

The Claim Manager Vs. Lakshmi

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Court : Karnataka

Decided On : Aug-26-2022

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 2187/2017

Appellant : The Claim Manager

Respondent : Lakshmi

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE26H DAY OF AUGUST, 2022 BEFORE THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL NO.2187/2017 (WC) BETWEEN: THE CLAIM MANAGER SRI RAM GENERAL INSURANCE COMPANY LIMITED., HEAD OFFICE, E/8, EPIP RIICO INDUSTRIAL AREA SITAPURA, JAIPUR, RAJASTHAN BY SHRIRAM GENERAL INSURANCE CO. LTD, 5/4, 3RD CROSS, S.V. ARCADE BELAKANAHALLI MAIN ROAD OPP: BANNERAGHATTA MAIN ROAD II M.B. POST, BANGALORE-560076 APPELLANT (BY SRI. O. MAHESH, ADVOCATE) AND:

1. LAKSHMI AGED ABOUT32YEARS W/O H.D. VEERANNA2 SHILPA V AGED ABOUT16YEARS D/O H.D. VEERANNA3 NIRANJANAMURTHY. V. MINOR, AGED ABOUT13YEARS S/O H.D. VEERANNA2RESPONDENT NOS.2 AND3ARE MINORS REPRESENTED BY THEIR M\G LAKSHIMI- RESPONDENT

NO.1.

4. DEVENDRAPPA AGED ABOUT 73 YEARS D/O LATE MUDLAPPA
MUDDAKKA AGED ABOUT 68 YEARS W/O DEVENDRAPPA ALL ARE
RESIDING AT HOSAKEREPALYA, KHANDENAHALLI POST, DARAMAPURA
HOBLI HIRIYUR TALUK CHITRADURGA DISTRICT- 577501 NOW R/AT
HANUMANTHAPURA TUMKUR- 572101 6. KENCHAPPA AGED
ABOUT 53 YEARS S/O MAHALINGAPPA R/O HOSAKERE KHANDENAHALLI
POST DARAMAPURA HOBLI, HIRIYUR TALUK, CHITRADURGA DISTRICT-
577501 RESPONDENTS (BY SRI. RAMESH K.R., ADVOCATE FOR C/R1 TO
R5, R6- SERVED) THIS M.F.A IS FILED UNDER SECTION 301) OF WC ACT,
AGAINST THE

JUDGMENT

AND AWARD DATED:

23. 01.2017 PASSED ON ECA NO.116/2014 ON THE FILE OF THE 2D
ADDITIONAL SENIOR CIVIL JUDGE, MACT, TUMAKURU, AWARDED
COMPENSATION OF RS.8,91,770/- WITH INTEREST AT 12 P.A., FROM THE
DATE OF THE ACCIDENT TILL REALIZATION. 3 THIS M.F.A. COMING ON FOR
FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the appellant-Insurance Company challenging the judgment and award dated 23.01.2017 passed by the Court of II Additional Senior Civil Judge and MACT, Tumkur in ECA No.116 of 2014. (hereinafter referred to as 'Tribunal' for brevity) questioning the liability to pay compensation. Brief facts:

2. It is stated that H.D. Veeranna S/o Devendrappa, was a workman, within the meaning of Employees Compensation Act, as a loader-unloader-cum cleaner under the 1st respondent in TATA Ace Goods Vehicle bearing Reg.No.KA-16-B-6716 on monthly salary of Rs.9,000/- and he was getting bhatta of Rs.50/- per day, under the employment of respondent No.6. On 02.05.2014 at about 4.30 p.m., when H.D. Veeranna was proceeding in the said vehicle, it met with an accident

near 4 Ajjagondanahalli circle, Bellavi Hobli, Tumakur Taluk, due to the rash and negligent driving by its driver, due to which he sustained grievous injuries and shifted to Government Hospital, Tumakur. After First Aid, he was shifted to Dhanush Hospital, Bengaluru and thereafter, he was shifted to Victoria Hospital, Bengaluru for treatment. While taking treatment on 05.05.2014, H.D.Veeranna died due to the injuries sustained in the alleged road traffic accident.

