

Choudavva Vs. Marappa

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Court : Karnataka Dharwad

Decided On : Jun-03-2016

Judge : Rathnakala

Appeal No. : MFA 23412/2009

Appellant : Choudavva

Respondent : Marappa

Advocate for Pet/Ap. : Sri. K.L. Patil

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE03D DAY OF JUNE, 2016 BEFORE THE HONBLE MRS. JUSTICE RATHNAKALA M.F.A. No.23412/2009 C/W M.F.A.Nos.23413/2009, 23414/2009, 22781/2009, 22782/2009 & 22783/2009 (MV) IN MFA NO23412OF 2009 BETWEEN :

1. CHOUDAVVA W/O THIRKAPPA NINGAMMANAVARA @ HONNAMMAHAVARA, AGE44YEARS, 2. MANJAPPA S/O THIRAKAPA NINGAMMANAVARA @ HONNAAMMANAVARA, AGE :

24. YEARS, 3. MARIYAPPA S/O THIRAKAPA NINGAMMANAVARA @ HONNAAMMANAVARA, AGE:

22. YEARS, 4. HONNAPPA S/O THIRAKAPA NINGAMMANAVARA @ HONNAAMMANAVARA, AGE:

20. YEARS, 5. GANGAMALAVVA D/O THIRAKAPA NINGAMMANAVARA2@ HONNAAMMANAVARA, AGE:

17. YEARS, 6. GUDAPPA S/O THIRAKAPA NINGAMMANAVARA @ HONNAAMMANAVARA, AGE:

15. YEARS, 7. MARUTHI S/O THIRAKAPA NINGAMMANAVARA @ HONNAAMMANAVARA, AGE:

14. YEARS, APPELLANTS NO.5 TO7ARE MINORS REP. BY APPELLANT NO.1-MOTHER ALL ARE R/AT KAJJARI, TQ: RANEBENNURA, HAVERI DIST. (BY SRI LOKESH MALAVALLI, ADV.) APPELLANTS AND :

1. MARAPPA S/O VENKATAPPA, AGE: MAJOR, OCC: BUSINES, R/O BENGALORE, TQ & DIST BANGALORE.

2. THE DIVISIONAL MANAGER, ORIENTAL INSURANCE CO.LTD., N.K. COMPLEX KESHWAPUR, HUBLI, TQ: DHARWAD. (BY SRI K.L. PATIL, ADV. FOR R-2 R1-DISPENSED WITH) RESPONDENTS THIS MFA IS FILED U/S.30(1) OF THE W.C.ACT, 1926, AGAINST THE JUDGEMENT AND

ORDER

DATED2804-2009, PASSED IN W.C.A/F.33/2007, ON THE FILE3OF THE LABOUR OFFICER & COMMISSIONER FOR WORKMEN'S COMPENSATION, HAVERI DISTRICT, HAVERI, PARTLY ALLOWING FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THE CLAIM PETITION IN MFA NO23413OF 2009 BETWEEN :

1. SMT.PUTTAVVA W/O HANUMANTHAPA LAMANI, AGE:

26. YEARS, 2. NAGARAJ S/O HANUMANTHJAPPA LAMANI, AGE6YEARS, 3. HEMAVVA W/O NEMAPA LAMANI, AGE54YEARS, ALL ARE R/O KAJJARY VILLAGE, RANEBENNUR TALUK, HAVERI DIST. APPELLANTS (BY SRI LOKESH MALAVALLI, ADV.) AND :

1. MARAPPA S/O VENKATAPPA, AGE: MAJOR, OCC: BUSINESS, R/O BENGALORE, TQ & DIST BANGALORE.

2. THE DIVISIONAL MANAGER, ORIENTAL INSURANCE CO.LTD., N.K. COMPLEX KESHWAPUR, HUBLI, TQ: DHARWAD. (BY SRI K.L. PATIL, ADV. FOR R-2; R1-DISPENSED WITH) RESPONDENTS4THIS MFA IS FILED U/S.30(1) OF THE W.C.ACT, 1926, AGAINST THE JUDGEMENT AND

ORDER

DATED2804-2009, PASSED IN W.C.A/F.32/2007, ON THE FILE OF THE LABOUR OFFICER & COMMISSIONER FOR WORKMEN'S COMPENSATION, HAVERI DISTRICT, HAVERI, PARTLY ALLOWING FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THE CLAIM PETITION IN MFA NO23414OF 2009 BETWEEN:

1.

