

(2016) 02 KAR CK 0139
In the Karnataka High Court
Case No : M.F.A. No. 24541/2012 (WC)

Sanjeev

APPELLANT

Vs

Dundappa and Others

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 4
Workmens Compensation Act, 1923 — Section 2(1)(n), Section 4, Section 4(A),
Section 4(A)(1), Section 4(A)(3)(a), Section 4-A

Citation : (2016) 02 KAR CK 0139

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Harish S. Maigur, Advocate, for the Appellant;

Final Decision : Partly Allowed

Judgement

B. Veerappa, J.—1. Though the matter is posted for Orders this day, with the consent of the learned Counsel for the parties, the same is taken up for final disposal.

2. The above appeal is filed against the judgment and award dated 26.11.2011 made in W.C.A.S.R. No. 21/2011 on the file of the Labour Officer and Commissioner for Workmen's Compensation, Sub-Division-I, Belgaum awarding compensation of Rs. 1,64,640/- after one month of adjudication at 12% per annum.

3. It is the case of the appellant that on 11.8.2008 at about 11.00 a.m. when he was working as Labour under the 1st respondent in a 407 Tempo bearing Registration No. KA-23/7439 from Hukkeri to Ankali village, at that time while unloading the machine, it fell on him, as a result of which he sustained the following injuries:

"i) Type III-B compound fracture of left elbow;

ii) Fracture of lower 1/3rd left humerus with comminuted fracture head of radius

and lateral epicondyle with radial nerve injuries."

Immediately he was admitted to the KLE Hospital, Belgaum as an inpatient for a period of 13 days for which he spent an amount of more than Rs. 1 lakh towards medical expenses. It is his contention that prior to the accident, he was aged about 20 years and was working as labour under the 1st respondent earning Rs. 4,500/- per month and Batta at Rs. 30/- per day and because of the accident, he has lost his earnings. Therefore, he filed a claim petition claiming compensation of Rs. 3,50,000/- before the Commissioner of Workmen's Compensation.

4. In response to the notice, 1st respondent appeared through advocate and filed his objections denying the employment of the appellant under him, accident and all other averments made in the claim petition including the salary, age, occupation. The 2nd respondent/Insurance Company filed objections denying all the petition averments contending that the 2nd respondent is not liable to pay any compensation.

5. Based on the pleadings, the Labour Commissioner framed the following issues:

(English Transcription)

"Issues

1. Whether the claimant is a workmen under Section 2(1)(n) of the Workmen's Compensation Act, 1923?

2. If so, whether the accident has occurred during the course of employment and out of the employment?

3. What was the age of the claimant at the time of accident? And what was his monthly income?

4. Whether the claimant proves that he is entitled for the compensation as claimed?

5. Whether the claimant is entitled for the interest and penalty on the compensation claimed under Section 4(A) of the Workmen's Compensation Act, 1923?

6. If awarded, who is liable for payment of compensation, interest and penalty?

7. What order?"

6. After considering the entire material on record, the Labour Commissioner recorded a finding that the appellant is the workman as contemplated under the provisions of Section 2(1)(n) of the Workmen's Compensation Act, 1923; that the appellant has sustained injuries during the course of employment and hence, he is entitled to the total compensation of Rs. 1,64,640/- with interest at 12% p.a. from after one month of adjudication of the case. Hence, the present appeal is filed. The respondents have not filed any appeal against adverse findings recorded by the Labour Commissioner.

7. I have heard the learned Counsel for the parties to the lis.

8. Sri Harish S. Maigur, learned Counsel for the appellant contended that the Labour Commissioner ought to have considered the medical evidence on record which clearly discloses that the appellant was inpatient for more than 13 days and he has spent an amount of Rs. 1 lakh towards his medical expenses; that the Labour Commissioner has not considered the evidence of P.W. 1, who has stated on oath that prior to the accident, he was working under the 1st respondent and was earning Rs. 4,500/- per month and Rs. 30/- per day as bata, but while awarding the compensation, it has taken the income of the appellant as Rs. 3,500/- which is on the lower side. The same requires modification. He also contended that the Labour Commissioner is not justified in awarding 12% interest after one month of the adjudication in view of the dictum of the Hon'ble Supreme Court in the case of Oriental Insurance Co. Ltd., v. Siby George and Others reported in , 2012 ACJ 2126. Therefore, he sought to allow the appeal as prayed for.

