

Madivalappa Vs. Basavaraj

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Court : Karnataka Dharwad

Decided On : Sep-19-2023

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 25024/2013

Appellant : Madivalappa

Respondent : Basavaraj

Judgement :

- 1 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE19H DAY OF SEPTEMBER, 2023 BEFORE THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL NO.25024/2013(WC) BETWEEN: SHRI MADIVALAPPA W/O. BHIMARAYAPPA JADHAV, (ARER), AGE:

23. YEARS, OCC: NILL, R/O: HOSUR, TAL: SAUNDATTI, DIST: BELGAUM. APPELLANT (BY SRI H. R. LATUR, ADVOCATE) AND:

1. BASAVARAJ S/O. BHIMARAYAPPA JADHAV, (ARER) AGE:

40. YEARS, OCC: AGRICULTURE, R/O: HOSUR, TQ: SAUNDATTI, DIST: BELGAUM.

2. THE BRANCH MANAGER, THE ORIENTAL INSURANCE CO.LTD., THE MERCHANTS CO-OP BANK BUILDING, S.R. CIRCLE, BAILHONGAL, DIST: BELGAUM. RESPONDENTS (BY SRI B.M.ANGADI, ADVOCATE FOR R2; R1 IS SERVED) THIS MFA IS FILED UNDER SECTION 301) OF WORKMENS COMPENSATION ACT, PRAYING TO ENHANCED THE COMPENSATION AND FIXED THE LIABILITY ON R2 THE

JUDGMENT

AND AWARD PASSED BY THE LABOUR OFFICER AND COMMISSIONER FOR WORKMENS COMPENSATION, DIV - 2, BELGAUM DISTRICT, BELGAUM, IN KA.PA.KA/S.R-77/2010 DATED 13.08.2013 IN THE INTEREST OF JUSTICE AND EQUITY. THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING: - 2 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013

JUDGMENT

The appeal is filed by the claimant challenging the judgment and award dated 13.08.2013 in KA.PA.KA/S.R- 77/2012 by the Labour Officer and Commissioner for Workmens Compensation, Division-2, Belagavi, (for short, hereinafter referred to as the Commissioner) for seeking enhancement of compensation and questioning the liability fastened on the owner to pay compensation.

2. Brief facts of the case are that the appellant/claimant was working as a coolie under the employment of respondent No.1 who is owner of the tractor bearing registration No.KA-22/T-6972 which is insured with respondent No.2 and on 12.03.2010 the claimant was working as a coolie under instruction of respondent No.1 for Harvesting Soybean crop and the right hand of the claimant was crushed in the said tractor and harvesting machine has fallen on him and due to which claimant has suffered amputation of right hand. Therefore, by contending that the claimant had suffered - 3 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 injuries out of and in the course of employment, therefore, filed claim petition before the learned Commissioner. The learned Commissioner while granting compensation, fastened liability on the employer.

3. Heard the arguments from both sides and perused the records.

4. The learned counsel for the appellant/claimant submitted that the insurance policy issued is an agricultural Kisan package policy and therefore, when the tractor is attached with the harvesting machine that whole component of the vehicle is constituted as an agricultural purpose vehicle for that purpose the tractor is insured and when the insurance policy is package policy for agricultural purpose, then the insurer is liable to indemnify the owner. Admittedly, the claimant has suffered injuries out of and in the course of employment. Therefore, prays that the insurance company is liable to indemnify the owner and pay compensation. Further submitted that the claimant has suffered amputation on right hand and claimant being - 4 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 coolie he is not able to do work as a coolie for livelihood. Hence, amounting to functional disability at 100% but the Tribunal has taken only 80%. Therefore, requested to hold 100% as functional disability.

5. On the other hand, the learned counsel for the Insurance Company submitted that under insurance policy, tractor is only insured and the claimant had sustained injuries to his right hand was crushed as harvesting machine has fallen on him and this harvesting machine is not covered under the insurance policy. Therefore, the learned Commissioner is correct in exonerating the insurance company. Therefore, prays to dismiss the appeal.

