

(2017) 04 KAR CK 0041
In the Karnataka High Court
Case No : 3070 of 2011 (WC)

ROYAL SUNDARAM

APPELLANT

Vs

MUNIRATHANAMMA & Ors

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Citation : (2017) 04 KAR CK 0041

Hon'ble Judges : B Manohar

Bench : SINGLE BENCH

Advocate : SUGUNA R REDDY, K SURYANARAYANA RAO

Final Decision : Allowed

Judgement

1. The Royal Sundaram Alliance Insurance Company Limited has filed this appeal challenging the legality and correctness of the judgment and order dated 02.02.2011 made in WCA/FC-04/2009 by the Labour Officer and Commissioner for Workmen Compensation, Chickballapura (for short "Commissioner for Workmen Compensation") fastening the liability on them to compensate the claimants.

2. For the sake of convenience, the parties are referred to as they are arrayed before the Commissioner for Workmen's Compensation.

3. The facts leading to the filing of this appeal are as under: Respondents No.1 to 4 herein filed a claim petition contending that the husband of the 1st claimant, father of the 2nd and 3rd claimants and son of the 4th claimant Muniyappa was working as a driver in Tractor and Trailer bearing Registration No.KA-40/T-3404 belonged to respondent No.5 herein for last three years. The owner of tractor and trailer was paying salary of Rs.4,500/- per month and bata of Rs.25/- per day. On 22.4.2008, as per instructions of the owner of tractor and trailer, while the deceased was proceeding towards his agricultural land at about 12.00 p.m, the vehicle met with an accident and he sustained grievous injuries. Subsequently, he succumbed to the said injuries. It was contended that the

accident had occurred during the course and out of employment. The police had registered a case in Crime No.103/2008. The said vehicle was insured with the Insurance Company. Hence, the owner as well as the Insurance Company are liable to compensate the claimants.

4. Though notice was issued to respondent No.1/owner of the vehicle, the same was returned unserved. The Commissioner for Workmen Compensation placed the 1st respondent exparte and proceeded to pass the judgment and order.

5. The Insurance Company filed written statement denying the entire averments made in the claim petition and disputing the relationship of master and servant between the owner of vehicle and deceased Muniyappa. Further, the owner of vehicle in the complaint lodged before the police clearly stated that the deceased was working as driver in the tractor and trailer belonged to one Venkatesh. Nowhere it was mentioned that the deceased was working as a driver in the 1st respondent. The insurance policy was given to the owner of the vehicle by one Hanumegowda, whereas the deceased was not a workman under the said Hanumegowda. Hence, the Insurance Company is not liable to pay compensation to the claimants.

6. On the basis of pleadings of the parties, the Commissioner for Workmen Compensation framed necessary issues.

7. The claimants in order to prove their case, the 1st claimant got examined herself as PW1 and got marked the documents as Exs.P1 to P7. On behalf of the Insurance Company, the Investigating Officer of the Insurance Company was examined as RW1 and one of the officials of the Insurance Company was examined as RW2 and the insurance policy as well as the letter addressed to the owner of the tractor and trailer was marked as Exs.R1 and R2.

8. The Commissioner for Workmen Compensation after appreciating the oral and documentary evidence let in by the parties held that the deceased Muniyappa died during the course and out of employment. The police had registered a case in Crime No.103/2008. The claimants are the wife, children and mother of the deceased and they are entitled for compensation.

9. With regard to quantum of compensation is concerned, taking into consideration the income of the deceased as Rs.4,000/- per month, deducting 50% thereof as he was aged about 27 years applying the relevant factor 209.92, the Commissioner for Workmen Compensation awarded the compensation of Rs.4,19,840/- with interest at 7.5% from 17.2.2009 till the date of passing of the order and interest at 12% p.a. from the date of passing of the order. Since the policy was in force as on the date of accident, liability was fastened on the Insurance Company to compensate the claimants. The Insurance Company being aggrieved by the judgment and order passed by the Commissioner for Workmen Compensation has filed this appeal.

10. I heard Sri K Suryanarayana Rao, learned Advocate appearing for the

appellant and Smt.Suguna Reddy, learned Advocate appearing for the claimants and perused the judgment and order and oral and documentary evidence let in by the parties.

11. The main contention of the appellant is that the owner of tractor and trailer was not served with notice. In the absence of the owner of tractor and trailer, the Insurance Company is not liable to compensate the claimants. In the instant case, though the notice was ordered to the 1st respondent therein, notice was returned unserved with certain endorsements. However, claimants had not taken any steps for service of notice on the owner of the vehicle. However, the Commissioner for Workmen Compensation placed the 1st respondent as exparte and proceeded to pass the order. Primarily liability was fastened on the owner of the vehicle to compensate the claimants. In view of the contract entered into between the owner of the tractor and trailer and the Insurance Company, the liability was fastened on the Insurance Company to compensate the claimants. In the absence of the owner of the tractor and trailer, the liability fastened on the Insurance Company is contrary to law. In support of his contention, Sri K Suryanarayana Rao relied upon a reported judgment in 1998 ACJ 121 in the case of Oriental Insurance Co. Ltd. -vs- Sunita Rathi and others.

