

(2010) 01 KAR CK 0089

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3591 of 2004

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Ramanna and Another

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 23, 3, 4 (1) (c)

Citation : (2011) ILR (Kar) 2268 : (2011) 1 KCCR 617

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Aruna Deshpande, for S. Srishaila, for the Appellant; Ravi D. Hosamani, for Lakshmikanth Reddy, for Respondent-1 and Veeresh B. Patil, for Respondent-2, for the Respondent

Judgement

Aravind Kumar, J.—The insured is questioning the correctness and legality of the order passed in W.C. No. 114/2002 by the Commissioner, Workmen's Compensation, Sub-Division-II, Bellary dtd. 28/02/2004.

2. The facts in nutshell are as follows: The rank of parties as arrayed before the Commissioner for Workmen's Compensation, are being referred in this appeal for the sake of convenience.

3. One Sri. Ramanna, working as a driver of auto-rickshaw bearing No. KA 17/6071 belonging to one Sri. S. Veeraiah had taken the said auto-rickshaw on 12/01/2002 and while returning from the village at about 4 p.m. to avoid collision with the vehicle coming from the opposite direction in front of the Engineering college gate, Airport road, Bellary, took a left turn of the autorickshaw on account of which he lost control over the vehicle and turned turtle and fell down, as a result it was claimed that he sustained fracture of his left hand and other injuries and took treatment in a Private hospital.

4. On account of the injuries sustained, a claim petition was filed as referred to supra claiming a total compensation of Rs. 4,00,000/-. On service of notice the

2nd Respondent-insured filed its statement of objections denying the averments made in the claim petition in to to. The sum and substance of said objections was that, complaint was lodged after 13 days from the date of accident, no wound certificate had been produced, Doctor, who issued the disability certificate has not treated the claimant and there was no disability to the injured. Before the Commissioner for Workmen's Compensation, the claimant got himself examined and also examined one Dr. Lakshmi Narayana and got marked Ex.A-1 to A-9. The Respondent examined its. Manager and got marked the insurance policy. During the pendency of the proceedings before the Commissioner for Workmen's Compensation, an application came to be filed by the insured u/s 23 of the Workmen's Compensation Act read with Rule 34 of the Karnataka Workmen's Compensation Rules seeking there under a direction to the insurer to produce the required evidence of witnesses as also required documents, the said application came to be rejected by an Order dtd. 21/02/2004 on consideration of the rival claims advanced before it. The Commissioner for Workmen's Compensation by his Order dtd. 28/02/2004 ordered for payment of compensation of Rs. 1,10,208/- together with 12% interest payable by the 2nd Respondent-Insurance Company. It is this award, which has been assailed by the insured in the present appeal. It is seen from the order sheet that the appeal is yet to be admitted and since by order dtd. 28/10/2004 Lower Court records had been called for and is available on the file, the matter is taken up for final hearing by the consent of learned Counsel appearing for the parties. The Appellant has raised the following substantial question of law for being considered and answered in favour of the Appellant. The same reads as follows-

Whether the Appellant is liable to satisfy the award made by the Commissioner for Workmen's Compensation, when the disablement suffered by the claimant/ Respondent No. 1 was neither permanent nor partial disablement.

5. I have heard Smt. Aruna Deshpande, learned Counsel appearing for the Appellant and Sri. Ravi. D. Hosamani, learned Counsel appearing for Sri. Y. Lakshmikanth Reddy for 1st Respondent in this appeal. It is contended by the learned Counsel for Appellant as follows:

(i) The accident in question had occurred on 12/01/2002 and the complaint has been lodged on 24/01/2002 and there is no explanation whatsoever forthcoming for the delay in filing the complaint and hence on this ground the bona fides of the claimant cannot be accepted.

(ii) The claimant had not produced the wound certificate and hence the assessment of the disability by a Doctor, who has examined the claimant, subsequently is of no relevance.

(iii) The Doctor, who issued the disability Certificate Ex.A-6 is not a Orthopedic Surgeon and as such he is incapable of certifying the disability.

