
(2011) 01 KAR CK 0221

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7760 of 2005

The New India Assurance Company Limited

APPELLANT

Vs

K. Somashekhar and Another

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Citation : (2011) 130 FLR 612 : (2011) ILR (Kar) 1880 : (2011) 3 KarLJ 101 : (2011) 3 LLJ 815 : (2011) 3 TAC 76

Hon'ble Judges : I.L.L. Manjunath, J;H.G. Ramesh, J

Bench : Division Bench

Advocate : Vishwanath S. Shettar, for the Appellant; Suresh M. Latur, for the Respondent

Judgement

K.L. Manjunath, J.—This case is a classic example to show how the powers granted to the Commissioner for Workmen's Compensation

under the provisions of the Workmen's Compensation Act, 1923 can be misused while awarding compensation in respect of non-schedule

injuries.

2. This appeal is preferred by the Insurance Company challenging the legality and correctness of the order passed by the Commissioner for

Workmen's Compensation, Bangalore in Case No. WCA/NFC/CR-30/2003, dated 28-6-2005, wherein a compensation of Rs. 5,05,106/- has

been awarded with interest at 12% p.a.

3. The facts leading to this case are as hereunder:

The 1st Respondent lodged a claim petition claiming compensation on account of the injury sustained by him while discharging his duty as a

workman under the Respondent 2 on 4-2-2003 at 3.30 p.m. while driving the

auto rickshaw No. KA 04 9902. According to him on the said date while he was proceeding from North to South on Bannerghatta Road, another vehicle No. DDQ-8373 was coming from Southern side to Northern side and on account of the rash and negligent driving of the said vehicle it dashed against the auto which was being driven by the 1st Respondent as a result of which the 1st Respondent sustained fracture to his right wrist and also to his head. He was shifted to NIMHA Ns Hospital and thereafter he was admitted to Krishna Nursing Home. According to him on the date of the incident he was aged about 23 years, getting a salary of Rs. 4,000/- per month and a batta of Rs. 20 per day. It was also his case that on account of the injury sustained in the accident 1st Respondent has become an invalid person and his not only incapable of driving auto and he is also incapable of doing any manual work.

4. The Insurance Company contested the case. The owner of the auto rickshaw did not contest the case. It was contended by the Insurance Company that the Appellant is not permanently disabled and is able to drive the vehicle and the compensation claimed by the claimant as excessive.

5. In order to prove the contention of the claimant, the claimant got himself examined as P.W. 1 and Dr. Ramesh Krishna an Orthopedic Surgeon attached to Victoria Hospital was examined as P.W. 2. Doctor has deposed that on account of the injury sustained by the Petitioner he has been suffering from a permanent residual physical disability of 32% of right upper limb and which is about to 10 to 11% of the whole body and in view of this disability the Petitioner cannot work as auto rickshaw driver and cannot do any other manual work also. The Doctor was cross-examined by the Insurance Company. In the cross-examination he has admitted that the fracture of right wrist has been united completely. He has denied the suggestion put by the Insurance Company Advocate that the claimant is not suffering from any disability. The Commissioner considering the evidence let in by the parties and based on the examination-chief of the Doctor came to the conclusion that the claimant is not only unable to drive auto rickshaw but also unable to do any other manual work and considering the disability as 100%, awarded a compensation of Rs. 5,05,106/- with interest at 12% p.a. This order and award is called in question in this appeal.

6. It was contended by the Appellant-Insurance Company that the claimant has not been suffering from any disability in view of the admission of the doctor in his cross-examination that the right wrist of the claimant has been united. Therefore, he contends that the Respondents Counsel may be directed to keep the Respondent present.

7. Having heard the learned Counsel for both the parties, as this Court has been noticing in several cases coming under the provisions of the

Workmen's Compensation Act, 1923, the Commissioners are in the habit of awarding compensation exorbitantly in respect of non-schedule

injuries. This Court also felt that it is necessary to issue not only notice to the 1st Respondent but also to the Doctor who has been examined as

P.W. 2. Accordingly, on 10-1-2011 P.W. 2-Dr. Ramesh Krishna and the 1st Respondent appeared before this Court. By looking into the

personality of the 1st Respondent, we directed the 1st Respondent to show his right wrist. There is no disability to right wrist at all. He also

admitted that he can drive the auto rickshaw. After looking into Respondent 1 we directed the Doctor who was present before this Court to show

how he has given the certificate that the 1st Respondent is not only incapable of driving the vehicle but also incapable of doing any other manual

work. Then the doctor has admitted before us that the certificate issued by him is incorrect. The Respondent who was present before the Court

also stated that his licence need not be cancelled and he is willing to continue as driver of the auto rickshaw.

8. From the above narration it is clear to the Court that in order to get more compensation a false evidence has been given by the 1st Respondent

and he has been supported by P.W. 2-Doctor who has given the evidence and the Commissioner who has seen the 1st Respondent personally

granted exorbitant compensation by misusing his power.

9. At this stage, the learned Counsel for the 1st Respondent submits that the 1st Respondent is willing for reduction of the compensation awarded

by the Tribunal.

