeded to frame issues and recorded evidence. On behalf of claimant he examined himself as PW. 1, in his evidence he reiterated petition averments. In support of his case he produced in all six documents i.e., Exs. P1 to P6, which are FIR, charge sheet, proceedings in CC. No. 243/2006, certified copy of panchanama, certified copy of wound certificate issued in Bowring and Lady Curzon Hospital and also discharge card issued from said hospital. He also examined one Dr. Rajanna as PW. 2. The said doctor in his affidavit evidence stated that claimant has suffered following injuries:

1. Sutured wound 1 cm., above the right eyebrow 3 cms., long.
 2. Sutured wound over anterior aspect right arm 4 cms., long.
 3. Sutured wound 3 cms., long horizontally over (right) temporal region.
 4. Sutured wound 1 cm., below and medial to injury No. 3 1.5 cms., long.
 5. Abrasion over right arm 3 cms., above and 2 cms., lateral to injury No. 3.
 6. Sutured wound 1.5 cms., long 3 cms., below and 2 cms., medial to injury No. 3.
 7. Abrasion over dorso-lateral aspect of (right) forearm 11 cms., long & 3 cms., wide.
 8. Swelling deformity, abnormal mobility and crepitations of lower 1/3 and middle 1/3 of (right) thigh diagnosis fracture shaft right femur.
4. PW. 2 has stated that initially claimant was treated in a private hospital, later he was treated in Bowring and Lady Curzon Hospital from 26.11.2005, where he was operated on 13.12.2005 for open reduction and internal fixation of fractured bone. He admit having given disability certificate to claimant on 9.4.2007 making following observations:

On examination on 9.4.2007,

1. Patient walks with limp on to right side.
2. Shortening of right lower limb by 1.5 cms.
3. Operated scar on lateral aspect of right thigh and buttock.
4. Limitation of right hip movements by 40%.
5. Limitation of right knee movements by 30%.
6. Muscle power around right hip is GrIV against GrV.
7. Muscle power around (right) knee is GrIV against GrV.
8. Multiple scars over face, scalp and (right) arm.

Check X-ray No. 9934 dated 9.4.2007 of (right) thigh shows old united fracture shaft of right femur with exuberant callus formation and IM nail fixation in situ.

He is advised active hip, knee and quadriceps exercises.

He needs to undergo one more surgery i.e., removal of implants.

Due to above mentioned disabilities he cannot walk like a normal person, needs support to climb stairs, cannot lift any weight, cannot sit crossed leg, difficulty to squat, cannot do any hard work.

After referring to various guidelines and including Alimco manual, I am of the opinion that the petitioner is having permanent disability of 46% to (right) lower limb and 23% to the whole body. In view of this disability the petitioner cannot work as a cleaner and cannot do any other manual work.

PW. 2 also produced case sheet, copy of X-ray taken recently and OP card of recent examination at the time of evidence, which are at Exs. P7, P8 and P9.

5. The Commissioner on appreciation of pleadings, oral and documentary evidence available on record proceeded to accept that claimant has suffered injury in a road accident which has taken place on 26.11.2005, in the course of his employment. The injuries suffered by claimant arise out of his employment with 1st respondent. It is further held that claimant has suffered loss of earning capacity to the tune of 90%. Accordingly, Commissioner proceeded to calculate compensation taking the income of claimant at Rs. 3,800/- p.m., with loss of earning capacity at 90% and awarded compensation in a sum of Rs. 4,54,251/- payable with interest at 12% p.a., from 30th day of order till date of deposit of entire amount.

6. 2nd respondent being aggrieved by the aforesaid order has come up in this appeal on the ground that there is error on the part of Commissioner in assessing income of claimant at Rs. 3,800/- pm., contrary to the admission of claimant and 1st respondent/employer. The loss of earning capacity taken at

90% as against the alleged whole body disability said to have suffered by claimant to an extent of 23% is incorrect. There is error in appreciating evidence available on record in the form of wound certificate, which appears to be tampered. There is non compliance of Section 10 of Workmen's Compensation Act.

7. In this proceedings, after service of notice appeal was admitted to consider the substantial questions of law raised in the appeal memo, which are as under:-

1. Whether the Commissioner was justified in allowing Rs. 4.54.251/- holding wages of the injured-cleaner at Rs. 3,800/- per month arbitrarily in the absence of specific, cogent and corroborative evidence in this regard and further holding that injured has lost 90% loss of earning capacity as against 23% whole body disability spoken to by the doctor examined with no reference to loss of earning capacity of the injured due to alleged physical disability?

