

(2015) 04 KAR CK 0120

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 9841, 9842 and 9843/2007 and 21440/2008 (WC)

The New India Assurance Co. Ltd.

APPELLANT

Vs

Doddarama and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0120

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : N.R. Kuppellur, for the Appellant; Hanamant R. Latur, Advocates for the Respondent

Judgement

B. Manohar, J.—Appellant - Insurance Company filed these appeals challenging the judgment and order dated 22.02.2007 made in WCA.SR-69/2001, 71/2001 and 72/2001 passed by the Labour Officer and Commissioner for Workmen's Compensation, Belagavi (hereinafter referred to as "the WCC for short).

2. Since the common order dated 22.02.2007 passed by the Commissioner of Workmen Compensation is challenged in these three appeals, all the appeals are clubbed together and disposed of by this common judgment. Further, the claimant in WCA.SR-69/2001 filed MFA No. 21440/2008 seeking for enhancement of the compensation as also the rate of interest awarded by the WCC, which is contrary to law.

3. 1st respondent in these three appeals are claimants. They filed the claim petitions contending that they are working as Hamals in the vehicle bearing regno.KA-22/T-1357 belonging to the 2nd respondent in these appeals. On 31.12.2000 while they were proceeding from Hattargi village to Benakanholi carrying groundnut bag, due to the rash and negligent driving of the said lorry by its driver, the vehicle met with an accident near Sindhihalla village. In view of the accident, the claimants sustained grievous injuries and fracture of ribs and injuries to head and legs. Initially, they had taken treatment in the Government

hospital at Yamakanmaradi. Thereafter they were shifted to the District Hospital, Belagavi. In view of the injuries sustained and disability suffered by them, they cannot work as Hamals in future. The Yamakanmaradi police have registered a case in Crime No. 231/2000 against the driver of the offending vehicle. The accident occurred during the course and out of employment. Prior to the accident, the claimants were getting the salary of Rs. 3,000/- per month and sought for compensation.

4. Insurance Company filed statement of objections and contended that there is no relationship of master and servant between the claimants and owner of the vehicle. The claimants in these appeals filed MVC Nos. 159, 160 and 161/2001 before the Motor Accident Claims Tribunal, Belgaum, contending that while they were travelling as passengers in the goods vehicle along with the groundnut bags, they sustained injuries in the road traffic accident, and they were the agriculturists. Subsequently, the said claim petitions before the Tribunal were withdrawn and the claim petitions were filed before the WCC contending that the claimants were working as Hamals in the said lorry. No document has been produced to show that they were working as Hamals in the lorry and hence the claimants are not entitled for any compensation and sought for dismissal of the claim petition.

5. The Commissioner taking into consideration the police records and other relevant records held that there is a relationship of master and servant between the claimants and owner of the offending vehicle and as the claimants were working as hamals in the said lorry and the accident occurred during the course and out of employment, the Insurance Company has to compensate the claimants and fastened the liability on the Insurance Company. With regard to the quantum of compensation, the WCC taking into consideration the income of the claimants as Rs. 2,000/- per month, applying the relevant factors and taking into consideration disability, awarded the compensation,

6. Being aggrieved by the judgment and order passed by the WCC, the Insurance Company filed MFA Nos. 4114/2002, 4116/2002 and 4115/2002 before this Court. This Court, after considering the matter in detail, allowed the said appeals, set aside the order passed by the WCC and remanded the matter to the Commissioner to reconsider the matter afresh with regard to the relationship of master and servant and pass appropriate orders in accordance with law. After remand, WCC clubbed three claim petitions together and allowed the parties to lead evidence once again and permitted the Insurance Company to cross-examine the claimants and to lead evidence.

7. The WCC after considering the oral and documentary evidence, held that the claimants were working as hamals in the offending lorry and in the road traffic accident occurred on 31.12.2000, the claimants have sustained injuries and they are entitled for the compensation. The WCC also fastened the liability on the Insurance Company and directed the Insurance Company to compensate the claimants, by the judgment and order dated 22.02.2007. Being aggrieved by the

said order, the appellant Insurance Company filed these appeals.

8. Sri. N.R. Kuppelur, learned counsel appearing for the appellant, contended that the judgment and order dated 22.02.2007 passed by the WCC is contrary to law. Earlier, the claimants had filed MVC Nos. 159/2001, 160/2001 and 161/2001 before the MACT claiming compensation, contending that while they were travelling along with the groundnut bags, accident occurred and they sustained injuries. It was claimed that they were agriculturists by profession and had sought for compensation. However, they withdrew the said claim petitions and filed claim petitions before the WCC, contending that they were working as hamals in the offending lorry, which is contrary to the statement made in the claim petitions filed before the Tribunal. It is contended that, admittedly the vehicle involved in the accident is a goods vehicle. The claimants were travelling along with the goods as passengers and hence they are not entitled for any compensation and no material has been produced to establish the relationship of master and servant before the WCC. Hence it is contended that the order passed by the WCC is contrary to law.