2. SMT.GUTHEVVA W/O DYAMAPA BYADAGI, AGE:

30. YEARS, SANJEEVA S/O DYAMAPA BYADAGI, AGE :

9. YEARS, 3. MARIYAPPA S/O DYAMAPA BYADAGI, AGE :

7. YEARS, 4. MANJUNATHA S/O DYAMAPA BYADAGI, AGE :

5. YEARS, APPELLANTS No.2 To 4 ARE MINORS REP. BY APPELLANTS No.1-MOTHER ALL ARE R/A KAJJARI, TALUK RANEBENNUR, HAVERI DIST. (BY SRI LOKESH MALAVALLI, ADV.) APPELLANTS5AND :

1. MARAPPA S/O VENKATAPPA, AGE: MAJOR, OCC: BUSINES, R/O BENGALORE, TQ & DIST BANGALORE.

2. THE DIVISIONAL MANAGER, ORIENTAL INSURANCE CO.LTD., N.K. COMPLEX KESHWAPUR, HUBLI, TQ: DHARWAD. (BY SRI K.L. PATIL, ADV. FOR R-2 R1-DISPENSED WITH) RESPONDENTS THIS MFA IS FILED U/S.30(1) OF THE W.C.ACT, 1926, AGAINST THE JUDGEMENT AND

ORDER

DATED 28-04-2009, PASSED IN WCA.F. NO.34/2007, ON THE FILE OF THE LABOUR OFFICER & COMMISSIONER FOR WORKMEN'S COMPENSATION, HAVERI DISTRICT, HAVERI, PARTLY ALLOWING FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THE CLAIM PETITION IN MFA NO22781 OF 2009 BETWEEN : DIVISIONAL MANAGER, ORIENTAL INSURANCE CO LTD., ENKAY COMPLEX, KESHWAPUR, HUBBALLI, NOW REP. BY ITS REGIONAL MANAGER, SUMANGALA COMPLEX, OPP. CORPORATION, LAMINGTON ROAD, HUBBALLI, DIST DHARWAD. (BY SRI K L PATIL, ADV.) APPELLANT AND :

1.

2. SMT PUTTAVVA S/O HANUMANTAPPA LAMANI, AGE:

29. YEARS, OCC: HOUSEHOLD, KUMAR. NAGARAJ S/O HANUMANTAPPA LAMANI, AGE 9 YEARS, 3. HEMAVVA W/O NEMAPA LAMANI, AGE:

55. YEARS, OCC: HOUSEHOLD WORK, (SINCE RESPONDENT NO.2 IS MINOR, HE IS REPRESENTED BY MINOR GUARDIAN NEXT FRIEND HIS MOTHER RESPONDENT NO.1) 4. MARAPPA S/O VENKATAPPA, R/O. # 893, 32, 10TH CROSS, 2ND STAGE, 80 FT. ROAD, CHANDRA LAY OUT, BANGALORE-40. (BY SRI LOKESH MALAVALLI, ADV. FOR R1-R3; R-2 IS MINOR REP. BY R-1; R-4 DISMISSED) RESPONDENTS ACT, AGAINST THIS MFA IS FILED U/S 30(1) (A), OF THE THE WORKMEN COMPENSATION

JUDGMENT
AND

ORDER
DATED:

28. 04-2009 PASSED IN WCA/F.NO.32/2007 ON THE FILE OF THE LABOUR OFFICER FOR WORKMEN COMPENSATION HAVERI, DISTRICT HAVERI, AWARDED THE COMPENSATION OF RS.3,76,740/- ALONG WITH INTEREST AT THE RATE OF 12 P.A. FROM THE DATE OF PETITION TILL ITS DEPOSIT. AND COMMISSIONER IN MFA NO22782 OF 2009 BETWEEN : DIVISIONAL

