

(2016) 03 KAR CK 0304

In the Karnataka High Court

Case No : MFA No. 31292 of 2010 (WC) C/w. MFA NOS. 31293, 31294, 31295, 31296 and 31297 of 2010 (WC) MFA No. 31292 of 2010 (WC)

The New India Assurance Co. Ltd.

APPELLANT

Vs

H. Hussain and others

RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 2(c), 30, 4(1)(c)(ii)

Citation : (2016) 4 ACC 188 : (2016) 150 FLR 98 : (2016) LabLR 546 : (2016) 3 TAC 663

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Amaresh S. Rawoor, Advocate For Sri Basavaraj R. Math, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Sujatha, J. - All these appeals arise out of the common Judgment and Order passed by the Commissioner for Workmen's Compensation, Raichur. Hence, these matters are clubbed, they are heard together and disposed of by this common Judgment.

2. Briefly stated the facts are:

That the injured claimants working as Driver, Cleaner and Labourers were travelling in the lorry bearing No. AP 02/4365 on 3.11.2008 and the said lorry met with an accident due to which the occupants of the lorry who were employees in the course of employment sustained grievous injuries. The injured moved before the Commissioner for Workmen's Compensation, Raichur seeking for suitable compensation under the provisions of the Workmen's Compensation Act, 1923, ["the Act" for short]. The Commissioner, after appreciating the evidence available on record, allowed the claim petitions, awarded the compensation to the claimants as under:

Sl. No.

Claim Petition Numbers

Name of the Claimant

Occupation

Amount [in Rs.]

1

40/2009

H. Hussain

Driver

1,74,703

2

41/2009

Hemantharaj

Cleaner

1,51,417

3

42/2009

Hanumanthappa

Hamali

1,08,279

4

43/2009

Hussainappa

Hamali

1,13,568

5

44/2009

Ramesha

Hamali

1,10,764

6

45/2009

Sunkappa

Hamali

1,05,445

Being aggrieved by the said compensation amount awarded by the Commissioner, the Insurer is before this Court.

3. Learned Counsel for the Insurer contends that the Commissioner erred in relying on the disability certificate assessed by the non treated Doctor and assessed the compensation of a non schedule injury exorbitantly contrary to the provisions of Section 4[1][c][ii] of the Act. It is contended that the PW.7-Doctor had assessed the disability without any valid basis. Though the same was denied by the Insurer, the Commissioner accepting the evidence of the Doctor assessed the disability as under:

Sl. No.

Claim Petition Numbers

Name of the Claimant

Occupation

Percentage of disability

Accordingly, she seeks to set aside the order impugned herein.

4. Per contra, learned Counsel appearing for the claimants justifying the order passed by the Commissioner contends that the Doctor who had examined all the injured claimants with reference to the medical records, particularly, wound certificate and the X-rays assessed the disability. The permanent disability of the claimants was corroborated by the Expert evidence as per the provisions of Section 4(1)(c)(ii) of the Act. As such, the Commissioner has assessed the disability in accordance with the disability certificate coupled with the wound certificate and awarded the compensation which cannot be found fault with.

5. Considered the rival submissions made by the parties.

6. These appeals are filed by the Insurer under Section 30 of the Act which contemplates that no appeal shall lie against any order unless substantial question of law is involved in the appeal. The arguments advanced by the appellants relates to re-appreciation of the evidence made by the Commissioner. The Commissioner appreciating the evidence, has given a finding of fact with regard to the extent of loss of earning capacity of the claimants as a result of the accident. It is settled law that under the scheme of the Act, the Commissioner is the final authority on the questions of fact and the first appellate authority is the

final authority on the questions of law. No case is made out by the Insurer to controvert the evidence led by the Doctor. No attempt is made to discard the evidence of the Doctor by either taking a second opinion of the qualified Doctor or seeking for referring the matter to a panel of Doctors or Medical Board to assess the loss of earning capacity of the claimants. Mere denial of the disability assessed by the Doctor would not suffice to establish the case of the Insurer that the injured claimants had suffered simple injuries and there was no permanent disability. PW.7-Doctor is an Orthopaedic surgeon who has issued the disability certificate.

7. Section 4[1][c][ii] of the Act provides that in case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent disablement as is proportionate to the loss of earning capacity as assessed by the qualified medical practitioner permanently caused by the injury. It is not the case of the Insurer that PW.7 is not the qualified Doctor or that he has not seen the records or examined the Injured or that he has manipulated the records of treatment or he has misread the same. As such, no case is made out by the Insurer that the evidence was inadmissible. An identical issue was before the Apex Court in the case of "B. Lakshmana Etc., v. The Divisional Manager, New India Assurance Company Limited Etc.," in Civil Appeals No. 11381-11386/2013 and the Apex Court has observed thus:

"12. Under the scheme of the Act, the Workmen's Compensation Commissioner is the final authority on the questions of fact and the first appellate authority is the final authority on the question of law. In the instant case, there is no question of law much less a substantial question of law arising for consideration under Section 30 of the Act for the High Court. The High Court has simply ventured to re-appreciate the evidence and record a difference finding, which is not within its jurisdiction under Section 30 of the Act, in the absence of any material irregularity or perversity."

8. In the light of the said Judgment and considering the factual matrices of the instant cases, it is apparent that no case is made out by the appellants to entertain the appeals as there is no question of law much less substantial question of law arising for consideration under Section 30 of the Act.

9. Accordingly, all these appeals are dismissed.

10. The amount in deposit shall be transmitted to the jurisdictional Authority and the claimants are at liberty to withdraw the same.

11. In view of the dismissal of the appeals, pending applications do not survive for consideration and are dismissed accordingly.