
(2010) 08 KAR CK 0059
In the Karnataka High Court
Case No : MFA. No. 6462 of 2005

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Nagaraja K.H. and Vinayamurthy		RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2011) 131 FLR 103 : (2011) ILR (Kar) 331 : (2011) 2 KarLJ 511 : (2010) 4 KCCR 2816 : (2012) 1 LLJ 80

Hon'ble Judges : K.L. Manjunath, J;B. Manohar, J

Bench : Division Bench

Advocate : A.N. Krishnaswamy, for the Appellant; H. Pavan Chandra Shetty, for M.C. Umadevamma, for R.1, for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—The Oriental Insurance Company Limited has filed this appeal challenging the legality and correctness of the award dated 18-5-2005 passed by the Commissioner for Workmen's Compensation, Bangalore in.WCA/B-2/NFC/CR-24/2004.

2. The brief facts of the case are as follows:

The respondent-claimant Sri. K.H. Nagaraj claims to be working as a cleaner, loader and un-loader of the lorry bearing registration No. MH-04/S-6714 belonging to the second respondent. On 26-2-2004, on the instruction of the driver of the said lorry, the claimant, was changing the lorry tyre, at that time, the driver of the said lorry moved the vehicle and at the same time, another lorry came from behind and dashed against the lorry to which he was changing the tyre. As a result of the said accident, his right hand was got struck in between the two lorries and his right hand was fractured. He also suffered other injuries all over the body. Immediately, after the accident, the claimant was admitted to Victoria Hospital for treatment. The claimant contended that he was getting a salary of Rs. 4,000/ - p.m. and Rs. 40/ - per day as batta. He is aged about 21

years. It is the contention of the claimant that due to the fracture of right hand and other injuries, he cannot perform the work of a cleaner, loader and un-loader. Hence, he sought for compensation.

3. Pursuant to the notice issued by the Commissioner for Workmen's Compensation, the Insurer filed objections denying the averments made in the claim petition and contended that no accident had taken place on the said date. Though the said lorry was covered by the Insurance, the Cleaner and Loader are not covered by the Policy and sought for dismissal of the claim petition against the Insurer. However, the second respondent-owner of the vehicle remained *exparte*.

4. On the basis of the pleadings of the parties, the Commissioner for Workmen's Compensation framed necessary issues.

5. In order to prove his case, the claimant examined himself as P.W.1 and the Doctor who has treated him as P.W.2 and got marked the documents as Ex. P.1 to Ex. P.6. The Insurer has cross-examined the claimant, however, not led any evidence. The Insurer relied upon Ex. P.1/FIR filed before the Police regarding the accident. As per the FIR, on 26-2-2004, while the claimant was crossing the main road, a lorry bearing registration No. KA-03/7661 dashed against the claimant and his right hand has been fractured. However, the claimant has denied the said suggestions. The Doctor who has examined him has deposed before the Commissioner that there is a fracture of right hand and it was deformed shortening the right arm by 1:5 cm. In view of the fracture of right hand, he cannot do the work of cleaner or loader and un-loader. The Doctor was cross-examined by the Insurer. However, the Insurer has not examined any of the witnesses in support of their claim.

6. The Commissioner, taking into consideration the income and age of the deceased and the disability suffered by the claimant has awarded compensation of Rs. 4,05,369/- i.e. $s \times 225.22 \times 100/100$) as against the Insurance Company and also to pay interest at 12% p.a. from the date of claim petition.