6. The factum of accident that the claimant was coolie had suffered injuries as his right hand crushed in the harvesting machine suffering amputation is not disputed. The injury caused to the claimant out of and in the course of employment is not disputed. The issue involved is whether under insurance policy which is - 5 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 agricultural package policy and if tractor is attached with harvesting machine or with any other agricultural operative machine attached to the tractor and workman suffered injury or death then the insurance company is liable to be absolved or not is to be determined in the present appeal.

7. Upon considering the rival submissions the following substantial question of law arises for consideration: i) Whether, under the facts and circumstances involved in the case, admittedly where the insurance policy is an agricultural package policy issued in respect of the tractor and if accidental injury or death is caused while harvesting the crop with held of harvesting machine attached to the tractor, insurance company is liable to absolved?. - 6 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 8. The above question of law is answered holding negative for the following reasons:

9. Admittedly, the insurance policy is issued towards tractor for agricultural purpose package policy. Mere a single tractor engine is not usable for any purpose unless it is attached with other machines or trailer or agricultural equipment so as to use it for agricultural purpose. When the insurance policy is issued for agricultural package policy for the tractor, then the coverage of insurance is to the whole component of vehicle with machine or trailer or equipment. Issuance of agricultural purpose package policy towards tractor means covering risk of the tractor, when the tractor is used for agricultural purpose. As above stated tractor engine alone cannot do any functions for agricultural purpose unless it is attached with tiller machine or thresher machine or harvesting machine or trailer. Therefore, where insurance policy is issued for agricultural package policy, it covers the risk, when the tractor is used for agricultural work - 7 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 along with machine attached to it. When harvesting or tiller machine is attached to the tractor then the policy issued towards agricultural purpose package policy covers risk of workman working with the said tractor and machine. Harvesting machine is not a mechanically propelled vehicle and therefore, independent of tractor the said harvesting machine cannot have motion when harvesting machine or tiller machine or thresher machine or

trailer is attached to the tractor, then the insurance coverage attracts for injury sustained during operation of the said machine/equipment/trailer when it is attached to tractor. Therefore, object behind issuance of agricultural purpose package policy is to be considered. When the tractor is insured for agricultural purpose package policy, then it covers the risk along with machine attached to it when both tractor and machine are together engaged for agricultural work. Therefore, just because there is no insurance issued separately towards said machine is not the ground to say that insurance company is liable to exonerated from its liability. The contention raised in the - 8 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 appeal by the insurance company is applicable where such machine is not attached to the tractor and in static conditions independently and any accident occurred due to only such machine without attaching with tractor then only the insurance company is absolved. But when the said machine/equipment/trailer is attached to the tractor engine, then the whole component vehicle together has become the vehicle for agricultural purpose and even if technically in the insurance policy only the tractor is mentioned, it means, with all these extensions, wherever the said tractor is attached with machine for the agricultural purpose, then there is a valid insurance coverage. This is lost sight by the learned Commissioner. The judgments of Honble Supreme Court in the cases of Raj Kumar Vs. Ajay Kumar and Another¹; Rekha Jain Vs., National Insurance Co., Ltd., and Others²; Jakir Hussein Vs. Sabir and Others³; Mohan Soni Vs. 1 (2011) 1 SCC3432 (2013) 8 SCC3893 (2015) 7 SCC252- 9 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 Ram Avtar Tomar and Others⁴ and Pratap Narain Singh Deo vs. Srinivas Sabata and another⁵ cannot be followed.

10. Therefore, the substantial question of law is answered in the negative for the reason that when the tractor is attached with any machine used for harvesting purpose or for agricultural operational work and insurance policy is issued as agricultural purpose package policy, then the insurer cannot be absolved only on the ground that insurance policy issued is only for tractor engine. REGARDING QUANTUM OF COMPENSATION:

11. In the present case, the claimant had suffered amputation of right hand. The claimant is a coolie by profession for his livelihood. At one hand the claimant is not able to do work as coolie, as the coolie work requires physical strength with two hands. Therefore, when the 4 (2012) 2 SCC2675 (1976) 1 SCC289- 10 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 claimant has suffered disability to work as a coolie, then it amounts to 100% as functional disability affecting his loss of earning capacity including loss of future prospects in life, this is well settled by the Honble Supreme in the case of Pratap Narain Singh Deo vs. Srinivas Sabata and another⁶ and Raj Kumar vs. Ajay Kumar and another⁷ and in catena of decisions. Therefore, by following the principles of law laid down by the Honble Apex Court as discussed above are applied to the present case.