3. Hence, the claim petition was filed by the claimants under Section 10 of the Employees Compensation Act ('EC Act' for brevity), claiming compensation in respect of the death of H.D.Veeranna caused during the course of his employment. The Tribunal on appreciating the materials on record, allowed the claim petition along with costs and awarded a compensation of Rs.8,91,770/-, together with interest at 12% per annum from the date of accident till realization. The Tribunal held that the Insurance Company is liable to pay the compensation. 5

4. Heard arguments of the learned counsel for the appellant-Insurance Company and the learned counsel for respondents- claimants and perused the materials on record. Submission of learned counsel for Insurance Company:

5. The learned counsel for the appellant- Insurance company submitted that in the present case, the respondents-claimants have not proved the relationship of the employer and the employee between the deceased and respondent No.6-owner of the vehicle. Therefore, the claim made before the Tribunal was not maintainable.

6. It is submitted that the owner-respondent No.6 has not produced any registers or records showing respondent No.6 was an employer of the deceased. Therefore, no employer-employee relationship is proved before the Tribunal. There is no compliance with reference to Section 18 of Minimum Wages Act ('MW Act' for brevity) and Rules 29 and 29(B) of the Karnataka Minimum Wages 6 Rules ('KMW Rules' for brevity). It is mandatory on the part of the employer to maintain a register and records regarding employment of employees under him, but, respondent No.6 has not produced any register or records proving that the deceased was working under his employment. Further submitted that for non-compliance of these mandatory requirements of Section 18 of the MW Act and Rules, the claim petition is not maintainable, for want of proof of relationship of

employer and employee.

7. Further, submitted that as per Section 10 EC Act no prior notice was issued by respondent No.6- employer soon after the accident. Therefore, the claim made by the claimants is not maintainable in view of non- issuance of notice to Insurance Company. Further submitted that as per Section 4-A of EC Act, compensation shall be paid as soon as it falls due. Under the EC Act, the primary liability is on the employer to satisfy the claim and later the Insurance company to indemnify, subject to insurance policy. But in the present case respondent No.6- 7 owner has not complied with Section 4-A of EC Act. Hence, submitted the claim petition is not maintainable.

8. Further, learned counsel submitted that neither the claimants nor respondent No.6 have examined any independent witness to prove the relationship of the employer and employee. It is submitted that the evidence of RW.1-employer alone is not sufficient and quite naturally the owner has given evidence in order to escape from the liability and put burden on the insurance company. Therefore, evidence of RW.1 is not appreciable because it is in the nature of self-explanatory without having any corroboration. Therefore, disputed the relationship of the employer and the employee.

9. Further, it is submitted that the owner or driver of the offending TATA Ace Goods Vehicle has not issued notice to the insurer- Insurance Company as enshrined under Sections 133 and 134(c) of Motor Vehicles Act, 1988 ('MV' Act for brevity). Therefore, there could not be any chance to the Insurance Company to know that 8 such an accident has occurred. Therefore, due to non- compliance of Sections 133 and 134(c) of MV Act, the claim proceedings is vitiated. Further it is submitted that there is non-compliance of Section 158(6) of MV Act since the Investigating Officer has not reported with regard to the factum of accident, injury or death and the vehicle number etc., to the Insurance company. Hence, claim proceedings are vitiated.

10. It is further submitted that there is no evidence on behalf of the owner-respondent No.6 as to whether the deceased was traveling inside the cabin or in the body of the vehicle, but if either of it is proved on its probability, the Insurance

company is not liable to pay compensation, since traveling in a goods vehicle with excess passengers enables disentitlement of compensation from the Insurance Company. Therefore, non-compliance of mandatory provisions vitiates the claim proceedings. Hence, he prays to allow the appeal by setting aside the judgment and award passed by the learned Commissioner/ Tribunal. 9

11. It is further submitted that the seating capacity of the TATA Ace Goods Vehicle is 1 + 1. But there were eight persons traveling in the TATA Ace vehicle and there is no evidence at all to show that all those persons were either traveling in the cabin or traveling in the body of the offending vehicle. Therefore, traveling of eight persons in the TATA Ace vehicle as it is Light Motor Vehicle which is meant for transportation of luggage/goods only, certainly affects the driver to drive the vehicle conveniently, thus it resulted into accident. Therefore, there is violation of conditions of policy. Hence, the insurance company is not liable to pay any compensation, and he submits that the liability may be fastened on the owner-respondent No.6.

