

(2011) 07 KAR CK 0122

In the Karnataka High Court

Case No : MFA No's. 4804 and 7366 of 2009

Oriental Insurance Company Ltd.

APPELLANT

Vs

Abdul Haque and Devaraje
 Sri Abdul Huk Vs Devaraju
and The Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Constitution of India, 1950 — Article 141

Workmens Compensation Act, 1923 — Section 4 A (1), 4 A (3)

Citation : (2011) 07 KAR CK 0122

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : M. Arun Ponappa, for the Appellant; Vedhukumar Y.S, for R1 in MFA No. 4804/2009, Arun K.S, for Vallari Associates, for R1 and Arun Ponappa, for R2 in MFA No. 7366/2009, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—An order and award passed by the Commissioner for Workmen's Compensation ("CWC" for short), Hassan Division, has been questioned by the Petitioner/claimant and also the Respondent/insurer. MFA 7366/2009 is by the Petitioner for enhancement or compensation amount. MFA 4804/2009 is by the insurance company, seeking reduction of the compensation amount-against the quantum of award. For convenience, the parties would be referred to with reference to their rank in the claim petition.

2. In brief, the facts of the case could be stated as follows:

1st Respondent-Devaraju, S/o. Surappa was the owner of lorry bearing registration No. CTA-9996. Mr. Abdul Huk-Petitioner, was employed by the owner of the said vehicle, to drive the said vehicle. On 25.09.2006, the Petitioner sustained injuries on account of occurrence of an accident involving the said vehicle while in employment and during the course of employment of the owner of the vehicle. The vehicle had been issued with an insurance policy by the 2nd Respondent-insurance company. The workman sustained injuries such as fracture

of superior pubic rami (L) and fracture of histaiaam (inferior pubic rami) apart from other injuries. Even after taking treatment, there being permanent partial disability suffered, which reduced the earning capacity of the workman, claim petition under the provisions of Workmen's Compensation Act, 1923 (for short "the Act"), was filed against the owner and insurer of the offending vehicle. The owner of the vehicle despite service of notice of the claim petition did not appear and was placed *exparte* by the CWC. The 2nd Respondent/insurance company, appeared through its counsel, filed written statement, wherein, the issue of insurance policy and the same being in force as on the date of the accident was admitted. All other averments made in the claim petition was called upon to be proved.

3. The CWC raised the issues based an the material pleadings. Workman deposed. Exs.P-1 to P-5 were marked. One Dr. Goutham, an orthopaedic surgeon, General Hospital Holenarasipura, was examined as PW-2. He had treated the injured and examined the injured for the purpose of assessment of physical disability and the loss of earning capacity. Exs.P-6 to P-8 were marked through him, Respondents did not adduce any evidence. However, the insurance policy of the vehicle in question was placed on record. Considering the rival contentions and after appreciation of the evidence on record, the claim petition was allowed and compensation of Rs. . 1,54,703/- was ordered to be paid within 30 days and in case of default, the amount to carry simple interest at 12% p.a.

4. Sri Vedhukumar Y.S. learned advocate appearing for the Petitioner, contended that, on account of the employment injuries sustained, there is permanent disability, since the Petitioner's left leg is shortened, as a result of which, he is unable to squat, walk long distance nor lift heavy weight much less drive the vehicle. Learned Counsel submitted that, though PW-2 examined and assessed the permanent disability to the whole body at 25%, keeping in view the fact that the Petitioner is a driver, the loss of earning capacity being 100%, the CWC has erred in awarding compensation of Rs. . 1,54,703/-. Learned Counsel further submits that, non-awarding of interest on the compensation amount after expiry of 30 days from the date of accident/the arising of the cause of action for the claim is contrary to the decision reported in *Shri Aleemuddin and Others Vs. The Divisional Manager, New India Assurance Company Limited*,

5. Sri M. Arun Ponappa, learned advocate appearing for the insurance company, on the other hand contended that, PW-2 has stated that the Petitioner has suffered 25% disability to the whole body, despite which, the CWC has taken disability at 35%. The finding recorded by the CWC is contrary to the evidence on record and hence requires to be modified. Learned Counsel submitted that, the award of interest on the compensation amount after 30 days of adjudication of the claim/assessment of loss is in conformity with the decision of the Apex Court in the case of *National Insurance Company Ltd. v. Mubasir Ahmed* 2007 ACJ 845 (SC)

6. In view of the rival contentions and the record of the case, the questions for

determination are:

1: Whether the CWC is justified in arriving at the finding that the permanent disability and the loss of earning capacity is 35%?

2. Whether the CWC is justified in not awarding interest on the compensation amount w.e.f. 25.10.2006?

7. The employment of the workman, injuries sustained as a result of the occurrence of the accident, which arose out of and during the course of employment, the permanent disability suffered and the liability to pay compensation as found by the CWC is not under challenge. Even otherwise, the same is well established from the evidence on record. The occurrence of the accident is established from the police records Exs.P-1 and P-2. The workman has sent a notice to the insured and the insurer as per Ex.P-5 and the acknowledgement is at Ex.P-5(a). Ex.P-4 is the driving licence of the Petitioner. Ex.P-3 is the wound certificate, which shows the injuries sustained i.e., tenderness over left hip anterior aspect, deformity of left hip, tenderness over left ischium and fracture of superior pubic rami (left). The treatment obtained by the Petitioner is reflected in Exs.P-6 to P-8. PW-2 has deposed with regard to injuries sustained, the treatment and the assessment made by him with regard to permanent disability. He has admitted that, there is mal-union of the fractures. He has assessed the permanent disability to the whole body at 25%.

