

(2011) 06 KAR CK 0062

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7311 of 2005

The Divisional Manager, United India Insurance Co. Ltd.

APPELLANT

Vs

Shambulingappa Sarathi and Mallappa Ningappa Beeralu

RESPONDENT

Date of Decision : 09-06-2011

Acts Referred:

Citation : (2011) 06 KAR CK 0062

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : A.M. Venkatesh and B.C. Shivanne Gowda, for the Appellant;
Laxman T. Mantagoni and N.M. Hindral for C/R-1-absent, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—This appeal is by the United India Insurance Co. Ltd., calling in question the award passed by the Commissioner for Workmen's Compensation, Davanagere, and liability being put on the Appellant-Insurance Company to satisfy the award amount.

2. The facts in brief, which led to the impugned award being passed, are that R-1 herein filed a petition before the Commissioner for Workmen's Compensation contending that, on 14.2.2004, he travelled in the tractor-cum-trailer bearing No. KA-27-T-5035-36 as a coolie and was also carrying jowar bags and when the vehicle reached P.B. Road, Harihara Church, there was an accident involving a cyclist, who was coming from the opposite side and when the driver of the tractor applied brakes, R-1 and others, who were travelling with him, fell down and sustained injuries. It is on this premise, a petition was filed and the Commissioner for Workmen's Compensation allowed the claim petition by awarding Rs. 1,87,410/- as compensation with 12% interest.

3. I have heard learned Counsel for the Petitioner Shri A.M. Venkatesh and none appears for the Respondents and there is no representation either for the Respondents.

4. The submission of the learned Counsel for the Petitioner-Insurance Company is that, he does not dispute the policy in respect of the tractor-cum-trailer is a comprehensive policy but, however, no premium was paid covering the risk of any of the coolies and, therefore, liability could not have been put on the insurance Company. Secondly it was argued that, merely on the say of R-1, the Commissioner for Workmen's Compensation held that R-1 was a coolie under the insured. But, however, there was no convincing evidence placed in this regard and, in the absence of there being evidence to indicate that R-1 was in fact, employed as a coolie under the insured and in the absence of the employer also entering the witness box, the mere oral say of R-1 could not have been accepted by the W.C. Commissioner.

5. Having regard to the aforesaid submission put forward and the order of the W.C. Commissioner also indicating that it was merely on the say of R-1 that the Commissioner proceeded to hold that R-1 was a coolie under the insured, in my view, the Commissioner ought to have required R-1 to establish by convincing evidence that R-1, in fact, was employed as a coolie by the insured and on a salary of Rs. 150/-per day with batta. No co-employee of R-1 was examined to establish the fact of R-1 being employed as a coolie by the insured.

6. This Court, in a Division Bench ruling in M.F.A. No. 6556/2006 and other cases, disposed of on 27.12.2010, has held that, where the claimant was found to have worked as a coolie under the owner and the claimant was also found carrying the material as per the instructions of the insured and for the purposes of the insured's agricultural operations, the liability put. on the Insurance Company cannot be held to be erroneous.

7. In the instant case, as the evidence was not very convincing to show that R-1 was, in fact, working as a coolie under the insured and that he was carrying jowar bags as per the instructions of the insured, the matter, therefore, requires remand to the W.C. Commissioner for fresh consideration and the Commissioner shall also take note of the decision of this Court rendered by a Division Bench in the aforementioned M.F.A. and other connected cases.

8. Accordingly, the appeal is allowed and the impugned judgment is set aside and the matter is remanded to the Commissioner for Workmen's Compensation for fresh consideration. Both the parties are at liberty to place additional evidence if any, if they choose to place before the Commissioner and thereafter, The matter shall be disposed of by the Commissioner in accordance with law in all respects viz., liability, payment of interest, etc, within a period of three months from the date of receipt of this judgment.

The amount in deposit be transferred to the W.C. Commissioner for being kept in fixed deposit till the disposal of the matter by the Commissioner.