12. Learned Advocate further contended that there is no relationship of master and servant between the owner of tractor and trailer and the deceased. Immediately after the accident, a complaint was lodged by the brother of the deceased. In the complaint, the brother of the deceased clearly mentioned that the deceased Muniyappa was working as a driver in the tractor and trailer belonged to one Venkatesh. Unless there is relationship of master and servant between the insured and the deceased, the Insurance Company is not liable to compensate the claimants. The deceased does not fall under Section 2(1)(n) of the Employees Compensation Act (for short "Act"). No document was produced to show that the owner of vehicle was paying salary to the deceased Muniyappa. Hence, the order passed by the Commissioner for Workmen Compensation is contrary to law.

13. On the other hand, Smt.Suguna Reddy, learned Advocate appearing for the claimants argued in support of the judgment and order passed by the Commissioner for Workmen Compensation. Learned Advocate contended that the Insurance Company has not taken any such defence in the memorandum of appeal with regard to service of notice to the 1st respondent before the Commissioner for Workmen Compensation. Hence, the appellant cannot raise additional question of law in this appeal.

14. Smt.Suguna Reddy further contended with regard to the liability of the Insurance Company to compensate the claimants, the Commissioner for Workmen Compensation taking into consideration the relevant records produced before him and the provision of the Act awarded just and fair compensation. However, while awarding the compensation, the interest at the rate of 7.5% awarded is contrary to law and sought for dismissal of the appeal.

15. During the pendency of the above appeal, the appellant filed an application seeking permission to the appellant to raise additional grounds of appeal and question of law contending that no steps have been taken for service of notice to the 1st respondent - owner of tractor and trailer before the Commissioner for Workmen Compensation and also the liability of the Insurance Company to compensate the claimants in the absence of the owner of tractor and trailer.

16. I have carefully considered the arguments addressed by the learned counsel appearing for the parties and perused oral and documentary evidence and the order passed by the Commissioner for Workmen Compensation.

17. The records produced before this Court clearly disclose that the notice issued to the owner of tractor and trailer was returned unserved. No steps were taken for service of notice to the 1st respondent - owner of tractor and trailer. During the course of the order, the Commissioner for Workmen Compensation observed that the parties have not taken any steps for service of notice to the 1st respondent - owner of tractor and trailer. The said fact itself clearly shows that without issuing notice to the 1st respondent, claim petition was disposed of. Under the Act, primarily the liability is fastened on the owner of tractor and trailer to compensate the claimants. In view of the agreement entered into between the owner and the insurer, the insurer has to compensate the claimants on behalf of the owner of the vehicle. In the instant case, the owner of the vehicle was not served with notice. Hence, the question of directing the Insurance Company to compensate the claimants does not arise. The Hon'ble Supreme Court in the case of Oriental Insurance Co. Ltd. -vs- Sunita Rathi and others reported in 1998 ACJ 121 in para - 3 held as follows: "3. It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point."

18. Further the contention taken by the appellant is that while lodging the complaint before the jurisdictional police, the brother of the deceased clearly stated that the deceased Muniyappa was working under one Venkatesh. Even if Venkatesh is treated as owner of the vehicle, there is no relationship of master and servant between the owner of tractor and trailer and the deceased. No document has been produced before this Court to show that the deceased was working under the owner of tractor and trailer. Unless the deceased fulfills Section 2(1)(n) of the Act, the Insurance Company is not liable to compensate the claimants. The Commissioner for Workmen Compensation without examining all these aspects of the matter allowed the claim petition filed by the claimants

and directed the Insurance Company to compensate the claimants. Hence, I am of the opinion that without issuing notice to the owner of the vehicle, the Commissioner for Workmen Compensation ought not to have fastened the liability on the Insurance Company. Hence, it is just and proper to remand the matter to the Commissioner for Workmen Compensation to consider the matter afresh after issuing notice to the 1st respondent - owner of the vehicle before the Commissioner for Workmen Compensation as well as the Insurance Company and pass fresh orders in accordance with law. Accordingly, I pass the following: ORDER Appeal is allowed. The judgment and order dated 2.2.2011 made in WCA/FC-04/2009 by the Labour Officer and Commissioner for Workmen Compensation, Chickballapur, is set aside.

The matter is remanded to Senior Civil Judge, Chickballapur to consider the same afresh and pass orders in accordance with law. The Senior Civil Judge, Chickballapur is directed to dispose of the claim petition after issuing notice to all the parties as expeditiously as possible and not later than six months from the date of receipt of the copy of this order.

The amount in deposit is ordered to be refunded to the appellant.

I.A.No.1/2017 filed by the appellant for additional grounds is allowed.