

(2017) 12 KAR CK 0001
In the Karnataka High Court
Case No : 7131 of 2010

THE MANAGER

APPELLANT

Vs

SRI. MANI

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

[2957](#) Workmens Compensation Act, 1923, [2957-22](#) Section 22 - Form of application

Citation : (2017) 12 KAR CK 0001

Hon'ble Judges : B. Sreenivase Gowda

Bench : SINGLE BENCH

Advocate : ANANDITA SRINIVASAN, M. U. POONACHA, K. VENKATE GOWDA, K. S. GANESH

Judgement

1. MFA is filed by the insurer of the employer challenging the judgment and award passed by the Commissioner for Workmen's Compensation. Cross objection is filed by the employer of the workman, challenging the interest portion of the award.

2. As both the appeal and cross objection have arisen out of a common judgment and award passed by the Commissioner for Workmen's Compensation, with the consent of the learned Counsel appearing for the parties, they are heard together and disposed of finally by this common judgment. Perused the judgment and award passed by the Commissioner for Workmen's Compensation.

3. As there is no dispute regarding relationship of workman and employer between respondents 1 and 2 respectively, and certain injuries sustained by the workman due to fall of a branch of a tree, in the course of and out of employment, the points that arise for consideration in the appeal and cross objection are : i) Whether the Commissioner was justified in directing the appellant - insurer to pay the entire compensation to the claimant, having regard to the fact that employer had declared the wages of the claimant at Rs.539.58 at the time of obtaining the policy ? ii) Whether interest awarded is in accordance

with the provisions of the Workmen's Compensation Act ?

4. Smt. Anandita Srinivasan, for Sri. C.M. Poonacha for Lex Plexus, learned Counsel appearing for the insurer submits, the first respondent (employer) having obtained an insurance policy for ten workers showing their wages together as Rs.64,750/-, according to which wages of each employee would be Rs.593.58 per month, the liability of the insurer will be proportionate to the wages shown for each workman. The Commissioner without considering this has committed an error in fastening the liability on the insurer to pay the entire award amount which is disproportionate to the extent of liability of the insurer.

5. Learned Counsel for the claimant submits, claimant has been working as a permanent employee in the estate of the second respondent (employer) on monthly wages of Rs.100/- per day. Considering the same, the Commissioner was justified in assessing his income at Rs.100/- per day and Rs.3,000/- per month and awarding compensation and directing the insurer to pay the compensation amount to the claimant. As such, the said finding of the Commissioner does not call for interference and he prays for dismissing the appeal of the insurer. He further submits, the Commissioner has committed an error in awarding interest at 12% p.a. with effect from the date of award instead of from 30 days after the accident.

6. Sri. K.S.Ganesha, learned Counsel for the cross objector (employer) submits, the Commissioner has committed an error in awarding interest from the date of accident instead of from 30 days after the accident. Therefore, he prays for allowing the cross objection filed by the employer regarding interest portion of the award is concerned.

7. The first respondent (worker) on 19-01-2004 while working as a coolie in the coffee estate of the second respondent (employer) sustained injuries to his spine due to fall of a branch of a tree on him and therefore, he filed a claim petition before the Commissioner for Workmen's Compensation, Chickmagalur sub-division, seeking compensation from his employer and the insurer of his employer under Sec.22 of the Workmen's Compensation Act. The Commissioner after conducting the trial and hearing the learned Counsel appearing for the parties has awarded compensation of Rs.76,244/- and directed the insurer to pay the said sum to the claimant within 30 days from the date of the award and in the event of failing to pay the award amount within 30 days, to pay the same with interest at 12% p.a. from the date of award and directed the employer to pay Rs.57,386/- towards interest from 19-02-2004 (date of accident) upto the date of the award.

8. It is not in dispute that first respondent (claimant) while working in the coffee estate of the second respondent (employer) sustained certain injuries on account of fall of a branch of a tree on him and doctor has stated in his evidence that first respondent - claimant has suffered disability of 20% to the whole body. Even though the employer has disputed the rate of wages of workman at Rs.100/- per

day and contended that he was paying wages of Rs.64.75 per day, but has not substantiated the said contention by adducing cogent evidence. Therefore, his wages taken by the Commissioner at Rs.100/- per day and Rs.3,000/- per month, as claimed by the workman, is sound and proper. Relevant factor applicable to the age group of the claimant is 211.79. So loss of future earning would work out to Rs.76,244/- ($\text{Rs.3,000/-} \times 60/100 \times 211.79 \times 20/100$) as rightly awarded by the Commissioner.

9. Thus claimant is entitled for the said compensation amount towards loss of future earning on account of injuries sustained by him in the course of and out of employment. The dispute between the appellant - insurer and the second respondent - employer is, who has to pay the compensation amount and if so, to what extent ?

10. The contention of the insurer is, second respondent while obtaining the insurance policy from the appellant had shown the wages of ten employees together at Rs.64,750/-, according to which, wages for each workman comes to Rs.539.58 per month and therefore their liability should be proportionate to the wages of the first respondent - workman which comes to Rs.13,713/- ($\text{Rs.539.58} \times 60/100 \times 211.79 \times 20/100$).

11. Though second respondent - employer had shown the wages of ten employees together at Rs.64,750/- as per Ex.R.2, whereas in the check roll of labourers which was produced and marked as R.1B, wages of first respondent - claimant was shown as Rs.800/- per month. It is stated so in the memorandum of appeal. Relevant factor applicable to the age group of the claimant would be 211.79. Doctor has stated, claimant has suffered the disability of 20% to the whole body. If so, liability of the insurer would become Rs.20,331.84 ($\text{Rs.800/-} \times 60/100 \times 211.79 \times 20/100$) with interest at 12% p.a. from 30 days after the accident.

12. The second respondent - employer though in his statement of objections filed before the Commissioner has contended that he was paying wages to the first respondent - claimant at Rs.64.75 per day, but has not substantiated the said contention by adducing any evidence. Therefore, the Commissioner was justified in holding, claimant was getting wages of Rs.100/- per day and Rs.3,000/- per month. If so, the employer has to pay the balance of loss of future earning of Rs.55,912.16 ($\text{Rs.2,200/-} \times 60 \times 211.79 \times 20/100$).

13. As per the judgment of the Hon"ble Supreme Court in Oriental Insurance Co. Ltd. vs. Siby George and others reported in (2012) 12 SCC 540, interest has to be awarded at 12% p.a. from 30 days after the accident.

14. Hence, the following order : Both the appeal and cross objection are allowed in part. Judgment and award passed by the Commissioner for Workmen's Compensation is modified to the extent stated herein above. Appellant - insurer is liable to pay Rs.20,331.84 with interest at 12% p.a. from 30 days after the accident till the date of realisation. The employer of the workman - the second

respondent herein, shall pay the balance award amount amounting to Rs.55,912.16 with interest at 12% p.a. from 30 days after the award till the date of payment and they shall pay their respective share of compensation within two months from the date of receipt of a copy of this judgment, after deducting the amount, if any, already paid or deposited. Amount deposited in the above appeal and cross objection is ordered to be transmitted to the concerned Senior Civil Judge, Chickmagalur. The Senior Civil Judge after releasing the amount payable to the claimant as indicated herein above, shall refund the excess amount, if any payable to the insurer as well as the employer as the case may be.