
(2013) 03 KAR CK 0023

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30473 of 2011 (WC)

The Branch Manager

APPELLANT

Vs

Lakshmana, Shankara and Vasanta Shetty

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Workmens Compensation Act, 1923 — Section 3(1)(b)

Citation : (2014) ACJ 1030 : (2013) 3 AKR 194 : (2013) ILR (Kar) 3797 :
(2013) 6 KarLJ 111

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Sudarshan M, for the Appellant; Babu H. Metagudda, for R1, Sri. R.J. Bhusare, for R2 and Sri. Bapugouda Siddappa, for R3, for the Respondent

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J.—This appeal is by the insurer against the award passed by the Commissioner for Workmen's Compensation, Sub Division-2, Bijapur in WCA NO. 129/2008 dated 16.11.2010. The insurer is challenging the liability on the ground of violation of Section 3(1) (b) of Workmen's Compensation Act ("Act" for short). In the case on hand, it is alleged that on 13.04.2008, the claimant was driving a Mahindra Bolero Jeep bearing No. KA-20/M-9049 and when he was near Kustagi, he having lost control over the vehicle, it dashed against a tree and in that, he fell down and sustained injuries.

2. In the claim petition filed before the Commissioner for Workmen's Compensation, Bijapur, the Commissioner taking into consideration the nature of injury sustained and having held that the accident occurred during the course of employment, awarded compensation of Rs. 1,29,168/- with 12% interest p.a., fastening the liability on the insurer.

3. The learned counsel for the appellant relied upon the decision of the Division Bench of this Court reported in Louis Martis Vs. Louis Korrea and Another, in the

case of Louis Martis Vs. Louis Korrea and Another, with reference to Clause-ii of Section 3(1)(b) of the Act to contend claimant was driving the vehicle in a rash and negligent manner as such there is violation of Section 3(1)(b) of the Act and is not entitled for compensation.

4. Heard the counsel for the appellant and the counsel for the respondents.

5. Though there is a reference made to Section 3(1)(b) of the Act in question in the above cited decision wherein charge sheet was filed against the petitioner/claimant, on the ground that the claimant was driving the vehicle in rash and negligent manner and he is not entitled for compensation, the claim petition was dismissed. Section 3(1)(b) refers to willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen. There is nothing on record to demonstrate regarding willful disobedience for the purpose, in the course of employment. Even if the accident occurs during the course of employment, due to negligence his employer shall be liable to pay the compensation. Consequently it is to be indemnified by the insurer if there is an insurance coverage. The negligence may be attributed depending upon the degree of care or the standard of care to be taken. If the accident occurred due to the negligence, it cannot be held willful disobedience. In that view of the matter, the decision of the Division Bench of this Court is not applicable to the facts of this case. In the decision cited supra, though it has been held that when an accident happens due to his own negligence it cannot be said that the employer or the insurer is liable but, on a proper reading of the section, it could be said willful disobedience differs from negligence. If negligence is considered as an omission on the part of the workman in discharging his duty, it cannot be said as a willful conduct or willful negligence so as not to fasten liability on the employer or insurer. In that view of the matter, the decision of the Division Bench of this Court cannot be held applicable to the case on hand. The appeal preferred by the insurer relying on the decision of this Court does not survive for consideration.

Accordingly, the appeal preferred by the insurer is dismissed.