8. The CWC accepting the evidence of PW-1 & PW-2, taking into consideration the nature of injuries sustained, the permanent disability and the avocation of the Petitioner as a driver, held that, there is 35% loss of earning capacity by taking the wages of the workman at Rs. . 4,000/- per month and his age being 40 years, applying, the relevant factor 184.17, the compensation payable was assessed at Rs. . 1,54,703/-. The CWC while assessing the loss of earning capacity has examined the case only with regard to avocation of the Petitioner as a driver.

9. Having heard the learned Counsel on both sides in part, by an order dated 05.07.2011, the Petitioner was directed to be present before the Court to see his physical condition. On the request made by his counsel the matter was adjourned on 13.0.7.2011 to enable the Petitioner to appear before the Court. The Petitioner appeared before the Court. His left leg appears to be short by about 2 inches. Other than limping, while walking, I could not notice any other difficulty faced by the Petitioner to work and earn wages. Determination of loss of earning capacity has to be with reference to all the work which the workman was capable of performing at the time of accident resulting in such disablement and not with reference to the work which the workman was performing at the time of accident. The workman has not established by any evidence, that after sustaining of the injury, he is not able to do the work which he was performing before the accident and that, he is not able to do any other work. Having seen the workman in the Court, the assessment of permanent disability at 25% by

PW-2 is justified. The Petitioner is capable of performing the duty of a driver of light motor vehicle, if not a heavy transport/goods vehicle and also perform other works. In the circumstances, the Commissioner is not justified in assessing the loss of earning capacity at 35%. The permanent disability suffered being 25% to the whole body, the loss of earning capacity, in the facts and circumstances of the case has to be the same i.e., 25%. In the result, the claim of the Petitioner for enhancement is untenable and the grievance of the insurance company against the quantum of award is well-founded. The compensation which the CWC ought to have awarded in favour of the claimant is Rs. . 1,10,502/- Rs. . 2,400/- x 184.17 x 25/100). The CWC has passed excess award for Rs. . 44,201/-.

10. However, the CWC is not justified in not awarding interest on the compensation amount after the expiry of 30 days period from the date of occurrence of the accident/the cause of action for the claim arose. The insured and the insurer did not deposit the compensation amount within 30 days period from the date of occurrence of the accident. Hence, the CWC has power u/s 4-A(3) of the Act to order payment of interest on the compensation amount.

11. In the decision reported in Shri Aleemuddin and Others Vs. The Divisional Manager, New India Assurance Company Limited, the question raised for determination was:

Where an employee receives personal injuries in a motor accident arising out of and in the course of his employment while working in the motor vehicle of the employer, whether the Insurance Company, which has insured the employer/owner of the vehicle against the third party accident claims under the Motor Vehicle Act, 1988 and against the claim for compensation arising out of the proceedings under the Workmen Compensation Act, 1923 in connection with such motor accident, is liable to pay the interest in respect of the award passed against the insured employer Under Sections 4-A(3) of the Act and if so, from what date?

The said question was answered as follows:

8. Keeping in mind the ratio of law laid down in the case referred to supra, it is just and necessary to state that the larger Bench decision in the case of PRATAP NARAIN SINGH DEO (SUPRA) appears to have not been brought to the notice of the Hon'ble Supreme Court, when the decision in the case of National Insurance Company Ltd. v. Mubasir Ahmed and Kamala Chaturvedi's Case (Supra) were delivered. The said two decisions are by Benches of two Hon'ble Judges of the Apex Court, whereas, the ratio of law laid down in the case of Pratap Narain Singh Deo's case which has been followed in the subsequent cases, was rendered by a quorum of more than two Hon'ble Judges. Under Article-141 of the Constitution of India, the judgment of the Hon'ble Supreme Court is binding on all the Courts in the country. However, in the event if there is a conflict on the question of law in two decisions, while considering the question of law on the point and interpretation of statute, this Court is required to follow the course of

action as has been laid down by the larger Full Bench of this Court in the case of Govindanaik G Kalaghatigi (supra).

9. In view of the ratio of law laid down by the Apex Court in the case of PRATAP NARAIN SINGH DEO'S (SUPRA), which is the binding precedent in regard to the expression "fell due" appearing in Section-4-A(1) and (3) of the Act, following and applying the said ratio to the facts of the present case it has to be held that the amount of compensation becomes due on expiry of one month; from the date of accident and if the same is not paid or deposited, interest becomes payable after the expiry of one month period from the date of the workmen sustaining injuries due to an accident in the course of his employment and not after 30 days from the date of order/award passed by the Commissioner. The learned Commissioner has erred in not applying the law, as enunciated in the case of Pratap Narain Singh Deo (supra) and in not awarding the interest after expiry of 30 days from the date of the accident. Hence, the contentions of the learned Counsel for Respondent are unacceptable. Substantial question of law stands answered accordingly.

For the foregoing reasons, both the appeals are allowed in part.

The compensation payable to the Petitioner by the insurance company stands determined at Rs. . 1,10,502/- with interest at 12% p.a. w.e.f. 25.10.2006 till the date of actual deposit.

Out of the amount deposited in MFA 4804/2009, the compensation with interest as above be sent to the Office of CWC for payment to the claimant and the balance amount be refunded to the insurance company.

Parties to bear their respective costs.

Draw modified award.