12. Further, learned Senior counsel for the appellant-Insurance Company submitted that before the Tribunal/ learned Commissioner the claimants have given evidence in the form of affidavit in lieu of examination-in- chief, which is not permissible in the proceedings before the Tribunal/learned Commissioner under the provisions of 10 EC Act. Therefore, it is submitted that, Order 18 Rule 4 of CPC is not applicable and thus the entire proceedings is vitiated and in this regard the learned Senior counsel for the appellant-Insurance company submitted that at the most the case has to be remanded to the learned Tribunal for fresh consideration directing that the evidence should not be by way of affidavit evidence. Therefore, submits that Order 18 Rule 4 of CPC is not applicable. Hence, prays to allow the appeal by setting aside the judgment and award passed by the Tribunal.

13. Again the learned counsel for the appellant submitted that the quantum of compensation awarded by the Tribunal is on exorbitant side. The Tribunal/learned Commissioner has taken monthly wages at Rs.9,000/-, but as per the notification issued for the relevant year as per Section 4 of the Act, the income ought to have

been taken at Rs.8,000/- p.m., only. He further submitted that the interest awarded from the date of accident, which is not correct. Hence, on all these grounds prays to set aside the judgment and award passed by the Tribunal. 11 Submission of learned counsel for claimants:

14. On the other hand, the learned counsel for respondent Nos.1 to 5-claimants submitted that non-compliance of provisions of MW Act is nothing to do with the claim made under the EC Act. Just because evidence is not adduced as mandated under Sections 18 of MW Act and Rules 29 and 29-B of the KMW Rules, cannot be a ground to reject the claim petition. Further submitted that at earliest point of time the deceased was taken to the hospital for the treatment and the hospital authorities have noted down the history of the accident by mentioning that the deceased was working as a loader-unloader-cum- cleaner of the vehicle. Therefore, soon after the accident it was mentioned as the deceased was working as loader- unloader-cum-cleaner of the vehicle, which is sufficient to prove the relationship of employer and employee. Further, submitted that just because Sections 133, 134(c) and 158(6) of MV Act are not complied with, that cannot take away the rights of the claimants. Non-compliance of these provisions does not create a bar to make a claim and 12 entertain the claim. Further submitted that even though notice under Section 10 of EC Act was not issued by the employer, but notwithstanding such non-issuance of notice, the learned Commissioner/Tribunal shall entertain the claim petition as per proviso.

15. Further it is submitted that as per Section 4-A of EC Act, compensation to be paid when it is due and penalty for default to the party. Therefore, it is submitted only after determining the compensation as stated in Section 4 of the EC Act the employer's burden starts to pay, but not before making determination of the compensation.

16. Further it is submitted that in the present case, respondent No.6 -employer has not paid the compensation for the reason that there was valid insurance policy coverage and it is rightly considered by the learned Commissioner of the Tribunal. Therefore, it is submitted that there is compliance of Section 4-A of EC Act. 13

17. It is further submitted that as per Section 23 of EC Act, the learned Commissioner or Tribunal is empowered to exercise powers under Code of Civil Procedure, 1908, for the purpose of taking evidence and oath etc., Therefore, he submitted that Order 18 Rule 4 of CPC is applicable as per the power vested under Section 23 of the EC Act to the learned Commissioner to receive/ record evidence. Therefore, it is submitted that just because examination-in-chief is done by way of affidavit evidence, it cannot vitiate the proceedings.

18. It is further submitted that non-compliance of Section 18 of MW Act and Rules 29 and 29(B) of the KMW Rules, at best attracts the penalty as per Section 22A of M.W. Act. Therefore, non-compliance of Section 18 of the Act and Rules is different aspect, which is nothing to do with the claim arising under the EC Act.

19. It is further submitted that as per Proviso Nos.4 and 5 and Section 10 of EC Act, just because the 14 notice is not issued that shall not be a bar to entertain the claim made under the EC Act. Analysis:

20. Having heard the arguments addressed by both the sides and perusal of records, it reveals that the Tribunal has awarded compensation of Rs.8,91,770/- with interest @ 12% p.a., from the date of accident till the date of realization by putting burden on the appellant- insurance company, for the reason that relationship of employer and employee is proved and there is valid insurance policy exists as on the date of accident. Therefore, the Tribunal/learned Commissioner has fastened liability on the insurance company.

