
(2015) 09 KAR CK 0285

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8478/2006 (WC)

The Branch Manager, The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Arjun and Others

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(44), 2(46)

Citation : (2015) 09 KAR CK 0285

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : R.V. Nadagouda, for the Appellant; Sanganagouda V. Biradar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Sreenivas Gowda, J—Appeal by the Insurer of a Tractor challenging the Judgment and Award passed by the Commissioner for Workmens' Compensation, Sub-Division-II, Bijapur now Vijayapura (hereinafter referred to as "Commissioner" for short).

2. With the consent of the learned counsel appearing for the parties, appeal is heard, admitted for consideration of the following substantial question of law and disposed of finally:

"1) Whether the Commissioner had jurisdiction to entertain the claim petition and to award compensation.

2) Whether the Commissioner was justified in fastening the liability on the insurer of the offending tractor.

3) Whether the compensation with interest at 12% p.a. awarded by the Commissioner is sustainable in law?"

3. Sri R.V. Nadagouda, learned counsel for appellant-insurer offending tractor submits, claimants are residents of Mangalaveda Village in Solapur District of

Maharashtra State and they are not residents of Bijapur District and that the Commissioner, Bijapur had no jurisdiction to entertain the claim petition and award compensation. He submits, as per Insurance Policy of the offending tractor, it covers the risk of driver and third parties only and it does not cover the risk of deceased who travelled in the trailer as coolie under the owner of offending trailer. He submits, the Commissioner, without considering the above aspect of the matter has committed an error in fastening the liability on the insurer of the offending tractor.

4. He further submits, quantum of compensation and interest awarded by the Commissioner are not in accordance with the provisions of the Workmens' Compensation Act therefore, he prays for allowing the appeal filed by the Insurance Company by setting aside the Judgment and Award passed by the Commissioner.

5. Per contra, Sri Sanganagouda V. Biradar, learned counsel for the claimants submits, both deceased and claimants are residents of Hitnalli village in Bijapur Tq and District and further a branch office of the insurer of the offending tractor is also situated at Bijapur. Considering the above aspect of the matter, the Commissioner was justified in entertaining the claim petition and awarding compensation. He submits, Rs. 25/- extra premium collected by the insurer while insuring the offending tractor covers the risk of deceased who died in the course and out of employment as an employee under the owner of the offending tractor. He submits, quantum of compensation and interest awarded by the Commissioner are in accordance with the provisions of WC Act. Therefore, he prays for dismissal of the appeal.

Re: Jurisdiction:

6. The claimants in their claim petition as well as in their evidence made on oath have specifically contended that they are residents of Hitnalli village in Bijapur Tq. and District which comes within the jurisdiction of the Commissioner.

7. The owner of the offending tractor who was arrayed as first respondent before the Commissioner, though was served with the notice of the claim petition, did not choose to enter appearance and she was placed ex-parte. Thereby, she has not denied the case of the claimants including their contention that they are residents of Hitnalli Village in Bijapur Tq. and District.

8. A perusal of the memorandum of appeal would show, no where in the appeal including the grounds raised for framing substantial question of law, appellants have taken up the ground that the Judgment and Award passed by the Commissioner is not sustainable for want of jurisdiction.

9. When the claimants have contended that they are residents of a village coming within the jurisdiction of Commissioner, Bijapur before whom they have filed claim petition and if that is not disproved by the opposite party by adducing cogent evidence, the contention of the claimants that they are residents of a

village coming within the jurisdiction of Commissioner has to be accepted. There is no merit in the contention of the insurer that claimants while lodging the complaint to the Police and during their cross-examination have admitted that they are residents of Mangalveda Village and the Commissioner has no jurisdiction to entertain the claim petition. In the complaint and in the evidence of the claimants, claimants have stated that they were residing with the deceased at Mangalveda village. It is to be noted by virtue of employment of deceased at Mangalveda Village, all of them must have been residing at Mangalveda during the lifetime of deceased but, it does not mean that they are not residents of Hitnalli village in Bijapur Tq.& District.

10. In the absence of raising a specific ground in the appeal memo regarding jurisdiction, any amount of argument advanced by the learned counsel for the appellant with regard to jurisdiction would not come to their rescue.

