

(2015) 03 KAR CK 0456

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6647 of 2007 (WC)

Regional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Ravi Shankarappa and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 2 AKR 853

Hon'ble Judges : N.K. Patil, J; Rathnakala, J

Bench : Division Bench

Advocate : A.N. Krishna Swamy, for the Appellant; Suresh M. Latur, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the Insurance Company is directed against the judgment and order dated 19th June, 2006, passed in CWC- 3/NFC/CR-43/02, by the Labour Officer and Commissioner for Workmen's Compensation, Sub Division-3, Bannerghatta Road, Karmika Bhavan, Bangalore, (for short, "Commissioner for Workmen's Compensation") for reduction of compensation on the ground that, the compensation of Rs. 3,81,222/- with 12% interest per annum, awarded in favour of the injured claimant as against his claim for Rs. 6,00,000/-, is highly exorbitant and excessive. In this appeal, the Insurer has raised the following substantial questions of law for consideration:

"1] Whether the Commissioner was justified in taking the loss of earning capacity at 100% much against the medical evidence which would indicate the disability at 26%.

2] Whether the Commissioner is competent to ignore the medical evidence and arrive at a conclusion of own to assess the loss of earning capacity much against the decision of Full Bench of this Hon'ble Court in the case of Shivalinga Shivanagowda Patil and Others Vs. Erappa Basappa Bhavihala and Others, (2004) 2 ACC 470 : (2004) ACJ 333 : (2004) 101 FLR 178 : (2004) ILR (Kar)

193 : (2004) 1 KCCR 685 : (2004) 1 LLJ 1089 .

3] Whether the Commissioner was justified in saddling the liability of interest at 12% one month from the date of the accident much against the ratio laid down by the Apex Court in the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, (2007) 2 ACC 374 : (2007) ACJ 845 : AIR 2007 SC 1208 : (2007) 112 FLR 1033 : (2007) 3 JT 176 : (2007) 1 LLJ 1035 : (2007) 2 SCALE 455 : (2007) 2 SCC 349 : (2007) 1 SCC(L&S) 643 : (2007) 2 SCR 117 : (2007) 3 SLJ 62 : (2007) 1 UJ 240 ."

2. The facts in brief are that, the injured claimant while he was working as a cleaner in Canter Lorry bearing Registration No. KA-09/A-1989, suffered fracture of shaft of left femur and fracture of left tibia in an accident that occurred on 21-05-2002.

3. On account of the injuries sustained, the injured-claimant filed the claim petition before the Commissioner for Workmen's Compensation, seeking compensation of a sum of Rs. 6,00,000/- against the owner and Insurer of the offending vehicle. The said claim petition had come up for consideration before the Commissioner for Workmen's Compensation on 19th June, 2006. The Commissioner for Workmen's Compensation, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 3,81,222/-, assessing the income of the claimant at Rs. 3,000/- per month, taking 60% of the said income, adopting factor of 211.79 and re-assessing the whole body disability at 100%, with 12% interest per annum, from 30 days from the date of accident till the date of deposit. Being highly aggrieved by the quantum of compensation awarded by the Commissioner for Workmen's Compensation as exorbitant and excessive, the Insurer is in appeal before this Court, seeking substantial reduction of compensation.

4. We have heard the learned counsel appearing for Insurer and learned counsel appearing for injured claimant, gone through the grounds urged in the memorandum of appeal carefully and perused the impugned judgment and order passed by Commissioner for Workmen's Compensation.

5. Learned counsel appearing for Insurer, Shri. A.N. Krishna Swamy vehemently submitted that the Commissioner for Workmen's Compensation grossly erred in awarding exorbitant compensation, by taking into consideration the loss of earning capacity at 100% much against the medical evidence of the Doctor, who assessed the whole body disability at 26%, taking half of the functional disability towards left lower limb at 52%. He submitted that considering the nature of injuries sustained, i.e. fracture of shaft of left femur and fracture of left femur and left tibia, by the injured claimant, the Commissioner for Workmen's Compensation, is not at all justified in assessing the permanent whole body disability at 100% and the same cannot at any stretch of imagination be sustained and is liable to be modified. He also submitted that the Commissioner

for Workmen's Compensation erred in saddling the liability of paying interest at the rate of 12% p.a. from one month from the date of the accident, till the date of deposit, much against the ratio of law laid down by the Hon'ble Apex Court in the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, (2007) 2 ACC 374 : (2007) ACJ 845 : AIR 2007 SC 1208 : (2007) 112 FLR 1033 : (2007) 3 JT 176 : (2007) 1 LLJ 1035 : (2007) 2 SCALE 455 : (2007) 2 SCC 349 : (2007) 1 SCC(L&S) 643 : (2007) 2 SCR 117 : (2007) 3 SLJ 62 : (2007) 1 UJ 240 . Therefore, he submitted that the impugned judgment and order passed by Commissioner for Workmen's Compensation is liable to be modified, reducing the compensation substantially.

6. As against this, learned counsel appearing for injured claimant, inter alia substantiated the impugned judgment and order passed by Commissioner for Workmen's Compensation stating that the Commissioner for Workmen's Compensation, after critical evaluation of the oral and documentary evidence available on file, has rightly awarded compensation, assessing the income at Rs. 3,000/- per month, taking 60% of the income, adopting factor of 211.79, having regard to the age of the injured claimant as 28 years. Hence, interference in the same is uncalled for.