9. On the other hand, Sri. Hanumant Latur and Sri. M.M. Kannur, learned counsel appearing for the claimants and Sri. Anandkumar, learned counsel appearing for the owner of the vehicle argued in support of the judgment and order passed by the WCC and contended that the claimants were working as hamals in the lorry bearing registration No. KA-22/T-1357 belonging to one Yallappa. The owner of the vehicle appeared before the WCC and filed statement of objections contending that the claimants were working as hamals in the lorry belonging to him and they sustained injuries in the accident occurred on 31.12.2000. Since the vehicle is covered by the Insurance Policy, the insurer is liable to compensate the claimants. Apart from that, immediately after the accident, a complaint was lodged before the jurisdictional police. They have clearly mentioned that, while the claimants were working as hamals, after loading the groundnut bags belonging to Maruti Rama Naik, Laxman Subraya Kolli and Rama Siddappa Naik, due to rash and negligent driving of the said lorry, the vehicle met with an accident at about 12.30 pm near Sindhiholla. The claimants have specifically contended that they have not authorized any person to file the claim petition before the MACT. One unknown person has taken their signatures and they were not aware of the name and address of the said person. In fact much before the Insurance Company filed the statement of objections, the said appeals were withdrawn by the said person. The WCC taking into consideration all those aspects of the matter, passed by judgment and order and sought for dismissal of the appeal.

10. I have carefully considered the arguments addressed by the advocate appearing for the parties and perused the judgment and order, oral and documentary evidence adduced by the parties.

11. The records clearly disclose that, while the claimants were working as hamals in a lorry bearing registration No. KA-22/T-1357 during the course and out of

employment, they had sustained injuries in view of the rash and negligent driving of the said vehicle. Immediately after the accident the claimant in WCA.SR-69/2001 lodged a complaint stating that while they were proceeding from Hattargi village to Benakanahalli, some of the persons were waiting for the vehicle along with the groundnut bag and they requested to stop the vehicle. After loading the groundnut bags they proceeded towards Benakanahalli. On the way the vehicle met with an accident near Sindhihalla at about 12.30 pm. In the evidence also, the claimants have deposed that they were working as hamals in the lorry belonging to the 2nd respondent. In the cross-examination, nothing contrary has been elicited by the advocate appearing for the appellant. During the course of cross-examination, the claimants have specifically mentioned that they have not authorised the said party to prefer the claim petitions before the Tribunal. When they were in the hospital, their signatures were taken on Vakalaths. In fact the said claim petitions were withdrawn much prior to the appellant filing the statement of objections. Immediately after discharge from the hospital, the claimants had filed the claim petition bearing WCA.SR.69/2001, 71/2001 and 72/2001. The insurance policy of the offending vehicle also covers three coolies working in the said lorry. The claimants in their evidence clearly mention that they were carrying the groundnut bags in the lorry and the claimants themselves admitted that, after loading the groundnut bags, while proceeding towards Benakanahalli the accident had occurred. The appellant has also not produced any document to show that the claimants are not the hamals working in the said lorry and no materials have been produced to show that there is no relationship of master and servant.

12. On the other hand, the evidence of the claimants clearly disclose that they were working as hamals in the said lorry. The Insurance policy covers three hamals.

13. Hence, I do not find any infirmity or irregularity in the finding recorded by the WCC. The appellant has not made out a case to interfere with the same. There is no substantial questions of law to be decided in this appeal. Accordingly, appeals filed by the appellant - Insurance Company are liable to be dismissed.

14. The claimant in MFA 21440/2008 contended that interest at 12% p.a. awarded from 30 days of passing of the order is contrary to law. In view of the judgment of the Hon'ble Supreme Court reported in The Oriental Insurance Company Ltd. Vs. Siby George and Others, (2012) ACJ 2126 : AIR 2012 SC 3144 : (2012) 134 FLR 1064 : (2012) 7 JT 301 : (2013) LabIC 350 : (2012) 3 LLJ 609 : (2012) LLR 897 : (2012) 4 PLR 598 : (2012) 4 RCR(Civil) 617 : (2012) 7 SCALE 86 : (2012) 12 SCC 540 : (2012) 4 TAC 5 : (2012) AIRSCW 4384 : (2012) 5 Supreme 254 in the case of Oriental Insurance Company Ltd., v. Siby George and Others, the claimant is entitled for interest from one month after the accident and not from one month after the passing of the order. The compensation awarded by the WCC taking into consideration income, applying the relevant factor and the disability assessed by the doctor is in accordance with

law. However, the claimant in MFA No. 21440/2008 is entitled for interest from 30 days after the accident. Accordingly, I pass the following order.

ORDER

MFA Nos. 9841/2007, 9842/2007 and 9843/2007 filed by the Insurance Company are dismissed.

MFA 21440/2008 filed by the claimant is allowed in part. The claimants are entitled for interest at the rate of 12% p.a. from 30 days after the accident.

The amount in deposit be transferred to the WCC, Belagavi.