
(2016) 06 KAR CK 0208
In the Karnataka High Court
Case No : M.F.A. No. 21703 of 2011 (WC)

New India Assurance Company Limited	APPELLANT
Vs	
Maruti	RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2017) AAC 379

Hon'ble Judges : Mr. G. Narendar, J.

Bench : Single Bench

Advocate : Sri. G.N. Raichur, Advocate, for the Appellant; Sri. B.M. Patil, Advocate, for the Respondent No. 1; Served & Unrepresented, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. G. Narendar, J.—This appeal is listed for admission and at the request of the learned counsel appearing on behalf of the parties, it is taken up for final disposal.

2. The parties are referred to by their nomenclature before the Commissioner for Workmen's Compensation.

3. The brief facts of the case are that the claimant has made a claim for compensation in respect of a calamity that occurred way back in 2009. The claimant, who is the 1st respondent herein has preferred a petition under Section 22 of the Workmen's Compensation Act [henceforth referred to as "the Act" for the purpose of convenience], praying for compensation on account of the injuries sustained in an accident. It is the case of the claimant that on 23.11.2009 he was proceeding to Ajara in the tractor and trailer bearing reg. No. KA-36/P-3223 belonging to the 1st respondent/owner and after loading bricks at Ajara and while they were returning, near Gadhinglaj-Sankeshwar road, the tyre of the tractor suffered punctured. Hence the tractor and trailer was stopped. In the

meantime, the claimant wanted relieve himself and went to answer the nature's call and he started to cross the road. At that time, a motorcycle which was being ridden at a high speed and in a rash and negligent manner, came and crushed into the claimant and fled away. As a result, the claimant sustained grievous injuries and was immediately shifted to K.L.E.Hospital, Belagavi, where he was treated as an in-patient for more than a month. He has incurred expenses in excess of Rs. 1,50,000-00 towards medical expense. Prior to the accident, he was hale and healthy and was earning Rs. 4,000-00 p.m. by employment as a coolie in the aforesaid tractor. On account of the injuries, he has become physically disabled and unable to eke out his livelihood as he was prior to the accident.

The 1st respondent/owner of the tractor and trailer did not appear and contest the claim. Therefore, he has been placed ex-parte.

The 2nd respondent/insurer has appeared and filed its objections raising standard objections and denying the petition averments. Therein, it was contended that the claimant has not suffered injuries on account of the use of the vehicle and that there was no relationship of employer and employee between the claimant and the 1st respondent. Hence the insurer was not liable to compensate any liability on behalf of the 1st respondent and prayed for dismissal of the petition.

The claimant examined himself as P.W.I and one Dr. S.R.Anaadi, as P.W.2 only in order to depose regarding the disability suffered by him and also got marked the documents Exs.P1 to 9. The insurer got examined one of its officers as R.W.I and got marked a copy of the insurance policy as Ex.R2(1).

The Commissioner, after a detailed examination of the material on record was pleased to formulate the following 7 issues:

(VERNACULAR MATTER)

After hearing the parties and upon consideration of the pleadings and material evidence before him, the Commissioner for Workmen's Compensation was pleased to allow the petition by granting a compensation of Rs. 1,69,394-00 along with interest at the rate of 12% p.a. from the date of the Judgment. Aggrieved by the same, the insurer/2nd respondent is before the Court as the appellant.

4. The appellant has formulated the following substantial questions of law for consideration;

a) Whether the Commissioner for Workmen's Compensation is justified in saddling the liability on the appellant insurance company against the provision of Section 140 and 143 of M.V. Act 1988?

b) Whether the Commissioner for Workmen's Compensation is justified in coming to a conclusion that the injuries caused to the petitioner were in the

course of the employment and arising out of the employment in spite of the evidence on record to show that the injuries are not caused by the use of the insured vehicle?

c) Whether the Commissioner for Workmen's Compensation is justified in saddling the liability on the appellant insurance company in spite of the documentary evidence on record to show that no premium was collected by covering the risk of the coolies as provided under IMT 39 of India Motor Tariff?

d) Whether the Commissioner for Workmen's Compensation is justified in taking the loss of earning capacity as 40% against the principles laid-down in Section 4(1)(c)(ii) of the W.C. Act?