12. It is the case of the claimant that he has suffered 100% functional disability. The claimant was aged 20 years old. Hence, relevant factor is 219.95.

13. The learned Commissioner submitted to take monthly wage as Rs.6,000/-. In the present case, the accident was occurred on 12.03.2010 and as on 12.03.2010, the Explanation-2 of proviso to Clause (b) is 6 (1976) 1 SCC2897 (2011) 1 SCC343- 11 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 in existence till 18.01.2010. On 18.01.2010, the said Explanation-2 was omitted and sub-section (1-B) is inserted to Section-4 of the Employees Compensation Act. What was Explanation-2 before omission is even if the claimant claims his monthly wage is less or more of Rs.4,000/- then for the purpose of Clause-A and Clause-B shall be considered to be Rs.4,000/- only. Therefore, for the purpose of making assessment of quantum of compensation whatever may be the monthly wage, only Rs.4,000/- could be taken. This is the intention of legislature in enacting Explanation-2 on 18.11.2010. By the Act No.35/2009, Explanation-2 was omitted and sub- section (1-B) is inserted. Sub-section(1-B) came into force on 18.01.2010 which enumerates that the Central Government may issue notification specifying such monthly wages for the purpose of Sub-section(1) enabling to make assessment of compensation. Therefore, according to the rate of monthly wage as notified by the Central Government such monthly wage is to be taken into consideration. Therefore,

Explanation-2 is removed and - 12 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 sub-section(1-B) is inserted which means as per the monthly wage notified by the Central Government, the said monthly wage is to be taken into consideration, but not otherwise.

14. As on the date of accident, on 12.03.2010, the monthly wage notified by the Central Government is Rs.4,000/- p.m. when section(1-B) is in existence such monthly wage as per Central Government notification is Rs.4,000/-. The accident is caused on 12.03.2010. Therefore, the learned Commissioner is correct in holding the monthly wage and accordingly assessed the quantum of compensation but as above stated, the claimant had suffered 100% functional disability and Commissioner has erred in holding 80% disability and the same requires modification.

15. The monthly wage taken by the Commissioner is kept in tact as there is no grievance by the insurance company. The learned Commissioner held the monthly wage at Rs.4,500/- and this is not challenged by the - 13 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 insurance company, hence it is retained as it is, as it is beneficial to the claimant, being Employee Compensation is a social beneficiary legislation. Accordingly, the compensation is reassessed and quantified as below: $\text{Rs.4,500} \times 60 \times 21995 = \text{Rs.5,93,865/-}$.

16. The claimant has produced medical bills worth Rs.22,377/- as per Ex.P.5, accordingly the same is awarded.

17. Accordingly , I pass the following:

ORDER

i) The appeal filed by the claimant is allowed. ii) The order and award passed by the Labour Officer and Commissioner for Workmens Compensation, Division-2, Belagavi District, Belagavi in KA.PA.KA/SR-77/2012 dated 13.08.2013 is modified.-. 14 - NC:

2023. KHC-D:10853 MFA No.25024 of 2013 iii) The appellant-claimant is entitled for total compensation of Rs.6,16,242/- (Rs.5,93,865 + Rs.22,377) along with interest at 12% per annum from the date of accident till realization as against the amount of Rs.4,75,092/- awarded by the Workmens Compensation Commissioner, Belagavi. iv) No order as to costs. v) Draw decree accordingly. SD/- JUDGE SSP: para 1 to 11 HMB: para 12 to end List No.:

2. SI No.:

21. CT-ASC

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