
(2001) 02 KAR CK 0046

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1819 of 1997

S. Kumaraswamy and Another

APPELLANT

Vs

Ramu

RESPONDENT

Date of Decision : 23-02-2001

Acts Referred:

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

Citation : (2001) ACJ 1904 : (2001) 90 FLR 362 : (2001) ILR (Kar) 2739 :
(2002) 2 KarLJ 218 : (2001) 3 KCCR 1650

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : S.P. Shankar, for the Appellant; S. Tejeshwara, for the Respondent

Final Decision : Allowed

Judgement

Chidananda Ullal, J.—This appeal is preferred by the owner and the Insurance Company to challenge the award dated 18-3-1997 in case No. WCA 23 of 1993 passed by the Workmen's Compensation Commissioner, Mysore District, Mysore. In passing the said award, the said Workmen's Compensation Commissioner awarded a sum of Rs. 97,320/- payable by the appellants herein to the respondent-claimant together with interest at 6% and further penalty of Rs. 20,000/- payable by the appellant 1-owner.

2. The learned Counsel appearing for the appellant Sri S.P. Shankar had taken me through the impugned award passed by the Workmen's Compensation Commissioner, Mysore District, Mysore, henceforth in brief referred to as the "WCC". It was argued by him that though the medical evidence had reflected that the respondent-claimant had suffered overall bodily disablement of 15%, he had fixed the disability in the matter of earning capacity of the respondent-claimant to an extent of 100%. While taking me through the evidence adduced by the respondent-claimant, very well-adverted to in pages 6 and 7 of the impugned order, Sri Shankar submitted that the awarding of the compensation of Rs. 97,320/- together with interest was totally disproportionate to the disability

the respondent-claimant had suffered. According to him, the WCC would have fixed the compensation in-between 20% to 50% and not beyond. He had also pointed out that the award was in total negation of the provision in Section 4(1)(c)(ii) of the Workmen's Compensation Act, henceforth in brief, the "WCC Act" and that being the position, according to him, there is a question of law involved in the instant appeal.

3. Next, for and on behalf of the appellant 1-owner, Sri S.P. Shankar had also argued that there was no good reason for the WCC to award penalty of Rs. 20,000/- on the appellant 1-owner as he was not put to notice before passing that order on him as contemplated under the proviso below Section 4-A(3)(b).

4. Therefore, he prayed that impugned award passed by the WCC be modified to reduce to 20% from 50% thereon and further this Court be pleased to set aside the penalty of Rs. 20,000/- on the appellant 1-owner.

5. In the absence of the learned Counsel for the respondent-injured, I have gone through the records of the WCC myself. On doing that, it is clear that the respondent-claimant had suffered non-schedule injury and as such, the compensation had to be computed with reference to the provision in Section 4(1)(c)(ii) of the Act. Admittedly, in the instant case, the bodily disablement of the respondent-claimant was assessed at 15%. In the assessment by the doctor, the bodily disablement of the respondent-claimant was fixed at 15% and if that is so, the disablement in the particular limb i.e., hip-joint, must be more than 15%. To me it appears that, it is in the fitness of things that the loss of earning capacity be assessed at 50% taking into account the medical evidence on record. Therefore, the impugned award passed by the WCC is liable to be scaled down to 50%.

6. It was argued by Sri Shankar that the appellant 1-owner had not been put on notice before fastening the liability of paying the penalty of Rs. 20,000/-. I find sufficient force in the said argument of Sri Shankar also, for under the proviso below Section 4-A(3)(b), it is provided therein that no penalty shall be imposed under Clause (b) without giving reasonable opportunity to the employer to show cause as to why he could not be imposed with penalty.

7. In view of the above argument advanced by Sri Shankar, I have cross-checked in the records of the WCC as to whether the appellant 1-owner had been put to notice with regard to fastening of the said liability of penalty, more particularly, the order sheet maintained in the case. But in no part thereof, I did notice that the appellant 1-owner had been issued with any show-cause notice as provided under the above proviso. Therefore, it also appears to me that the WCC would not have fastened the liability of payment of penalty on the owner in the said facts and circumstances of the case.

8. In that view of the matter, the impugned award passed by the WCC is scaled down to Rs. 48,660/- together with interest at 6% from 17-5-1993. The impugned award insofar as the same related to the award of penalty of Rs.

20,000/- as against the appellant 1-owner stands set aside.

9. At this stage, the learned Counsel for the appellant Sri Shankar submitted that the appellant had since deposited the sum awarded i.e., Rs. 97,320/- before this Court and that out of the said sum, a sum of Rs. 15,000/- together with interest and cost had since been claimed by the respondent-claimant before the Court and therefore, the quantum had to be worked out with regard to the rest of the monies to be paid to the respondent-claimant. Let the Registry now make the necessary calculation and transfer the sum due to the respondent-claimant to the WCC below and further refund the remaining sum in deposit to the appellant 2-Insurance Company at the earliest, on the same being claimed by it.

10. The appeal therefore succeeds in part and accordingly stands allowed in part in the above terms.