
(2011) 09 KAR CK 0170

In the Karnataka High Court

Case No : M.F.A. No's. 15094 of 2007 and 3527 of 2008

The Branch Manager The Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Suwbhagya, Sri. Paramashiviah, Sri. Kumar and Uma Industries
 Smt. Sowbhagya, Sri. Paramashivaiah and Sri. Kumar Vs Uma Industries and The Branch Manager Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 4, 4 (A) (iii) (a)

Citation : (2011) 09 KAR CK 0170

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : P.B. Raju, in M.F.A. No. 3527/2008 and H. Pavana Chandra Shetty, in M.F.A. No. 15094/2007, for the Appellant; H. Pavana Chandra Shetty, for R-1 to R-3 in M.F.A. No. 3527/2008 and P.B. Raju, for R-2 in M.F.A. No. 15094/2007, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—These two appeals are filed by insurance company and claimant questioning the judgment and award passed by

Commissioner, Workmen Compensation-3, Bangalore in WCA-3/FC/CR/98/2007 dated 30.05.2007 whereunder claim petition filed by

claimants came to be allowed in part and a compensation of Rs. 3,20,355/- was awarded to the legal heirs of deceased employee. Claimants filed

MFA No. 15094/2007 are seeking for enhancement and insurance company has filed MFA No. 3527/2008 on the question of relationship and

quantum. Since these two appeals arise out of a common judgment and award, they are taken up together for consideration.

2. Heard Sri. P.B. Raju, learned Counsel appearing for insurance company and

Sri. H. Pavana Chandra Shetty appearing for claimants. Employer

is served and unrepresented in MFA No. 3527/2008 and Respondents 1 to 3 are represented by Sri. Pavana Chandra Shetty. In MFA No.

15094/2007 notice to R-1 namely employer has been dispensed with by order dated 23.11.2009 and R-2 is represented by Sri. P.B. Raju.

Hence service of notice on all parties in both appeals are complete and by consent of learned Advocates for both the parties, these appeals are

taken up for final disposal since they are of, the year 2007-2008 and pending for admission since then. Parties are referred to as per rank before

Commissioner for Workmen's Compensation.

3. Brief facts leading to filing of these two appeals are as under:

One Sri. Manju, working as a cleaner in a vehicle bearing Registration bearing No. KA-02-AA-4396 belonging to first Respondent was travelling

in the said vehicle and was returning on 05.08.2001 after delivering glasses as instructed by his employer and while, returning at about 12 midnight,

driver of the said vehicle is said to have lost control and dashed against a tree on the highway and on account of which deceased sustained

grievous injury and after being shifted Channarayapatna Government Hospital for treatment he is said to have succumbed to injuries as he did not

respond to medical treatment. Thereafter a claim petition was filed by mother and two major younger brothers of deceased seeking compensation.

On service of notice of claim petition, Respondents appeared and contested the matter by filing detailed statement of objections interalia denying

the averments made in the claim petition and a specific contention was taken that deceased was not working with the first Respondent and he was

working elsewhere as such there was no relationship of employer and "employee between" deceased and first Respondent. First claimant got

herself examined on behalf of claimants to substantiate the contentions raised in claim petition and got marked Exhibits P-1 to P-9. Respondents did

not tender any oral evidence and they got marked the policy issued to offending vehicle as Exhibit-R-1. On appreciation of pleadings and evidence

of parties, Commissioner for Workmen's Compensation allowed the claim petition in part and awarded a compensation of Rs. 3,20,355/- with

interest at 12% p.a. payable one month after the date of judgment, it is this judgment and award, which is questioned by both claimant and

insurance company as adverted to herein above.

4. Having heard the learned advocates appearing for both the parties, I am of the view that following substantial questions of law would arise for consideration:

(i) Whether the Commissioner was correct and justified in arriving at a conclusion that there existed relationship of "employer" and "employee" between deceased and first Respondent?

(ii) Whether the Commissioner was justified in awarding interest at 12% p.a. payable after one month after the date of award?

5. Facts already narrated herein above are sufficient enough to answer the substantial questions of law formulated herein above and as such they

are not once again delved upon since it would be repetition of facts. It is also required to be noticed that issuance of policy to the offending vehicle

as Exhibit R-1 is not in dispute.

