

(2011) 04 KAR CK 0136
In the Karnataka High Court
Case No : M.F.A. 7884 of 2009

United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Varija Gowda, Master Veenth Gowda, Smt. Nagamma
and Ivar Bhothlu

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Citation : (2011) 3 KCCR 346 SN : (2011) 3 KCCR 345

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

Bench : Single Bench

Advocate : A.M. Venkatesh, for the Appellant; Pundikai Ishwar Bhat, for R1 to R3, for the Respondent

Judgement

S.N. Satyanarayana, J.—The 2nd Respondent insurance company in SR. No. 6/2008 on the file of Commissioner for Workmen's Compensation, Dakshina Kannada, Mangalore has come up in this appeal challenging the order dated 30.6.2009 passed therein.

2. Brief facts leading to this appeal are:

One Janardhan Gowda who was working as driver of lorry bearing No. KA-19/4001 belonging to 1st Respondent insured with 2nd Respondent met with an accident on 19.11.2007 at about 1.10 in the afternoon. Subsequently, his widow and children filed claim petition seeking compensation for his death against the owner of lorry and also insurance company contending that accident resulting in the death of Janardhan Gowda has taken place in the course of his employment and the death caused is directly attributable to stress and strain arising out of employment. The claim petition was allowed by awarding compensation to claimants in a sum of Rs. 3,56,980/- with interest at 12% p.a., from 30th day of accident till date of deposit of entire amount. In the said order Commissioner held that the accident resulting in the death of Janardhana Gowda has taken place in the course of his employment and his death is directly attributable to his employment. It is also held that the claimants who are his

widow and children being his legal heirs are entitled to compensation awarded in the said proceedings.

3. The 2nd Respondent insurance company being aggrieved by the finding of Commissioner so far as it pertains to holding that death of deceased is directly attributable to his employment has come up in this appeal on the ground that there is error on the part of Commissioner in not appreciating the material evidence available on record which discloses that death of deceased is in the natural course i.e., due to cardiac arrest and not because of any strain or fatigue, which he is said to have suffered in the course of his employment i.e., while driving lorry belonging to 1st Respondent. It is also its case that before the Commissioner the claimants have not produced expert opinion of Doctor to substantiate that the death of Janardhana Gowda is arising out of his employment with 1st Respondent as driver of lorry. In the absence of same, finding given by Commissioner is without basis and the same is required to be set aside.

4. In this proceedings after going through the grounds of appeal and finding of Commissioner in the order impugned this Court find the following substantial questions of law arise for consideration:

1) Whether the finding of Commissioner holding that death of Janardhana Gowda is arising out of his employment is contrary to the finding in Ex.P2?

2) Whether the Commissioner was justified in awarding interest at 12% p.a., from 30th day of accident contrary to the decision of Apex Court?

5. Heard the counsel for Appellant and Respondents/claimants. On reappraisal of the pleadings, oral and documentary evidence available on record with reference to grounds of appeal and finding of Commissioner in the impugned order this Court answer both the substantial questions of law in the negative for the following:

REASONS

Admittedly, in this proceedings relationship between parties i.e., relationship of claimants as widow and children of deceased Janardhana Gowda and relationship of deceased with 1st Respondent as employee and employer and between Respondents 1 and 2 as insured and insurer is not in dispute.

It is also not in dispute that on 19.11.2007 at about 1.10 pm., in the afternoon while Janardhan Gowda was driving the offending lorry died after the said lorry met with an accident dashing against the road side tree.

6. The only point that arises for consideration is, whether the cause for death is arising out of the employment of deceased or otherwise. Admittedly, deceased was working as driver of lorry belonging to 1st Respondent at the time of accident. It is not in dispute that said accident is witnessed by complainant who lodged FIR, which is at Ex.P1. According to complainant, while he was coming

from left side, he noticed the lorry which was driven by deceased was proceeding from Kudumboor towards Bicampady on Bicampady - Kudumboor road. After noticing another lorry coming from opposite direction, deceased swayed the lorry to left side, in the process it went over a ditch and thereafter, hit the road side tree resulting in his instant death. The P.M., report which is at Ex.P2 discloses that cause of death is "due to congestive cardiac failure, a natural cause of death".

7. Now what is to be seen is, whether accident has taken place after deceased suffered cardiac arrest while driving lorry or he has suffered cardiac arrest while driving the lorry, as a result he lost control of lorry and thereafter, gone and hit the tree. Or in the alternative it may be other way i.e., after the lorry having lost control of its driver must have gone to left side of road and then hit the tree and due to collision driver must have suffered cardiac arrest due to shock. Now the only thing that could be relied upon to decide which way the accident has taken place is PM report. The PM result is ambiguous. It does not say either way. In the circumstances, the only way in which entire accident resulting in the death of deceased will have to be analysed is from the evidence available on record with reference to Ex.P1, which contains complaint of Yeshwanth, an eye-witness to the accident. According to him, lorry swayed to left only for the purpose of giving way to other lorry, which was coming from opposite direction. That means to say, at the time when said lorry was passing the oncoming vehicle deceased was conscious and was awake and was in full control of his vehicle. As could be seen from Ex.P1, immediately after the vehicle swayed to left driver lost control of the same and has gone and hit the tree. Therefore, it presupposes that before lorry hit the tree, the deceased was alive, conscious and he was in control of the vehicle. Therefore, the only analogy that could be arrived at is, the cardiac arrest must have happened due to shock of the vehicle hitting tree. With this evidence on record there is no option for this Court but to accept that injury resulting in his death has taken place in the course of his employment and directly attributable to his employment.