21. So far as considering the rival contentions made by the learned counsel regarding non-observation of Section 18 of MW Act and Rules 29 of KMW rules, it is true that duty casts on the employer to maintain registers or records of employees working under him and to submit details as required to the competent authorities as stated 15 in the MW Act. Correspondingly, Rules 29 and 29(B) are framed but non-compliance of these provisions attracts penalty as per Section 22 of MW Act. Under those provisions, just because the employer has not maintained the registers or records, it cannot vitiate the claim proceedings arising under the EC Act. The scope and object of the enactment of MW Act, 1948 is to put responsibility on the employer to pay minimum wage as fixed to its employees,

otherwise if the employer is not able to pay the minimum wage as prescribed by the Government under notification issued under the MW Act then the employer cannot run his business/employment. Therefore, this safeguard is provided to the employee to receive atleast a minimum wage for work done by him under the employment of the employer and not below that. There was prevailing situation earlier that there was much exploitation by the employer by not giving sufficient wage even the minimum wage and extracting work from the employees. Therefore, in order to avoid such turbulent situations meted to the employees to safeguard the 16 interest of the employees, the enactment namely the MW Act is enacted. The justification of statutory fixation of Minimum Wage is obvious. The provisions like the MW Act are more in advanced countries and the scope and object of the Act is to safeguard the interest of the employees. Even if the employer is not able to pay fair wage or living wage, then it is incumbent and mandatory on the part of the employer to pay minimum wages to its employee. For this avowed object the MW Act, 1948 is enacted. Non- compliance of the provisions under the MW Act is nothing to do with in proving relationship between the employer and employee and cannot vitiate the claim proceedings arising under the EC Act. The scope, object and reasons of the MW Act and EC Act are two different. Therefore, just non-compliance of Section 18 of MW Act or Rule 29 and 29-B of the KMW Rules may attract penal provision under Section 22-A of the MW Act, but nothing to do with proving relationship of employer and employee in claim proceedings under EC Act. It is true that the burden is 17 either on the claimants or on the employer to prove the relationship of employer and employee.

22. In this regard, considering the submissions made by the respective counsels that independent evidence is not produced proving the relationship of the employer and employee, under such circumstances, respondent No.6 who is examined as RW.1 before the Tribunal/ learned Commissioner, is not alone sufficient, but his evidence is not challenged, in order to avoid his liability. But upon considering the evidence of RW.1 that the deceased was under his employment, this Court considered the document Ex.P-9 which is the MLC register extract of District Government hospital, Tumakuru, which states that the deceased was taken to the hospital on 03.05.2014 at 12.30 a.m. (midnight) and it is stated in the history that the patient was brought to the hospital and died while under

treatment. It was mentioned in MLC register that the patient (the deceased) is working as loader-unloader-cum cleaner in the TATA Ace Goods vehicle. It is pertinent to mention that the accident was 18 occurred on 02.05.2014 at night 11.30 p.m. Therefore, within one hour the deceased was shifted to the hospital at 12.30 a.m. (midnight) and thereafter, at the very initial point of time it is mentioned in the history of the accident that the patient was working as a loader-unloader-cum- cleaner in the alleged TATA Ace vehicle. Even at that point of time, complaint to police was not given. The first information statement was given on the next day on 03.05.2014 at morning 6.45 a.m., by one Siddappa J., who is stated to be eye-witness to the accident and was also traveling in the said TATA Ace goods vehicle. At that very initial point of time there could not be chance of making manipulation in the hospital register or in the complaint before Police, so as to make a claim for getting compensation. Therefore, considering all the eventualities after the accident, in the natural course of the time all the event occurred and the deceased was shifted to the hospital within one hour and at that time, it was mentioned that the patient was working as a loader- unloader-cum-cleaner in the TATA Ace Goods vehicle. 19

