

(2016) 02 KAR CK 0135

In the Karnataka High Court

Case No : MFA Nos. 30798, 30800, 30801/2010 and 30799/2010 (WC)

The Branch Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Balu and Others

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, Section 2(1)(n)

Citation : (2016) 02 KAR CK 0135

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : S.S. Aspalli, Advocate, for the Appellant; S.V. Biradar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—1. The New India Assurance Co. Ltd., filed these appeals challenging the judgment and order dated 28-10-2009 made in WCA/SR Nos. 68/2007, 83/2006, 45/2007 and 104/2006 passed by the Labour Officer, Commissioner for Workmen's Compensation, Sub-Division-II, Bijapur, (hereinafter referred to as "the WCC for short), fastening the liability on them to compensate the claimants.

2. The common order passed by WCC has been challenged in these appeals. Hence, all the appeals are clubbed together and disposed of by this Common order.

3. Respondents 1 and 2 in MFA 30798/2010 and the first respondent in other appeals filed respective claim petitions contending that, son of the claimants one Sudheer and claimants in other appeals were working as coolies in a lorry bearing registration No. MH-07/3384 belonging to the first respondent in all the claim petitions. On 01-03-2006, as per the instructions of owner of the vehicle, after loading cement mixture machine, and cement bags and steels, while proceeding from Devaghad to Balivade village, due to the rash and negligent

driving of the said lorry by its driver, the vehicle met with an accident near Kesarkar Ice Factory. Due to the said accident, the claimants fell down from the lorry and cement mixture machine fell on Sudheer and other coolies. Due to the said impact, Sudheer died on the spot and other claimants had sustained grievous injuries. Immediately on accident, they were shifted to Government Hospital at Devaghad and after first aid, they took treatment in other private hospitals. They claimed that in view of the fracture of bones and injuries sustained, they have spent huge money towards their treatment and they cannot work as coolies as they were working prior to the accident. Prior to the accident, the owner of the vehicle was paying salary of Rs. 200/- per day and batta of Rs. 50/- for the claimants in WCA Nos. 83/2006 and 84/2006; Rs. 200/- per day to the claimants in WCA Nos. 45/2007 and Rs. 150/- per day and Rs. 50/- in 104/2006; as batta for the deceased. As on the date of accident, the insurance policy covers the risk of coolies working in the said lorry. The accident occurred during the course and out of employment. Hence, the claimants are entitled for compensation from the second respondent.

4. In pursuance of the notice issued by the WCC, though the owner of the vehicle was served with notice, he remained ex-parte. The second respondent/Insurance Company filed written statement denying the entire averments made in the claim petition and also contended that there is no relationship of master and servant between the deceased in the first claim petition and claimants in other claim petitions and owner of the offending vehicle. The driver of the offending lorry did not possess the valid and effective Driving License as on the date of accident. More than 20 to 30 persons were travelling in the vehicle as unauthorized persons. The insurance policy does not cover the risk of unauthorized passengers travelling in the goods vehicles. In the complaint lodged before the jurisdictional police by one Rajesh, he has clearly stated that 20 to 30 persons were travelling in the said lorry for the construction work. On that day, they had to lay the slab. No document has been produced to show that the deceased and claimants were working in the said lorry as coolies. The accident was not informed to the Insurance Company as required under Section 10 of Workmen's Compensation Act and there is violation of Rule 100 of Karnataka Motor Vehicles Rules, 1989. Hence, the insurer is not liable to compensate the claimants and sought for dismissal of the claim petitions.

5. On the basis of the pleadings of the parties, the WCC framed necessary issues. The claimants in order to prove their cases, examined father of the deceased Sudheer and other claimants got examined themselves as witnesses and got marked the documents as Ex. P1 to Ex. P25. On behalf of the second respondent, one Mr. Ramesh B. Kulkarni, Manager of New India Assurance Co. examined himself as one of the witnesses.

6. The WCC on appreciating the oral and documentary evidence adduced by the parties and taking into consideration the police records held that due to the rash and negligent driving of the lorry, the vehicle met with the accident. The

claimants who were working in the said lorry sustained injuries and one of the coolies died on the spot. The accident occurred during the course and out of employment. Hence, the claimants are entitled for compensation. Since the vehicle is covered by insurance policy and policy covers the risk of four employees working in the said lorry, the liability is fastened on the Insurance Company to compensate them, by its judgment and order dated 28-10-2009. Being aggrieved by the judgment and order passed by the Commissioner for Workmen's Compensation fastening the liability on the Insurance Company, the Insurance Company has preferred these appeals.

7. Sri. S.S. Aspalli, learned counsel appearing for the appellant contended that the judgment and order passed by the WCC is contrary to law. No document has been produced before the WCC, regarding relationship of master and servant between the deceased and claimants and owner of the offending lorry. Under the Workmen's Compensation Act, the duty casts upon the WCC to give a finding whether the injured persons are workmen within the meaning of Section 2(1)(n) of the Workmen's Compensation Act. The occurrence of accident was not made known to the appellant/Insurance Company as required under Section 10 of the Workmen's Compensation Act. Apart from that the vehicle involved in the accident is a goods carrying commercial vehicle, four employees are covered by the insurance policy. As could be seen from the complaint lodged before the jurisdictional police, 20 to 30 persons were travelling in the lorry for construction work and they were carrying cement mixture machine for the purpose of laying slab. At no stretch of imagination, those persons can be treated as workmen within the definition of Workmen" under the Act. Out of 4 claimants, claimant in WCA/SR-104/2006 is aged about 15 years and he was a minor. He cannot be a workman and it violates the Child Labour Act. It is seen from the complaint that 20 - 30 persons were travelling in a goods vehicle. There is violation of conditions of the policy. Hence, insurer is not liable to compensate the claimants. Hence, the order passed by the WCC is contrary to law and the compensation awarded is also exorbitant and sought for setting aside the same by allowing the appeals.

