
(2016) 02 KAR CK 0391

In the Karnataka High Court

Case No : MFA Nos. 20864, 20847, 20848/2008 and 20844/2008(WC)

The New India Assurance Co. Ltd.

APPELLANT

Vs

Obelesh and Others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 2(1)(n)

Citation : (2016) 02 KAR CK 0391

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : G.N. Raichur, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

B. Manohar, J.—1. The New India Assurance Company has filed these appeals challenging the judgment and order dated 07-10-2008 made in WC/NF/72 to 75/2006 passed by the Labour Officer and Commissioner for Workmen Compensation, Koppal (hereinafter referred to as "the WCC for short) wherein the liability has been fastened on the appellant to compensate the claimants.

2. The common judgment and order passed by WCC, Koppal is challenged in these appeals. Hence all the appeals are clubbed together and disposed of by this common judgment.

3. Respondent No. 1 in all these appeals had filed the claim petitions contending that they were working as loader/labourer in a mini goods lorry bearing registration No. KA-06/9804 belonging to the second respondent herein. As per the instructions of the owner of the vehicle, on 30th August 2004 at about 2.30 a.m., they were proceeding towards Sindhanoor from Chitradurga for the purpose of loading the goods. Due to the rash and negligent driving of the said lorry by its driver, the vehicle dashed against another parked vehicle near Maraba cross on NH-13. Due to the impact, the claimants had sustained grievous injuries. Immediately after the accident, they were shifted to the Government

Hospital at Kudligi and thereafter they had taken treatment at private hospitals. Prior to the accident, owner of the vehicle was paying them daily wages of Rs. 150/-. In view of the accident, they cannot work as loaders. The accident occurred during the course and out of employment and hence, each of them sought for compensation of Rs. 4,50,000/- with interest at 12% p.a.

4. In pursuance of the notice issued by the WCC, the owner of the vehicle filed the written statement denying the entire averments made in the claim petitions and also contended that the claimants were not working as loader/labourer in the lorry belonging to him. He was not paying any salary to the claimants. On the date of accident, the claimants were travelling as unauthorized passengers and there is no relationship of master and servant between the claimants and him. Hence, sought for dismissal of the claim petitions as against the owner of the vehicle.

5. The Insurance Company filed written statement denying the entire averments made in the claim petitions and also contended that there is no relationship of master and servant between the claimants and owner of the vehicle. It is also contended that the owner has also disputed the relationship of master and servant. As on the date of accident, the offending vehicle was not covered by the insurance policy. Apart from that the driver of offending vehicle did not possess the valid and effective driving license. The claimants were traveling as unauthorized passengers and the insurance policy of the offending vehicle does not cover the risk of the unauthorized passengers. Hence, sought for dismissal of the claim petitions.

6. On the basis of pleadings of the parties, WCC framed necessary issues. The claimants got examined themselves as P.W.1 in each of the appeals and got marked the documents as Ex. P1 to Ex. P19. Dr. Vishwaprasad, who had issued disability certificate was examined as P.W.2. On behalf of the respondents, none of the witnesses were examined.

7. The WCC after appreciating the oral and documentary evidence let in by the parties, taking into consideration spot panchanama, MVI report, copy of the complaint and charge sheet held that due to the rash and negligent driving of the goods vehicle, the accident had occurred and the claimants have sustained injuries. The claimants were working as loader/labourer, they sustained injuries during the course and out of employment and they are entitled for compensation. Taking into consideration age of the claimants and disability assessed by the doctor, applying the relevant factor, the WCC awarded compensation to the claimants. Since the vehicle is covered by insurance policy, the liability was fastened on the Insurance Company to compensate the claimants. The appellant-Insurance Company, being aggrieved by the judgment and order passed by the WCC, filed these appeals.

8. Sri. G.N. Raichur, learned counsel appearing for the appellant-Insurance Company contended that the judgment and order passed by the WCC is contrary

to law. Under the Employees Compensation Act, to award the compensation the claimants must prove that they are the workmen under Section 2(1)(n) of the Employees Compensation Act. In the instant case, no document has been produced to show that they were workmen within the provisions of Employees Compensation Act. The owner of offending vehicle also denied that the claimants were working as loader/labourer in his lorry and he was not paying any salary to the claimants. The WCC only on the basis that the claimants have sustained injuries in the road traffic accident due to the rash and negligent driving of the driver of the offending vehicle, awarded compensation, which is contrary to law. Further, against the order passed in some of the claim petitions arising out of the very same accident, this Court in MFA Nos. 10381-10383/2007 by its order dated 27-08-2010 set aside the judgment and order passed by the WCC and allowed the appeals filed by the Insurance Company. It is further contended that in the complaint lodged before the jurisdictional police, the claimants have admitted that 25 to 40 persons were travelling in the said vehicle wherein they were proceeding to Sindhanoor to purchase sheep. At no stretch of imagination, the claimants can be treated as workmen. Hence, sought for setting aside the judgment and order passed by the WCC by allowing these appeals.

9. Though the respondents are served with notice, they remained unrepresented.

10. I have heard the learned counsel appearing for the appellant/Insurance Company and perused judgment and order, oral and documentary evidence

11. The records clearly disclose that the claimants have sustained injuries in the road traffic accident occurred on 3-8-2004 at about 2.30 a.m. Immediately after the accident, a complaint was lodged before the jurisdictional police, wherein it was clearly admitted that they were travelling in a goods vehicle towards Sindhanoor for the purpose of purchasing sheep. On the date of accident, around 25 to 40 persons were travelling in the said goods vehicle. However, in the claim petitions, the claimants have contended that they were working in the said lorry as loader/labourer. The owner of offending lorry, in his written statement had disputed the claim made by the claimants and denied that they were working in the said lorry. In fact, one Mansor, P.W.16 was working as cleaner in the said lorry. The claimants have not produced any document to show that they were working as loaders in the said lorry and they were paid salary of Rs. 150/per day. Except oral assertion, no document has been produced to establish the same. The WCC only on the basis that the claimants have sustained injuries in the road traffic accident awarded the compensation. The WCC has lost sight of the complaint made before the jurisdictional police. In the complaint, the injured persons have clearly admitted that 25 to 40 persons were travelling in the offending vehicle to Sindhanoor for the purpose of purchasing sheep.

12. In order to award compensation under the Employees Compensation Act, the claimants must prove that they are workmen under Section 2(1)(n) of the Employees Compensation Act. If they are workmen within the provisions of the Act, then only they are entitled for compensation. In the instant case, the

claimants have failed to establish that they are workmen under the provisions of the Employees Compensation Act. Hence, the order passed by the WCC cannot be sustained. The insurance policy of the offending vehicle does not cover the risk of unauthorized passengers travelling in the goods vehicle. In fact, some of the injured persons in the very same accident have filed claim petitions in MVC Nos. 991/2005, 992/2005 & 949/2005. The compensation awarded by the WCC in those claim petitions was set aside by this Court in MFA Nos. 10381-10383/2007 on the appeals being filed by the appellant-Insurance Company. The issue raised in these appeals is fully covered by the judgment referred to above since it is arising out of the very same accident. Accordingly I pass the following:

ORDER

All the appeals are allowed. The judgment and order dated 07-10-2008 made in WC/NF/72 to 75/2006 passed by the Labour Officer and Commissioner for Workmen Compensation, Koppal is set aside. The claim petitions filed by the claimants are dismissed.

The amount in deposit is directed to be refunded to the appellant-Insurance Company.