5. It is contended by learned counsel for the appellant that no evidence is being let in to demonstrate the relationship between the claimant and the 1st respondent, as employee and employer, and hence the claim petition under the said Act is not maintainable.

6. The Commissioner has formulated issue No. 1, which relates to adjudicating the issue as to whether the claimant is a workman as defined under the provisions of the Act. The Commissioner taking note of the testimony of the claimant and the fact that the claim has not been resisted by the 1st respondent and also keeping in view the fact that no material evidence is placed on record by the insurer to disprove the claim of the claimant, concluded that the claimant has proved that he is a workman. It is also observed by the Commissioner that the evidence let in by the insurer does not dislodge the assertion of the claimant that he is a workman, employed with the 1st respondent as a coolie in the tractor owned by the 1st respondent. Thereafter, the Commissioner has assessed the wages and in this regard has taken the aid of the ruling of this Court rendered in the case of *New India Assurance Co. Ltd. v. Smt. Channamma and others*, reported in ILR 2007 Kar. 1287; wherein it was held as follows:

"The Court has taken judicial notice that between 2000 and 2005, the minimum wages for unskilled labourer was around Rs. 100 to 150".

On this basis, the Commissioner has fixed the monthly income of the claimant at Rs. 3,500-00. Thereafter, the Commissioner has also assessed the disability suffered by the claimant on the basis of the disability certificate and the testimony of P.W.2 and after observing the claimant, who was present before the Court concluded that the claimant has suffered 40% disability. This being a finding of fact and no other contradictory evidence being placed by the insurer before the Court, this Court does not find any perversity or illegality in the same and accordingly agrees with the above findings of the Commissioner.

7. The next argument on behalf of the appellant is that the Commissioner erred in concluding that the injuries sustained by the claimant are in the course of the employment. The learned counsel for the appellant would vehemently contend that, answering nature's call can by no stretch of imagination, be construed as

part of the employment. The phrase, "the nature's call" by itself indicates that the very act is beyond human control and one which affects everyone without any discrimination. It is beyond the realm of reality to contend that a workman can discharge his duty and functions without resorting to answering nature's call. The contention is without basis. It is necessary to recount the plea and testimony of the claimant.

8. It is his case that on instructions of the 1st respondent, he has proceeded in the 1st respondent's tractor and trailer in order to bring bricks for the purpose of construction of a well in the land of the 1st respondent and in the land of one Ravasab Sulakude and that the tractor had suffered a puncture on the way back and hence they were constrained to bring the tractor and trailer to standstill and on account of the tractor having been stopped, the claimant desirous to relieve himself or in other words to answer nature call alighted and when he was proceeding to cross over and while crossing the road, he was hit by a speeding motorcycle.

9. It is common knowledge that the driver and the other employees in the vehicle in a way act as custodians of the vehicle in the absence of the owner, who has handed over the custody of the same. In the said process, they are the occupants of the vehicle in different capacity. Such persons employed like drivers, loaders, cleaners, coolies, etc., who are attached to or employed in vehicle do not work within fixed time schedule. Their employment begins when they report to their employer and it continues till they return back and station the vehicle and hand-over the keys to the employer. This generally is the feature of the class of people as stated supra. It can be gainfully said and without fear of contradiction, that repairing of a broken down vehicle or making arrangement to have the broken down vehicle repaired are one part of the employment and it cannot be contended that it is not in the course of employment. The persons, who are in the custody of the vehicle, are responsible to the employer with regard to safe keep of the vehicle till they hand it over back to the custody of the employer/owner. Hence, in the light of the above, this Court concludes that the employment by the claimant commenced on receipt of instructions and it continues till he completed the task assigned to him i.e., loading the bricks at Ajara and unloading the same in the designated land, which was yet to be completed and it would also include breaks for food and nourishment's and brakes taken for answering nature's call. The accident occurred even before the task assigned to the claimant which was completed and hence it must be construed that the claimant sustained the injuries in the course of employment. Hence, the said contention of the appellant also stands rejected. In this regard, the appellant has also relied upon a decision reported in the case of Mailikarjuna G. Hiremath v. The Branch Manager, The Oriental Insurance Co. Ltd. & another reported in CDJ 2009 SC 257. The facts of the case and the facts of the case on hand are totally different and incomparable to the case on hand. It was a case, where the driver of the taxi, after dropping the claimant to the temple had gone to the temple pond and while sitting at the edge of the water; had accidentally