8. On the other hand, Sri. Sanganagouda V. Biradar and Sri. K.D. Bhananur appearing for claimants argued in support of the order passed by the WCC and contended that deceased Sudheer and other claimants were working as coolies in the lorry belonging to the first respondent therein. As per the instructions of the owner of the vehicle, after loading the cement mixture machine, cement bags and iron, while proceeding towards Balivade village, near Kesarkar Ice Factory due to rash and negligent driving of the said lorry, the vehicle turned turtle. Due to which, the claimants fell down and cement mixture machine ran over Sudheer and other coolies. In view of that, Sudheer died on the spot and other claimants sustained grievous injuries and fracture of bones. In the complaint lodged before the jurisdictional police by one Rajesh, he has clearly mentioned that the claimants are coolies in the said lorry. The claimants are illiterate and ignorant persons, except doing coolie work, they do not know any other work. No material

has been produced by the appellant/Insurance Company to dispute that the claimants are coolies working in the said lorry. The driver of the offending lorry was having valid and effective Driving License as on the date of accident. The accident occurred during the course and out of employment and the claimants are entitled for compensation. Hence sought for dismissal of the appeals.

9. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award and oral and documentary evidence.

10. The records clearly disclose that claimants and other persons travelling in a goods vehicle sustained injuries in the road traffic accident occurred on 1-3-2006 at about 9.00 a.m., due to rash and negligent driving of the said lorry. The claimants claim that they are working as coolies in the said lorry, the owner of the vehicle was paying Rs. 200/- per day and batta of Rs. 50/-. The insurance policy covers the risk of four employees travelling in the said vehicle. The specific case pleaded by the claimants is that, on the said day, after loading cement mixture machine, cement bags and steel, while proceeding towards Balivade for the purpose of unloading, unfortunately, the said vehicle met with accident near Kesarkar Ice Factory. One of the coolies, Sudheer died on the spot and other coolies sustained fracture and other grievous injuries. However, the appellant disputed the same contending that they are not coolies and they are building construction workers, they were travelling in a goods vehicle along with cement mixture machine for the purpose of laying slabs. Hence, the insurer is not liable to compensate the unauthorized persons travelling in the goods vehicle. Though the police records disclose that there are 20 - 30 persons travelling in the goods vehicle as on the date of accident, we are concerned only with four employees who are deceased Sudheer and claimants in other claim petitions working in the said goods vehicle. In the complaint lodged before the jurisdictional police it was specifically mentioned that the claimants are working in the said lorry as coolies and they sustained injuries in the road traffic accident. The owner of the vehicle also not disputed the said fact. The injured persons in their evidence clearly mentioned that they are working as coolies in the said lorry. In the evidence of claimant in WCA/SR-104/2006, it was clearly stated that he was working as hamali in the said lorry and owner of the vehicle was paying him salary of Rs. 200/- per day. The claimant in WCA/SR-83/2006 clearly stated that he was working as a hamali as well as loader and unloader. He has loaded the cement mixture machine in the lorry and he was travelling for unloading the said cement mixture machine and cement bags. The claimant in WCA/SR-45/2007 also stated that he was working as coolie in the vehicle belonging to Ashok Prabhakar Chawan. The police records also clearly disclose that the claimants are coolies travelling in the offending lorry. In the Rural areas, owners of the vehicle pays the remuneration daily and they will not keep any receipt for that and no appointment order is being issued. In view of that, the claimants are not in a position to produce any documents to show that they are working in the said lorry as coolies. Only for non-production of necessary documents, the case of the

claimants cannot be thrown out. The evidence of parties, police records and charge sheet, clearly disclose that the claimants are working as coolies in the said lorry. The appellant has not produced any contra documents to prove that the claimants are not coolies. The WCC taking into consideration the entire aspect of the matter held that the claimants are working as coolies in the offending lorry hence they are entitled for compensation. The insurance policy covers the risk of the four employees working in the lorry. Even though 20 to 30 persons were travelling in the said vehicle, the liability of the Insurance Company is confined only to four persons. Hence the Insurance Company cannot deny the compensation to these claimants who are injured persons and dependents of deceased Sudheer. I find no infirmity or irregularity in the said finding.

11. Taking into consideration salary of the claimants as Rs. 3,600/- p.m. taking 50% thereof in respect of the deceased and 60% thereof in respect of the injured persons, applying the relevant factor, and taking into consideration disability assessed by the Doctor, the WCC awarded the compensation, which is in accordance with the schedule of Workmen's Compensation Act. I find no infirmity or irregularity in the judgment and order passed by the WCC.

12. The claimants are entitled to interest from 30 days after the accident and not from 1-2-2006 as assessed by the WCC. The appellant has not made out a case to interfere with the judgment and order passed by the WCC. Accordingly I pass the following.

ORDER

All the appeals are dismissed.

The amount in deposit made before this Court is directed to be transferred to the Principal Senior Civil Judge & CJM, Vijayapura, in view of abolition of the post of Commissioner for Workmen Compensation, Bijapur District, Bijapur.