

(2014) 07 KAR CK 0121

In the Karnataka High Court

Case No : M.F.A. Nos. 10933/2007 and 7309/2009 (WC)

The New India Assurance Co. Ltd. and Others

APPELLANT

Vs

Swamy and Others

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Citation : (2014) 07 KAR CK 0121

Hon'ble Judges : N.K. Patil, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : K. Suryanarayana Rao, Advocates for the Appellant; N.R. Ravikumar, Advocates for the Respondent

Judgement

N.K. Patil, J.—These two appeals are by the Insurer and Hirer, being aggrieved by the order dated 26.06.2007 in Case No. CWC/F/ASR 2/2007 and Case No. CWC/F/ASR 3/2007 on the file of the Commissioner for Workmen's Compensation, Hassan Sub-Division, Hassan. It is specific case of the Insurer and Hirer that they are not liable to pay the award amount and hence the award in question is liable to be set aside as the deceased Madhu and Chandramma are the employees of respondent No. 7 -Ravi S/o. Basave Gowda, owner of the quarry.

2. The following substantial questions of law have arisen for consideration:

"IN MFA No. 10933/2007

(1) Whether the finding of the Commissioner as to relationship of deceased with respondent-5 insured was just in view if the facts and pleadings of respondent insured and respondents 6 & 7 who had engaged him.

(2) Whether the Commissioner on the facts, evidence and in terms of the policy was justified in holding that the risk of deceased was covered under Mis & Spl Type of vehicle policy and fastening the liability on the appellant to pay the compensation?

(3) Whether the interest awarded on the amount of compensation is in accordance with the Judgment of the Apex Court reported in AIR 2006 SCW 1265?

IN MFA No. 7309/2009

(1) Whether the commissioner justified in entertaining the claim application filed by the Respondents 1 to 4/applicants without jurisdiction?

(2) Whether the Commissioner justified in granting the interest at the rate of 12% per annum after 1 month from the date of accident till the date of realization. In view of the judgment of the Apex Court reported in AIR 2009 SCW pages 3717 The Oriental Insurance Co. Ltd. v. Mohammed Nasir?

(3) Whether the Commissioner justified in fixing the liability against the appellant as he is neither the owner of the offending vehicle nor the employer of the deceased Chandramma?

(4) Whether the Commissioner justified in passing the judgment without fixing the liability against the principal employer?

3. The brief facts of the case are:

"The first Claimant is father of the deceased - Madhu and husband of deceased - Chandramma and Claimants 2, 3 and 4 are the sisters of the deceased - Madhu and daughters of deceased - Chandramma. They have filed claim petitions under Workmen's Compensation Act seeking compensation on account of untimely death of both the deceased that occurred on 12-02-2002, due to the rash and negligent driving by the driver of the compressor. They have sustained fatal injuries and thereafter succumbed to the same. Further, it is the case of the Claimants that the father of the deceased - Madhu and husband of deceased - Chandramma has lost his life partner and companion at the young age and the Claimants No. 2 to 4 have lost love and affection and security in life & it has also affected social, moral and economic condition of the family. The deceased were hale and healthy prior to the accident."

4. The said claim petitions have come up for consideration before the Commissioner for Workmen's Compensation. After appreciating the oral and documentary evidence and other material available on file, the Labour Court has taken the income of the deceased at Rs. 3,200/- p.m. and also considering the age at 14 years for deceased - Madhu and 40 years for deceased - Chandramma has awarded a sum of Rs. 3,65,664/- in first claim petition and Rs. 2,94,672/- in the second claim petition with interest at 12% per annum from 30 days after date of accident. Not being satisfied with the impugned judgment and award the Insurer and Hirer have presented these appeals, for modification of the same.

5. The submission of the learned counsel Mr. Suryanarayana Rao, at the outset, is that the Commissioner for Workmen's Compensation has committed an error in awarding the compensation to the claimants. It is their specific case that

vehicle belongs to respondent No. 5 - K.C. Sannaiahppan and the said vehicle has been given on agreement of hire to the respondent No. 6 - Srinivasa S/o. Chandre Gowda, appellant in second appeal and that has been used for quarrying purpose by respondent No. 7 - Ravi S/o. Basave Gowda. Therefore, he vehemently submitted that the direction issued to respondents No. 2, 3 and 4 the Insurer, Hirer and the owner of the quarry to indemnify the award is not justifiable and is liable to be set aside.