slipped and fallen into water and drowned. Hence, the Court held that there is no casual connection between the act of taking bath and the employment and absolved the insurer. In the case on hand, it is one of answering nature's call and it is a common feature to find rest rooms in all work places, which are provided solely for the said purpose. The act of taking a bath is an optional act could have been avoided even by 24 or 48 hours, which cannot be the case when it come to answering nature's calls.

10. The appellant's counsel has also relied upon another ruling of the Hon'ble Apex Court in the case of Mamtaj Bi Bapusab Nadaf and others v. United India Insurance Company and others reported in 2011(2) Kar.L.J. 241 (SC); wherein yet again the facts and circumstances of the case are totally at variance to the facts obtaining on hand. That was a case, where the claimant was loading maize, unloading from the tractor, to an underground storage bin. The workman, who had gone down into the underground storage in order to clean it, fell into the pit and died due to asphyxia. Hence, the Court has rightly concluded that the act of loading into the underground storage pit has no connection to his employment and concluded that it had no connection to the loading or unloading of the food grain to and from the tractor and trailer. Factually the case are not on parity and hence, the ruling of the Hon'ble Apex Court is not applicable to the facts on hand.

11. The appellant's counsel has also relied upon the ruling of the Division Bench of this Court in M.F.A. No. 9338/2005 [WC] dated 27.08.2010. The facts of the said case are that the loader who had gone to a garden land with the tractor and trailer had attempted to climb the coconut tree to pluck coconuts and in that process, he fell down from the tree and sustained injuries and has become permanently disabled due to para-pegia. In these circumstances, it was held that the act of climbing the tree had no casual connection to the nature of the employment assigned to him and has rightly upheld the claim of the insurer. The facts of the said case and the facts of the case on hand cannot be related. Hence, this ruling is not applicable to the facts and circumstances of this case.

12. Learned counsel for the respondent has relied upon the ruling of this Court in M.F.A. No. 21614/2009 [WC] disposed of on 28.01.2013. In the said case, while answering issue No. 2, the relevance and the impact of the provisions of Section 140 and 143 of the Motor Vehicles Act, or claims under the Workmen's Compensation Act has been detailed and this Court has been pleased to observe as follows:

"11. The next issue is as to whether death arose out of and in the course of employment and by the use of the vehicle bearing registration bearing No. MH. 12-841 and as to whether the risk of the deceased was covered under the policy. The answer to this issue would be an answer to points for consideration at Sl. Nos. 1 to 3 raised above. Having held that there was relationship of employer and employee between the deceased and 4th respondent who was the driver of the vehicle in question, the question is when the vehicle was not being driven by the driver in the sense that he was not at the wheel of the vehicle but was

standing beside the vehicle near a Dhaba, would have meant that the vehicle was not in use and therefore, in terms of the provisions of the Motor Vehicles Act the insurer can escape the liability.

