

(2016) 11 KAR CK 0096

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 20612 of 2010 connected with
Miscellaneous First Appeal Nos. 20613 to 20616 of 2010 (WC)

New India Assurance Company Limited

APPELLANT

Vs

Shivanand

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 30(1)

Citation : (2017) 2 KantLJ 144

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

Bench : Single Bench

Advocate : Sri. Ravi G. Sabhahit, Advocate, for the Appellant; Sri. Raghavendra Purohit for Sri. Dinesh M. Kulkarni Advocates, for the Respondent No. 1; Held Sufficient, for the Respondent No. 2 and 3

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha, J.—Since these appeals arise out of the common judgment and award passed by the Commissioner for Workmen's Compensation, Hubli ("Commissioner" for short), in W.C. A. NF. Nos. 87/2005, 90/2005, 57/2007, 58/2007 and 59/2007.

2. The claim petitions were instituted contending that the workmen travelling in Truck No. KA-30/1212 sustained injuries/succumbed to the injuries in employment accident arising out of and in the course of employment which occurred on 25-3-2005. Compensation was sought under the provisions of the Workmen's Compensation Act, 1923 ("Act" for short). On service of notice, the appellant-insurer entered appearance and filed statement of objections.

3. The primary defence taken by the appellant was in much as the claimants travelling as passengers in Truck No. KA-30/1212 (offending vehicle), duly insured with the appellant-insurer; the insurer is not liable to indemnify the owner for the violation of the terms and conditions of the policy. The Commissioner after appreciating the evidence on record awarded compensation

with interest thereon fastening the liability on the appellant-insurer. Being aggrieved, the insurer is in appeal.

4. The learned Counsel Sri Ravi G. Sabhahit appearing for the appellant would contend that there was no relationship of employer and employee between the respondents No. 2 and respondent No. 1; the accident has not occurred during the course of employment; the complaint-Ex. P. 2, lodged by one of the occupant of the offending vehicle clearly discloses that the claimants were travelling as unauthorised passengers in the goods vehicle; the breach of terms and conditions of the Insurance Policy was apparent. The Commissioner failed to appreciate the same. Thus, the insurer is challenging the impugned judgment and order only with regard to the liability fastened to satisfy the award. Learned Counsel appearing for the appellant placed reliance on the judgment of the Hon'ble Apex Court in the case of *Oriental Insurance Company v. Premalata Shukla* reported in (2007) 13 SCC 476.

5. Per contra, learned Counsel Sri Raghavendra Purohit appearing for Sri Dinesh M. Kulkarni, learned Counsel for the claimants would contend that Ex. P. 2 was recorded by the Police Authorities while the complainant was under mental shock and agony having suffered the accidental injuries, thereafter immediately a further statement was given by the complainant on the same day i.e., on 25-3-2005 narrating the actual incident and the same was recorded by the very same person who had recorded the complaint at the first instance. Ex. P. 24 clearly discloses the sequence of events of the accident. The complainant had adduced evidence explaining the incident, recording of the complaint by the Police Authorities and the subsequent further statement as per Ex. P. 24 made by the complainant clearly establishes that the claimants were travelling as cleaner and coolies in the offending vehicle. The Commissioner after analysing the evidence on record, awarded the compensation fixing the liability on the appellant-insurer since the offending vehicle was covered with the Insurance Policy in much as the six workmen. Thus, the learned Counsel seeks to dismiss the appeals confirming the impugned judgment and order.

6. Heard the learned Counsel for the parties and perused the material on record. The substantial question of law raised in this appeal is, whether the Commissioner was justified in holding that the claimants were workmen and travelling in the offending vehicle during the course of employment and met with the accident arising out of employment?

7. The insurer mainly placed reliance on the complaint-Ex. P. 2 to contend that the workmen were travelling in the vehicle as unauthorised passengers. Though Ex. P. 2 is the complaint lodged by one of the occupant of the offending vehicle at the time of the accident, Ex. P. 24 is the further statement of the complainant stated before the Police Authorities which clearly discloses that while narrating the incident of the accident, by inadvertence it was recorded that the claimants along with him boarded the offending vehicle to proceed towards Adargunchi, but the said claimants were all cleaners and coolies in the offending vehicle, had

returned to their native place after loading the cement bags into the offending vehicle and they boarded the offending vehicle with him to unload the cement bags. In this background, it would be profitable to refer to the judgment of the Hon''ble Apex Court in *Premlatha Shukla's* case (*supra*), whereby their lordships considering the issue of lodging of the first information report in the claim petition has held that once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any irregularity in relying on other parts, irrespective of the contents of the document being proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise. A party objecting to the admissibility of the document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefore consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the document had not been proved and thus should not be relied upon.

8. In the light of the said judgment the facts of the present case is examined. As narrated above, the complainant has given further statement as per Ex. P. 24 to clarify that the workmen injured/deceased were travelling as coolies/cleaners in the offending vehicle. This document becomes part and parcel of the original complaint-Ex. P. 4. This Ex. P. 24 was not challenged by the appellant-insurer objecting to the admissibility of the same, by raising objection at the appropriate time. As per the judgment of the Hon''ble Apex Court referred to above, if objection is not raised and document is allowed to be marked, the appellant-insurer cannot be permitted to raise a contention in the appeal proceedings that Ex. P. 24 had not been proved and Ex. P. 2 is only admissible. Exs. P. 2 and P. 24 both are recorded by the same person on the same day as could be evidenced from the testimony of the complainant-P.W. 6. Ex. P. 24 is like a corrigendum to Ex. P. 2. The contents of Ex. P. 2 are clarified by Ex. P. 24. Ex. P. 2 has to be read with Ex. P. 24. The arguments advanced by the appellant-insurer could have been appreciated in the absence further statement at Ex. P. 24. The further statement recorded by the Police Authorities on the same day of lodging the complaint makes the difference of analysing the incident.

9. In the given the circumstances, the judgment relied on by the insurer do not assist the appellant. The appellant-insurer has failed to prove the non-existence of relationship of employer and employee/injured/deceased, the Commissioner profusely analysing the evidence on record has given a finding of fact that the relationship of employer and employee existed between the respondents 2 and 3 and the injured/deceased workman. There is no perversity in appreciating the evidence and giving a finding by the Commissioner, in much as the relationship of employer and employee. This is a pure question of fact, which cannot be considered as question of law, muchless a substantial question of law.

10. In the result, the appeals stands dismissed.

11. Amount in deposit shall be transferred to the jurisdictional employees' compensation Court/Tribunal for disbursement.