(iv) It is contended that the Doctor, who has issued the disability certificate has to speak about the disability of the injured and certify the proportionate loss of

earning capacity of the injured and it is based only on the said opinion as per Sub-clause (c) of Sub-section (i) of Section 4 of the W.C. Act, the quantum of compensation can be assessed and not otherwise.

(v) In support of the said contention a Full Bench judgment of this Court in the case of Shivalinga Shivanagowda Patil and Others Vs. Erappa Basappa Bhavihala and Others, at para 25 is pressed into service.

(vi) It is also contended that the Commissioner for Workmen's Compensation has awarded 12% interest to be deposited within one month from the date of award for the period of after the lapse of one month from the date of accident and this is contrary to the law laid down by the Hon'ble Supreme Court in the case of Oriental Insurance Co. Ltd. v. Mohd. Nasir and Anr. reported in 2009 AIR SCW 3717.

6. Per contra, Sri. Ravi. D. Hosamani, learned Counsel for the Respondent/claimant would contend that mere delay in filing the complaint is not fatal for making a claim for award of compensation under the W.C. Act. He would also submit that the medical records of Karnataka Medical College had been produced, which has been examined by the Commissioner for Workmen's Compensation and based on this record and also on the basis of the X-ray taken on the date of the accident, the disability certificate viz., Ex.A-6 has been issued and the Doctor, who has issued Ex.A- 6 has not only been examined by the claimant, but also been cross-examined extensively on all the grounds now urged by the Appellant herein. Hence, the Doctor has withstood the cross-examination and submits that the award of the Commissioner does not call for interference. Elaborating his submissions he would also submit that the judgment of Shivalinga's case referred to supra, there cannot be any issue on the legal principles enunciated by their Lordship's, but would contend that same is not applicable to the facts of the present case. Cross-objection has not been filed. In support of his submission he would rely upon the decision of this Court reported in the matter of Shri Aleemuddin and Others Vs. The Divisional Manager, New India Assurance Company Limited, and accordingly submits that the question of law formulated in this appeal is required to be answered against the Appellant and in favour of the 1st Respondent and accordingly the appeal be dismissed. Having heard the learned Counsel appearing for the parties, it would be necessary to extract the relevant portion of the W.C. Act for the sake of convenience.

7. Section 3, which is an enabling provision for a workman to claim compensation reads as follows;

3. Employer's liability for compensation.- (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding (three) days;

(b) in respect of any [injury, not resulting in death (or permanent total disablement) caused by] an accident which is directly attributable to -

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

Section 4(1)(c) reads as follows-

4. Amount of compensation -

(c) Where permanent partial disablement result from the injury (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which could have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.-Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.-In assessing, the loss of earning capacity for the purpose of Sub-clause (ii), the qualified medical practitioner shall have de regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule 1.

8. Recontension No. 1: It is submitted by learned Counsel for Appellant that the accident in question is said to have occurred on 12/01/ 2002, there is no explanation coming from the claimant as to why there was a delay in lodging the complaint before the jurisdictional police on 24/01/2002. It is seen from the records that the FIR, which was lodged on 24/01/2002 has been marked as Ex.A-1 as also the spot mahazar which is at Ex.A-3 and the charge-sheet at Ex.A-2. It is stated in the deposition of the claimant that immediately on the occurrence of accident he was shifted to MCH hospital at Bellary and as such he could not file the complaint before the jurisdictional police. In the cross-

examination there is no suggestion made to the said witness regarding delay in filing the complaint, it has also come in evidence that, on being admitted to the hospital it was treated as Medico legal case and immediately on information from the Hospital Authorities, the police have registered a case as is found from the cross-examination of this witness dtd. 30/12/2003. Hence, the contention of learned Counsel for Appellant that the delay in filing the complaint would be fatal cannot be accepted and accordingly the said contention is hereby rejected.

