
(2014) 12 KAR CK 0245

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4788/2010 (WC)

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mubeen Taj

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302
Workmens Compensation Act, 1923 — Section 22

Citation : (2014) 12 KAR CK 0245

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : M. Arun Ponnappa, Advocate for the Appellant; Anuradha N.G,
Advocate for the Respondent

Judgement

Aravind Kumar, J.—Insurer is in appeal calling in question judgment and award passed by Commissioner for Workmen's Compensation, Bangalore dated 24.02.2010 in WC/FC-15/2008 whereunder claim petition filed under Section 22 of the Workmen's Compensation Act, 1923 by legal heirs of deceased Sri Abdul Rahim @ Sardar came to be allowed in part and a total compensation of Rs. 3,98,800/- has been awarded.

2. I have heard arguments of Sri M. Arun Ponnappa, learned Advocate appearing for appellant and Smt. Anuradha M.G., learned Advocate appearing for respondent Nos. 1 to 5. Respondent No. 6 is served, represented and none appears. Since records have been secured, by consent, it is taken up for final disposal.

3. It is the contention of Mr. Arun Ponnappa, learned Advocate appearing for insurer that evidence that was available before Commissioner for Workmen's Compensation, Bangalore (hereinafter referred to as the "Commissioner" for brevity) namely, Ex. R-1 which is the statement of one Sri Shah Nawaz Pasha indicated that he has admitted before the jurisdictional police that he had purchased vehicle in question prior to accident in question which was said to be

driven by deceased workman- Sri Abdul Rahim and as such there was no employer and employee relationship between respondent No. 6 and deceased Sri Abdul Rahim and deceased being an employee of Sri Shah Nawaz Pasha and there being no policy in his name. Insurer cannot be held liable to indemnify the claim. He would elaborate his submission by contending that statement of respondent No. 6 herein before jurisdictional police as per Ex. R-3 indicated that he had admitted before jurisdictional police that he had sold the vehicle in question in favour of Sri Shah Nawaz Pasha which evidence was sufficient enough to arrive at a conclusion that there was no employer and employee relationship between deceased Sri Abdul Rahim and respondent No. 6 herein. Hence, he prays for substantial question of law formulated in the appeal memorandum be formulated and answered in favour of appellant -insurer and prays for dismissal of the claim petition.

4. Per contra, Smt. Anuradha, learned Advocate appearing for claimants would support the judgment and award passed by the Commissioner and contends that registration certificate issued to the offending vehicle would clearly indicate that said vehicle was standing in the name of respondent No. 6 herein and respondent No. 6 had filed an application before jurisdictional Magistrate Court for release of said vehicle and as such, it cannot be held that respondent No. 6 was not the employer of deceased. She would further elaborate her submission by contending that insurer having raised a plea that Sri Shah Nawaz Pasha was the owner of said vehicle did not examine the author of Ex. R-1 namely, alleged statement made by Sri Shah Nawaz Pasha before jurisdictional Police and in the absence of said evidence, statement of Navaz Shaw recorded by police as per Ex. R-1 cannot be accepted at its face value. On these grounds, she seeks for answering the substantial question of law if formulated in favour of claimants.

5. Having heard the learned Advocates appearing for parties and on perusal of the records, this Court is of the considered view that following substantial questions of law would arise for consideration in this appeal:

"(1) Whether Commissioner of Workmen's Compensation was justified in arriving at a conclusion that there was "employee" and "employer" relationship between deceased Sri Abdul Rahim and respondent No. 6 herein (R. Sundar Jabadas)?

(2) Whether Commissioner for Workmen's Compensation was justified in ignoring Ex. R-1 which was the statement of Sri Shah Nawaz Pasha before jurisdictional police which came to be produced through official of the Insurer - R.W.1 and so also statement of respondent No. 6 herein which came to be produced as Ex. R-3 to arrive at a conclusion that "employee" and "employer" relationship existed between deceased workman and respondent No. 6?"

Since these two substantial questions of law are interlinked, they are answered together.