MANAGER, ORIENTAL INSURANCE CO LTD., ENKAY COMPLEX, KESHWAPUR, HUBBALLI, NOW REP. BY ITS REGIONAL MANAGER, SUMANGALA COMPLEX, OPP. CORPORATION, LAMINGTON ROAD, HUBBALLI, DIST DHARWAD. (BY SRI K L PATIL, ADV.) APPELLANT AND :

1.

2. SMT CHOUDAVVA W/O TIRAKAPPA NINGAMMANAVAR @ HONNAMMANAVAR, AGE:

41. YEARS, OCC: HOUSEHOLD, KUMAR. MANJAPPA S/O TIRAKAPPA NINGAMMANAVAR @ HONNAMMANAVAR, AGE:

23. YEARS, OCC: STUDENT, 3. MARIYAPPA S/O TIRAKAPPA NINGAMMANAVAR @ HONNAMMANAVAR, AGE:

22. YEARS, OCC: STUDENT, R/O KAJJARI VILLAGE IN RANEBENNUR, TQ: DIST HAVERI.

4. HONNAPPA S/O TIRAKAPPA NINGAMMANAVAR @ HONNAMMANAVAR, AGE:

21. YEARS, OCC:STUDENT, 8 5. GANGAMALAMMA S/O TIRAKAPPA NINGAMMANAVAR @ HONNAMMANAVAR, AGE:

19. YEARS, OCC:STUDENT, 6. GUDDAPPA S/O TIRAKAPPA NINGAMMANAVAR @ HONNAMMANAVAR, AGE:

16. YEARS, OCC:STUDENT, 7. MARUTI S/O TIRAKAPPA NINGAMMANAVAR @ HONNAMMANAVAR, AGE:

14. YEARS, OCC:STUDENT, (SINCE RESPONDENTS NO.6 TO7ARE MINORS THEY ARE REPRESENTED BY THEIR MINOR GUARDIAN NEXT FRIEND THEIR MOTHER RESPONDENT NO.1) R/O KAJJARI VILLAGE IN RANEBENNUR, TQ: DIST HAVERI.

8. MARAPPA S/O VENKATAPPA, R/O. # 893, 32, 10TH CROSS, 2ND STAGE, 80 FT. ROAD, CHANDRA LAY OUT, BANGALORE-40. (BY SRI LOKESH MALAVALLI, ADV. FOR R1-R7; R-6 & 7 ARE MINORS REP. BY R-1; R-8 DISMISSED) RESPONDENTS THIS MFA IS FILED U/S30(1) (A) OF THE WORKMEN COMPENSATION ACT, AGAINST THE

JUDGMENT
AND

ORDER
DATED:

28. 04-2009 PASSED IN WCA/F.No.33/2007 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN COMPENSATION, OF HAVERI, COMPENSATION AWARDDING THE9RS.3,22,297/- ALONG WITH INTEREST AT THE RATE OF12 P.A. FROM THE DATE OF PETITION TILL ITS DEPOSIT. IN MFA NO22783OF 2009 BETWEEN : DIVISIONAL MANAGER, ORIENTAL INSURANCE CO LTD., ENKAY COMPLEX, KESHWAPUR, HUBBALLI, NOW REP. BY ITS REGIONAL MANAGER, SUMANGALA COMPLEX, OPP. CORPORATION, LAMINGTON ROAD, HUBBALLI, DIST DHARWAD. APPELLANT (BY SRI K L PATIL, ADV.) AND :

1.

