

(2016) 09 KAR CK 0042

KARNATAKA HIGH COURT (DHARWAD BENCH)

Case No: MFA No. 10986 of 2008 (WC)

The National Insurance
Company Limited, Bangalore

APPELLANT

Vs

Topanna Dakappa Lamani

RESPONDENT

Date of Decision: Sept. 23, 2016

Acts Referred:

- Employees Compensation Act, 1923 - Section 3

Citation: (2016) AAC 2510

Hon'ble Judges: B. Manohar, J.

Bench: Single Bench

Advocate: Shri. Suresh S. Gundi, Advocate, for the Appellant; Stands Abated, for the Respondent No. 5; Served, for the Respondent Nos. 1 to 4

Final Decision: Dismissed

Judgement

B. Manohar, J. - The National Insurance Company has filed this appeal challenging the legality and correctness of the judgment and order dated 21-8-2008 made in WCA/F-37/2007 passed by the Labour Officer and Commissioner for Workmen's Compensation, Haveri (hereinafter referred to as "the WCC" for short) fastening the liability to compensate the claimants.

2. Respondent Nos. 1 to 4 herein filed claim petition contending that, Smt. Gouravva, wife of claimant No. 1 and mother of claimant Nos. 2 to 4 was working as a Hamali in a tractor and trailer bearing registration No. KA-27/T-723-724 belonging to respondent No. 5 herein. On 21-10-2003, while she was proceeding in the said tractor and trailer towards Chandapur to bring the fodder and manure, due to rash and negligent driving of the said tractor and trailer by its driver, the tractor and trailer turned turtle. Due to the said impact, Gouravva fell down and sustained fatal injuries. Immediately after the accident she was shifted to the Government Hospital, Shiggaon. But, she was declared as dead. Prior to the accident, she was hale and

healthy. As on the date of the accident, she was aged about 35 years and getting salary of Rs. 4,000/- p.m. and Rs. 50/- per day as batta. The police registered a case in crime No. 172/2008 against the driver of the said tractor and trailer. The accident occurred during the course and out of employment. Since the insurance policy covered the risk of the tractor and trailer, both the owner and as well as the insurance company were liable to compensate the claimants. Hence, they filed the claim petition.

3. In response to the notice issued by the WCC, the owner of the tractor and trailer entered appearance and filed written statement admitting the fact that the deceased was working as a Hamali in the tractor and trailer and he was paying salary of Rs. 3,500/- p.m. As on the date of the accident, the driver of the offending vehicle having a Valid and effective driving licence and insurance policy covered the risk of the said tractor and trailer. Hence, the insurance company has to compensate the claimants and sought for dismissal of the claim petition as against the owner. Respondent-insurer filed written statement denying the entire averments made in the claim petition and also disputed the relationship of master and servant between the claimant and owner of the vehicle. Further, the driver of the tractor and trailer was not having a valid and effective driving licence and the compensation claimed by the claimants was exorbitant and therefore, sought for dismissal of the claim petition.

4. Based on the pleadings of the parties, the WCC framed the necessary issues. The claimant in order to prove their case examined claimant No. 1 as PW 1 and got marked Exs. P1 to P9. On behalf of the respondents, the Branch Manager of the Insurance Company was examined as RW 1 and got marked the Insurance Policy as Ex. R1.

5. The WCC after considering the oral and documentary evidence on record and taking into consideration the spot mahazar, IMV report and charge sheet held that, the deceased died in the road traffic accident occurred on 21-10-2003 during the course and out of employment. The claimants being dependent on the deceased, they were entitled for the compensation.

6. With regard to the quantum of compensation, though the claimants claimed that the deceased was getting salary of Rs. 4,000/- per month, the WCC taking into consideration the income of the deceased as Rs. 3,000/- per month, taking 50% thereof and since the deceased was aged about 35 years applying the relevant factor of 197.06, awarded a sum of Rs. 2,96,400/- with 12% interest. Since the insurance policy covered the risk of the tractor and trailer and the driver of the said tractor and trailer was having a valid and effective driving licence, the liability to compensate the claimants was fastened on the Insurance Company.