7. The Insurer being aggrieved by the award passed by the Commissioner for Workmen's Compensation filed this appeal.

8. Sri. A.N. Krishnaswamy, learned Counsel appearing for the appellant contended that the award passed by the Commissioner is contrary to law. It is contended that the Ex. P.1/FIR has not been considered by the Commissioner wherein in the FIR the claimant has stated that on 26-2-2004, while he was crossing the Hosa Tharagupete Main Road, a lorry bearing registration No. KA-03/7661 came and dashed against him. Due to the accident, his right hand has been fractured. He has also contended that the driver of the said lorry has taken him to the hospital and given treatment. Further, he contended that a complaint has been lodged in this regard after a lapse of 14 days after the accident. In view of that, the claimant is not entitled for any compensation. It is also contended that the claimant was not injured during the course of

employment and he was not working as a cleaner of the vehicle bearing registration No. MH-04/S-6714. Learned Counsel for the appellant further contended that the claimant was working as a Cleaner at Bombay-Madras Transport and he was not the employee under the second respondent. Though the said lorry is covered under the insurance. Cleaner, Loader and Un-loader are not covered under the Policy. Hence, the liability of the Insurer to pay compensation does not arise and sought, for setting aside the award passed by the Commissioner for Workmen's Compensation.

9. On the other hand, Sri. Pavan Chandra Shetty, advocate, appearing on behalf of Smt. M.C. Umadevamma, advocate, contended that due to the motor vehicle accident, the claimant has suffered fracture to his right hand and he has taken treatment. Due to the accident he cannot lift the heavy goods and he is permanently disabled to do the work of loader and un-loader. Taking into consideration the age of the claimant and the salary drawn by him, the Commissioner had awarded just compensation and the same does not require interference by this Hon'ble Court and accordingly, sought for dismissal of the appeal.

10. We have carefully gone through the arguments addressed by the parties, perused the award passed by the Commissioner for Workmen's Compensation and oral and documentary evidence of the parties.

11. The case of the claimant is that on 26-2-2004, while he was changing the tyre of the lorry bearing registration No. MH-04/S-6714, he met with an accident as the driver of the said lorry moved the vehicle and another lorry came from behind and dashed against the said lorry, due to which, his right hand has been fractured. It is his contention that he has suffered 100% functional disability and he has taken treatment in Victoria Hospital. The Doctor has deposed before the Commissioner that the appellant has suffered 100% disability and sought for compensation.

12. On the other hand, the appellant-Insurer has contended that the claimant has not been injured due to the accident that occurred on 26-2-2004, whereas, in the complaint filed before the Police, as per the Ex. P.1/FIR the claimant has complained to the Police stating that on 26-2-2004 while he was crossing Hosa Tharagupete main road, a lorry bearing registration No. KA-03/7661 came in a rash and negligent manner and dashed against him, due to which, his right hand has been fractured. It is also stated in the FIR that the driver of the said lorry took him to the hospital for treatment. The said complaint has been lodged 14 days after the accident. However, in the claim petition filed before the Commissioner, he has contended that while changing the tyre of the lorry bearing registration No. MH-04/S-6714, the accident occurred and he sustained fracture of right hand. Further, the learned Counsel for the appellant-Insurer contended that the lorry in question is covered under the Insurance Policy, but the Cleaner, Loader and Un-loader are not covered under the Insurance Policy. Hence, the Insurer is not liable to pay compensation.

13. We have perused Ex. P.1/FIR dated 12-3-2004, in which, it is clearly mentioned that at about 8.00 a.m., in front of Bombay-Madras Lorry office, a lorry bearing registration No. KA-03/7661 dashed against the claimant. Hence, it is clear that the claimant sustained injury not because of the accident of lorry bearing registration No. MH-04/S-6714. Though the appellant has taken the said contention before the Commissioner for Workmen's Compensation, the Commissioner brushed aside Ex. P.1 and passed the award, which is contrary to law. The claimant cannot be a workman under the 2nd respondent and he cannot claim compensation under the Workmen's Compensation Act.

14. Accordingly, the appeal is allowed and the order dated 12-8-2005 passed by the Commissioner for Workmen's Compensation in WCA/B-2/NFC/CR-24/2004 is set aside. However, liberty is reserved to the claimant to proceed against the offending vehicle in accordance with law.

The amount deposited before this Court is directed to be refunded to the appellant.