9. Recontention No. 2: It is contended that wound certificate having not been produced itself goes to show that claimant had not suffered any injury and the injuries now propounded by him in the disability certificate are concocted and is required to be considered for being brushed aside for the reason that the Medico Register Extract has been produced by the claimant before the Commissioner of Workmen's Compensation and the nature of injuries found at the time of admissions is noted in the said register, the same being an attested copy i.e., attested by the Medical Superintendent, Medical College Hospital, Bellary, cannot be said to be concocted as is canvassed and the Commissioner for Workmen's Compensation was justified in accepting the same. Though a feeble attempt has been made by the learned Counsel for Appellant to contend that the fracture which is said to be one of the injury, does not find a place in the said exhibit, viz., Ex. P-5, i.e., Medico Legal Register Extract, by itself cannot be a ground to reject the claim that there was no fracture for the obvious reason at the time of admission it would not be possible to notice as to any fracture having occurred by physical examination. It is only on the detailed clinical examination that the doctors would be able to assess as to whether there are any internal injuries like clotting of the blood or the fracture if any, which can be noticed. A perusal of the said exhibit i.e., A-5 it is seen, the Doctor has opined that the fore-arm of left hand there is a swelling and requires to be X-rayed and it is this in which the claimant contends where fracture has occurred. Another aspect which requires to be considered for rejecting the contention of Appellant in this regard is the X-ray film produced at Ex.A-7, which was taken on the same day of the accident. This X-ray also having been scrutinized and analysed by the Doctor, who issued the Disability Certificate, has spoken about the fracture having occurred. Hence, the contention of non-production of Wound certificate is fatal to the claim petition is liable to be rejected and accordingly it is rejected.

10. Re-contention No. 3: It is contended that Doctor, who issued the Disability Certificate i.e., Ex.A-6 has not treated the claimant and as such it is submitted that Disability Certificate cannot be accepted and it is required to be rejected. On re-appreciation of the evidence of the Doctor, it is found that the author of Ex.A-6 being Dr. K. Lakshminarayana, has been examined as C.W.2 and he has stated in his evidence about clinically and physically examining the claimant before issue of the Certificate. He specifically states that, on 21/11/2003 he has examined Sri. Ramanna S/o. Doddappa, aged about 25 years for physical disability assessment. He also states that said person presented himself for being physically examined and after having examined the said person, found on such

examination certain disability, which by his own words reads as under-

On examination today his other external injuries were healed up, the operation site showed the e/o healthy scar of 10 cms in size with wasting of the muscles around the region due to which the muscle mass is reduced by 3 cms due to which the movements of supination, pronation, lateral rotation and hook grip are reduced which are essential for managing Auto, thus impeded of his profession.

11. It has come on record that, the said Doctor has not only physically and clinically examined the claimant, but has also verified the earlier records of claimant pertaining to the earlier period and on perusing of all these materials, has issued the disability certificate. Hence, the contention of learned Counsel for Appellant is hereby rejected.

12. Re-contention No. 4 and 5: It is contended by learned Counsel for Appellant that, as per Sub-clause (2) of Clause (c) of Sub-section (1) of Section 4 of Workmen's Compensation Act, the Doctor who issued the physical disability certificate ought to have correlated the injury to the incapacity of the injured to carry on the same profession and this aspect having not been spoken to by the Doctor, the Commissioner was in error in awarding compensation under the heading- Loss of Income. Accordingly, it is contended that the award of the Commissioner for Workmen's Compensation be rejected. In this regard, the decision of Shivalinga Shivanagouda Patil and Ors. v. Erappa Basappa Bhavihala and Ors., referred to supra is pressed into service as also the relevant provision of the Act. Section 4 enumerates the amount of compensation payable under the said section, which is subject to the other provisions of Act. The injury in question is a non-scheduled injury. The claimant has contended that the injury has resulted in permanent partial disablement and there cannot be any dispute that any determination of compensation insofar as the said injury is concerned of Sub-clause (2) of Clause (c) of the Section 1 would be applicable to the said injury.

13. Now what is required to be examined in the instant case is whether the ingredients of Clause 2 are satisfied for the claimant to qualify himself to make a claim to award under this clause, the compensation. Sub-clause (2) speaks about the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity, requires to be assessed by the qualified Medical Practitioner. In the instant case, in order to establish that there has been a permanent partial disability on account of the injuries sustained in the accident, the claimant has produced Ex.A-6. The contents of said Certificate reads as follows-

This is to certify that Sri. Ramanna S/o. Doddappa aged about 25 years of Bellary, driver by profession came to me for PD assessment consequent to RTA he had on 12/01/2002 and was treated initially at VIMS and later by a local Doctor and was further managed by me from time to time till date.