6. It is the contention of Sri. P.B. Raju learned Counsel appearing for Insurance company that deceased was an employee of M/s. Sill Mirror

Factory and policy issued to the offending vehicle related to M/s. Uma Industries and as such there was no relationship of employer and employee

between the deceased and M/s. Uma Industries and as such Insurance Company is not liable to indemnify the claim. A perusal of records made

available by learned advocates appearing for parties would clearly disclose that on the date of accident, deceased was travelling in the offending

vehicle and goods supplied by M/s. Sill Mirror Factory was being transported to first Respondent namely M/s. Uma Industries and on similar lines

FIR has been lodged at Exhibit P-1. This clearly goes to show that deceased was an employee of M/s. Uma Industries. This fact is also fortified

from a perusal of cross examination of PW-1 namely mother of deceased wherein it is stated by her that one week prior to the date of accident,

deceased Manju was working in M/s. Sill Mirror Factory to the suggestion that he was a employee of M/s. Sill Mirror Factory, Nowhere in the

cross examination it has been elicited that as on the date of accident deceased was working at M/s. Sill Mirror Industries. In view of this

documentary evidence as also oral evidence available on record, I am unable to accede to the request made by learned Counsel for Appellant to

hold that there was no relationship of "employer" and "employee" between

deceased and M/s. Uma Industries. As such substantial question of law

No. 1 is answered in affirmative i.e., against insurance company and in favour of claimants.

Re. Substantial Question of Law No. 2:

7. Commissioner has awarded interest at 12% p.a. payable one month after the date of award. The provision which governs the entitlement of

interest, by claimant as found in the Workmen's Compensation Act, 1923 is at Section 4A(iii)(a) which reads as under:

4A. Compensation to be Paid When Due and Penalty for Default-

(1) Compensation u/s 4 shall be paid as soon as it falls due.

(2) in cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional

payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the [employee],

as the case may be, without, prejudice to the right of the [employee] to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner

shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at

such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by

notification in the Official Gazette, on the amount due.

8. A perusal of said provision makes it explicitly clear that in addition to compensation that is to be awarded additional amount of compensation

can be levied against defaulting employer by way of penalty and interest thereon also, not exceeding 12% p.a. or at such higher rate not exceeding

the maximum amount of lending rates in any schedule bank as specified by Central Government. What has been awarded by commissioner in the

instant case is interest payable after one month after date of award which is contrary to statutory provision. As such, I am of the considered view

that claimant would be entitled to interest @ 12% p.a. payable from one month after the due date i.e. date of accident @ 12% p.a., since it is a

fatal accident. As such, I am of the considered view that Commissioner erred in awarding interest one month after the date of award which is

contrary to provisions referred to above. In that view of the matter, substantial question of law is to be answered in the negative i.e., in favour of

claimants and against insurance company.

9. In view of the above, award is being modified accordingly by holding that insurance company shall be liable to pay interest @ 12% p.a. payable

from 05.09.2001 (date of accident being 05.08 2001) and Insurance company shall deposit the interest that is payable within six weeks from the

date of receipt of certified copy of the order before jurisdictional Commissioner for Workmen's Compensation. Amount in deposit before this

Court in M.F.A. No. 3527/2008 with interest if any earned shall be transmitted to Commissioner, Workmen's Compensation-3, Bangalore, by

the registry forthwith for disbursement in accordance with award.

In view of the discussion made herein above, following order is passed:

ORDER

10. M.F.A. No. 3527/2008 is hereby dismissed by answering substantial question of law No. 1 against insurance company/Appellant and in

favour of Respondent/claimant.

11. M.F.A. No. 15094/2007 is hereby allowed in part by answering substantial question of law No. 2 in the negative i.e., in favour of claimants

and against insurance company and ordering payment of interest @ 12% p.a. payable by Insurance company from 05.09.2001.

12. Amount in deposit, before this Court is ordered to be transmitted to Commissioner for Workmen's Compensation, Sub-Division-3,

Karmikara Bhavana, Bangalore for being disbursed in favour of claimants.

13. Balance amount of interest payable by the Insurance company to the claimants shall be deposited before jurisdictional Commissioner for

Workmen's Compensation within six weeks from date of receipt of certified copy of this order.

14. No order as to costs.

I.A. No. III/2003 for stay does not survive for consideration.