

(2011) 07 KAR CK 0150

In the Karnataka High Court

Case No : Misc. First Appeal No. 11258 of 2007

The Divisional Controller, KSRTC

APPELLANT

Vs

Sri Manjegowda

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 22 (4)

Citation : (2011) 07 KAR CK 0150

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

Bench : Single Bench

Advocate : B.L. Sanjeev, for the Appellant; S. Mahesh and K.T. Nagendra, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—The Respondent was a driver at Chennarayapatna Depot of the Appellant - Corporation. On 9.7.02, he was on duty driving bus No. KA-13/F-831. An accident occurred due to the bus dashing against a TVS moped and then hitting to a road-side tree. The rider of the TVS moped and a passenger in the bus died on the spot. 35 passengers in the bus and a pillion rider of the moped were severely injured. A case was registered against the Respondent/driver of the bus, by the jurisdictional police. The Appellant paid Rs. 44.000/- to the Respondent towards advance and a further sum of Rs. 1,74,491/- to meet the medical expenses. The Respondent was sanctioned leave for the period commencing from 9.7.02 to 19.3.04 and again from 20.3.04 to 31.5.04, treating the period as on duty and wages of Rs. 1,04,316/- was paid. The Appellant dismissed the Respondent from service, alleging commission of misconduct and causing damage to the interests of the Corporation, by causing the said accident. The order of dismissal having given rise to a dispute, Government made a reference to the Labour Court at Chikmagalur. The Labour Court allowed the reference and set aside the order of dismissal dated 2.11.06. The Appellant was directed to reinstate the Respondent -workman into service and provide alternate job suitable to him on his producing disability certificate or to consider the application seeking voluntary retirement with continuity of service and

consequential benefits for the purpose of determining the retiral benefits. However, backwages was denied. As a measure of punishment, the Management was permitted to withhold one increment with cumulative effect. The Award was directed to be implemented within one month from 19.9.09. The Award was accepted by the Appellant. The Respondent was reinstated on 22.2.10 in a sedentary post, protecting his pay and allowances.

2. The Respondent filed a claim petition on 29.10.04, before the Commissioner for Workmen's Compensation, Hassan Sub-Division u/s 22(4) of the Workmen's Compensation Act, 1923 against the Appellant, to direct payment of compensation for the injuries sustained on account of the occurrence of the accident, while on duty. The claim though opposed, was allowed by the Commissioner and compensation of Rs. 4,61,136/- was ordered to be deposited with interest at 12% from 23.6.07 till the date of deposit. This appeal is directed against the said order/Award.

3. The appeal was admitted to determine the following questions:

(1) Whether the Respondent would be entitled to claim compensation for loss of income/loss of earning capacity even when he is provided with an employment as per the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995?

(2) Whether the Commissioner was justified in assessing the disability of the Respondent at 100%?

4. Sri B.L. Sanjeev, learned Counsel appearing for the Appellant, by placing reliance on the decision in the Case of Palraj Vs. The Divisional Controller, NEKRTC, , contended that, the compensation awarded without taking into consideration the appointment of Respondent in a sedentary post, protecting his pay and allowances, is highly excessive and hence, interference in the matter is called for.

5. Learned Counsel appearing for the Respondent, though admitted that the Respondent has been provided with alternate employment with pay protection, contended that, there is partial permanent disability, which is a functional disability and the Respondent is crippled, in view of which, the Commissioner is justified in passing the impugned order/Award. Learned Counsel submitted that, the Respondent was permitted to withdraw 50% of the deposited amount, by an order passed on 23.7.09 and the said amount has been withdrawn on 24.8.09 and in the circumstances, the appeal may be dismissed.

6. In the case of PAL RAJ (supra), the Appellant was employed as a driver in NEKRTC and while on duty, an accident occurred and he sustained grievous injuries. The medical officer opined that there is 65% total body disability and 20% functional disability. However, the Commissioner for Workmen's Compensation in the claim petition filed, took the functional disability at 85% and quantified the compensation payable. The Corporation which admitted that the

claimant on account of the injuries sustained is unable to drive the vehicle and appointed him as a peon in the Corporation, questioned the quantum awarded. The appeal was allowed in part and the compensation was reduced from Rs. 1,75,970/- with interest to Rs. 41,404.80 with interest. The workman questioned the Judgment/Award passed in appeal. Noticing the employment of the workman as a peon in the Corporation, Apex Court has held that the loss of earning capacity has to be computed keeping in mind the alternate employment given to the Appellant on the same salary as he was enjoying while performing the duty of a bus driver which cannot be ignored in computing the amount of compensation which the Appellant was entitled to. While agreeing with the order passed in appeal put in challenge before the Apex Court, it was held that, the percentage of functional disability has to be modified from 20% to at least 35% having regard to the Appellant's mobility on account of the medical treatment received after the accident and also because of the Appellant's loss of future earnings and also promotions. The appeal was accordingly disposed of.

In my opinion, the case on hand is squarely covered by the said decision. Keeping in view the fact that, the Appellant has employed the Respondent pursuant to the Award passed by the Commissioner and extended the pay protection, the Respondent is entitled to the compensation at 35% of the wages under the head "functional disability" and also the loss of future earnings and promotions.

In the said view of the matter, the appeal is allowed in part.

The compensation payable stands determined at Rs. 1,61,397.60 ($2400 \times 192.14 \times 35/100$) which shall carry interest at 12% p.a. with effect from 23.6.07 till the date of deposit.

Since the Respondent has withdrawn Rs. 2,30,568/-, he shall refund the excess amount to the Appellant. The Appellant is at liberty to recover the excess amount from the salary of the Respondent at the rate of Rs. 2,000/- p.m.

The balance amount in deposit with accrued interest be refunded to the Appellant.

Parties to bear their respective costs.

Draw modified Award.