

(2014) 04 KAR CK 0032

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 8900 and 8901 of 2005 (WC)

Oriental Insurance Company Limited

APPELLANT

Vs

Shankarappa

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Workmens Compensation Act, 1923 — Section 22, 4(1)(c)(ii)

Citation : (2014) 6 KarLJ 123

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Aruna Deshpande, Advocate for the Appellant; Chandrashekhar P. Patil, Advocate for the Respondent

Judgement

Aravind Kumar, J.—These two appeals are by the insurer is directed against order and awards passed by the Commissioner for Workmen's Compensation, Koppal (for short, "CWC") in WCA Nos. 168 of 2003 and 54 of 2004, dated 30-7-2005. Contention of Smt. Aruna Deshpande, learned Advocate appearing for appellant-insurer is that Tribunal committed a serious error in accepting that there was relationship of employer and employee and as such, award is to be set aside. She would also contend that compensation determined by construing the disability at 35% and 30% respectively is not in consonance with the evidence and there is no material to show as to what is the proportionate loss of earning capacity of the workman to award compensation as determined by the CWC. On these grounds, he seeks for formulating substantial questions of law as formulated in the appeal memorandum and prays for answering the same in favour of the insurer.

2. Per contra, Sri Chandrashekhar Patil, learned Advocate appearing for workman would support the order and awards passed by CWC and prays for dismissal of the appeal.

3. Workmen in both these appeals filed claim petitions under Section 22 of Workmen's Compensation Act, 1923 seeking compensation contending inter alia

that while they were travelling in a mini lorry bearing registration No. KA-37-3154 as driver and hamal, said vehicle got turtled on account of which, inmates sustained injuries resulting in physical disability being suffered and thereby their earning capacity has got reduced. Hence, they sought for payment of compensation. CWC on appreciation of evidence and considering objections raised by the insurer, allowed the claim petitions in part and awarded a sum of Rs. 1,12,309/- and Rs. 82,153/- respectively.

4. Having heard the learned Advocates appearing for parties, I am of the considered view that following substantial question of law would arise for consideration in these appeals:

"Whether CWC was correct in considering the loss of earning capacity of the workmen was to the extent of 35% and 30% respectively? Or was it required to be considered less?"

5. While adjudicating a claim petition under Workmen's Compensation Act, 1923 and assessing compensation payable, CWC is required to consider as to what is the loss of earning capacity of the workmen on account of injuries said to have been sustained by them and thereby reducing their earning capacity. Explanation to Section 4(1)(c)(ii) of the Act is clear and unambiguous. The medical practitioner who assess the disability of the workman has to state as to what is the proportionate loss of earning capacity of the workman that has occasioned on account of injuries sustained. In the absence of such evidence, CWC is required to evaluate medical evidence available on record and then, determine the loss of earning capacity.

6. In this background, when facts on hand are examined, it would indicate as under:

Re: WCA No. 168 of 2003 (MFA No. 8900 of 2005)

In the instant case, workman had sustained fracture of right humerus and tip of phalanges - ring finger, index finger and middle finger. Dr. Vishwaprasad who has been examined as P.W. 4 has assessed the disability at 30% to 35% of the limb. He has not stated what would be the proportionate loss of earning capacity of the workman. Undisputedly, workman is a driver and he has not surrendered driving licence which would have evidenced the fact that on account of injuries sustained and consequential disability suffered, he would be unable to drive. On the other hand, he seems to have continued his avocation of being a driver. However, on account of the injury having now sustained, his working hours may get reduced and thereby his earning capacity would also get reduced. In the absence of medical evidence available on record with regard to loss of earning capacity, assessment made by CWC that loss of earning capacity of workman would be to an extent of 35% is excessive and exorbitant.

7. Considering the nature of injuries as discussed hereinabove, this Court is of the considered view that 15% should be construed as loss of earning capacity

which can be offset by awarding compensation to the said proportion. Hence, compensation to which claimant would be entitled to would be as under:

Accordingly, said amount is awarded to workman in WCA No. 168 of 2003 in substitution to what has been awarded by CWC.

Re: WCA No. 54 of 2004 (MFA No. 8901 of 2005)

8. In the instant case, workman had sustained fracture of mandible bone and other injuries. Dr. Vishwaprasad has opined that after examining the workman on 20-10-2004 he has assessed the disability at 25% to 30% to the limb. In the absence of evidence to the effect that in what proportion there is loss of earning capacity to the workman, CWC could not have considered loss of earning capacity to be at 30%. Thus, loss of earning capacity opined by CWC is exaggerated and not in consonance with the medical evidence on record. Hence, loss of earning capacity if considered at 10%, it would meet ends of justice and it would be in consonance with the medical evidence available on record. Accordingly, claimant would be entitled to compensation as under:

Accordingly, said amount is hereby awarded to workman in WCA No. 54 of 2004 which would be in substitution to what has been awarded by CWC.

9. In view of the discussion made hereinabove, substantial question of law formulated hereinabove is answered partly in favour of appellant-insurer. For the reasons aforesaid, following order is passed:

(i) MFA Nos. 8900 and 8901 of 2005 are hereby allowed in part.

(ii) Order and awards passed by Commissioner for Workmens' Compensation, Koppal in WCA Nos. 168 of 2003 and 54 of 2004, dated 30-7-2005 are hereby modified and in substitution to what has been awarded by CWC, compensation of Rs. 56,154.60 and Rs. 31,597.20 respectively is hereby awarded to the workmen, which shall carry interest at the rate of 12% p.a. payable after one month from the date of accident till date of payment or deposit, whichever is earlier.

(iii) Excess amount in deposit before this Court is ordered to be refunded to the appellant-insurer on proper identification.

(iv) Amount awarded herein with interest shall be paid in favour of respective workmen by the Registry of this Court on proper identification.

(v) No costs.