23. Even though the evidence of RW.1 employer can be categorized as a self-explanatory statement/ evidence, quite naturally he has to do so, but his evidence is corroborated with the document at Ex.P9. Upon considering the complaint averments at Ex.P2 given by one Siddappa S/o Jogappa, who has stated that he sustained injuries in the said accident while traveling in the TATA Ace Goods Vehicle along with the deceased, no doubt, in the complaint Ex.P2, the complainant had not stated that the deceased was working as a loader, unloader cum cleaner in the said vehicle but when the entire facts and circumstances are considered/ appreciated, quite naturally there is no scope for the complainant to state that the deceased was under the employment of respondent No.6, since the deceased is unknown person to complainant. The TATA Ace goods vehicle was being used for the transportation of silk worm cocoons. If the driver has given complaint regarding the accident then things would have been different. Complainant -Siddappa is a different person and said vehicle was used for transportation of silk 20 worm cocoons. Therefore, there is no chance of complainant to know the name of the deceased as to under whom he was

working. Just because in the complaint if it is not stated that the deceased was working under the employment of respondent No.6, that cannot be a ground to reject the proof of relationship of employer and employee as discussed above.

24. The said complainant- Siddappa has given a statement before the police on 02.06.2014 with only in respect of mentioning the name of the deceased was in the vehicle and met with an accident and died later in the hospital. It is quite natural in the course of investigation the identity of the deceased is to be ascertained, since the name of the deceased is not stated in the complaint, but only mentioned some persons were injured. Therefore, the complainant is a person nothing to do with proving the relationship of the employer and employee. Considering the evidence of RW.1 which gets corroboration from Ex.P9- MLC register extract proved the fact that the deceased was 21 working under the employment of respondent No.6- employer who is the owner of TATA Ace Goods vehicle.

25. It is the contention of the learned Senior counsel that the provisions of Sections 133, 134(c) and Section 158(6) of the Motor Vehicle Act are not complied in the present case either by the owner or by Police. Therefore, it is submitted that they did not have an opportunity of knowing about the occurrence of accident and in this regard, the Insurance Company is kept in dark and therefore, the Insurance Company cannot be made liable by filing the claim petition before the Tribunal. But before filing the claim petition, there are statutory requirements as per the provisions of MV Act which have to be complied with. Therefore, it is submitted that for non-compliance of these statutory requirements, the claim petition is not maintainable and entire proceedings are vitiated. Further Section 133 of MV Act contemplates the duty of the owner of a motor vehicle, to give information to the Police. Here not only the owner of the motor vehicle, the driver or conductor of the vehicle accused of any offence under this Act shall, on the demand of any police officer authorized in this behalf by the State Government, give all information regarding the name and address of, and the license held by, the driver or conductor which is in his possession, or could by reasonable diligence be ascertained by him during the course of investigation.

26. Section 134(c) of MV Act stipulates that it is the duty of the driver or the owner to give the information in writing to the insurer who has issued a certificate of insurance about the occurrence of the accident by giving particulars regarding Insurance Policy number, period of validity, date, time and place of accident; particulars of the person who is injured or killed in the accident; name of the driver and the particulars of the driving license.

27. It is contended by the learned counsel for the Insurance Company that either owner or the driver has to give information to the Insurer as above stated regarding the accident. Hence, submitted that, there is a breach of this statutory requirement. 23

28. But, just because Insurer is not informed, that cannot take away the right of filing claim petition by employee, in case, the claim is made under the Employees Compensation Act or by third party in the Motor vehicle accident case. Just non-compliance of these provisions are not a bar for raising a claim before the Tribunal and the rights of claimants are not controlled by this provision. There may be non-compliance, but that cannot take away the rights of claimants in preferring the claim petition for getting compensation for injury or death caused in the said accident. The employee has statutory right for claiming the compensation under the EC Act or third party or any other person can claim compensation under the EC Act or under MV Act and this statutory requirement cannot be curtailed just because some of the provisions are not complied with as they are in the form of duty. Exercising, right is different and breach of duty is different. Just because there is breach of duty, the statutory rights of the persons cannot be curtailed. Breach of duty may be amenable for 24 penal action but such a breach of duty certainly does not curtail the statutory rights of the claimants.

