

(2011) 07 KAR CK 0147

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4698 of 2009

Syed Zameer

APPELLANT

Vs

Babu and National Insurance Company Ltd.

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2011) 07 KAR CK 0147

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

Bench : Single Bench

Advocate : Pradeep Naik K, for the Appellant;

Judgement

A.N. Venugopala Gowda, J.—Respondent 1 was the owner of lorry bearing registration No. MEL-5471 which was insured by the 2nd Respondent: The Appellant was employed by the owner of the said vehicle to work as a coolie in the vehicle i.e., to do the job of loading and unloading. On 17.8.05, the Appellant sustained injuries as a result of an accident involving the said vehicle during the course of his employment. A claim petition was filed by him against the insured and the insurer of the offending vehicle. Appellant deposed and also examined a qualified medical practitioner. Exs. P1 to P7 were marked. On appreciation of the evidence brought on record, the Commissioner for Workmen's Compensation (for short, CWC), finding that the jural relationship is established and that the workman is aged about 35 years and was earning wages of Rs. 3,000/- p.m., due to the permanent physical disability suffered, finding the loss of earning capacity at 35%, determined the compensation payable at Rs. 1,24,147/-and ordered the compensation amount to be deposited with interest at 12% p.a. if the same is not deposited within 30 days of the order /Award. Aggrieved with the quantum of compensation determined and the consequential Award, the claimant has filed this appeal.

2. Sri Pradeep Naik K., learned Counsel appearing for the Appellant, firstly contended that, the CWC is not justified in holding that the claimant was earning

wages of Rs. 3,000/- p.m. Learned Counsel submitted that, the bata of Rs. 50/- per day paid by the insured/employer has not been taken into consideration. Secondly, CWC is not justified in assessing the loss of earning capacity at 35%, since the evidence of qualified medical practitioner shows that there is 41% disability. Thirdly the CWC has erred in not awarding interest on the determined compensation amount after 30 days of the occurrence of the accident i.e., with effect from 18.9.05.

3. Respondents are served and have remained unrepresented.

4. I have perused the record.

5. The points for determination are:

(a) Whether the CWC is justified in reckoning the wages at Rs. 3,000/- p.m. and the loss of earning capacity at 35% of the wages?

(b) Whether the Appellant is entitled to be awarded interest on the compensation amount with effect from 13.9.05?

6. The Respondents have not questioned the impugned order/Award. In the circumstances, it is unnecessary to record any finding with regard to the jural relationship, occurrence of the accident, permanent disability suffered and the liability to pay the compensation to the Appellant.

7. Ex. P4 is the wound certificate. Exs. P4, P6 & P7 are the medical records. PW-2 has deposed that the Appellant came to him on 6.8.07 for the assessment of physical disability. PW-2 has not treated the Appellant. Taking into consideration the complaint stated by the Appellant and the documents produced with regard to the treatment obtained for the injuries sustained in the accident, finding restriction in the movement of the right lower limb, he has opined that there is 41% permanent physical impairment of the right lower limb and to the whole body at 14%. Considering the evidence on record, the CWC has held that on account of the physical impairment of the right lower limb, there is loss of earning capacity, which he assessed at 35%.

8. Other than the self serving testimony of the Appellant with regard to the wages and the bata paid, there is No. credible evidence to hold that he was earning Rs. 4,500/- p.m. The CWC noticing the evidence brought on record which did not inspire confidence, has reckoned the wages at Rs. 3,000/- p.m. I do not find any error having been committed by the CWC in reckoning the wages at Rs. 3,000/- p.m. since there is No. credible material placed on record to hold that the Appellant was earning wages of more than Rs. 3,000/- p.m.

9. Since there is No. credible evidence with regard to the treatment obtained in as much as the doctor who treated the Appellant was not examined and PW-2 examined the Appellant after expiry of long period and only assessed the physical impairment and there is No. evidence on record with regard to the Appellant being unable to do any other work and the impairment would not come

in the way of earning wages by doing other works, the CWC is justified in assessing the loss of earning capacity at 35%.

10. However, the Commissioner has committed error in not awarding interest on the compensation amount after expiry of 30 days period from the date of occurrence of the accident/cause of action for the claim arose. The Appellant is entitled to award of interest with effect from 19.9.05 on the compensation amount keeping in view the ratio of decision reported in Shri Aleemuddin and Others Vs. The Divisional Manager, New India Assurance Company Limited, , wherein, it has been held 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.

In the result, the appeal is allowed in part.

The compensation amount of Rs. 1,24,147/- shall carry interest at 12%.p.a. with effect from 19.9.05 till the date of actual deposit. However, the Respondent Insurance Company is not liable to pay interest for the delay period of 162 days,

condoned conditionally, while allowing Misc. Cvl.12067/09.

No costs.

Draw modified Award.