

(2016) 03 KAR CK 0361

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2733/2007 (WC)

The New India Assurance Company Ltd.

APPELLANT

Vs

Reshma and Others

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

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

Citation : (2016) 4 ACC 142 : (2016) 150 FLR 299 : (2016) 3 TAC 652

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Vijayakumar B. Horatti for Ravi G. Sabhahit, Advocate, for the Appellant; Harish S. Maigur, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—1. The New India Assurance Company being aggrieved by the judgment and order dated 25.01.2007 passed in ALCB/WCA/BGM/SR 22/2006 by the Assistant Labour Commissioner and Commissioner for Workmen's Compensation, Belgavi sub-division, Belgavi, (hereinafter referred to as "the WCC") fastening liability on them to compensate the claimants has filed this appeal.

2. Respondents 1 and 2 herein filed a claim petition contending that respondent No. 1 is the daughter and respondent No. 2 is the brother of one Abdulsab Fakrusab Nadaf who was working as a cleaner in the lorry bearing registration No. KA-22/A-4112 belonging to the 3rd respondent herein. The 3rd respondent was paying a salary of Rs. 2,500/- p.m. and bata of Rs. 100/- per day to Abdulsab Fakrusab Nadaf. On 11.06.2005, after unloading aluminum powder, while Abdulsab Fakrusab Nadaf was proceeding along with the driver towards the market, near Prince Bakery, the said Abdulsab Fakrusab Nadaf collapsed due to internal bleeding in the brain. Immediately, he was taken to the hospital where he was declared as dead. The claimants claimed that the death occurred during the course of employment due to stress and strain. Hence, the owner as well as

Insurer had to compensate the claimants. As on the date of the accident, the Insurance Policy covered risk of the driver and cleaner, they sought for compensation of Rs. 5 lakhs.

3. Pursuant to the notice issued by the WCC, the owner of the vehicle filed the written statement denying the entire averments made in the claim petition and also disputed the relationship of master and servant between the deceased as well as the owner of the vehicle. He contended that at no point of time, the deceased was appointed, as a cleaner in the said lorry or any other lorry owned by him. The case of the owner is that his company owned more than 70 vehicles and they have appointed drivers and cleaners. The deceased was not appointed as a cleaner in any of the lorry and his name is not found in the register maintained by them. It is also his case that the deceased will not fall under Section 2 (1) (n) of the Employees' Compensation Act, 1923. Hence, sought for dismissal of the claim petition.

4. The Insurance Company also filed its objection taking similar contentions.

5. On the basis of the pleadings of the parties, the WCC framed necessary issues. The claimants in order to prove their case, 1st claimant examined herself as PW-1 and got marked the documents Ex. P.1 to Ex. P.6. The power of attorney of 1st respondent i.e., the owner of the vehicle examined himself as RW-1. However, the Insurance Company has not examined any witnesses. The Insurance Policy of the vehicle was marked as Ex. R. 1 with the consent of the parties.

6. The WCC on appreciating the oral and documentary evidence let in by the parties, taking into consideration copy of the complaint, charge-sheet, inquest report, post mortem report and taking into consideration evidence of PW-1 held that the deceased died during the course and out of employment due to stress and strain and that the claimants are the dependants of the deceased. Hence, they are entitled for compensation. Since the vehicle was covered by the Insurance Policy, liability was fastened on the Insurance Company to compensate the claimants.

7. With regard to the quantum of compensation, taking into consideration income of the deceased as Rs. 2,196.40/- p.m., taking into consideration 50% thereof, as he was aged about 29 years taking into consideration relevant factor of 209.92, has awarded a sum of Rs. 2,30,534/- with interest at the rate of 12% p.a.. Being aggrieved by the judgment and order passed by the WCC, the appellant has preferred this appeal.