9. Per contra, Sri G.N. Raichur, learned Counsel for the 2nd respondent sought to justify the impugned order.

10. In view of the rival contentions urged by the learned Counsel for the parties to the lis, the points that arise for consideration in the present appeal are;

"i) Whether the Commissioner for Workmen's Compensation is justified in taking the disability at 35% while disposing of the case?

ii) Whether the Labour Commissioner is justified in taking the income of the appellant at Rs. 3,500/- per month when there is evidence on record?

iii) Whether the Labour Commissioner is justified in awarding interest at 12% per annum after one month from the date of adjudication?"

11. The Labour Commissioner considering the entire material on record has recorded a specific finding that no material produced before the Court to prove that the claimant sustained 100% disability. In the absence of any material on record, the Labour Commissioner comes to the conclusion that the appellant claimant has sustained only 35% disability, as stated by the Doctor, who examined as P.W. 2. Therefore, the Labour Commissioner is justified in taking the disability of 35%. Accordingly, the 1st issue is answered in affirmative.

12. The appellant has not examined the 1st respondent under whom he was working as labour and no material is produced before the Court to prove that he was getting salary of Rs. 4,500/- per month from the 1st respondent and bata Rs. 30/- per day. In the absence of any material documents, taking into consideration the age of the claimant, the Labour Commissioner taken the income of the claimant at Rs. 3,500/- per month and 35% disability, as per Doctor evidence and applying the provisions of Section 4 of the Employee's Compensation Act, 1923 read with schedule 4 -factors for working out lump sum equivalent of compensation amount in case of permanent disability and death.

Taking into consideration the age of the claimant, the factors taken as 224. Therefore, the 2nd issue has to be answered in affirmative holding that Commissioner is justified in taking the income of the appellant at Rs. 3,500/- per month and the relevant factor as contemplated under the schedule of the Workmen's Compensation, Labour Commissioner has awarded a sum of Rs. 1,64,640/- and the same is in accordance with law.

13. While awarding the compensation, the Commissioner has proceeded to award compensation of Rs. 1,64,640/- with 12% interest after one month from the date of adjudication of the case. The said procedure adopted by the Labour Commissioner is contrary to the provisions of Section 4(A)(1) and 4(A)(3)(a) of the Workmen's Compensation Act, 1923.

14. The Hon'ble Supreme Court in the case of Oriental Insurance Company Limited v. C.B. George and others reported in 2012 ACJ2126 held that the employees/claimant is entitled the award amount from the date of accident and interest after one month of the accident and not after one month of the adjudication. The relevant paragraph at 9 and 12 reads as under:

"9. The matter once again came up before the Court when by amendments introduced in the Act by Act 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.09.1995. The question arose whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15.09.1995. A three Judge Bench of the Court in Kerala State Electricity Board v. Valsala K. , 2000 ACJ 5 (SC), answered the question in the negative holding, on the authority of Pratap Narain Singh Deo, , 1976 ACJ 141 (SC), that the payment of compensation fell due on the date of the accident. In paras 1, 2, and 3 of the decision the Court observed as follows:

"(1) The neat question involved in these special leave petitions is whether the amendment of Sections 4 and 4-A of the Workmen's Compensation Act, 1923, made by Act 30 of 1995 with effect from 15.09.1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15.09.1995?

(2) Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act, have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

(3) A four Judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata, , (1976) ACJ 141 (SC), speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the

claim.

10. xxx

11. xxx

12. In light of the decisions in Pratap Narain Singh Deo, , 1976 ACJ 141 (SC) and Valsala K., , 2000 ACJ 5 (SC), it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed, , 2007 ACJ 845 (SC) and Mohd. Nasir, 2009 ACJ 2742 (SC), insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala K. do not express the correct view and do not make binding precedents."

15. In view of the law declared by the Hon"ble Supreme Court stated supra, the claimant is entitled for compensation from the date of the accident and interest after one month of the accident. Accordingly, the 3rd issue has to be answered in negative holding that the Labour Commissioner is not justified in awarding interest at 12% after adjudication of one month.

16. In view of the aforesaid reasons, the appeal is allowed in part. The appellant is entitled to a sum of Rs. 1,64,640/- with 12% interest after one month from the date of accident and not after one month of the adjudication, as held by the Labour Commissioner.

17. The impugned judgment and award passed by the Labour Commissioner is modified holding that the appellant is entitled award amount with interest after one month of the accident.

Ordered Accordingly.