11. On the other hand, the Hon"ble Supreme Court, in the case of Morgina Begum Vs. Managing Director, Hanuman Plantation Ltd., AIR 2008 SC 199 : (2007) 115 FLR 509 : (2007) 12 JT 134 : (2008) 1 LLJ 305 : (2008) 149 PLR 482 : (2007) 11 SCALE 503 : (2007) 11 SCC 616 : (2008) 2 SCC(L&S) 458 : (2007) 10 SCR 372 : (2007) AIRSCW 6567 has held as under:--

"7. The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place, then in order to facilitate the claimants they may make their claim not necessarily at the place where the accident took place but also at the place where they ordinarily reside. This amendment was introduced in the Act in 1995. This was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the Act. It is not possible for poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of the accident for filing a claim petition. It may be very expensive for the claimants to pursue such a claim petition because of the financial and other hardship. It would entail the poor claimant travelling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen."

The instant case is squarely covered by the said decision. Accordingly, substantial question of law No. 1 is answered accordingly.

Re: Liability:

The claimants in their claim petition as well as in their evidence have specifically contended that deceased was an employee under the owner of Tractor and when the deceased had been to bring the sand by travelling in the trailer attached to the offending tractor, the tractor-trailer met with an accident and he died. As per definition of Tractor under Section 2(44) of the Motor Vehicles Act, 1988, it is not constructed to carry on any load. As per definition of Trailer as defined under Section 2(46) trailer means any vehicle, other than a semi-trailer and a side-car drawn or intended to be drawn by a motor vehicle. It is a combination of both

the tractor and trailer makes a full-fledged goods carrier. Further, tractor-trailer may be used as a goods carrier for the purpose of carrying on commercial activities or they may be used as miscellaneous vehicle for the purpose of carrying on agriculture activities. When they are engaged together for carrying on any activities and during the said use if accident takes place resulting in injury to a 3rd party or to a workman either under the owner of the tractor or trailer, both owners and insurers of both tractor and trailer are jointly and severally liable to make good the claim as has been held by the Division Bench of this Court in the case of *The Branch Manager, New India Assurance Co. Ltd. Vs. Boregowda and Others*, (2008) ACJ 934 : (2008) ILR (Kar) 64 . As such, there is no merit in the contention of the insurer that the insurance policy covers the risk of only the driver and it does not cover the risk of coolie/s travelling in the trailer.

12. In the instant case, admittedly deceased was an employee under the owner of the Tractor and when deceased was proceeding in the trailer as an employee under the owner of the tractor, the tractor and trailer met with accident and deceased died. Therefore, owner and insurer of both the vehicles are liable to pay compensation. There is no material as to ownership and insurance of the trailer. Insurance policy of the tractor would show, extra premium of Rs. 25/- was collected covering the risk of the employee. Therefore, insurer of tractor is liable to pay 50% of the compensation. Claimants have to recover remaining 50% of the compensation by initiating appropriate proceedings against the owner and insurer of trailer.

Accordingly, the question No. 2 is answered.

13. In so far as determination of compensation based on income and age of the deceased, the Commissioner has rightly awarded total compensation of Rs. 2,21,989.00 with 12% interest p.a. with effect from 30 days after the accident is in accordance with the WC Act. As such, there is no merit in the contention of the insurer that compensation and interest awarded by the Commissioner are not in accordance with the provisions of WC Act. Question No. 3 is answered accordingly. Hence, I pass the following order:

The appeal is dismissed.

Judgment and award dated 28-04-2006 passed in WCA No. 13/2004 on the file of the Labour Officer and Commissioner for Workmens' Compensation, Sub-Division NO.2, Bijapur is modified insofar as liability is concerned and it is confirmed in all other aspects.

Appellant-insurer of the tractor is hereby directed to deposit compensation awarded by the Commissioner with proportionate interest at 12% p.a. from 30 days after the accident, within two months from the date of receipt of a copy of this order.

Registry is directed to transmit the amount if any already deposited before this Court to the jurisdictional Senior Civil Judge, Bijapur.

From the amount already deposited by the insurer, the jurisdictional Sr. Civil Judge is directed to release 50% of the compensation awarded by the Commissioner with proportionate interest in favour of the claimants in terms of the award.

The Commissioner shall refund the balance amount to the appellant insurer.

It is open to the claimants to recover the remaining 50% of the award amount from the owner and insurer of the trailer by initiating appropriate proceedings.

No order as to costs.