



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 29TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL

MISCELLANEOUS FIRST APPEAL NO. 103533 OF 2018 (ECA)

BETWEEN:

SRI. MAHESH S/O. SAHADEVAPPA KALASUR,
AGE: 34 YEARS, OCC: DRIVER, NOW NIL,
R/O. MALAGUNDA, TQ: HANGAL,
DIST: HAVERI-581104.

...APPELLANT

(BY SRI. HARISH S. MAIGUR, ADVOCATE)

AND:

1. SRI. VIJAYAKUMAR D. S, S/O. DEVAPPA K.
AGE: MAJOR, OCC: BUSINESS,
R/O. SHIVADARSHANA FARM HOUSE,
INDIRA NAGAR, SAGAR-577401,
TQ: SAGAR, DIST: SHIVAMOGGA.
2. THE DIVISIONAL MANAGER,
THE UNITED INDIA INSURANCE CO. LTD,
N. K. COMPLEX, KESHWAPUR, HUBBALLI-580029.

...RESPONDENTS

(BY SRI. S. S. KOLIWAD, ADV. FOR RESPONDENT NO.2
NOTICE TO RESPONDENT NO.1 SERVED)

THIS MISCELLANEOUS FIRST APPEAL IS FILED U/S.30(1) OF THE EMPLOYEES COMPENSATION ACT, PRAYING TO ENHANCE THE COMPENSATION BY MODIFYING THE JUDGMENT AND AWARD PASSED BY THE COMMISSIONER FOR EMPLOYEES COMPENSATION AND SENIOR CIVIL JUDGE AND J.M.F.C, HANGAL, AT: HANGAL, IN E.C.A. NO-21/2014 DATED 01/06/2017 BY ALLOWING THIS APPEAL WITH COSTS, IN THE INTEREST OF JUSTICE AND EQUITY.

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THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This is an appeal by the appellant/injured filed under Section 30(1) of the Employees Compensation Act, 1923 (for short, 'Act, 1923'), seeking enhancement of compensation, being aggrieved by the judgment and award dated 1.6.2017 passed in ECA No.21/2014 on the file of learned Commissioner for Employees' Compensation and Senior Civil Judge & JMFC, Hangal (for short, 'Commissioner').

2. The facts in brief are that the, the appellant/injured was working as driver under respondent No.1. That on 9.12.2012 at about 8.15 a.m., the appellant was driving the bus bearing registration No.KA-15/3600 belonging to respondent No.1 and when he was proceeding towards Andalagi to Bommanahalli, at that time, one cattle suddenly came on road and the driver of the bus i.e., the appellant took the bus on katcha road, and suddenly the bus toppled down. Due to which, the appellant sustained fracture of left scaphoid bone, fracture of left clavicle, fracture of scapula and other multiple injuries all over the body. Immediately, he was shifted to



government hospital, Hangal for treatment. It is averred that the appellant was aged about 30 years and was getting Rs.12,000/- per month as salary from respondent No.1 and Rs.100/- per day as batta. Due to the accidental injuries, he has lost his earning capacity. Hence, he filed claim petition.

3. The respondent/Insurance Company entered appearance and filed objections denying the age, avocation and income of the appellant. The insurer admitted that the vehicle bearing registration No.KA-15/3600 was insured with respondent No.2/Insurance Company under package policy. It is further averred that the liability of insurance company is subject to terms and conditions of policy. Thus, sought dismissal of the claim petition.

4. During trial, the appellant examined himself as PW1 and examined one doctor as PW2, apart from marking the documents as Ex.P1 to P12(a). The respondents did not examine any witness nor marked any document.

5. The learned Commissioner after analyzing the evidence available on record, awarded total compensation of Rs.1,14,360/- along with interest at 12% per annum.



6. Heard the arguments of learned counsel Sri.Harish S Maigur for the appellant/injured and learned counsel Sri.S.S.Koliwad, for the respondent/insurance company.

