

(2011) 04 KAR CK 0175

In the Karnataka High Court

Case No : M.F.A. No. 9565 of 2006 (WC) and M.F.A. Crob-6 of 2009

United India Insurance Co. Ltd.

APPELLANT

Vs

A. Harish Kumar and M. Sathishchandra
 Sri. A. Harish
Kumar Murthy Vs Sri. Sathish Chandra and The Branch
Manager United India Insurance Co. Ltd

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Citation : (2011) 04 KAR CK 0175

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : O. Mahesh, M.F.A. No. 9565/2006 WC and Sri. Pavana Chandra Shetty, M.F.A. Crob. 6/2009, for the Appellant; Pavana Chandra Shetty, for R1 R2-Served, M.F.A. No. 9565/2006 (WC) and Sri. O. Mahesh, for R2 M.F.A. Crob. 6/2009, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana

1. This appeal and cross objection are arising out of order dated 16.1.2006 passed in CR.No.39/2004 on the file of Commissioner for Workmen's Compensation, Bangalore. The appeal in MFA.No.9565/2006 is filed by the insurance company challenging the liability to pay compensation. Whereas cross objection is filed by claimant seeking enhancement of compensation awarded under the order dated 16.1.2006.

2. Brief facts leading to appeal and cross objection are:

The claimant before Commissioner contends that he was working as driver of tempo bearing No.KA-02/AA 4239 belonging to 1st respondent and insured with 2nd respondent before Commissioner. On 27.4.2004 he met with an accident on Mysore-Bangalore Road while driving the aforesaid tempo in the course of his employment under 1st respondent. The said accident was caused by a Toyota

quails bearing No.KL-11/R 9300 coming from opposite direction resulting in fracture of his right leg, right rib and blunt injury to his forehead and to both hands. The Commissioner on appreciation of pleadings, oral and documentary evidence available on record proceeded to accept that the accident resulting in injuries to claimant has taken place in the course of his employment under 1st respondent and injuries suffered by him arise out of his employment. Accordingly, allowed the claim petition awarding compensation in a sum of Rs.2,62,164/- payable with interest at 12% pa., from 30th day of accident till date of deposit of same.

3. 2nd respondent insurance company being aggrieved by the same has come up in this-appeal challenging the said order on the ground that relationship of employer and employee is not properly established before Commissioner. There is error in accepting age, salary and other particulars and loss assessed thereof which has resulted in the Commissioner taking the loss of earning capacity at 50% which is contrary to the evidence available on record. Further, in the application filed in IA.I/07 it is also urged that there is duplication of claim on behalf of claimant, on that ground also appeal is required to be allowed and the impugned order is required to be set aside.

4. On appreciation of grounds of appeal, cross objection and finding of Commissioner in the impugned order, this Court find the following substantial questions of law arise for consideration in this appeal:

1) Whether there is perversity on the part of Commissioner for Workmen's Compensation in appreciation of evidence available on record to arrive at the loss of earning capacity at 50%?

2) Whether there is duplication of claim by cross objector claimant before the Commissioner?

3) Whether Commissioner was justified in awarding interest at 12% p.a., from 30th day of accident contrary to ratio laid down by apex Court?

5. Heard the counsel for appellant and respondent who is also cross objector. On appreciation of pleadings, oral and documentary evidence available on record in the light of grounds of appeal, cross objection and finding of Commissioner, this court answer 2nd substantial question of law in the affirmative and in view of 2nd substantial question of law answered in the affirmative the other two substantial questions of law do not survive for consideration for the following:

REASONS

6. The fact that tempo bearing NO.KA-02/AA-4239 belongs to 1st respondent and insured with 2nd respondent is not in dispute. It is also not in dispute that as on the date of accident the said vehicle was driven by claimant. It is not in dispute that for the injuries suffered by him he has initially taken treatment in Government Hospital, Mandya. Thereafter, in St.John's Hospital, Bangalore. However, whether there exist relationship of employer and employee between

claimant and 1st respondent is required to be assessed in view of the additional documents produced by insurance company by filing application in IA.I/2007.

7. On going through the said application and the documents produced along with that it is seen that claimant in this proceedings namely A.Harish Kumar s/o Anjan Murthy has filed claim petition in MVC.No.3399/2004 on the file of MACT, Bangalore. Incidentally in the said petition he has described himself as Harsih s/o Anjanamurthy. Whereas in the claim petition before the Commissioner for Workmen's Compensation he is A.Harish Kumar s/o Anjan Murthy. In the claim petition his address is residing near Gaali Anjaneya Temple Road, Mysore Road, Bangalore-2(sic) whereas before the MACT his address is resident at Valmikhinagar, Mysore Road, Bangalore-26. However, no age is referred to in the claim petition before the Commissioner, whereas his age is referred to as 23 years before MACT, Bangalore.

8. On going through both claim petition before Commissioner and claim petition before MACT, barring these discrepancies the date, place of accident and number of vehicles involved in the accident clearly discloses that claimant before the Commissioner who has filed claim petition seeking compensation from the owner of tempo claiming that there is relationship of employer and employee between himself and 1st respondent has also filed MVC.No.3399/2004 before MACT, Bangalore contending that he is working in M/s.J.R.Travels, Valmikinagar, Bangalore, on monthly salary of Rs.4,500/-. In the said proceedings, he has sought for compensation from the owner and insurer of vehicle bearing No.KA-11 /R-9300.

9. In the claim petition before the MACT he has referred to the said vehicle as Scorpio jeep, whereas in the proceedings before the Commissioner for Workmen's Compensation, he has referred to the said vehicle having same registration number as a quails vehicle. Therefore, there is total discrepancy in the pleadings in both the cases which has arisen from same accident, in same place, between vehicles having same registration number and involving the claimant herein who is claimant in MACT also. With this, it is clearly seen that there is an attempt on the part of claimant before the Commissioner who is also cross objector to make unlawful gain and enrichment by initiating proceedings one under the provisions of Workmen's Compensation Act. and another under the provisions of Motor Vehicles Act. In view of there being duplication in the claim the order passed by the Commissioner for Workmen's. Compensation is required to be set aside and the appeal filed by the appellant is required to be allowed.

10. Accordingly, the appeal is allowed and the order dated 16.1.2006 passed in CR.No.39/2004 is set asi(sic). In view of the appeal being allowed the entire amount in deposit is ordered to be refunded to appellant insurance company.

11. While dismissing this appeal it is further ordered that if claimant has secured compensation in MVC.3399/2004 on the file of MACT, Bangalore, allowing of this

appeal by setting aside the impugned order passed by the Commissioner for Workmen's Compensation, will remain. If the claimant is able to establish that the claim petition filed by him in MVC.No.3399/2004 is dismissed and he has not received any compensation in the said proceedings, he is at liberty to revive this appeal at any point of time by producing necessary documents to substantiate the same and is entitled to seek restoration of his cross objection in No.6/2009. Reserving such liberty to the respondent/claimant cross objection is dismissed.