Regarding the re-assessment of whole body disability at 100% by the Commissioner for Workmen's Compensation, she vehemently submitted that the injured claimant was aged about only 28 years at the time of accident and working as a cleaner in Canter Lorry, which is a heavy vehicle. The Doctor, having regard to the nature of injuries sustained i.e. fracture of left femur and left tibia, has assessed permanent functional disability at 52% towards left lower limb and whole body disability at 26%. But, the Commissioner for Workmen's Compensation, taking into consideration the fact that on account of the grievous injuries sustained in the accident, the injured claimant cannot work as a cleaner and cannot do any manual work and also he was the only earning member in the family has reassessed the whole body disability at 100%. Therefore, she submitted that the said reassessment of the whole body disability by the Commissioner for Workmen's Compensation at 100%, is just and proper and does not call for interference by this Court.

7. After hearing the rival contentions of the parties, after perusal of the impugned judgment and order passed by the Commissioner for Workmen's Compensation and after reappraisal of the oral and documentary evidence available on file, the only point that arise for our consideration in this appeal is:

"Whether the quantum of compensation awarded by Commissioner for Workmen's Compensation is excessive and liable to be reduced?"

8. After careful perusal of the impugned judgment and order passed by Commissioner for Workmen's Compensation and after critical evaluation of the oral and documentary evidence available on file, it emerges that, occurrence of accident and the resultant injuries sustained by injured claimant are not in

dispute. It is further not disputed that the injured claimant has sustained fracture of shaft of left femur and fracture of left tibia. He took open treatment on 19-06-2002 and open reduction and internal fixation with K-nail was done and discharged on 01-07-2002 and also took follow-up treatment at Victoria Hospital. On clinical examination, the Doctor noted the following disabilities:

- "a) Patient cannot stand or walk without support.
- b) Wasting and weakness of left lower limb
- c) Tenderness of left thigh with joint line. Tenderness of left knee
- d) Operated Scar measuring 6 inches over left leg
- e) Terminal Restriction of joint movements of left hip by 30 degrees and left knee by 45 degrees and
- f) Shortening of 1.5 cm. of left lower limb (compared to opposite limb)."

The Radiological examination showed that the old fracture left femur (united) with K-nail implant in situ with malunited fracture left tibia with Secondary Osteo-Arthritis of left knee. Considering the aforesaid disabilities and after clinical and radiological findings, the Doctor opined that the injured claimant suffers a permanent residual physical disability of 52% of left lower limb, which is about 26% of the whole body disability. In view of the said disability, the Commissioner for Workmen's Compensation came to the conclusion that the claimant cannot do the work of a cleaner or any other manual work also and assessed the whole body disability at 100%. The same, in our opinion is on the higher side, not in proper perspective and cannot be sustained in view of the ratio of law laid down by the Full Bench of this Court in the case of Shivalinga Shivanagowda Patil and Others Vs. Erappa Basappa Bhavihala and Others, (2004) 2 ACC 470 : (2004) ACJ 333 : (2004) 101 FLR 178 : (2004) ILR (Kar) 193 : (2004) 1 KCCR 685 : (2004) 1 LLJ 1089 . Therefore, considering the nature of injuries sustained, nature and duration of treatment undergone and the total functional and whole body permanent physical disability assessed by Doctor, we accept the whole body disability assessed by the Doctor at 26%, to meet the ends of justice and to safeguard the interest of both the parties.

9. Further, considering the age, avocation and the year of accident being 2002, the Commissioner for Workmen's compensation is justified in assessing the monthly income of the claimant at Rs. 3,000/- and taking 60% of it, which works out to Rs. 1,800/- per month.

10. Further, the Commissioner for Workmen's compensation is also justified in assessing the age of the claimant as 28 years, on the basis of the medical records, disbelieving the oral say of the injured claimant that he was aged about 19 years at the time of accident, in the absence of any documentary evidence in support of the same.

11. The Commissioner for Workmen's compensation is also justified in adopting

the factor of 211.79 as per the table, having regard to the age of the injured claimant being 28 years, at the time of accident. The same is accepted.

12. Thus, the injured claimant would be entitled to total compensation of Rs. 99,117-72, (i.e. Rs. 1,800/- x 211.79 x 26/100) rounded off to Rs. 99,200/- as against Rs. 3,81,222/- awarded by the Commissioner for Workmen's Compensation. Thus, there would be reduction of compensation by a sum of Rs. 2,82,022/-.

13. Further, the Tribunal is also highly justified in awarding 12% interest per annum, from 30 days from the date of occurrence of accident till the date of deposit.

14. Accordingly, the substantial question of law raised by the appellant/Insurer are answered as above. In the light of the facts and circumstances of the case, as stated above, the appeal filed by the Insurance Company is allowed in part.

The impugned judgment and order dated 19th June, 2006, passed in CWC-3/NFC/CR-43/02, by the Labour Officer and Commissioner for Workmen Compensation, Sub Division-3, Bannerghatta Road, Karmika Bhavan, Bangalore, is hereby modified, reducing the total compensation from Rs. 3,81,222/- awarded by Commissioner for Workmen's Compensation, to Rs. 99,200/- (reduction being Rs. 2,82,022/-), with interest at 12% per annum, from 30 days from the date of occurrence of accident, i.e. 21-06-2002 till the date of deposit.

The injured claimant is held entitled to a sum of Rs. 99,200/- with interest at 12% per annum, from 30 days from the date of occurrence of accident, i.e. 21-06-2002 till the date of deposit by Insurer before this Court and also bank interest on Rs. 99,200/- from the date of deposit by Registry in Bank till the date of payment.

Further, on perusal of the appeal papers, it emerges that the Insurer has deposited a sum of Rs. 3,81,222/- vide Cheque bearing No. 042477 dated 10/12/2007, being the award amount.

In view of reduction of compensation, the Insurer is permitted to recover the excess amount, if any, withdrawn by the injured claimant, in accordance with law.

Further, Registry is directed to refund the amount in deposit, if any, to the Insurer, through its counsel or authorized officer, forthwith.

Office to draw award, accordingly.