12. In this context what is to be seen is Section 146 of the Motor Vehicles Act, wherein a duty is cast on the owner of every vehicle to have an insurance policy in force " in relation to the use of the vehicle by the person. It is in this context that the vehicle being insured has to be considered as the contention of the learned Counsel for the appellant on this aspect is two fold: One is that the insurance policy in the instant case did not cover the risk of the deceased beyond a period of 24 hours, as only a transit policy was issued. The copy of the policy (certificate of insurance) only has been produced as Ex.P.11. A perusal of the said document states that the risk commences on 04.10.2005. The certificate of insurance nowhere states that the risk is only for 24 hours. On the other hand, the certificate states that the cover note is in accordance with Chapter-X and XI of the Motor Vehicles Act, 1988. Therefore, the insurer is liable to indemnify in terms of the provisions of the said Act. Hence, it cannot be said that the risk of the deceased was not covered in terms of the provisions of the Workmen's Compensation Act wherein the liability of the insured/employer is absolute.

As far as the 2nd contention is concerned, it is that there was "no use of the vehicle" as the deceased was standing beside the vehicle when he was hit by an unknown vehicle is concerned, Section 143 of the Motor Vehicles Act is pressed into service. The said Section which is in Chapter-X, deals with the applicability of the said Chapter to certain claims. It states that the provision of Chapter-X shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923, resulting from an accident of the nature referred to under sub-section (1) of section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act. The implication of this section read with Section 140 of the Act, would only mean that if driver of the vehicle in question is negligent in causing the accident and sustains injuries or dies, then in that case his claim under the Workmen's Compensation Act cannot be defeated on account of his own negligence. Beyond that, no reliance can be placed on Section 143 of the Act with regard to the "use of the vehicle" which is the subject matter of controversy in the instant case. On the other hand, in Section 146 of the Act what is stated is the expression "in relation to use of the vehicle". The expression "in relation to" is of a wider connotation and it cannot be interpreted to mean that it is only when the deceased i.e., the driver in the instant case was on the wheel of the vehicle or inside the vehicle that the claim of legal representatives of deceased can be met by the insurer and not otherwise. The expression "in relation to use of the vehicle" is not an exhaustive phrase but an expansive one and denotes notional extension than the expression "use of the vehicle" per se.

13. In this context, reliance could be placed on two decisions of the Apex Court

in the case of *Renusagar Power Co. Ltd. v. General Electric Company & another* (AIR 1985 SC 1156) and *M/s. Doypack Systems Pvt. Ltd. v. Union of India* (AIR 1988 SC 782) by way of analogy. In the first of the above cases arising under the provisions of the Arbitration Act 1940, it has been held that expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement. Similarly, in *M/s. Doypack Systems Pvt. Ltd.*, it has been held that the expressions "pertaining to", "in relation to" and "arising out of", used in the deeming provisions, are used in the expansive sense. The words "pertaining to" and "in relation to" have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word "pertain" is synonymous with the word "relate". The expression "in relation to" (so also "pertaining to") is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance.

14. It is therefore, held that the deceased who was an employee of the 4th respondent, being outside the vehicle for the purpose of having his morning tea at the Dhaba cannot be said to be engaged in an activity which is outside the scope of his employment. When a driver is directed to drive the vehicle from one destination to another destination it is implied that the said driver or employee engaged is entitled to breaks for having his food or to attend to nature calls or could be engaged in repair of the vehicle. When the death occurs at that stage, it cannot be said that "it was not in relation to the use of the vehicle" or that the death was outside the scope of employment. Many a time injury or death may occur of a driver, cleaner or a coolie employed by the owner of the vehicle though the vehicle is not in motion but in the circumstances mentioned above such an injury or death would be one arising out of and during the course of employment,"

15. The observations of this Court can be gainfully relied upon for disposal of the case on hand. This Court is in respectful agreement with the findings and reasoning as rendered by this Court in M.F.A. No. 21614/2009 (WC). In view of the above, the other limb of argument that the Award by the Commissioner is contrary to the provisions of Section 140 and 143 of the M.V. Act is also without basis and is accordingly rejected. In view of the above, the appeal stands rejected without being admitted.

16. The amount deposited be transmitted to the jurisdictional court. In the above facts and circumstances of the case, there shall be no orders as to costs.