(2016) 03 KAR CK 0257

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 21861/2010, M.F.A. Crob. 716/2011 and Miscelleneous First Appeal No. 21860/2010 (WC)

United India Insurance Co. Ltd. and Others APPELLANT

Vs

Dyavanagouda and Others RESPONDENT

Date of Decision : 17-03-2016

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

Citation : (2016) AAC 1356

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : C.V. Angadi, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

B. Manohar, J.—1. The appeals and the cross objection are filed by the United India Insurance Company Limited and the claimant in WCA/NF Nos. 130/2006 & 129/2006 respectively dated 25.02.2010 passed by the Labour Officer and Commissioner for Workmen''s Compensation, Gadag, (for short ''the WCC).

2. M.F.A. No. 21861/2010 and M.F.A. No. 21860/2010 are filed by the appellant-Insurance Company whereas the M.F.A. Crob.716/2011 is filed by the respondent in M.F.A. No. 21860/2010. The common judgment and order passed by the WCC is challenged in these appeals and the cross objection. Both the appeals and cross objection are clubbed together and disposed of by this common order.

3. The respondents in each of the appeals are the claimants. They filed the claim petition contending that they were working as hamalies in a tractor-trailer bearing registration No. KA-26/T-7414 and KA-26/T-7415 belonging to the 2nd respondent herein. As per the instructions of the owner, on 16.09.2006 after loading the sand at Konnur village, when they were proceeding towards Kallapur village towards the property of the owner, in order to avoid a cow which came on the road, driver of the tractor-trailer applied brake suddenly. Due to that, the

tractor-trailer turn turtled. The two hamalies in the tractor-trailer sustained grievous injuries. They took treatment in the Shreyas hospital. The accident occurred during the course and out of employment. It was their case that prior to the accident, owner of the vehicle was paying them salary of Rs. 120/- per day and bata of Rs. 30/- per day. In view of the injuries sustained and the suffering undergone, now they cannot do the work of hamalies and sought for compensation of Rs. 6,00,000/- each. Pursuant to the notice issued by the WCC, though the owner of the vehicle was served with notice, remained unrepresented.

4. The 2nd respondent-Insurance Company in the claim petitions filed their statement of objections denying the entire averments made in the claim petitions and also contended that there was no relationship of master and servant between the claimants and the owner of the vehicle and that no documents were produced to show that the owner of the vehicle was paying salary of Rs. 120/- per day and bata of Rs. 30/- per day. The insurance policy is ''Miscellaneous and Special Type of Vehicles Package Policy'' and it does not cover the risk of the coolies working in the said tractor-trailer. Hence, sought for dismissal of the claim petitions as against the 2nd respondent.

5. On the basis of the pleadings of the parties, the WCC framed necessary issues. The claimants in order to prove their case, examined themselves as PWs-1 and 2. The doctor who issued the disability certificate was examined as PW-3. On behalf of the Insurance Company, one of the Officers has been examined as RW-1 and the Insurance Policy is marked as Ex. R. 1.

6. The WCC after appreciating the oral and documentary evidence let in by the parties and taking into consideration the spot mahazar, IMV report, copy of the complaint and charge-sheet held that the claimants sustained injuries in the road traffic accident that occurred on 16.09.2006 during the course and out of employment. The claimants are the ''workmen'' within the meaning of Section 2 (1)(n) of the Employees'' Compensation Act. Hence, the claimants are entitled for compensation.

7. Though the claimants claimed that the owner of the vehicle was paying salary of Rs. 120/- per day and bata of Rs. 30/- per day, no documents had been produced to substantiate the same. The accident occurred in the year 2006. Taking into consideration the minimum wages being paid to the hamalies, income of the claimants was taken at Rs. 3,000/- p.m. At the time of accident, the claimant in WCA/NF No. 130/2006 was aged about 32 years and the claimant in WCA/NF No. 129/2006 was aged about 35 years. The claimant in WCA/NF No. 130/2006 sustained fracture of the wrist of right hand and fracture of right shoulder and other injuries. He was an inpatient for more than one month and he had undergone surgery to the right shoulder. In view of the injuries sustained and the surgery that he had undergone, there was restriction in the movement of wrist and right shoulder and that he cannot lift heavy object. As the claimant was a coolie by profession and the injury sustained would come in the way of day to day activities, the doctor assessed the functional disability to an extent of 41%.

8. Insofar as the claimant in WCA/N.F. No. 129/2006 is concerned, the claimant had sustained fracture of the third middle clavicle bone of left hand and other injuries to the body. In view of the fracture of third middle clavicle bone, there was restriction in the movement of left hand to an extent of 40%. In view of the mal-union of the clavicle bone, the claimant had sustained functional disability. The doctor assessed the disability to an extent of 32%. The WCC taking into consideration income at Rs. 3,000/- p.m., taking 60% thereof and disability to an extent of 41% and taking into consideration relevant factor as 203.85 since the claimant was aged 32 years, awarded a sum of Rs. 1,50,441/- in WCA NF No. 130/2006 with interest at the rate of 12% p.a.