29. Further, after considering the arguments canvassed by the learned counsel that Section 158(6) of MV Act is not complied with. Regarding production of certain documents and license in certain cases, as per Section 158(6) of MV Act, it is duty cast on the Police, as soon as information is received by the Police regarding the accident, the Police officer incharge of the Police Station shall forward a copy of the same within thirty days from the date of recording the information or before the

authority, as stated in the said provision also to the claims Tribunal having jurisdiction and also a copy be sent to the concerned Insurer and also it is incumbent upon the owner to forward the copy of the same to the such claim Tribunal and the insurer. Therefore, certain duties are cast on the Police officials and owner, but non-compliance of this cannot be a ground to reject the claim petition. As held above, breach of duty is different and exercising statutory right is different. Just because the owner or the Police 25 officer are failing in their duty, that cannot take away the statutory right of the claimants vested in them.

30. Further, Section 158(6) of MV Act shall be read with sub-section 4 of Section 166 of the MV Act that the claim Tribunal soon after receipt of Accident Information Report (AIR) it is the duty cast on the Tribunal to treat it as an application for compensation under the MV Act. Therefore, for this purpose to make hassle free to the claimants of the accident, for providing speedy justice to the claimants, such a benevolent arrangement is made by the law makers. Therefore, just because Section 158(6) of MV Act is not complied with, cannot vitiate the claim proceedings. Hence, in this regard, I do not accept the contention raised by the Insurance Company.

31. Considering the other contentions urged by the learned Senior counsel for the appellant that in the claim petition before the Commissioner for the employees compensation, the leading of evidence by way of an affidavit in lieu of examination-in-chief is not permissible. 26 But in the present case, the claimant and the other witnesses have lead their evidence by way of an affidavit in lieu of the examination-in-chief. Therefore, it is submitted that entire proceeding is vitiated and at the most, the matter may be remanded to the Commissioner/Tribunal for fresh consideration to take oral evidence in examination-in-chief but not by way of an affidavit. He placed reliance on the judgment of this Court in the case of Commissioner The Commissioner, city Municipal Council vs. Nagubai and others reported in ILR 2010 KAR1623 Therefore, submitted the said provisions cannot be made applicable to claim compensation arising under the EC Act, since it is a self-contained code.

32. This contention raised by the learned counsel cannot be accepted for the reason that in the very same judgment it is the dictum that the application of provisions of Code of Civil Procedure has to be restricted to the extent that it is made applicable in Section 23 of the ECA Act, namely for the purpose of taking evidence/enforcing attendance of witness and compelling production of documentary evidence and material objects but other provisions of CPC cannot be imported into the EC Act.

33. In this regard, Section 23 of the Employees Compensation Act stipulates as follows: Powers and procedure of Commissioners.- The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the Commissioner shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)

34. Therefore, as per Section 23 of the EC Act, the Commissioner shall have all the powers of Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on both and of enforcing witnesses and compelling the production of documents and material objects. The Commissioner shall be deemed to be a Civil Court for all the purpose of Section 195 of Code of Criminal Procedure (for brevity Cr.P.C.) Therefore, the Commissioner is deemed to be a Civil Court having vested with the power of Civil Court and when the Civil Court is exercising powers under the provisions of CPC for the purpose stated above, then the Commissioner shall exercise power of CPC for the purpose of taking evidence on both and of enforcing witnesses and compelling oral and documentary evidence and material objects. It is to be noted that the EC Act is a self-contained code. The provisions of CPC have to be applied to the extent enumerated in Section 23 of the EC Act.

35. Also it is worthwhile to quote Rule 41 of Employees Compensation Rules, 1924. Rule 41 of Workmen Compensation Rules, 1924 which reads as follows:

29. 41. Certain provisions of Code of Civil Procedure, 1908, to apply.-Save as otherwise expressly provided in the Act or these Rules the following provisions of the First Schedule to the Code of Civil Procedure, 1908, namely, those contained in Order V, Rules 9 to 13 and 15 to 30: Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII; and Order XXIII, Rules 1 and 2, shall apply to proceedings before Commissioners, in so far as they may be applicable thereto: Provided that- (a) for the purpose of facilitating the application of the said provisions the Commissioner may construe them with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before him; (b) the Commissioner may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if he is satisfied that the interests of the parties will not thereby be prejudiced. 30