8. However, the counsel for Appellant/insurance company would try to distinguish the manner in which the accident has taken place with reference to two judgments of Apex Court; one in the matter of P.K. Shukla Vs. Executive Engineer and Others, and another one in the matter of Mallikarjuna G. Hiremath Vs. The Branch Manager, The Oriental Insurance Co. Ltd. and Another, .

9. On going through the aforesaid two judgments the facts and circumstances in the aforesaid judgments are totally distinguishable to the facts and circumstances in the present case. In the case of Mallikarjuna G. Hiremath the deceased who had carried passengers in a truck in the course of his employment, after parking the truck went to take bath in a pond near temple, in the process he drowned. Therefore, in the said accident no stress or strain of his employment was involved resulting in his death. It is an accidental death due to fall in to the pond. The facts and circumstances in that case cannot be equated to the facts

and circumstances of this case. However, the counsel for Appellant tries to stress upon the observation made by the Apex court at paragraph 16 in the said judgment, which reads as under:

16. In a case of this nature to prove that accident as taken place, factors which would have to be established, inter alia, are:

- (1) stress and strain arising during the course of employment,
- (2) nature of employment
- (3) injury aggravated due to stress and strain.

In Shakuntala Chandrakant Shreshti's case the observation at paragraph 16 is also tried to be relied upon, which reads as follows:

16. Before we analyse the provisions of the Act, we may notice that in the complaint petition, there was no allegation that (i) the deceased met with his death by reason of any strain of work; (ii) Appellant had no personal knowledge as regards quantum of or nature of work required to be performed by the deceased; and (iii) as to how service strain during his services was caused.

In the aforesaid judgment there is also discussion that medical evidence is precondition to give a finding regarding nexus between injury accident and death.

10. Incidentally, the judgments which are produced by Counsel for Appellant, in a way assist the case of claimants/Respondents for the reason that here is a case where when accident took place deceased was in control of his vehicle. Nobody can deny the fact that when a person is driving a vehicle be it a truck or a bicycle, certain amount of stress or strain will always be there on him to observe the oncoming traffic, his path and other obstructions which he has to bear in mind while driving the vehicle. More particularly, in this case in a narrow road i.e., Bycampady - Kadumboor road which is a village road connecting two small Talukas, which is about 30 ft., in width. In such a space the driver who is driving the vehicle should have more care and caution. More particularly, if there are obstructions on either side of the road. In the instant case, admittedly, there was ditch on the left side. When deceased was trying to give way for the oncoming vehicle, he took the vehicle to the left side, the vehicle has gone over the ditch and gone and hit the tree. This is sufficient reason to accept that at the relevant time there was enough stress and strain, which has caused the accident and the said accident is the result for his death. Therefore, this Court is of the opinion that the aforesaid two judgments cited by Appellant would infact support the case of claimant. In the result, 1st substantial question of law is answered in the negative.

11. Now coming to 2nd substantial question of law it is seen that in the instant case the Commissioner has awarded compensation payable with interest at 12% p.a., from 30th day of accident. In catena of decisions the Apex Court and this Court has consistently time and again held that claimant in Workmen's

Compensation cases is entitled to receive compensation at 12% p.a., from 30th day of order and not from 30th day of accident. The latest decision of Apex Court in that behalf is *Parl Raj v. Divisional Controller NEKRTC* 2010 ACJ 2859 has confirmed the same. Therefore, in the light of the finding of Apex Court in the aforesaid decision 2nd substantial question of law is answered in the negative.

12. In the result, the appeal filed by the insurance company is allowed in part. The compensation awarded by the Commissioner in SR. No. 6/2008 on the file of Commissioner for Workmen's Compensation, Dakshina Kannada, Mangalore is confirmed. However, the liability to pay interest on the said amount is restricted to 12% p.a., from 30th day of order till date of deposit of entire amount.

13. In view of the appeal being allowed in part, from out of the amount in deposit the compensation awarded along with interest at 12% p.a., from 30th day of order till date of deposit of same shall be released in favour of claimants and the excess amount if any is ordered to be released in favour of Appellant.

14. From out of the amount to be released in favour of claimants, 1st and 2nd claimants are entitled to 35% each with proportionate interest and claimants 3 and 4 are entitled to 15% each with proportionate interest. So far as claimants 1, 3 and 4 are concerned, out of their respective compensation i.e, 35%, 15% and 15%, 80% from each of their compensation shall be deposited in any nationalised bank initially for a period of five years so far as 1st claimant is concerned and three years so far as claimants 3 and 4 are concerned with a right to them to receive interest periodically. The balance 20% with interest shall be released in their favour by cheque.

15. So far as 2nd claimant is concerned, the entire compensation i.e., 35% awarded to him shall be deposited in any nationalised bank until he attains the age of majority with right to 1st claimant i.e., his mother/1st claimant to receive interest as and when it accrues for his upkeep and maintenance.