2. Whether the order of the Commissioner could be justified in the light of the grounds raised in the above appeal?

8. Heard the Counsel for appellant and respondent/claimant. On appreciation of the grounds of appeal with reference to finding of the Commissioner in the order impugned and the material available on record this Court answer the aforesaid two substantial questions of law in the negative for the following:

REASONS

On going through the lower Court records to the shock and surprise of this Court it is seen that claim petition itself is tampered. The claim petition, which was filed on 7.2.2006 contains 1st sheet being the index page and 2nd sheet containing 1st and 2nd page of claim petition and 3rd sheet is 3rd page of claim petition. Incidentally, 2nd sheet of claim petition i.e., 1st and 2nd page of claim petition is replaced. The order sheet does not disclose either amendment to claim petition was permitted by Commissioner or that claimant was permitted to replace a page or portion of claim petition. Without there being any such order supporting such replacement in the order sheet, replacement of 2nd sheet containing 1st and 2nd page of claim petition clearly indicates that there is tampering of pleadings either with or without active connivance of Commissioner.

9. Now coming to evidence available on record it is seen that accident is said to have taken place on 26.11.2005. The complaint is lodged by one Muniyappa, driver of Bus bearing No. KA-07/4836. The contents of FIR which is at Ex. P1 disclose that on 26.11.2005 when said complainant-Muniyappa was driving his bus from Devanahalli to Vijayapura, near Kurubarakunte Cross at about 9 A.M., in the morning some vehicle dashed his vehicle on its rear side. On getting down from his bus and going to the backside of his bus he noticed that a Canter bearing No. AP-02/V-4129 had dashed against his vehicle and the said vehicle was driven by one Siddappa who had suffered injuries to his right leg and also on his head. Said Siddappa was sent to Devanahalli Hospital for treatment. If

complaint and FIR is accepted, there was no cleaner in the said canter at the relevant time of accident. There was only one person who was travelling in the said canter i.e., Siddappa said to be driver of canter. Therefore, the contention of claimant that he was working as a cleaner in the said vehicle and he was travelling in the said vehicle as such in the course of his employment he suffered injury in the accident on the said date is nothing but a figment of lie. If said Siddappa who was driver of canter is the same person who is claimant before Commissioner, then what was the reason for him to describe himself as a cleaner when he was driving the said vehicle which caused the accident. Therefore, the very basis on which claim petition is filed appears to be concocted.

10. Coming to other document i.e., charge sheet, it is filed against one Siddappa @ Siddaiah s/o Puttaiah. As stated above, he was the only occupant in canter at the relevant point of time of accident and charge sheet was filed against him. Whereas in the present case claimant claims himself to be G.M. Kumar @ Siddappa s/o Muniyappa. Therefore, said Siddappa and G.M. Kumar with alias name as Siddappa is not one and the same. This appears to be again another discrepancy in describing himself.

11. Now coming to medical certificate, though the accident is said to have taken place on 26.11.2005, medical records produced show the name of one Siddappa, who is said to have admitted to hospital on 26.11.2005 at about 2.45 P.M., and discharged some time in December 2005. In the said medical record/admission sheet in the column where date for discharge is put, date is changed four times. The original date is scratched beyond recognition. Over and above that 19 and 22 are written and scratched ultimately retaining the date of discharge as 24.12.2005. The contents of said document which is at Ex. P8 disclose some serious surgical operation conducted on one Siddaiah, who is said to be claimant G.M. Kumar himself. To say that said Siddappa and present claimant are one and the same, an application is filed before Resident Medical Officer of Bowring and Lady Curzon Hospital on 15.12.2005 and a notarised affidavit is also filed, thereafter the name of the parties is changed in the said document Assuming that this is done by PW. 2 Dr. Rajanna, as legitimate correction. The treatment that is given to said Siddappa in Ex. P8 has no connection or nexus with injuries said to have suffered by claimant on 26.11.2005 when canter in which he was travelling said to have met with an accident with offending bus. On going through this document, it is clearly seen that entire claim proceeding is nothing but an attempt of fraud. It reeks of collusion, manipulation and an attempt to pass-off document belonging to 3rd parties as that of claimant with the only purpose of securing compensation.

