

Sushela Devi Vs. Manasur S

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Court : Karnataka

Decided On : Jul-18-2023

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 6914/2012

Appellant : Sushela Devi

Respondent : Manasur S

Judgement :

- 1 - NC:

2023. KHC:25046 MFA No.6914 of 2012 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE18H DAY OF JULY, 2023 BEFORE THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL No.6914 OF2012(WC) BETWEEN:

1. SUSHELA DEVI, C/O PARAS SAHANI NOW AGED ABOUT41YEARS, 2. PARAS SAHANI, BIN MAHABIR SAHANI, NOW AGED ABOUT47YEARS, BOTH ARE RESIDING AT, C/O ASHOK KUMAR TEACHER, VIDYANAGARA, C BLOCK, HARIHARA. APPELLANTS (BY SRI. RAGHU. R ADVOCATE FOR SRI. S. RAGHAVENDRA, ADVOCATE) AND:

1. MANASUR S BIN IBRAHIM PASHA, LORRY OWNER, #232, JANATHA COLONY, - 2 - NC:

2023. KHC:25046 MFA No.6914 of 2012 JANATHA LAYOUT, 8TH CROSS, TUMKUR CITY.

2. THE MANAGER SRIRAMA GENERAL INSURANCE CO. LTD., SITHAPURA, JAIPUR, RAJASTHAN - 302 022. RESPONDENTS (BY SRI. B. PRADEEP ADVOCATE FOR R2; R1- SERVED) THIS MFA IS FILED U/S301)OF W.C.ACT AGAINST THE

JUDGMENT

DATED 30.01.2012 PASSED IN WCA.NO.KAA NA PA/C/R962010 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN COMPENSATION, DAVANGERE DISTRICT, DAVANGERE, DISMISSING THE CLAIM PETITION FOR COMPENSATION. THIS APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The present appeal is filed by the appellant/claimant challenging the order and award dated 30.01.2012 in No.Ka.Aa.Da/Ka.Na.Pa/CR-96/2010 passed by the Labour Officer and the Workmens Compensation Commissioner, at Davanagere, dismissing the claim petition.-. 3 - NC:

2023. KHC:25046 MFA No.6914 of 2012 2. The factum of the accident and the death of deceased in the accident are not in dispute.

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

4. The learned counsel for the claimant submitted that the deceased is a Coolie/Hamali/Loader in the lorry bearing No.KA-05/4074 under the employment of Respondent No.1 and died out of and in the course of employment. Therefore, the risk of the employee is compulsorily covered under Section 147 of the Motor Vehicles Act, but the Tribunal has wrongly dismissed the claim petition on the ground that extra premium is not paid covering the risk of Coolie/Hamali/Loader. Thus, the learned Commissioner has committed an error and hence, prays to allow the appeal and grant compensation.

5. On the other hand, learned counsel for the Insurance Company justified the order and award passed by the learned Commissioner and prays to dismiss the appeal.-. 4 - NC:

2023. KHC:25046 MFA No.6914 of 2012 6. In the present case, it is not disputed that the deceased was working as Coolie/Hamali/Loader in the lorry bearing No.KA-05/D-4074 under the employment of Respondent No.1 who is the owner of the lorry. It is not disputed that the deceased died while working as a Coolie/Hamali/Loader out of and in the course of employment. When these admitted facts are emerged, the substantial questions of law that arise for consideration are: i) Whether, under the facts and circumstances of the case, risk of the employee/ Coolie/Hamali/Loader is compulsorily covered under Section 147 of the Motor Vehicles Act?. ii) Whether the Insurance Company has issued insurance policy even without additional/extra premium is paid covering the risk of Hamali/Coolie/Loader?. - 5 - NC:

2023. KHC:25046 MFA No.6914 of 2012 7. In the present case, the learned Commissioner has dismissed the claim petition on the reason that extra- premium for covering risk of Coolie/Hamali/Loader is not paid. Therefore, dismissed the claim petition. Ex.R1- Insurance policy is GCCV-Public Carriers Package Policy. The learned Commissioner is just swayed away by the schedule of premium for covering the risk of Coolie/Hamali/Loader and thus, dismissed the claim petition for the reason that the risk is not covered under the insurance policy. This observation of the learned Commissioner is palpably wrong. Primarily, the insurance policy is package policy. There is no mentioning that extra/additional premium is paid covering the risk of Coolie/Hamali/Loader. But even in the Statutory Policy/Act Policy/Liability Only Policy to be issued under Section 147 of the M.V.Act, the risk of employee is covered when injury or death has occurred. Section 147 of M.V.Act is the mandatory Insurance policy which covers risk of the persons enumerated therein.-. 6 - NC:

2023. KHC:25046 MFA No.6914 of 2012 8. Whether under Section 147 of the M.V.Act, coverage of employee-workman is compulsory and mandatory, i.e., the policy issued also covers the risk of employee. Under these circumstances,

payment of extra/additional premium covering the risk of Coolie/Hamali/Loader is not warranted. Therefore, whether the Insurance Policy issued is in respect of the vehicle either package or Act policy, the risk of employee is compulsorily covered. Therefore, the Tribunal has committed an error in dismissing the claim petition. Therefore, whether it has approved the deceased employee working as a Coolie/Hamali/Loader in the Lorry bearing No.KA-05-D-4074 under the employment of Respondent No.1 and Ex.R1 is Insurance Policy which is package policy, the risk of the deceased is covered. Hence, in view of admitted existence of Insurance Policy as on the date of the accident, the Insurance Company shall indemnify the owner and pay the compensation. Accordingly, both owner and insurer are jointly and severally liable to pay the compensation.-. 7 - NC:

2023. KHC:25046 MFA No.6914 of 2012 9. As the deceased was a Coolie/Hamali/Loader, his monthly wages is considered as Rs.4,000/-. The relevant factor is 221.37 as the deceased was aged 22 years. Therefore, the loss of dependency is assessed and quantified as under: $\text{Rs.4,000/-} \times 50/100 \times 221.37 = \text{Rs.4,42,740/-}$ Thus, the claimant is entitled for a sum of Rs.4,42,740/- towards loss of dependency.

10. In the result, I pass the following:

ORDER

i. The appeal is allowed-in-part. ii. The impugned order and award dated 30.01.2012 in No.Ka.Aa.Da/Ka.Na.Pa/CR- 96/2010 passed by the Labour Officer and the Workmens Compensation Commissioner, at Davanagere, is hereby modified, holding that the claimants are entitled for a total - 8 - NC:

2023. KHC:25046 MFA No.6914 of 2012 compensation of Rs.4,42,740/- along with interest at the rate of 12% p.a., from the date of accident till realization. iii. The claimant is not entitled to interest for the delay period of 103 days. iv. No order as to costs. Sd/- JUDGE BNV List No.:

2. SI No.:

6. Page No.8 is Retyped and Replaced vide court order dated 04.01.2024.

