

(2016) 06 KAR CK 0051
In the Karnataka High Court
Case No : MFA No. 5902 of 2011 (WC)

Umesh

APPELLANT

Vs

P.F. Saldan

RESPONDENT

Date of Decision : 07-06-2016

Acts Referred:

Citation : (2016) AAC 1759

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : S.P. Kulkarni, Advocate, for the Appellant; K.A. Chandrashekar, Advocate, Umesh K.M, Advocate, M.P. Srikanth, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—Appellant is the claimant, being not satisfied with the quantum of compensation awarded by the Labour Officer and Commissioner for Workmen's Compensation, Hassan Division (hereinafter referred to as 'the WCC' for short) in WCA/NF/SR-18/2010 dated 4-3-2011, filed this appeal.

2. The appellant filed the claim petition contending that he was working as a coolie under the second respondent herein. On 28-4-2010, at about 8.30 a.m., while he was cutting the trees in the Deepak Estate belonging to the first respondent herein, he fell down from the tree and sustained fracture of right hand, right leg and loss of six teeth. The claimant claims that he has sustained injuries during the course and out of employment. Prior to the accident, the second respondent was paying him salary of Rs. 250/- per day. In view of the injuries sustained, he has sustained permanent disability and he cannot do the work of coolie and climb the tree. Hence sought for compensation of Rs. 6,00,000/-.

3. In pursuance of the notice issued by the Tribunal, respondents 1 to 3 entered appearance and filed written statements. The first respondent denied the relationship of master and servant between the claimant and himself. The

claimant is the employee of second respondent. It is for the second and third respondents to compensate the claimant for the injuries sustained and sought for dismissal of the claim petition as against him. The second respondent admitted that the claimant was working under him as a coolie. The insurance policy covers the risk of the coolies working under him and sought for dismissal of the claim petition as against him. The third respondent in their written statement have denied their liability and also denied other averments made in the claim petition. They have admitted that the employees of 2nd respondent working in Lakkunda estate are insured with them and they are covered under the insurance policy. Since there is violation of terms and conditions of the policy, they are not liable to compensate the claimant and hence sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, the WCC framed necessary issues. In order to prove his case, the claimant got himself examined as P.W. 1 and got marked the documents as Ex. P1 and Ex. P4. He also examined the doctor who treated him and issued disability certificate as P.W. 2 and the doctor got marked the documents as Ex. P2 and Ex. P3. On behalf of insurance company, the Development Officer of the insurer was examined as R. W. 1.

5. The WCC after appreciating the oral and documentary evidence let in by the parties held that the claimant fell down from the tree and sustained injuries during the course and out of employment. Hence he is entitled for compensation. With regard to quantum of compensation is concerned, the claimant has sustained fracture of elbow of left hand and fracture of femur of right leg. He has undergone surgery on 7-5-2010 and 12-5-2010. The interlocking nail has been fixed. The doctor has assessed the disability to an extent of 40% to the left hand and 40% to the right leg. In view of fracture of the left hand, he cannot lift the heavy objects and cannot climb the tree. The WCC has taken loss of earning capacity to an extent of 50% and taking the income as Rs. 4,000/- p.m., applying the relevant factor 215.28 since he was aged about 26 years as on the date of accident, awarded a sum of Rs. 2,58,336/- with interest at 12% p.a. from one month after the accident. The claimant being not satisfied with the quantum of compensation awarded by the WCC has filed this appeal contending that the WCC ought to have taken the functional disability to an extent of 100% while awarding compensation.

6. The learned counsel appearing for the respondents argued in support of the judgment and order and sought for dismissal of the appeal.

7. After hearing the learned counsel appearing for the parties, the only point that has to be decided in this appeal is whether the claimant is entitled for loss of earning capacity to an extent of 100% as against 50% assessed by the WCC.

8. The records clearly disclose that the claimant while cutting the trees in Deepak Estate, fell down from the tree and sustained grievous injuries on 28-4-2010 during the course and out of employment. He has undergone surgery internal fixation has been made. The doctor who has treated the claimant has assessed

the disability to an extent of 40% to the left hand since there is restricted movement of left hand and also assessed the permanent disability to an extent of 40% to the right leg. The injuries sustained by the claimant will not come in the way of claimant to do other works. At the age of 26 years, he has sustained fracture of femur, however, after surgery it is united. In view of that the WCC has taken the loss of earning capacity to an extent of 50%. Even for the amputation of leg, the disability is taken at 60%. In the instant case, except of fracture of left elbow, femur and loss of six teeth, the claimant has not sustained any other grievous injuries. The claimant can do other work.

9. I find no infirmity or irregularity in the judgment and order passed by the WCC awarding compensation of Rs. 2,58,336/- taking into consideration loss of earning capacity to an extent of 50%. The order passed by the WCC is in accordance with law. The appellant has not made out a case to interfere with the same. There is no substantial question of law that arises for consideration in this appeal. Accordingly, the appeal is dismissed.