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Court : Karnataka Dharwad

Decided On : Nov-21-2012

Judge : The Honourable Mr.Justice S.N. Satyanarayana

Appeal No. : M.F.A. No. 21987 of 2011 (WC)

Appellant : The Divisional Manager

Respondent : Basappa and Another

Judgement :

Satyanarayana, J.

1. The second respondent Insurance Company in WCA.No.194/2008 on the file of Commissioner for Workmens Compensation, Bagalkot, has come up in this appeal challenging the finding of Commissioner so far as it pertains to nature of accident and involvement of vehicle insured with second respondent Insurance Company.

2. Brief facts leading to this appeal are:

The wife of petitioner Basappa Hulappa Rotti, namely Mallawwa was said to be inmate of tractor trailer bearing No.KA-29/T.6898-99, which is said to have involved in an accident on 11.6.2008 resulting in her death. In that behalf, petition was filed seeking compensation for her death before Commissioner. In the said proceedings, on behalf of petitioner, he adduced evidence and relied upon 9 documents which are marked as Exs.P1 to P9. On behalf of respondents, it is only

second respondent which produced policy copy and examined one of its officer as RW.1. The Commissioner, on appreciation of oral and documentary evidence proceeded to allow the petition partially awarding compensation to petitioner in a sum of Rs.3,36,000/- payable with interest at 12% from 30th day of order. The Commissioner further directed the said compensation to be paid by owner and insurer of alleged offending tractor trailer.

3. Being aggrieved by the same, second respondent Insurance Company/insurer of tractor trailer has come up in this appeal contending that petition is fraudulent. According to him, though there is accident resulting in death of Smt. Mallawwa wife of petitioner before Commissioner, death of Mallawwa is not taken place involving tractor trailer bearing No.KA-29/T.6898-99. According to him, the manner in which accident took place resulting in the death of Mallawwa is suppressed and a false claim is foisted before Commissioner implicating the vehicle insured with second respondent before the Commissioner with the sole intention of securing compensation from Insurance Company. It is also its contention that assuming for a moment the said vehicle is not implicated vehicle, it is the vehicle which has caused accident, even then liability to pay compensation is not on Insurance Company, for the reason that, there is violation of the terms of policy in using the vehicle for the purpose of carrying employees of cultivator of some other land not belonging to the insured of the vehicle and said vehicle not being used for the work of insured in taking coolies to the land of insured. In that view of matter, Insurance Company is not liable to pay compensation. It is further contended that at the relevant time of accident driver of tractor trailer was not having valid driving licence to drive the tractor trailer and he had the licence to drive only a tractor and not a trailer which is drawing the trailer along with that.

4. In this proceedings on going through the grounds of appeal and judgment impugned this Court find the following substantial questions of law arise for consideration:

"1. Whether Commissioner for Workmens Compensation was justified in holding that tractor trailer bearing No.KA-29/T.6898-99 was involved in causing accident resulting in death of petitioners wife?

2. Whether Commissioner was justified in holding that the driver of offending vehicle was holding valid driving licence at the relevant time of accident and also the vehicle was used for the work of insured to carry coolies to the land of insured?"

5. Heard the Counsel for appellant and contesting respondent. On re-appreciation of the pleadings, oral and documentary evidence available on record in the light of grounds of appeal vis--vis the finding of Commissioner in judgment impugned, it is seen that indeed there is accident said to have taken place on 11.6.2008 at about 8.00 P.M. The complaint is lodged by one Basappa Amaragol, one of the inmates of tractor trailer. According to him, on the ill fated day about 15 persons were travelling in tractor trailer bearing No.KA-29/T.6869. They were proceeding from their village, namely, Basavanal of Kamatagi Hill for doing the agricultural coolie work in the land of one Huchhappa Hiral. For that they made use of the tractor trailer belonging to one Hanumantha Poojari bearing No.KA-29/T.6869. It is stated by him when said tractor trailer was proceeding on the Kamatagi road, said tractor trailer turtle on the road due to rash and negligent driving resulting in injuries to some of the inmates and death of Mallawwa wife of Basappa, petitioner before Commissioner. In that behalf, police complaint was lodged. Based on that FIR was also drawn on the very same day. It is seen that there appears to be a further statement given by very same person on the very same day. The further statement does not bear his signature, which is produced at Ex.P3, wherein changes the number of vehicle as KA-29/T.6898. At that time, he also adds the number of trailer as 6899, which was not there earlier at the time of filing complaint.