36. Therefore, as per Rule 41 as stated above, the powers vested with the Commissioner/Tribunal to exercise powers as enumerated in Rule 41 includes receiving evidence on oath and further stated in Section 23 of the Act and Rule 41 of the Rules. Order 18 of CPC stipulates for hearing of the suit and examining witnesses. This Order 18 is regarding the trial process to be followed in the suit proceedings and other cases as permissible. Rule 4 of Order 18 is about recording of evidence. The wordings stated in Section 23 taking evidence on oath and recording evidence are one and the same. Where it is stipulated in Section 23 that certain powers are vested with the Commissioner as per Code of Civil Procedure and taking evidence on oath that means it does not say it is not having meaning that recording of evidence as per CPC is not applicable. Where the Commissioner/Tribunal is vested with the powers of CPC and is deemed to be a Civil Court, so far as for the purpose enumerated under Sections 23 and 25 of EC Act, therefore, Order 18, Rule 4 of CPC is certainly applicable in the proceedings before the 31 Commissioner/Tribunal arising in the claim proceedings under the EC Act.

37. Adverting to Section 25 of the EC Act, it is a method prescribed for recording evidence with the Commissioner. What is stated in Section 25 is to record the evidence in a case arising out of this Act for claiming compensation shall be summary in nature. Therefore, the claim proceedings in this case and dispute

being summary in nature and therefore the intention of legislature is not to put the victim in a procedural wrangles but to make the victim to make easy as procedure wise. Therefore, it is the duty cast on the Commissioner to record the summary of the evidence or to take the evidence in brief. This does not mean that the procedure of filing affidavit examination-in- chief is barred. This procedure stated under Section 25 of EC Act, is also provided under CPC. Therefore, Section 25 cannot alone be read independently but it should be read conjointly along with Section 23 of the Act where the Commissioner/Tribunal is deemed to be a Civil Court, then the Commissioner/Tribunal has every power to exercise 32 the powers enumerated under CPC, so far as enumerated under Section 23 of EC Act and Rule 41 of Workmen Compensation Rules. Therefore, Section 25 of the EC Act does not snatch away the powers of the Commissioner as stated in Section 23 of the Act. Section 25 of EC Act is in addition/supplement to Section 23 of the Act, the duty on the Commissioner is to follow the procedure as stated in CPC being a Civil Court or to take summary of the evidence in brief of the witness while recording evidence. Therefore, I do not find any merits in the contention urged by the Insurance Company in this regard.

38. Another contention urged by the Insurance Company is that as per Section 10 of the EC Act, notice was not issued to the Insurer. Therefore, the proceeding is vitiated. Section 10 differentiates notice and claim. Sub Section (1) of Section 10 stipulates that no claim for compensation shall be entertained by the Commissioner unless the notice of accident is given to the Insurer. But the 4th proviso to the said Section specifically stated that just for want of any defect or irregularity in notice, shall 33 not be a bar to the Commissioner to entertain the claim. Even though notice is not issued, the Commissioner shall entertain the claim. Therefore, just there is a defect or irregularity in notice alone is not a bar to entertain the claim petition. Therefore, when the EC Act is beneficial in nature, just for non-observance of technicality of law cannot take away the rights of parties as vested in this Act. Even though there is no notice issued in the present case, that does not create any bar on the Commissioner to entertain the claim. Therefore, in this regard also, I do not accept the contention urged by the Insurance Company. Therefore, the grounds raised by the Insurance Company in the appeal regarding non-observance of some statutory requirements as discussed above cannot

create bar to make claim. As discussed above, there may be certain duties or effort on the owner or driver but mere breach of duty by the owner or driver cannot take away the rights of the parties which is recognized as statutory rights. Breach of duty is amenable for criminal actions but that certainly cannot takeaway the statutory rights of the victims as 34 provided under the Act. Therefore, in the present case, just because some statutory requirements are not done, is not a bar to file the claim petition.