7. The Insurance Company being aggrieved by the judgment and order passed by the WCC, filed this appeal.

8. Sri. Suresh S. Gundi, learned counsel appearing for the appellant contended that the judgment and order passed by the WCC is contrary to law. Immediately after the accident, one Yallappa Dakappa Lamani, who is none other than the brother of the first claimant lodged a complaint on 22-10-2003 stating that while he along with the deceased Gouravva and others was proceeding in a tractor and trailer bearing registration No. KA-27/T-5314 and 5315, it met with an accident and Gouravva sustained grievous injuries and succumbed to the said injuries. However, he made restatement rectifying the vehicle number as KA-27/T-723 and 724 and he also mentioned three other persons are travelling along with Gouravva. Though hi the FIR, the vehicle number was mentioned as KA-27/T-5314 and 5315, in the charge sheet vehicle number has been mentioned as KA-27/T-723 and 724. Since the said tractor and trailer belonging to Irappa Lamani was not insured and in order to get the compensation from the appellant-insurance company, some other vehicle number has been mentioned. Hence the claimants are not entitled for any compensation. Further, the compensation awarded by the WCC is on the higher side and sought for modifying the judgment and order passed by the WCC.

9. Though the respondents have been served with the notice, they have remained unrepresented.

10. I have carefully considered the arguments addressed by the learned counsel appearing for the appellant and perused the judgment and award passed by the WCC.

11. The records clearly disclose that Gouravva, who was working as a hamali in the tractor and trailer sustained grievous injuries in the accident, which occurred on 21-10-2003 and succumbed to the said injuries, while undergoing treatment at Shiggaon Hospital. Immediately after the death of Gouravva, the brother-in-law of the deceased one Yallappa Dakappa Lamani lodged the complaint before the jurisdictional police. While lodging the complaint, he had given the tractor and trailer number involved in the accident wrongly and subsequently, having realised the mistake, he made restatement stating that he had given wrong number of the tractor and trailer and requested to rectify the same in the complaint lodged. On the basis of the restatement made by the complainant, the charge sheet was Filed involving the tractor and trailer bearing registration No. KA-27/T-723 and 724 belonging to respondent No. 5. Immediately after the complaint, the police conducted the mahazar on the very same day and found that the tractor and trailer bearing registration No. KA-27/T-723 and 724 was found near Rajiv Gram at Mundagod road. The WCC taking into consideration all these aspects of the matter found that there was some mistake in mentioning the vehicle number at the first instance and subsequently it was rectified by the same complainant. In addition to that, the owner of the tractor and trailer clearly admits that the deceased-Gouravva working in the tractor and trailer as hamali and he was paying salary to her and while she, along with others, was proceeding towards Chandapur to bring fodder

and manure, due to rash and negligent driving of the driver, the vehicle turned turtle and Gouravva sustained grievous injuries and succumbed to the said injuries. Except the complaint filed on 22-10-2003, all other records support the case of the complainant. The WCC taking into consideration all these aspect of the matter held that, due to rash and negligent driving of the tractor and trailer bearing registration No. KA-27/T-723 and 724, the accident occurred and the deceased Gouravva died. The finding recorded by the WCC is in accordance with law.

12. With regard to the quantum of compensation, though the owner of the vehicle himself had clearly stated that he was paying salary of Rs. 3,500/- per month, no documents were produced to establish the same. Hence, the WCC considered the income of the deceased at Rs. 3,000/- per month and taking 50% thereof; as on the date of the accident, she was aged about 35 years and the relevant factor would be 197.06 and applying the same, awarded a sum of Rs. 2,96,400/-. I find no infirmity or irregularity in the judgment and award passed by the WCC and the compensation awarded is also in accordance with law. No case is made out by the appellant to interfere with the judgment and award passed by the WCC. Accordingly, the appeal is dismissed.