RE: SUBSTANTIAL QUESTION OF LAW Nos. (1) & (2)

6. Respondent Nos. 1 to 5 being wife and children of deceased Sri Abdul Rahim filed claim petition under Section 22 of the Workmen's Compensation Act seeking compensation of Rs. 8 lakhs contending inter alia that deceased Sri Abdul Rahim was working as a driver in Qualis vehicle bearing registration No. KA-02-MB-2169 belonging to respondent No. 6 herein on a salary of Rs. 8,000/- per month and he was being paid batta of Rs. 100/- per day. It was also contended that in the course of employment on 07.01.2008 when the customer took the said vehicle on hire and deceased was proceeding from Bangalore to Bababudangiri, Chickkamaalur said Sri Abdul Rahim was robbed of said vehicle and on account of his resistance he came to be murdered for gain by the occupants of the vehicle. Accordingly, jurisdictional police have also registered a case in Crime No. 12/08 under Section 302 and 201 IPC. Hence, they sought for payment of compensation.

7. Insurer appeared and filed statement of objections denying averments made in the claim petition and a specific plea was raised to the effect that there was no relationship of "employee" and "employer" between deceased and respondent No. 6 herein.

8. Averments made in the statement of objections would clearly indicate that a vague plea has been raised denying relationship. In other words there is no specific plea that deceased was working under Sri Shah Nawaz Pasha. Be that as it may. Insurer has examined its official as a witness namely, R.W.1 and through him got marked documents Exs.R-1, R-2 and R-3. Ex. R-1 is the statement of Sri Shah Nawaz Pasha stated to have been made before the jurisdictional police admitting that he had purchased the vehicle in question from respondent No. 6 and had not got transferred. Ex. R-3 is the statement, stated to have been made before police by Sri R Sundar Jabadas under whom deceased claimed to have been working to contend that deceased was working under Sri Shah Nawaz Pasha and not under Sri R Sundar Jabadas.

9. Claimants after having asserted that deceased was working under Sri Sundar Jabadas, respondent No. 6 have also examined one eye witness P.W.2 i.e., Sri Syed Peer. He has entered witness box and deposed that he has been working since 12 years along with deceased and on 07.01.2008 deceased was driving said Qualis which belonged to Sri R Sundar Jabadas. Nothing worthwhile has been elicited in his cross examination to disbelieve the testimony of said witness. It is also noticed that the Commissioner has recorded a finding that offending vehicle which deceased Sri Abdul Rahim was driving has been got released through jurisdictional Magistrate Court by above said Sri Sundar Jabadas-respondent No. 6 himself. Registration certificate of the said vehicle also stood in the name of Sri Sundar Jabadas-respondent No. 6 and so also policy issued to the offending vehicle.

10. In order to prove that statement made under Ex. R-1 and R-3, insurer has not made any attempts to secure the author of these two statements. In the absence of their evidence, assertion made by the insurer has remained a plea

without proof and it cannot be accepted. On the contrary, claimants have demonstrated before Commissioner that deceased was working under Sri Sundar Jabadas- respondent No. 6 herein and an independent witness P.W.2 who was a co-employee of deceased has also supported their claim. That apart, police records namely, FIR and charge sheet would also indicate that deceased was working under Sri Sundar Jabadas- respondent No. 6 herein. Respondent No. 6 herein namely, employer has not denied the relationship. Thus, burden cast on the insurer has not been proved. In that view of the matter, substantial questions of law formulated has to be answered by holding that Commissioner was justified in arriving at a conclusion that there existed "employee" and "employer" relationship between deceased Sri Abdul Rahim and Sri R Sundar Jabadas- respondent No. 6 herein and there is no infirmity whatsoever in the said finding recorded by Workmen's Compensation Commissioner.

11. For the reasons aforesaid, I proceed to pass the following:

JUDGMENT

"(1) Appeal is hereby dismissed.

(2) Judgment and award passed by Commissioner for Workmen's Compensation, Bangalore dated 24.02.2010 in WC/FC-15/2008 is hereby affirmed.

(3) The apportionment made in favour of the minor children and order for deposit as ordered by the Commissioner shall hold good and Registry shall ensure that fixed deposit is accordingly made.

(4) Registry is directed to issue cheque in favour of respondent No. 1 as ordered by the Commissioner.

(5) Difference of interest from the date of deposit till date shall be made by the insurer before this Court within outer limit of six weeks from the date of receipt of copy of this order."