39. Another contention is urged by the learned Senior counsel for the Insurance Company that there is a breach of conditions of Insurance Policy for the reason that the seating capacity as stated in the insurance policy is 1+1, but it is submitted that eight persons were traveling in the TATA Ace goods vehicle. Therefore, it is submitted that it caused violation of conditions of Insurance policy. Hence, Insurance Company is not liable to pay the compensation. Ex-R2 is the copy of the Policy. It is stated in the Insurance Policy that the seating capacity is 1+1. This fact is not disputed by the claimants and owner. This seating capacity 1+1 means the insurer is bound to indemnify the owner in so far as two persons i.e., the driver and cleaner/employee other than the driver (for 1+1 is concerned). Even there may be eight persons traveling in the same vehicle that cannot absolve the liability of the insurer, wherein, in the present case, as submitted by both 35 sides only one claim is made for accident i.e., in respect of the deceased. As discussed above, it is proved that the deceased was working as a loader/unloader and cleaner in the said vehicle and since the insurance policy covers the risk of 1+1 as per the seating capacity of the vehicle, there is no violation of conditions of insurance policy. If it is proved that the deceased was traveling as a passenger in the goods vehicle, it would have been different but the deceased being the employee of the respondent No.6/employer was traveling and met with the accident and died. Therefore, the death of the employee is covered under the EC Act and of Insurance Policy.

40. Section 4 of EC Act deals with amount of compensation and how to determine the same. Section 4-A of the EC Act comes into picture only after compensation amount is determined as per the method stated in Section 4 of the Act. Therefore, when the compensation is determined to be paid and it falls due, then Section 4-A

is made applicable. Under Sub section (2) and (3) of Section 4-A it is the duty cast on the employer. If the employer 36 does not accept the liability of compensation to the accident claim, he shall be bound to make provisional payment based on the accident; this is to be applied where there is no contract of insurance between the insurer and the owner of the vehicle. Where there is contract of insurance between the insurer and the owner and there is stipulation that insurer is liable to indemnify the owner, then there is no question of bar to accept the liability so far as payment of compensation is concerned. If there is no contract of insurance and in any other way if the insurer is not liable to indemnify then only duty is cast on the employer under Sub Section (2) of Section 4-A to make payment of compensation enumerated therein. But in the present case, there is no dispute regarding contract of insurance between the appellant-Insurance Company and the respondent No.6-owner. Ex.R2 is the insurance Policy in respect of the TATA Ace goods vehicle bearing No.KA-16-B-6716 and for seating capacity 1+ 1, only the insurer shall indemnify. Accordingly, appellant-Insurance Company is liable to indemnify respondent No.6-owner. 37 Regarding quantum:

41. In the present case, the deceased was aged 35 years and according to the age of the deceased appropriate factor applicable is 197.06 as per schedule IV of the EC Act. The Commissioner/Tribunal has held the monthly salary of the deceased as Rs.9,000/-, but considering the year of accident occurred on 02.05.2014 as per Section 4 of the EC Act for that relevant year, the maximum wages to be taken is Rs.8,000/-. But the Tribunal has committed an error by taking the monthly salary of the deceased as Rs.9,000/- which ought to have been taken as Rs.8,000/- per month.

42. As per Section 4(1)(a) of EC Act 50% of the monthly wages of the deceased is to be multiplied by the relevant factor. Accordingly, the compensation under the head loss of earning to the family/deceased is re-assessed and quantified to Rs.7,88,240/- as $(4,000 \times 197.06)$. Further, the Commissioner/Tribunal has also awarded a sum of Rs.5,000/- towards funeral expenses etc The Hon'ble Supreme Court in case of Sabarabibi 38 Yakubbbhai Shaik and others vs. National Insurance Company Limited and others reported in (2014)2 Supreme Court Cases 298 has awarded interest @ 12% per annum from the date of accident till the date of

realization. Therefore, the claimant is awarded a sum of Rs.7,93,240/- 43. Therefore, in so far as quantum of compensation is determined the appeal is liable to be allowed in part.

44. Thus, the claimant is entitled to the following compensation: Compensation under Amount in different Heads (Rs.) Loss of dependency 7,88,240 Funeral expenses 5,000 Total 7,93,240

ORDER

(a) The appeal filed by the Insurance Company is allowed in part. 39 (b) The judgment and award dated 23.01.2017 passed in E.C.A. No.116/2014 by the Court of II Additional Senior Civil Judge and MACT, Tumkur is modified and the appellants/claimants are entitled for the compensation of Rs.7,93,240/- in total with interest @ 12% p.a. from the date of accident till its realization. The appellant Insurance Company shall satisfy the compensation to claimants. (c) The amount deposited by the Insurance company shall be transmitted to the Tribunal along with the Trial Court records and copy of this order, forthwith. (d) No order as to costs. (e) Draw award accordingly. Sd/- JUDGE SKS/GVP

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