7. Learned counsel Sri.Harish S Maigur for the appellant submits that the Commissioner committed an error in assessing income of the appellant/injured at Rs.5,000/- per month, which is contrary to the pleadings and evidence available on record. He submits that the Commissioner further erred in assessing the loss of earning capacity of the appellant/injured at 18%, as the doctor (PW2), who examined the injured and issued Disability Certificate, has opined that the claimant has suffered 30% to the whole body. Hence, he seeks to allow the appeal by modifying the impugned judgment and award appropriately.

8. Per contra, learned counsel Sri.S.S.Koliwad for the respondent/Insurance Company supporting the impugned judgment and award would submit that the Commissioner taking note of the pleadings and evidence on record has rightly assessed the income and disability of the injured, which does



not warrant interference at the hands of this Court. Thus, he seeks to dismiss the appeal.

9. Having heard the arguments of learned counsel for the parties and on perusal of the appeal papers, the following substantial question of law would arise for consideration in this appeal:

Whether the Commissioner is justified in assessing the income of the injured/appellant at Rs.5000/- per month and also justified in assessing disability of the injured at 18%?

10. The above substantial question of law is answered in the negative and in favour of the appellant/injured.

11. There is no dispute with regard to employer and employee relationship between respondent No.1 and appellant/injured, so also the occurrence of the accident in question during the course of employment and arising out of the employment. The appellant/injured specifically pleaded that he was working as driver under respondent No.1 and getting monthly salary of Rs.12,000/- and additional sum of Rs.100/- as daily batta. However, he has not produced any iota of document to substantiate his claim of income. Central



Government under notification dated 31.05.2010 brought an amendment to the Act, 1923 fixing notional maximum wages of a workman at Rs.8,000/- per month for the purpose of computing compensation under the Act, 1923. Hence, this Court taking note of the same, assesses the notional income of the appellant/injured at Rs.8,000/- per month as against Rs.5,000/- assessed by the Commissioner.

12. Insofar as assessment of disability of the appellant/injured is concerned, the appellant examined PW2-doctor and he has deposed that on clinical and radiological examination, he has found that the claimant/injured has suffered permanent physical disability to the extent of 30% and 18% to the whole body. However, this Court, taking note of the evidence of PW2-doctor coupled with Ex.P12-Disability Certificate, is of the considered view that it would be just and appropriate to assess the disability of the appellant/injured at 20% to the whole body as against 18% assessed by the Commissioner. Thus, the appellant/injured would be entitled to compensation on the head of loss of earning capacity as under:



Rs.8,000 x 60/100 x 211.79 x 18/100 = **Rs.1,82,986.56**,

which is rounded off to **Rs.1,82,990/-**

13. Thus, the claimant would be entitled to compensation of **Rs.1,82,990/-** as against Rs.1,14,360/- awarded by the learned Commissioner.

14. It is noticed that this Court vide order dated 18.2.2022, while condoning the delay of 394 days in filing the appeal, made an observation that the appellant/claimant would not be entitled for interest for the delayed period, in case if he succeeds in the appeal. Hence, the claimant would not be entitled for the interest on the enhanced compensation for the delayed period.

15. In the result, I proceed to pass the following:

ORDER

- a) The appeal stands **allowed in part**.
- b) In modification of impugned judgment and award of the learned Commissioner, this Court holds that the appellant/claimant would be entitled to compensation of **Rs.1,82,990/-** as against Rs.1,14,360/- awarded by the learned Commissioner.



- c) The entire compensation amount shall carry interest at the rate of 12% per annum w.e.f. thirty days after the date of the accident till realization.
- d) Needless to observe that the appellant/claimant would not be entitled to interest on the enhanced compensation amount for the aforesaid delayed period. Registry to take note of the same while drawing award.
- e) Draw modified award accordingly.

**Sd/-
JUDGE**

JTR
List No.: 1 SI No.: 37