8. Sri Vijaykumar Horatti, learned counsel appearing for the appellant contended that the judgment and order passed by the WCC is contrary to law. Though the owner of the vehicle has taken a specific contention that there is no relationship of master and servant between the deceased and the owner of the vehicle, the WCC without considering the contention raised by the owner of the vehicle, only on the basis of the complaint lodged by driver of the vehicle, held that there is

relationship of master and servant between the deceased and the owner of the vehicle.

9. Under Section 2(1) (n) of the Act, it is incumbent upon the claimants to prove that deceased was working as a cleaner in the said lorry. Except oral assertion, no document has been produced. However, in the evidence, PW-1/claimant No. 1 has clearly admitted that they have not produced any document to show that the deceased was working as a cleaner in the said lorry belonging to the 3rd respondent herein. The Manager of the 3rd respondent in his evidence has clearly mentioned that deceased was not working as a cleaner in any of the lorries belonging to the 3rd respondent and they have maintained register of the employees working in their company. Hence, the finding of the WCC is contrary to law and sought for setting aside the same.

10. On the other hand, Sri Harish S. Maigur, learned counsel appearing for respondent/claimants argued in support of judgment and order passed by WCC and contended that due to stress and strain during the course of employment, the cleaner working in the said lorry died while he was proceeding towards market road in Goa. If the deceased was not the cleaner of said lorry, there was no occasion for him to go to Goa along with the driver. The autopsy of dead body clearly disclosed that the deceased died due to hemorrhage i.e., due to stress and strain. Hence, sought for dismissal of the appeal.

11. I have carefully considered the arguments addressed by counsel appearing for the parties, perused the judgment and order and oral and documentary evidence. The case of the claimants is that the deceased was working as a cleaner in the lorry belonging to the 3rd respondent and he died during the course of employment due to hemorrhage in view of stress and strain. However, owner of the vehicle disputed the said contention and contended that there is no relationship of master and servant between the deceased and the owner of the vehicle. The 3rd respondent has a company owning more than 70 lorries and they have maintained register of the drivers and cleaners working in their company. The name of the deceased is not found in the register maintained by them and contended that the deceased was not a cleaner working in their company. However, the claimants have not produced any document to substantiate that the deceased was working as a cleaner in the lorry belonging to the 3rd respondent except oral assertion. In the cross-examination of PW-1, she has clearly admitted that she has no document to show that the deceased was working as a cleaner in the company belonging to the 3rd respondent and the 3rd respondent was paying salary of Rs. 2,500/- p.m. to the deceased. Under the Employees' Compensation Act, the claimants must prove that there was relationship of master and servant between the deceased and owner of the vehicle and deceased died during the course and out of employment. It is only thereafter that the responsibility can be fixed on the owner to compensate the claimants.

12. In the instant case, the claimants have failed to prove the relationship of

master and servant between the deceased and the owner of the vehicle. Further, autopsy of the deceased and post mortem report clearly disclose that the deceased died natural death due to hemorrhage. The post mortem also do not support the case of the claimants. The owner of the vehicle in the written statement as well as in the evidence has clearly mentioned that the deceased was not working in their company, more particularly, in the lorry bearing registration No. KA-22/A-4112. Though the Manager of the 3rd respondent was cross-examined at length, nothing contrary has been elicited. If the deceased was working in the company of the 3rd respondent, nothing prevented the claimants to produce the ESI statement as well as the PF statement. Since the 3rd respondent owns a company incorporated under the Compensation Act, they are bound by the provisions of the Compensation Act. No document has been produced to substantiate the contention of the claimants. The WCC without examining the document produced by the parties and only on the basis of the complaint lodged by the driver stating that the deceased was working as a cleaner, has passed the judgment and order. The order passed by the WCC cannot be sustained. Accordingly, I pass the following:

"ORDER

- i) The appeal is allowed,
- ii) The judgment and order dated 25.01.2007 passed in W.CA 22/2006 by the WCC is set aside,
- iii) The claim petition filed by respondents 1 and 2 is dismissed."

The amount in deposit be refunded to the appellant.