6. The learned counsel Mr. N.R. Ravikumar, appearing for hirer, submitted that direction issued by the Commissioner for Workmen's Compensation to indemnify the award amount jointly and severally, cannot be sustained and is liable to be set aside. To substantiate his submission he pointed out that he has not engaged the services of deceased - Madhu or Chandramma and further he asserted that they are the labourers and their services were engaged by respondent No. 7 - Ravi S/o. Basave Gowda, being owner of the mines for quarry purpose. Therefore, without affording reasonable opportunity to substantiate their case and establish that both the deceased were working under respondent No. 7, the Labour Court has passed the impugned order. These two aspects of the matter are not looked into or considered by the Commissioner for Workmen's Compensation. Therefore, the finding on fact recorded against the Insurer and Hirer cannot be sustained and liable to be set aside.

7. The learned counsel Mr. Abhinav R. appearing for respondent No. 5 does not dispute that he is the owner of the vehicle involved in the accident and he leased the vehicle to respondent No. 6, who in turn allowed respondent No. 7 to use that vehicle for quarrying purpose and he has not engaged the services of the deceased Madhu or Chandramma for any purpose. He also contended that he has not been given any opportunity to establish the fact that the services of both the deceased were not engaged by him and to establish that fact he has given the vehicle on lease to respondent No. 6. Therefore, he submits in the interest of justice and to safe guard the interest of owner of the offending vehicle, hirer and owner of the quarry as also to establish their respective defence and to substantiate as to who had employed the services of the deceased and thereafter who has to indemnify the award amount would arise. This aspect of the matter has not been properly appreciated and hence the judgment and award in question is liable to be set aside and matter may be remanded back to the jurisdictional Labour court.

8. After careful consideration of the contentions of the learned counsel appearing for the Insurer, Hirer and Owner of the vehicle involved in the accident, the learned counsel for the Claimants and learned counsel appearing for respondent No. 5 as also after perusal of the impugned judgment and award dated 26.06.2007 passed by the Commissioner for Workmen's Compensation, Hassan Sub-Division, Hassan in WC.F.SR: 2 & 3 of 2007, it is very clear that without conducting proper inquiry and without considering the relevant material available on record and the stand taken by the Claimants in their claim petition and

objections taken by the Insurer, Hirer and owner of the offending vehicle, the Commissioner has proceeded and decided that the appellant - Insurer, Hirer and owner of the vehicle in question are jointly and severally liable to indemnify the award amount.

9. As rightly pointed out by the learned counsel appearing for all the parties, until and unless the Commissioner for Workmen's Compensation records a specific finding of fact, after looking into records and specific defence taken by the parties in the objections and stand taken in the claim petition, as to under whom the deceased Madhu and Chandramma were working, the liability cannot be fixed. This aspect of the matter has not been looked into nor decided by the Commissioner while passing the impugned judgment and award. Therefore, we find there is some force and substance in the arguments of the learned counsel for parties. In view of this the impugned judgment and award passed by the Commissioner directing to indemnify the amount awarded by the appellant - Insurer, hirer and owner cannot be sustained and liable to be set aside.

10. In the light of the facts and circumstances of the case referred to above the instant appeals filed by the appellants are allowed. The impugned judgment and award dated 26.06.2007 in Case No. CWC/F/ASR 2 & 3/2007 on the file of the Labour Officer & Commissioner for Workmen's Compensation, Hassan Sub-Division, Hassan, is hereby set aside. The matter stands remitted back to the jurisdictional Labour Court. The Labour Court is directed to dispose of the matter afresh keeping in mind the contentions and reasons referred to above and decide the matter after affording opportunity to all the parties, in accordance with law as expeditiously as possible at any rate within a period of 10 months from the date of receipt of the records.

All the parties to the proceedings are permitted to appear either personally or through their counsel on 11.08.2014 at 11.00 am before the concerned Labour Court.

Registry is directed to transmit the records to the jurisdictional Court.

Further, Registry is also directed to transmit the amount in deposit made by the Insurer and the Hirer to the jurisdictional court. The jurisdictional Court, in turn, is directed to invest the said amount in any nationalized bank till disposal of the main matter on merits.

Liberty is reserved to all the parties to file necessary applications to adduce oral and documentary evidence within a period of four weeks from the date of receipt of the copy of this judgment. In the event such applications are filed, the Labour Court is directed to receive the same and pass appropriate orders in accordance with law.