(2015) 06 KAR CK 0131

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 171/2011 (WC)

United India Insurance Company Ltd. APPELLANT

Vs

Devamma and Others RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:
Workmens Compensation Act, 1923 — Section 30

Citation : (2015) 06 KAR CK 0131

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : K. Suresh, for the Appellant; Pavitra G., Advocate for H.C. Shivaramu, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.

1. This appeal is filed by the United India Insurance Company challenging the award passed by the Commissioner for Workmen''s Compensation, Sub-Division-II, Mandya dated 11.10.2010. By the said order and the award, commissioner has granted an amount of Rs. 4,27,140/- as compensation to the dependents of deceased Cheluvaraju. The challenge in this appeal is with regard to the liability of the insurance company to make good the compensation.

2. The main contention urged by the insurance company as its defence before the Commissioner is that deceased Cheluvaraju was not engaged as a cleaner in the lorry involved in the accident but was a gratuitous passenger illegally carried in the lorry. In support of this defence, insurance company placed reliance on the statement of the deceased recorded by the police in the hospital at Maddur based on which FIR was registered.

3. The Commissioner for Workmen''s Compensation has examined this document in the light of other evidence particularly the evidence of the driver Shivanna who is examined as PW-3 and the evidence of the loader by name Vyramudi

examined as PW-2 coupled with the fact that deceased Cheluvaraju had suffered serious head injuries and succumbed to the said injuries on the following day.

4. Learned counsel appearing for the appellant/insurance company submits that FIR had been marked as Ex. P-1. The contents of the same disclose that deceased boarded the lorry midway and traveled as a passenger and not as an employee of the owner of the lorry. He therefore submits that the claimants cannot place reliance on this document to suit their purpose and reject the part of the document that does not support them. Though counsel appearing for the appellant is right in canvassing this general legal principle that the contents of FIR cannot be relied upon by the claimants partially refusing to admit the remaining part, in the instant case, the situation is totally different.

5. The facts reveal that deceased Cheluvaraju was seriously injured. He had fallen from the moving lorry and had sustained grievous injuries on his head. He was not in a position to speak properly. He could be admitted to the hospital on the following day of the accident and it is in the hospital when he was being treated the police have visited him and recorded his statement. Based on the said statement, FIR is registered. Therefore, it cannot be said that the statement taken by the police has to be preferred to the eye witness account of the lorry driver and the loader who have specifically stated that deceased had suffered grievous injuries on his head and was only speaking few words. Particularly, in the context of the fact that on the very next day (23.12.2004) he passed away. In such circumstances, the evidence adduced by the claimants particularly that of the eye witnesses who have stated that deceased was engaged as a cleaner in the lorry and was traveling in that capacity in the lorry when the accident occurred resulting in fatal injuries to him deserves to be accepted. It does not matter much at this stage as to whether he was traveling on the top of the lorry or inside the lorry. In addition, it has to be stated that this court is examining the matter in exercise of its powers under Sec.30 of The Workmen''s Compensation Act where substantial question of law alone is required to be taken into consideration. The commissioner has considered the evidence on record and has rejected the contentions urged by the insurance company. I do not find any illegality or perversity in the approach adopted by the Commissioner while recording findings regarding the liability of the insurance company to make good the compensation amount.

6. Hence there being no merit in this appeal, the same is dismissed.

Amount in deposit shall be disbursed to Resp. No. 1 the sole dependent and the mother of the deceased.