9. Insofar as the claimant in WCA/N.F. No. 129/2006 is concerned, taking into consideration income at Rs. 3,000/-, taking 60% thereof and taking into consideration functional disability to an extent of 32% and applying the relevant factor of 192.14 as he was aged about 32 years, awarded compensation of Rs. 1,10,673/- with interest at the rate of 12%p.a.

10. Since the vehicle was covered by the Insurance Policy and the hamalies working in the said tractor-trailer were covered by the Insurance Policy, the liability was fastened on the Insurance Company to compensate the claimants. Being aggrieved by the judgment and award passed by the WCC, fastening the liability on the Insurance Company, the appellant-Insurance Company has filed these two appeals whereas the claimant in WCA/N.F. No. 129/2006 not being satisfied with the quantum of compensation, has filed the cross objection seeking for enhancement of compensation.

11. Sri C.V. Angadi, learned counsel appearing for the appellant-Insurance Company contended that the judgment and order passed by the WCC is contrary to law. The Insurance Policy is a ''Miscellaneous and Special Type of Vehicles Package Policy'' and under the said policy, the hamalies working in a tractor-trailer are not covered. Hence, the Insurer is not liable to compensate the claimants. Further, the tractor-trailer is used for commercial purpose which is contrary to the conditions of policy. Hence, the Insurance Company cannot be held liable and sought for setting aside the judgment and order and dismissal of the cross objection by allowing the appeals filed by the Insurance Company.

12. The cross objector in M.F.A. No. 21860/2010 contended that the quantum of compensation awarded taking into consideration income at Rs. 3,000/- p.m. is contrary to law.

13. I have carefully considered the arguments addressed by the counsel appearing for the parties, perused the judgment and order and oral and documentary evidence.

14. The record would clearly disclose that the claimants in these appeals were working as hamalies in a tractor-trailer. On 16.09.2006 while they were proceeding towards Kallapur village, a cow was crossing the road. In order to avoid the said cow, driver of the tractor-trailer applied brake suddenly as a result

of which the tractor-trailer turn turtled and two hamalies working in the tractor-trailer sustained grievous injuries. The record produced by the claimants clearly disclosed that the claimants were working as hamalies in the tractor-trailer belonging to the 2nd respondent and they sustained employment injuries during the course of and out of employment. Hence, the claimants are entitled for the compensation.

15. With regard to the liability of Insurance Company is concerned, the claimants clearly admitted that after loading sand at Konnur village while they were proceeding towards the agricultural land of the owner of the vehicle, on the way it met with the accident. Hence, the tractor-trailer was being used for agricultural purpose only. No document had been produced by the Insurance Company to show that the tractor-trailer was being used for commercial purpose.

16. As per the law laid down by this Court in the case of NATIONAL INSURANCE COMPANY LIMITED v. SRI MARUTHI AND OTHERS (ILR 2011 KAR 4139), the tractor-trailer put together become a goods vehicle. At paragraphs 34, 35 and 36, this Court has clearly held that the tractor-trailer put together become a goods vehicle. The package policy covers the risk of the coolie working in the tractor-trailer. Paragraphs 34, 35 and 36 read as under:

"34. As of now, there are only two types of policies envisaged under the Standard Forms as contemplated under Section 6 of the Indian Motor Tariff Their liability under the liability only policy and package policy reads as under:

i) Liability only police: This cover Third Party Liability for bodily injury and/or death and Property Damage Personal Accident cover for Owner Driver is also included.

ii) Package Policy: This covers loss or damage to the vehicle insured in addition to (i) above.

35. By reading the above two types of policies, it is clear package policy is nothing short of comprehensive policy with all the contents almost similar to the comprehensive policy which was in vogue earlier to the introduction of this package policy.

36. The fully worded policy now produced refers to limits of liability as envisaged in Commercial Vehicles ''B'' Policy (Misc. & special type of vehicles). Section 1 refers to loss of damage to the insured vehicle, tractor-trailer combination; Section-II refers to liability to third parties and Section-Ill refers to towing disabled vehicle. We are concerned with Sub-section (i) of Section II which reads as under:

Subject to the limits of liability as laid down in the schedule herein, the company will indemnify the insured against all sums including the claimants costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person (including the loading and/or unloading) of the Motor vehicle."

17. With regard to the M.F.A. Crob. No. 716/2011 filed by the claimant, the claimant has not produced any document to show that he was getting salary of Rs. 120/- per day and bata of Rs. 30/- per day. The owner of the vehicle also has not supported the case of the claimant. In the absence of necessary documents, the WCC taking into consideration minimum wages being paid to the hamalies working in the transport department, has awarded the compensation. I find no infirmity or irregularity in the said finding. No case is made out in the appeals as well as the cross objection. Accordingly, both the appeals and cross objection are dismissed.

The amount in deposit may be transferred to the Civil Judge, (Sr.Dn.)., Gadag, for disbursement.

