(2010) 05 KAR CK 0005

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5663 of 2006 (AA)

United India Insurance Company Limited APPELLANT

Vs

Manjunath and Others RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2011) 1 KarLJ 267 : (2010) 3 KCCR 2444 : (2011) 2 LLJ 164 : (2011) 1 TAC 998

Hon'ble Judges : N. Ananda, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : P.B. Raju, for the Appellant; Sriyuths K.M. Nataraj, B.L. Srikantaiah and Sampath Anand Shetty, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—The appeal u/s 30 of the Workmen''s Compensation Act, 1923 (for short, ''the Act'') is by neither the employer nor the employee, but the insurer who had provided cover to the employer.

2. The insurer had raised objection for settling the claim by reimbursing the amount payable by the insured on the ground that the claim was not by legal heirs of an employee of the insured; that this stand had been supported by the very insured. There were other objections raised.

3. The Commissioner examined the rival versions as the applicants, insisted for compensation to be paid in view of the death of their breadwinner and admittedly while working in the estate of the insured and while carrying out the act of cutting down the trees which had been grown on the estate of the insured.

4. The Commissioner amongst other findings recorded a finding that the deceased is an employee of the insured for the reason that the deceased was carrying out the work on the estate as per the direction of the insured.

5. In the light of this finding, the Commissioner rejected the objections raised on behalf of the insurer and proceeded to determine the compensation resulting in Award of Rs. 3,59,131.50/- payable to the claimants.

6. It is aggrieved by this award, the present appeal.

7. Sri P.B. Raju, learned Counsel for the Appellant has urged that the deceased was not at all an employee of the insured and on the other hand, the position that had emerged even by way of consensus between the insured and the insurer was that the deceased was an employee of a contractor one M/s. Manjunath Wood Industries owned by an individual, in whose favour the employer insured had assigned the right to cut and remove the trees standing on the land of the employer and in that capacity the purchaser was busy felling down the trees and the deceased was one who had been engaged by the person who had purchased the standing trees.

8. Sri P.B. Raju, learned Counsel would also urge that the interest on the award amount is not in terms of the statutory provisions and the liability of the insurer being only in terms of the contract, no provision having been made for payment of interest in the contract, the interest part even assuming is to be paid to the claimants, in terms of the provisions of the Act, it has to be fastened only on the employer and not on the insured.

9. The third ground urged on behalf of the Appellant-insurance company is that the insurance company having collected the premium from the employer on the basis of the wages paid to the employees, the liability of the insurer cannot be higher than the commensurate wages that had been indicated to be the wages payable to the employees by the employer, based on which, the insurer had collected the premium for issue of the policy.

10. We find that the present appeal being one u/s 30 of the Act can be entertained only on the Appellant making out a substantial question of law which had been decided erroneously by the Commissioner.

11. On the first ground, we find that there is a finding of fact recorded by the Commissioner that the deceased was an employee of the insured working in the estate of the insured and as per the directions of the insured. This is a finding of fact recorded by the Commissioner and we cannot interfere or disturb this finding of fact, in an appeal u/s 30 of the Act.

12. Insofar as the second ground, urged regarding non-liability of the insured towards payment of interest is concerned, we find that, if the insurer has to make good the compensation in terms of the policy and the payment had been delayed because of the stand of the insurance company or even due to the lack of prompt response on the part of the Insurance Company, while it may be true that the liability is primarily that of the employer and the Insurance Company steps in only to reimburse the claim in favour of the employer, we find from the present facts that it is the not so tenable stand taken by the insurer, which had

delayed payment to the employee''s kith and kin and therefore we do not find anything wrong if the insurer is made liable to pay interest on the award amount, in favour of the claimants which amount was otherwise due to the claimants, on the date of death of the employee.

13. Though Sri Raju, learned Counsel for the Appellant would draw our attention to the judgment of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, , we find, on facts the judgment rendered being based on the terms and conditions of the Insurance Policy that had been issued by the insurer in that case, that cannot be pressed into service as an authority in respect of all policies containing different terms and conditions.

14. A condition of the nature as had been referred to and discussed by the Supreme Court has not been pointed out in the present situation. Therefore, this judgment does not advance the case of the Appellant to support the arguments addressed by Sri P.B. Raju, learned Counsel for the Appellant.

15. Insofar as the third ground relating to determination of wages restricting the liability of the insurer proportionate to the premium collected from the insured is concerned, we find such was not the plea of the insurer before the Commissioner nor was it canvassed in such a manner to elicit the attention of the Commissioner for recording a finding in this regard.

16. The dispute was only about the deceased person being not an employee of the insured. Therefore, this ground urged before us for the first time does not merit consideration in this appeal.

17. In the result, we find no merit in the appeal. In fact, the appeal is not tenable in terms of Section 30 of the Act and therefore dismiss the appeal levying cost of Rs. 5,000/- on the Appellant.

18. The amount deposited by the Insurance Company before this Court to be transmitted to the Commissioner forthwith and the balance, if any, to satisfy the award together with cost of Rs. 5,000/- to be deposited by the Insurance Company within four weeks from today.