

(2023) 02 KAR CK 0055

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6722 Of 2017 (WC)

Ningappa

APPELLANT

Vs

Shamimbanu & Others

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Employees' Compensation Act, 1923 — Section 4A(3)(a), 4(1), 4(1)A, 4(1)B

Citation : (2023) 02 KAR CK 0055

Hon'ble Judges : Anil B. Katti, J

Bench : Single Bench

Advocate : Siddappa B.M, Pradeep B

Final Decision : Partly Allowed

Judgement

Anil B. Katti, J

1. Appellant is challenging the judgment and award passed by Senior Civil Judge & JMFC, Challakere in ECA No.5/2016 dated 20.02.2017.

2. For the sake of convenience, parties are referred according to their ranks before the Tribunal.

3. The factual matrix leading to the case of claimant/appellant can be stated in nutshell to the effect that appellant was Hamali under employment of respondent No.1 who is owner of Lorry bearing No.CTW 9729 and met with accident on 25.11.2014. Prior to one year of accident, he was working under the employment of respondent No.1 and getting salary of Rs.8,000/- and Rs.200/- towards Batta per day. On 25.11.2014, due to rash and negligent driving of driver of said lorry, appellant fell down from the lorry and sustained injuries. The appellant was treated as indoor patient from 26.11.2014 to 18.12.2014 in Chitradurga Hospital and has undergone surgery, so also spent Rs.50,000/- towards medical expenses. Therefore, prayed for grant of compensation.

4. In response to notice, respondent Nos.1 and 2 appeared through their counsel

and filed objections. Respondent No.1 has admitted that deceased was his employee and on 22.11.2014, during the course of employment met with accident and sustained injuries. The appellant was engaged by this respondent on his lorry to load husk at Huliyaaru as a coolie. The vehicle is duly insured with respondent No.2 and if appellant is found to be entitled for any compensation, then respondent No.2 has to pay the same. Therefore, seeks to exonerate from the liability to pay any compensation to appellant.

5. Respondent No.2 contended that there was no relationship of employer and employee between deceased and respondent No.1. The age, occupation and income of deceased has been denied. Respondent No.1 as owner of lorry has entrusted to an unlicensed person to drive the vehicle and as such, this respondent is not liable to pay compensation. The liability to pay compensation is subject to the terms and conditions of the Policy. Therefore, prayed for dismissal of petition.

6. The appellant relied on the evidence of PWs.1 and 2 and documents at Exs.P.1 to P.11. Respondent No.2 relief on the evidence of RW.1 and the document at Ex.R.1. The Trial Court on appreciating the evidence has partly allowed the petition by awarding compensation of Rs.48,801/- with interest at 12% p.a. from respondent No.2.

7. Appellant sustained injuries during the course of employment under respondent No.1 on 25.11.2014 is not at issue. The grievance of appellant is that the wages taken is below minimum wages.

8. The substantial questions of law raised by appellant are;

i) Whether the wages taken of appellant is below minimum wages?

ii) What order?

9. Heard the arguments of both sides.

10. Indisputably, appellant suffered injuries during the course of employment under respondent No.1 on 25.11.2014. Therefore, the present case is covered in terms of Section 4(1)B of Employees' Compensation Act, 1923 (for short 'Act'). The compensation has to be determined for an amount equal to 60% of the monthly wages of the injured employee multiplied by the relevant factor.

11. The wound certificate Ex.P.6 reveals that on examination petitioner was found tenderness and swelling in the right wrist, tenderness in the right hip region and external rotation of the right lower limb. He was admitted as indoor patient in Government hospital, Chitradurga from 26.11.2014 to 18.12.2014. PW.2 was examined to prove the disability suffered by the petitioner. The evidence of PW.2 would go to show that the petitioner has suffered permanent disability to the extent of 50.19% of upper lower and right lower limb. The Trial Court has accepted the permanent disability to the extent of 10%. Looking to the nature of injuries suffered by the petitioner and the evidence of PW.2, it would be

appropriate to take the permanent disability suffered by the petitioner as 15%.

12. The Trial Court in the absence of any proof regarding the income of the petitioner has accepted notional income at the rate of Rs.6,000/- per month. The grievance of learned counsel for the appellant is that in view of Gazette Notification dated 31.05.2010, under SO 1258(E), the Central Government for the purpose of Sub-Section 1 of Section 4 of the Act notifies the minimum wages as Rs.8,000/-. The said amount should have been taken as the minimum wage by the Trial Court while determining the compensation in terms of Section 4(1)A of the Act.

13. The date of incident in the present case is 25.11.2014 and the Gazette Notification referred above was already in force which came into effect on 31.05.2010. Therefore, in view of the said notification minimum wages should be accepted at Rs.8,000/-. The age of appellant is accepted as 55 years on the basis of wound certificate at Ex.P.6 in the absence of any evidence on record. In view of Schedule IV factor is applicable and the applicable to the accepted age of deceased is 135.56. If the same is calculated in terms of Section 4(1)B of the Act, then it comes to $(Rs.6,000/- \times 60/100) = Rs.4,800/-$. The accepted permanent disability is 15%. If the same is worked out, then it comes to $(Rs.4,800/- \times 15/100) = Rs.720/-$, if it is multiplied with applicable factor, then it comes to $(Rs.720/- \times 135.56) = Rs.97,603/-$, to which amount the appellant is entitled for compensation for the injuries suffered by him.

14. The Trial Court dismissed the petition against respondent No.1 and directed respondent No.2 to deposit the awarded amount with interest at 12%. The Hon'ble Apex Court while considering the payment of interest in terms of Section 4A(3)(a) of the Act in the judgment in Civil Appeal No.1860/2022, dated 11.03.2022, Shoba and others vs. The Chairman, Vithalrao Shindhe Sakare Sahakari Kharkhane Limited and others has held the liability to pay compensation would arise on the date on which the deceased died for which he is entitled to the compensation and therefore, the liability to pay the interest on the amount of arrears/compensation shall be from the date of accident and not from the date of order passed by the Commissioner. The liability to pay interest is on the owner respondent No.1. Consequently, point No.1 for consideration is answered in the affirmative.

15. In view of the reasons recorded supra, proceed to pass the following;

ORDER

The appeal is hereby partly allowed.

The judgment and award passed by Senior Civil Judge & JMFC, Challakere in ECA No.5/2016 dated 20.02.2017 is ordered to be modified as under;

The appellant herein is entitled for total compensation of Rs.97,603/-.

Respondent No.2 is liable to pay the compensation and respondent No.1 is liable

to pay interest at the rate of 12% per annum on the said amount from 25.11.2014 till realization within three months from the date of this order.

The entire amount of compensation is ordered to be paid to the appellant.

Registry shall send a copy of the judgment along with records to the Trial Court.