2. SMT GUTTEVA W/O DYAMAPPA BYADGI, AGE:

25. YEARS, OCC: HOUSEHOLD, R/O KAJJARI VILLAGE IN RANEBENNUR TQ & DIST HAVERI. KUMAR. SANJEEV S/O DYAMAPPA BYADGI, AGE: MINOR, 3. MARIYAVVA D/O DYAMAPPA BYADAGI, AGE: MINOR4 MANJUNATH S/O DYAMAPPA BYADAGI, AGE: MINOR, 10 (SINCE RESPONDENTS NO.2 TO4ARE MINORS, THEY ARE REPRESENTED BY THEIR MINOR GUARDIAN NEXT FRIEND THEIR MOTHER RESPONDENT NO.1) RESPONDENTS NO.2 TO4ARE R/O KAJJARI VILLAGE IN RANEBENNUR, TQ & DIST HAVERI.

5. MARAPPA S/O VENKATAPPA, R/O. # 893, 32, 10TH CROSS, 2ND STAGE, 80 FT. ROAD, CHANDRA LAY OUT, BANGALORE-40. (BY SRI LOKESH

MALAVALLI, ADV. FOR R1-R4; R-2 TO4ARE MINORS REP. BY R-1; R-5 DISMISSED) RESPONDENTS THIS MFA IS FILED U/S301) (a) OF WORKMENT'S COMENSATION ACT, AGAINST THE

JUDGMENT
AND

ORDER

DATED:28-04-2009 PASSED IN WCA/F/34/2007 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN'S COMPENSATION, HAVERI THE COMPENSATION OF RS.3,76,740/- WITH THE INTEREST AT THE RATE OF12 P.A. FROM THE DATE OF PETITION TILL ITS DEPOSIT. AWARDDING DISTRICT, HAVERI, THESE APPEALS COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Though these appeals are listed for admission, by consent of both the parties, it is taken up for final adjudication after hearing the both sides. 11 2. Insurance company has filed M.F.A. Nos.22781/2009, 22782/2009 and 22783/2009 and on the other hand, claimants have filed M.F.A.Nos.23412/2009, 23413/2009 and 23414/2009 challenging the common judgment and award dated 28.04.2009 on the file of the Labour Officer and Workmens Compensation Commissioner, Haveri, Haveri District in W.C.Nos.32, 33 and 34/2007.

3. Since these appeals are arising out of the same accident and a common judgment and award, they are taken up together for consideration.

4. The fact not in dispute at this stage is the respondents/claimants being the legal heirs of deceased persons namely Hanumanthappa, Tirakappa and Dyamappa, who expired in a vehicular accident involving canter lorry bearing registration No.KA-02/C-3533 on 22.01.2005 filed respective claim petitions under Section 22 of the Workmens Compensation Act, 1923 (hereinafter 12 referred to as the Act, for brevity) before the Workmens Compensation Commissioner, Haveri (for short, Commissioner). Their case was that the deceased were working as Hamalies in the canter lorry bearing registration No.KA-02/Complaint-3533; on 22.01.2005, as

per the direction of the owner of the canter lorry, they were travelling in the said vehicle from Bombay to Bangalore; near sugar factory of Hiriya, the offending lorry bearing registration No.KA-22/D-3797 came from the opposite side rashly and negligently and dashed against the canter lorry. Due to which, all the three Hamalies suffered fatal injuries and died at the spot. The Hiriya Police registered a case against the driver of the offending lorry. It is the claim of the claimants that the deceased persons were getting salary of Rs.5,000/- per month with daily Bhatta of Rs.50/-. The claimants were entirely depending on the income of the deceased persons for their livelihood. The lorry was insured at the relevant point of time with the insurer and thus, they sought for 13 compensation of Rs.10,00,000/- jointly and severally from the owner and insurer.