6. Another interesting thing is though he had made a clear statement while referring to tractor trailer that it is Hanumantha Poojarys tractor trailer bearing No.KA-29/T-6869 it is seen he did not change the name of owner. According to him, it is still Hanumantha Poojarys vehicle, whereas at the time of filing claim petition it is seen that the owner of vehicle, which is subsequently implicated belongs to first respondent before Commissioner, namely, Hanamappa Basappa Talawar. So Hanumantha Poojary and Hanamappa Basappa Talawar are different persons. So also tractor which is said to have caused accident and referred to in the complaint and later changed are also different.

7. At this juncture, it is necessary to state that today this is the fourth case this Court has seen wherein Police have adopted the same method in changing the number of vehicle by recording further statements of complainants. Incidentally, in all the four cases where further statement was taken it is taken as if further statement was taken on the very same day the complaint was lodged. It is also noticed that in none of the further statements the signature of person who had given further statement is taken. This is clear indication of Police misusing their power and manipulating documents in a manner to assist the claimants to foist false cases to get compensation for the unfortunate incident in their life from somebody who is totally unconnected to said accident. In the present case, as could be seen from Exs.P1, P2 and further statement, the vehicle which is implicated is totally different from the one which is said to have caused the accident initially. Similarly, in other cases also the same method was adopted. Now it is seen that as in the other cases in this proceedings also the owner of tractor trailer entered appearance through Counsel but, choose not to contest the same. He did not even raise his voice to say that this is false case. That means, he was also supportive of this fraudulent litigation.

8. Ultimately, with the connivance of Police, owner of tractor trailer and all others concerned, the petition was decided and compensation is awarded saddling liability to pay the same on Insurance Company, which is totally unaware of all this fraudulent acts resulting in an award being passed against it.

9. In this proceedings, Counsel for first respondent, petitioner before claimant tried to substantiate the judgment on the basis that all this fraudulent things are not mentioned at the first stage by the Insurance Company is one of the stock ground that was raised. It was also stated that when once the Insurance Company having come to know about the falsification of the records and implication of vehicle does not choose to challenge the same, that means, it has reached finality. Therefore, the same cannot be adjudicated now. Time and again this Court and Apex Court has stated that fraud unravels everything. Here what is being observed is the fraudulent act in trying to fix an unknown vehicle to claim compensation for the unfortunate incident of the death of petitioners wife. In such circumstances, if the Courts go after the technicalities all that they can do is to accept the false and

fabricated documents for non-challenging the same in X or Y forum and thereby should allow the claim petitions and allow the fraudulent act committed by them to perpetuate, which is not the intent of any judicial proceedings.

10. In that behalf, several judgment of Apex Court was also cited. The circumstances in such cases are different. A typographical error here and there when it is brought to the notice of this Court which is accepted as a normal thing which is happening in the course of litigation. But the same analogy cannot be extended to fraudulent claims and equate the typographical error in lodging the complaint to that of implicating vehicle. Therefore, some kind of responsibility is there on the part of Courts also while looking into the said documents vis--vis the facts and circumstances of each case and while doing so, they cannot be blind to reality and they cannot follow the fixed path. If that is done, it is akin to the saying in search of wood, missing the tree i.e., while concentrating on the rights of the parties for awarding just and proper compensation ignoring the fraudulent act committed by them to achieve the same. Infact this would amount to serious irregularity which cannot be entertained. In that view of matter, this Court find in the instant case, indeed there is attempt on the part of Police and others in the proceedings to see that a false and fraudulent claim foisted by the husband of deceased Mallawwa is succeeded by implicating an unrelated vehicle to this accident, which cannot be entertained. In that view of matter, the judgment impugned is required to be set-aside.

11. Accordingly, this appeal filed by the Insurance Company is allowed. The judgment and order dated 28.12.2010 passed in WCA.No.194/2008 on the file of Commissioner for Workmens Compensation, Bagalkot is set-aside.

In view of the Appeal being allowed, the amount in deposit is ordered to be refunded to appellant.

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