12. Assuming for a moment that the document produced are genuine, let us see the conduct of Commissioner, who is the first and foremost culprit in this proceedings. It pains to see that an officer of that rank stooping to such lowest level for the sake of accommodating a claimant for extraneous consideration is beyond the comprehension of this Court. The Commissioner appears to be not

only dumb but also blind. He is not able to see the document, which is filed before him, can not apprehend the contents of it and is incompetent to come to a reasonable conclusion regarding genuineness of the same. Of course, when he has decided to be a party for manipulation, it is but natural that he would turn a blind eye to all the discrepancies on record. The Commissioner has not only turned a blind eye to this but proceed with utmost impudence to defy all reasonable limits of decency to assess the documents available on record in a manner unknown to law. In a proceeding initiated before Commissioner for compensation, the first and foremost thing that he is required to see is whether the injuries suffered by claimant causes loss of earning capacity to him. For that he need to rely upon the evidence of doctor. Unfortunately, the doctor who is another partner in crime is not honest in giving his opinion. He has tried to interpolate some other document as that of claimant and goes to the extent of saying that claimant has suffered limb disability to an extent of 46% which results in whole body disability to an extent of 23%. However, though he is required to give his opinion as contemplated under the Act regarding extent of loss of earning capacity said disability would cause to claimant, he is silent on that aspect. In the instant case the Commissioner takes the said responsibility on himself and goes a step further and feel that it is fit case where loss of earning capacity of claimant should be taken at 90% when there is neither acceptable reason nor medical evidence available on record. Further, in pleading and evidence of claimant it is said that his income is Rs. 3,000/- pm. The 1st respondent accept the same as Rs. 2,500/- pm. The Commissioner with the benevolence at his disposal generously fix the same at Rs. 3,800/- pm., and proceed to award compensation in princely sum of Rs. 4,54,251/- payable with interest at 12% from 30th day of order till date of deposit of entire amount.

13. On going through the entire records and finding given by Commissioner this Court find that there is clear attempt on the part of claimant in connivance with Dr. Rajanna, PW. 2, Commissioner for Workmen's Compensation in trying to hoodwink the 2nd respondent/ insurance company to part with fat compensation in a case where claimant is not even an injured in the vehicle which is said to have involved in accident on 26.11.2005. As stated earlier FIR, Ex. P1 does not disclose presence of claimant as cleaner in the said vehicle. It only points to presence of one Siddappa who was present in the said vehicle as driver. Assuming for a moment that claimant himself is Siddappa then he is not cleaner, he is a driver, he must be having driving licence and he should be pursuing work as driver under 1st respondent. The very fact that he is describing himself as a cleaner clearly indicates that either he was not in the vehicle at the time of accident or in the alternative if he were to be there, he was driving the said vehicle without valid driving licence. Let us see the second possible analogy to this. Assuming for a moment that said Siddappa and claimant are two different persons then claimant who is a total stranger to said accident is trying to put himself into the shoes of said Siddappa by changing his name into G.M. Kumar by filing some false and frivolous affidavit before Resident Medical Officer in the

Bowring and Lady Curzon Hospital and is trying to create documents for the sake of this frivolous case. In the result, appeal filed by 2nd respondent/insurance company is allowed. The Order dated 20.8.2008 in CR. No. 5/2006 passed by Commissioner for Workmen's Compensation, Sub-Division-II, Bangalore is set-aside. While doing so, this Court direct the Secretary, Home Department, Secretary to Labour Department and Secretary to Medical Department to initiate enquiry against M. Nagaraju, the Commissioner for Workmen's Compensation, Sub-Division-II, Bangalore as he was working during August 2008, and Dr. Rajanna s/o late Subbanna working as Orthopedic Surgeon in Bowring and Lady Curzon Hospital as on 17.7.2007, claimant in the aforesaid proceedings G.M. Kumar s/o Muniyappa, resident of Gaddehalli, Mavinhalli Post, C.S. Pura Hobli, Gubbi Taluk, Tumkur District claiming himself as having an alias name of Siddappa. The entire records pertaining to this proceedings be sent to Home Secretary to Government who intern shall appoint an honest officer to conduct enquiry against the above three persons with reference to their involvement in the aforesaid false claim and submit his report to this Court within six months from the date of receipt of a copy of this judgment.

In view of the Appeal being allowed the amount in deposit be refunded to the Appellant.