5. The owner of the vehicle remained *exparte* and the insurer contested the claim. The insurer disputed the relationship of employee and employer between the deceased and the owner of the lorry and contended that the deceased were unauthorised passengers in the lorry and have not died during the course of their employment. Among other things, during trial, the insurer produced a letter addressed by the owner to the insurer to the effect that he is unable to furnish the names of the coolies as the vehicle was entrusted to a transport company on kilometer basis. The Commissioner on consideration of material placed before him, allowed the petitions and awarded compensation at the rate of Rs.3,76,740/- to the claimants in W.C.No.32/2007, Rs.3,22,297/- to the claimants in W.C.No.33/2007 and Rs.3,76,740/- to the claimants in W.C.No.34/2007 with interest at 12% payable from 30 days of the date of the order. 14 6. Sri K.L. Patil, learned counsel for the appellant-insurer submits that the vehicle in question was hired to a transport company in which the deceased persons were travelling as Hamalies. The owner in his letter at Ex.R-2-5 has not identified the deceased as his employees which was an interstate transport vehicle and it is hit by proviso of Rule 100(1) of Karnataka Motor Vehicle Rules, 1989. Accordingly, no Hamali can be allowed to travel in the interstate transport vehicle. The policy in question covers the risk of only one Hamali and since three claims are made in respect of 3 Hamalies, the claims are liable to be rejected.

7. Sri Lokesh Malavalli, learned counsel for the claimants-appellants submits that having regard to the nature of employment, it cannot be expected from the claimants to produce documentary proof of employment or the wages which the deceased were earning from their employment. In the police records, the deceased are shown as Hamalies. The owner did not appear before the 15 Commissioner to contest the claim or dispute regarding employer and employee relationship except addressing a letter at Ex.R-2(5) to the insurance company, disputing on the identity of the deceased. In the given circumstances, the Commissioner has properly appreciated the matrix and has held that the deceased were the employees under the owner of the canter lorry. Though the claimants claim that the deceased were earning Rs.5,000/- per month with daily bhatta of Rs.3,000/- per month, the Commissioner has assessed the income of deceased persons at Rs.3,500/- per month. He submits that in the light of explanation to Section 4(1) of the Act, the income shall be assessed at Rs.4,000/- per month only in the event of salary of the deceased or the injured is more than Rs.4,000/- per month. Therefore, the compensation may be reassessed by working out of the monthly income as Rs.4,000/- and award may be modified to that extent and appeals of the insurer deserve to be rejected. 16 8. In the light of the rival submissions and on perusal of the impugned common judgment and award with the case records, following questions arise for my consideration:

1. Whether there exists employer and employee relationship between the owner of the lorry and the deceased?.

2) Whether the claimants are entitled for enhanced compensation?.

9. At this stage, there is no dispute to the fact that the claimants are the dependents of the deceased persons who expired in the vehicular accident dated 22.01.2005. The owner of the lorry despite service of notice has not contested the claim. Though the insurer had categorically disputed the relationship of employer and employee between the deceased and the owner, the Commissioner without much discussion, only on the basis of the chargesheet and on the statement of claimant, has held that the deceased were the Hamalies in the canter 17 lorry and that falls within the ambit of the workman under the Workmens Compensation Act.

Rule 100 of Karnataka Motor Vehicle Rules, 1989 regulates carriage of persons in goods vehicle proviso to Sub-Rule 1 allows bonafide employee of the vehicle to be carried free of charge. It is also permissible for a Police Officer in uniform to travel in goods vehicle while on duty in a light motor vehicle having registered laden weight less than (i) 990 kgs not more than one (ii) in any other light transport goods vehicle not more than three (iii) in any goods vehicle not more than seven. Further above subclasses (ii) and (iii) of the above proviso is not applicable to the vehicle plying in interstate vehicle or vehicle carrying goods from one city to another city. The vehicle involved in the accident is registered in Bangalore; it was plying to Bombay and was transporting the couriers. The documents produced by the insurer at Ex.R-1 and 2 series are not at all disputed by the claimants and the owner has remained exparte. These documents demonstrate that the vehicle was entrusted to a third party/transporter for courier service. Neither the owner nor the transporter admits the relationship with the deceased persons. When the relationship is not admitted by the owner though the case was not contested him, the Commissioner was obliged to examine before adjudicating the claim compensation about the existence of employer and employee relationship which is overlooked by him. The description of deceased as Hamalies in the chargesheet does not mean that they were working as Hamalies in the canter lorry under the first respondent- Marappa. The finding of fact recorded by the Commissioner is perverse. The insurance policy in question does not admit the risk of 3 Hamalies. The seating capacity of the vehicle was 2+1 its unladen weight was 3500 kgs. Apart from this claim which went for adjudication, other injured of the same accident had filed claim petition before Tribunal under the Motor Vehicle Act, 1988. The deceased Hamalies are from Haveri District, the lorry is registered at Bangalore and the owner is also from the Bangalore and the vehicle was plying to Bombay in interstate mode. Thus, all would go to establish that claimants were gratuitous passengers but not employees of the owner. Even if it is to be held that the owner since did not dispute the relationship of employer and employee, the insurer cannot be called upon to cover the risk of the owner who allowed gratuitous passengers to travel in his goods vehicle by which he committed breach of the terms and conditions of the contractual obligation under the policy. To that extent, the award needs to be modified.