10. In this background, the Appellant's Counsel as well as the 1st Respondent Counsel have today filed a joint memo stating that a lump sum of

Rs. 1 lakh may be paid as compensation to the 1st Respondent.

11. The memo is taken on record.

12. The learned Counsel for the Respondent 1 submits that in view of the joint memo, the appeal may be disposed of.

13. In the normal circumstances, we would have closed this appeal by accepting the joint memo. But considering the background of this case and

also considering that in several other cases this Court is coming across such complaints about awarding exorbitant compensation by the

Commissioner under the provisions of the Workmen's Compensation Act in regard to non-schedule injuries. We are of the opinion that a time has

come for all of us to introspect ourselves about our conduct in disposing off the cases.

14. In the instant case, though the claimant is healthy and robust, the Commissioner who has seen him personally has treated the claimant as 100%

physical disability assessing the claimant as a disabled person. The Doctor who has deposed before the Commissioner has also given a false

evidence. Even if the Doctor has deposed that the claimant is suffering from 100% physical disability and unable to do any other manual work, the

Commissioner could have assessed the case of the claimant and was required to award just and proper compensation payable to the claimant.

Similarly, the Advocate who is appearing for the Insurance Company has also failed to discharge his duties in not cross-examining the doctor

properly and he had an occasion to request the Commissioner to permit him to examine the claimant through any other competent Orthopedic

surgeons to assess the disability caused to the claimant. He has also failed in his duty. Similarly, though it is the duty of the claimant's Advocate to

get a just and proper compensation to his client, he is not expected to lead a false evidence being an officer of the Court. Therefore, we are of the

opinion a time has come for all of us to introspect ourselves about our duties while discharging our function. The Commissioner who is sitting as a

quasi-judicial authority, is required to assess the disability caused to the claimant properly and if he is of the opinion that the evidence of the Doctor

cannot be believed he can refer the matter to other competent doctor to assess the disability caused to the claimant. Similarly, the Advocates who

appear for the parties are also required to assist the Commissioner properly. We treat the Doctors as equal to the God and virtually a divine power

is given to them to treat the victims. After treating the victims, the divine power given to the doctors cannot be misused. It is their duty to assist the

Commissioner to arrive at proper conclusion and to award compensation based on the actual disability caused to the claimants. But doctors are

not supposed to give a false evidence or a false certificate assessing the disability incorrectly in order to get more compensation to the claimants for

false reasons which would restrain ourselves from expressing so.

15. We are also coming across that the Commissioner, Workmen's Compensation being a quasi-judicial authority by misusing his power is

awarding exorbitant compensation in regard to non-schedule injuries. According to us, such actions can be reduced or minimized if the cases are

allowed to be filed before the Motor Accident Claims Tribunal since the Motor Accident Claims Tribunal would be headed either by the District

Judge or a Civil Judge (Senior Division), cadre. If such power is vested to MACT, it would also reduce the burden of the claimants since MACT

claims Tribunal are available in almost all Taluk Headquarters. But such availability is not there if the claimant is directed to approach the

Commissioner for Workmen's Compensation as the office of the Commissioner for Workmen's Compensation is situated either in the Divisional

Headquarters or in District Headquarters. Therefore, we are of the opinion, time has come for us to request the Law Commission of India to

examine the feasibility of suggesting suitable amendment to the Workmen's Compensation Act, 1923, to lodge the claim petition before the Motor

Accident Claims Tribunal.

16. Similarly, a time has come for us to direct the Principal Secretary to the Health Department to circulate this order to all the Doctors in the

Hospitals, not to give any false evidence and to warn them that if any false evidence is given their registration would be cancelled and proper action

would be initiated.

17. Similarly, we are also of the opinion that the Secretary to the Labour Department of Karnataka shall instruct the Commissioner for Workmen's

Compensation to do complete justice and not to play with the exchequer of the Insurance Companies.

18. We are also of the opinion that time to time. Training is also required to be given to the Commissioners for Workmen's Compensation through

our judicial academy as they are the quasi-judicial authorities. In the circumstances, we request the Karnataka State Judicial Academy to conduct

Training programmed to all the Commissioners relating to disposal of the cases in accordance with law.

19. We are also of the opinion, that Insurance Companies should appoint competent lawyers to defend the company, failing which the same would result in loss of revenue to the Insurance Companies.

20. In the result, in view of the joint memo filed in this appeal by the parties, the appeal is allowed in part. The compensation awarded by the Commissioner is reduced from Rs. 5,05,106/- to a lump sum amount of Rs. 1 lakh.

21. At this stage, Mr. Vishwanath Shettar, submits that pursuant to the interim order granted by this Court on 15-9-2006 Respondent has already

withdrawn the amount of Rs. 1 lakh. In view of the same, we hold that the Appellant has satisfied the claim of the 1st Respondent in terms of the

Joint memo. The remaining amount in deposit is ordered to be returned to the Appellant.

We direct the registry to send a copy of this order to the Law Commission of India, New Delhi, the Law Commission in Karnataka, the Director,

Karnataka Judicial Academy, Bangalore, the Principal Secretary to Health Department, the Principal Secretary to the Labour Department and also

to send a copy of this order to all the Insurance Companies and KSRTC for further course of action.