He presented to me with swollen, tender Left Forearm and the X'rays revealed #

of both the bones of Radius and ulna at its mid shaft region upon advise underwent prosthetic Implantation for both the bones. He is under physiotherapy even now.

On examination today his other external injuries were healed up, the operation site showed the e/o healthy scar of 10 cms in size with wasting of the muscles around the region due to which the muscle mass is reduced by 3 cms due to which the movements of supination, pronation, lateral rotation and hook grip are reduced which are essential for managing Auto, thus impeded of his profession.

Considering the above facts, on verifying the documents produced, on physical examination and on considering his occupation, I am of the opinion that PPD is of 35% with resultant decrease in his earnings capacity.

14. The relevant portion of the said opinion of the Doctor, which was based on both clinical and physical examination of claimant is as follows-

On examination today his other external injuries were healed up, the operation site showed the e/o healthy scar of 10 cms in size with wasting of the muscles around the region due to which the muscle mass is reduced by 3 cms due to which the movements of supination, pronation, lateral rotation and hook grip are reduced which are essential for managing Auto, thus impeded of his profession.

15. Based on this observation made at the time of physical examination of the claimant, the Doctor has come to the conclusion that permanent partial disablement was to the extent of 35% with resultant decrease in his earning capacity. It is this aspect which has been enunciated by their Lordships in the Shivalinga Patil's case supra, wherein it is held in Headnote D to the following effect

(D) WORKMEN'S COMPENSATION ACT, 1923 (AMENDMENT ACT OF 1984) - CHAPTER II- SCHEDULES I AND IV - SECTION 19 - Determination of the loss of earning capacity - Has to be by reference to the work which the workmen was performing at the time of the accident or by reference to his capacity to do any other work after he has sustained the disability - HELD - Determination of the loss of earning capacity has to be with reference to "all the work" which the workman was capable of performing at the time of the accident resulting in such disablement or not with reference to the work which the workman was performing at the time of accident. However, this is subject to the condition that in the case the workman establishes by acceptable evidence that after the inquiry not only he is not able to do the work which he was performing before the accident but he is not able to do any other work, the loss of earning capacity could be assessed on the basis of such evidence.

16. In view of this medical evidence available on record, I am of the considered opinion that workman has produced acceptable evidence that he is not able to do the work which he was doing hitherto and thus resulting in the loss of earning capacity which is based on the said evidence. In view of the same, the

contention of learned Counsel for the Appellant is hereby rejected.

17. Insofar as re-contention No. 6 is concerned, it is contended by the learned Counsel for Appellant that the award of interest at the rate of 12.5% from the date of one month after the date of accident is contrary to the principles laid down in Oriental Insurance Company case referred to supra and accordingly submits that the pendente lite interest at 7.5% is liable to be paid to claimant. The learned Counsel appearing for Respondent does not cross swords on this issue with the learned Counsel for Appellant and to this extent the appeal requires to be allowed.

18. The award insofar as grant of interest to the extent of 12.5% is reduced to 7.5% as held by their Lordships in the case of Oriental Insurance Company case referred to supra, which would be till the expiry of 30 days after passing of the awards and there afterwards the rate of interest as awarded by the Commissioner i.e., 12% is affirmed. In view of the above, the following order is passed:

ORDER

(i) The appeal is allowed in part.

(ii) The substantial question of law framed herein above is answered against the Appellant and in favour of the 1st Respondent.

(iii) The award dtd. 28/02/2004 passed by the Labour Officer and Commissioner for Workmen's Compensation, Sub-division - II, Bellary in W.C. No. 114/2002 is modified only to the extent of interest as explained herein above.

(iv) Parties are directed to bear their respective costs.

(v) The amount in deposit before this Court shall be transmitted to the Labour Officer/Commissioner for Workmen's Compensation, Sub-Division-II, Bellary forthwith.