10. Coming to the question of amount of compensation, much against the evidence adduced by the claimants that the deceased were earning Rs.5,000/- per month salary with daily bhatta of Rs.50/-, the Commissioner has assessed the income as Rs.3,500/- per month by referring to the provisions of Minimum Wages Act and multiplying with the multiplier appropriate to the age of the deceased persons. When the Commissioner does not dispute that the deceased was earning more than Rs.3,000/- per month as per the provisions of Section 4 of 20 the Act, for the purpose of capitalization, the compensation in respect of death as per Explanation II of Section 4(1) of the Act, monthly income shall be deemed to be assess at Rs.4,000/- per month only and the compensation ought to have been computed on the basis of monthly income of Rs.4,000/-. That being so, compensation works out as under: In W.C.No.32/2007 Name of the deceased : Hanumanthappa, Income assessed : Rs.4,000/-, Age of the deceased At the time of accident :

26. years, Loss of earning capacity:

100. Multiplier based on the Age of the deceased :

215. 28 Rs.2,000X215.28X100/100=4,30,560/- In W.C.No.33/2007 Name of the deceased : Tirakappa, Income assessed : Rs.4,000/-, Age of the deceased at the time of accident :

40. years, 21 Loss of earning capacity:

100. Multiplier based on the age of the deceased :

184. 17 Rs.2,000X184.17X100/100=3,68,340/- In W.C.No.34/2007 Name of the deceased : Dyamappa, Income assessed : Rs.4,000/-, Age of the deceased at the time of accident :

26. years, Loss of earning capacity:

100. Multiplier based on the age of the deceased :

215. 28 Rs.2,000X215.28X100/100=4,30,560/- 11. In view of the judgment of the Apex Court in the case of Oriental Insurance Co. Ltd., -Vs- Siby George and

others (2012 ACJ2126, interest is payable from 30 days of the occurrence of the accident not from 30 days of the impugned order. To that extent, both the quantum of compensation and period from which the interest starts calculating also need to be modified. 22 12. In the result, I pass the following:

ORDER

(i) M.F.A.Nos.22781/2009, 22782/2009 & 22783/2009 filed by the insurance company are allowed; (ii) M.F.A.Nos.23412/2009, 23413/2009 and 23414/2009 filed by the claimants are allowed in part; (iii) The judgment and award dated 28.04.2009 on the file of the Labour Officer and Workmens Compensation Commissioner, Haveri, in W.C.Nos.32, 33 and 34/2007 is modified granting compensation of Rs.4,30,560/- to the claimants in W.C.No.32/2007, Rs.3,68,340/- to the claimants in W.C.No.33/2007 and Rs.4,30,560/- to the claimants in W.C.No.34/2007; (iv) Interest at the rate of 12% per annum is payable from 30 days of the date of accident by the first respondent/owner only; (v) Insurance company is absolved from its liability to pay the compensation; 23 (vi) The amount shall be disbursed among the claimants as per the rate ordered by the Commissioner. Registry is directed to refund the amount deposited by the insurance company along with accrued interest and transmit the original records to the jurisdictional Court of Senior Civil Judge. Naa Sd/- JUDGE

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