
(2017) 06 KAR CK 0118
In the Karnataka High Court
Case No : 2329 of 2009 (WC)

THE NEW INDIA ASSURANCE COMPANY LTD

APPELLANT

Vs

C MALLIKARJUNA, & Anr.

RESPONDENT

Date of Decision : 20-06-2017

Acts Referred:

[Workmens Compensation Act, 1923](#), [Section 10](#) - Notice and claim

Citation : (2017) 06 KAR CK 0118

Hon'ble Judges : K.Somashekar

Bench : SINGLE BENCH

Advocate : SMT. ARUNA R. DESHPANDE, SRI. Y. LAKSHMIKANT REDDY

Judgement

1. Respondent No.2-insurer in WCA.No.46/2006 on the file of the Labour Officer and Commissioner for Workmen's Compensation, Sub-Division-II, Ballari, (herein after referred to as "Commissioner" for short) has come up in this appeal impugning the judgment and award dated 29.12.2008.

2. The facts of the case are that: On 23.07.2005 the injured-claimant, namely C.Mallikarjuna (hereinafter referred to as "Workmen" for short) was working as driver of the Autorickshaw bearing No.MH-03-R-7950 belonging to Respondent No.1. When he reached Sudha Cross, near Railway Station, he lost control over the vehicle and dashed against the road divider and sustained grievous injuries to his right leg and right hand. He took treatment as an inpatient for 10 days in VIMS Hospital, Ballari. It was averred in the claim petition that at the time of accident, he was being paid wages of Rs.4000/- per month, apart from daily batta of Rs.50/-. As he sustained injuries during his employment, he filed a claim petition under Section 10 of the Workmen's Compensation Act, claiming compensation of Rs.4,00,000/- from the owner and insurer of the Autorickshaw.

3. After service of notice, the 2nd respondent-insurer has filed statement of objections and contested the claim petition. The 1st respondent-owner of the vehicle, despite service of notice, remained un-represented and he was placed

exparte before the Commissioner.

4. In support of his claim, the claimant-workmen, apart from filing his affidavit evidence got marked the FIR, Charge Sheet, spot panchanama, IMV report, wound certificate, driving license and disability certificate, as at Exs.P.1 to P.7 respectively. On behalf of the 2nd respondent-insurer, except marking the insurance policy, no evidence was let in.

5. On the basis of the pleadings of the respective parties, the Commissioner has framed as many as 5 issues and on evaluation of the oral and documentary evidence, was pleased to held that the "Workman" had sustained the injuries during the course of his employment and consequently allowed the claim petition, awarding compensation of Rs.51,667/- with interest at 12% per annum from the date of award. It is this award which is under challenge in this appeal by the insurer.

6. Smt. Aruna R. Deshpande, learned counsel for the appellant-insurer vehemently contended that the Doctor who had issued disability certificate, as at Ex.P.7 was not a qualified doctor in the field of Orthopedic. Further, she contended that the injuries sustained by the claimant are simple in nature and that they are not scheduled injuries and hence, the Commissioner is not justified in holding that the claimant had sustained 10% permanent physical/functional disability and hence, the compensation awarded by the Commissioner is excessive. On these primary grounds, she prays for setting aside the impugned award.

7. Per contra, Sri. Y.Lakshmikant Reddy, learned counsel for the Workman, placing reliance on the Judgment of the Apex Court in the case of Golla Rajanna and others ?vs- Divisional Manager & another (2017) 1 SCC-45 arising out of the Judgment dated 20.11.2012, rendered by the coordinate Bench of this Court in MFA. No.22543/2009 and other connected matters, vehemently contended that the Commissioner, on considering the evidence on record, was justified in awarding compensation and prays for dismissal of the appeal filed by the insurer.

8. On careful scrutiny of the evidence on record, it is seen that during the enquiry before the Commissioner, the Workmen has established the jural relationship of Employer- Employee and that the injuries sustained by him are during the course of his employment. Though the Doctor who had issued disability certificate as at Ex.P.7 was not an expert in the field of Orthopedic, the same has been issued based on the X-ray report and he assessed the permanent physical/functional disability at 10%. As could be seen from Ex.P.6, the driving license issued by the statutory authority, the Workman was aged 26 years on the date of the accident and having regard to the date of accident being 2005, the Commissioner took his monthly income at Rs.4000/- and applying the relevant factor of 215.28 has rightly determined the compensation payable at Rs.51,667/-.

9. The dictum of the Hon''ble Apex Court, in the case of Golla Rajanna referred above reads thus: "9. The Workmen's Compensation Commissioner, having

regard to the evidence, had returned a finding on the nature of injury and the percentage of disability.

It is purely a question of fact. There is no case for the insurance company that the finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c)(ii) of the Act, the percentage of permanent disability needs to be assessed only by a qualified medical practitioner. There is no case for the respondents that the Doctor who issued the disability certificate is not a qualified medical practitioner, as defined under the Act. Thus, the workmen's compensation Commissioner has passed the order based on the certificate of the disability issued by the Doctor and which has been duly proved before the Workmen's Compensation Commissioner.

10. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to reappreciate the evidence and recorded in its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act. "10. In view of the discussion made above and in view of the dictum laid down by the Hon'ble Apex Court in the case cited supra, there is no substance in the contention urged by the learned counsel for the appellant. No good grounds are made out to interfere with the well reasoned order passed by the learned Commissioner. Consequently, the appeal is liable to be dismissed, inasmuch as, the same is devoid of merit.

Accordingly, the appeal is dismissed.