

(2016) 03 KAR CK 0263

In the Karnataka High Court

Case No : MFA No. 22786 of 2011 (WC).

The Divisional Manager, New India Assurance Company Ltd.,
Hubli

APPELLANT

Vs

Manjunath alias Manjayya and another

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (2016) AAC 1290

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : R.R. Mane, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

B. Manohar, J. - New India Assurance Company Ltd. being aggrieved by the judgment and order dated 2-12-2009 made in WCA/NF 173/2006 by the Labour Officer and Commissioner for Workmen Compensation, Haveri District, Haveri (hereinafter referred to as "the WCC" for short) fastening the liability on the appellant to compensate the claimant has filed this appeal.

2. The 1st respondent herein filed a claim petition contending that he was working as a driver in a lorry bearing registration No. KA 29/3930 belonged to the 2nd respondent herein. On 22-4-2006, as per the instructions of the owner of the vehicle, after unloading tar at Mutagi village, while he was proceeding towards Hamsabhavi-Chikkeroora road, due to bad condition of the road, the driver lost control over the vehicle and dashed against the road side tree. Due to which the claimant sustained grievous injuries. Initially he took treatment in the District Government Hospital at Haveri and thereafter in the Private Hospital. In the accident, he had sustained fracture of 6th and 8th ribs, fracture of right iliac bone of right vertebra and injuries to other parts of the body. At the time of accident, he was aged about 28 years. The accident occurred during the course and out of employment. Prior to the accident, the owner of the vehicle was

paying salary of Rs. 200/- per day and bata of Rs. 50/-. The police have registered a case in Crime No. 27/2006. Hence, the claimant sought for compensation of Rs. 5,00,000/- with interest.

3. In pursuance of the notice issued by the WCC, the owner of the vehicle filed written statement admitting that the claimant was working as a driver in the vehicle and sustained injuries in the road traffic accident that occurred on 22-4-2006. The owner of the vehicle was paying a sum of Rs. 200/- per day. Since the vehicle was covered by insurance, the insurer has to compensate the claimant.

4. The 2nd respondent-Insurance Company filed written statement denying the averments made in the claim petition and also contended that there is no relationship of master and servant between the owner of the vehicle and the claimant. No document has been produced to show that the owner of the vehicle was paying salary of Rs. 200/- per day. The driver of the vehicle was not having valid and effective driving license as on the date of accident. Hence, the Insurance Company is not liable to pay compensation and sought for dismissal of the claim petition.

5. On the basis of the pleadings of the parties, the WCC framed necessary issues. The claimant in order to prove his case examined himself as P.W. 1 and the doctor who issued the disability certificate was examined as P.W. 2 and got marked the documents as Ex.PI to Ex.P10. On behalf of the Insurance Company, one of the officials, Sri S. Shivaprakash was examined as R.W. 1 and the insurance policy was marked as Ex.RI.

6. The WCC, after considering the oral and documentary evidence let in by the parties and taking into consideration the IMV report, spot mahazar, copy of the complaint and charge-sheet, held that the claimant sustained injuries in the road traffic accident occurred on 22-4-2006. The claimant is a workman within the meaning of Section 2(1)(n) of the Employee's Compensation Act, 1923. Though the doctor assessed the disability to an extent of 60%, the WCC has taken the functional disability to an extent of 48%, taking the income as Rs. 4,000/- p.m., considering the age of the claimant as 34 years, applying the relevant factor 199.40 and awarded a sum of Rs. 2,29,709/- with interest at 12% p.a. Since the vehicle was covered by insurance policy and the driver of the vehicle was having effective driving license as on the date of accident, the liability has been fastened on the Insurance Company to compensate the claimant. The Insurance Company being aggrieved by fastening the liability on them to compensate the claimant has filed this appeal.

7. Sri R. R. Mane, learned counsel appearing for the appellant contended that the judgment and order passed by the WCC is contrary to law. In the FIR, the name of the driver of the vehicle is not mentioned. Hence, it is difficult to believe that as on the date of accident, the claimant was driving the vehicle. Further the assessment of disability to an extent of 48% is also on the higher side. In the

absence of necessary document, the income of Rs. 4,000/- p.m. taken by the WCC is also exorbitant. Hence, the insurer is not liable to compensate the claimant and sought for setting aside the judgment and order.

8. Though the contesting respondents are served in this appeal, they remained unrepresented.

9. Having heard the learned counsel appearing for the appellant the only point that arises for consideration in this appeal is :

"Whether the claimant is entitled for compensation in the road traffic accident occurred on 22-4-2006?"

10. I have carefully considered the arguments addressed by the learned counsel for the appellant and perused the impugned judgment and order and oral and documentary evidence.

11. The occurrence of the accident, injuries sustained by the claimant in the road traffic accident occurred on 22-4-2006 during the course and out of employment are not in dispute. He took treatment in the Government hospital. The police records disclose that the claimant was working as a driver in the vehicle and he sustained injuries in the road traffic accident. Even though the name of the driver is not mentioned in the FIR, nobody has disputed the injuries sustained by the claimant in the road traffic accident. The owner of the vehicle has also supported the case of the claimant. Hence, it is to be held that the claimant has sustained injuries-in the road traffic accident.

12. With regard to the income is concerned, the owner of the vehicle has clearly admitted that he was paying salary of Rs.200/-. Taking into consideration the sealing with regard to the income in the Employee's Compensation Act, 1923, taking into consideration the income as Rs. 4,000/- p.m. taking into consideration 60% thereof, considering the age of the claimant as 34 years at" the time of accident, applying the relevant factor 199.40, though the doctor has assessed the disability to an extent of 60% in view of fracture of 6th and 8th ribs, fracture of right-iliac bone of right vertebra and injuries to the chest, plevis, the WCC has taken the functional disability to an extent of 48% and awarded compensation of Rs. 2,29,709/- I find that there is no infirmity or irregularity in the judgment and order passed by the WCC.

13. In view of provisions under the Employee's Compensation Act, 1923, the functional disability of a person has to be taken into consideration and compensation has to be awarded. In the instant case, though the owner of the vehicle was paying higher salary, taking into consideration the income of the driver as Rs. 4,000/- p.m. applying the relevant factor, raking into consideration the functional disability to an extent of 48%, the WCC has awarded just and reasonable compensation. There is no substantial question of law to be decided. Hence, the appeal is required to be dismissed. 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

1. The appeal is dismissed. The judgment and order dated 2-12-2009 made in No. WCA/NF 173/2006 by the Labour Officer and Commissioner of Workmen's Compensation, Haveri District, Haveri, is confirmed.
2. The amount in deposit is directed to be transferred to the Civil Judge (Sr. Dn), Haveri for disbursement.