

Manjamma Vs. Shivamurthy

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Court : Karnataka

Decided On : Jul-18-2023

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 7285/2012

Appellant : Manjamma

Respondent : Shivamurthy

Judgement :

- 1 - NC:

2023. KHC:25045 MFA No.7285 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.7285 OF2012(WC) BETWEEN:

1. MANJAMMA, W/O. LATE PARASAPPA, AGED ABOUT26YEARS, 2. HONNAPPA, S/O. DURGAPPA, AGED ABOUT63YEARS, 3. CHITRAMMA, W/O. HONNAPPA, AGED ABOUT53YEARS, 4. KASTURI, D/O. HONNAPPA, AGED ABOUT21YEARS, ALL ARE RESIDENT OF KASTURBA NAGAR, SANTEBENNUR HOBLI, CHANNAGERI TALUK, DAVANAGERE DISTRICT. APPELLANTS (BY SRI. MANJUNATHA PATTANASHETTY, ADVOCATE) AND:

1. SHIVAMURTHY S/O. BASAVARAJAPPA, OWNER OF TRACTOR-TRAILER, NO.KA-14-T-6266, R/O KASTURBA NAGAR, - 2 - NC:

2023. KHC:25045 MFA No.7285 of 2012 CHNNAGERI TALUK, DAVANAGERE DISTRICT - 577 001. (a) BASAVARAJAPPA S/O. HANUMAPPA, AGED ABOUT59YEARS, (b) KAMALAMMA W/O. HANUMAPPA, AGED ABOUT56YEARS, (c) RAVI S/O. LATE SHIVAMURTHY, AGED ABOUT33YEARS, (d) DRAKSHAYANI D/O. LATE SHIVAMURTHY, AGED ABOUT31YEARS, (e) VEENA D/O. DRAKSHAYANI, AGED ABOUT8YEARS, (f) MEENA D/O. DRAKSHAYANI, AGED ABOUT7YEARS (g) SHIVA S/O. DRAKSHAYANI AGED ABOUT5YEARS, RESIDING AT KASTURBA NAGAR, CHANNAGERI TALUK, DAVANAGERE DISTRICT.

2. UNITED INDIA INSURANCE CO. LTD., B.H. ROAD, SHIMOGA. BY ITS BRANCH MANAGER RESPONDENTS (BY SRI. C SHANKARA REDDY ADVOCATE FOR R2; R1(A), R1(B), R1(C), R1(D), R1(E) & R1(F) ARE SERVED; NOTICE TO R1(A) IS DISPENSED WITH V/O DTD1008.2016) - 3 - NC:

2023. KHC:25045 MFA No.7285 of 2012 THIS MFA IS FILED U/S301) OF W.C. ACT AGAINST THE

ORDER

DATED1210.2009 PASSED IN W.O.D/WC/C.R.NO.118/2007 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN COMPENSATION, DAVANGERE DISTRICT, DAVANGERE, ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THIS APPEAL, COMING ON FOR

ORDER

S, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The appeal is filed by the claimant challenging the Order and Award dated 12.10.2009 passed in Sam.Ka.Aa.Da/Ka.Na.Pa/CR-118/2007 by the Commissioner for Workmens Compensation, Davanagere, questioning the liability

fixed on the owner of the tractor- trailer and also for enhancement of compensation.

2. The facts of the case are that on 01.11.2006, when the deceased was working under the employment of Respondent No.1-owner of the tractor-trailer No.KA-14-T- 6266 met with an accident and the deceased succumbed to the injuries as the tractor-trailer turned turtle. The claimants filed a claim petition before the learned Commissioner.-. 4 - NC:

2023. KHC:25045 MFA No.7285 of 2012 3. The learned Commissioner has awarded compensation, but fixed liability on the owner of the tractor-trailer No.KA-14-T-6266 on the reason that the policy was not in force as on the date and time of the accident. The policy is commencing from 17.11.2006 till 16.11.2007, but the accident was caused on 01.11.2006. Therefore, on this ground, the liability is fastened on the owner of the tractor-trailer. But upon perusing Ex.R1- Insurance Policy No.240400/31/06/010004588 (referred to as 240400), it is in existence from 17.11.2006 to 16.11.2007. Therefore, assigning this reason, exonerated the Insurance Company on the ground that there was no Insurance Policy as on the date of the accident on 01.11.2006.

4. The Insurance Policy pertaining to the same Policy No.240400 is concerned, in respect of the same Tractor No.KA-14/T-6266, the Policy issue date is 03.10.2006 and Policy expiry date is 02.10.2007, but it is stated that the - 5 - NC:

2023. KHC:25045 MFA No.7285 of 2012 endorsement is effected from 03.10.2006. Upon considering this policy number and endorsement number, policy number is same as 240400, but endorsement numbers are different in the same policy. The learned Commissioner has swayed away by this endorsement number. The number of endorsements are different, but the policy issued is having policy number as 240400. This policy issued on 03.10.2006 was valid upto 02.10.2007. Therefore, when policy is issued on the date from the date and time only, the risk of coverage commences. The Endorsement number is 37/06/96/00000815/37/06/96/84000012. Therefore, the endorsement numbers may be different. But the Insurance Policy number is same as 240400. The above said fact is revealed from the copy of insurance policy produced to this Court. Therefore, the learned

Commissioner what has discussed the policy may be in the order and the policy number produced before this Court as per the insurance policy is the same having Policy number as 240400. But the Insurance Policy produced today is stipulating that the - 6 - NC:

2023. KHC:25045 MFA No.7285 of 2012 policy issue date is 03.10.2006 and policy expiry date is 02.10.2007. The endorsement effected from 17.11.2006. The learned Commissioner has committed an error by swaying away from this endorsement effective date. Endorsement number may be different for different offices of the same company, but the Policy number is same. Therefore, in respect of the Policy number 240400, the policy issue date is 03.10.2006 till 03.10.2007 for a period of one year. Therefore, the Insurance Policy is in respect of the same tractor No.KA-14-T-6266. Therefore, covers the risk of the employee/covers the death of the deceased. Hence, in this regard, the learned Commissioner has committed an error which is liable to be reversed so far as fastening the liability on the owner of the tractor. Therefore, in view of insurance policy in existence as on the date of accident as discussed, the Insurance Company is liable to be compensated.

5. On the quantum of compensation determined by the learned Commissioner, the learned Commissioner has - 7 - NC:

2023. KHC:25045 MFA No.7285 of 2012 taken monthly wage of Rs.4,000/- and deducted 50% of the income as per Section 4 of the Employees Compensation Act and multiplied by the relevant factor according to the age of the deceased and determined compensation. Therefore, the quantum of compensation determined by the learned Commissioner at Rs.4,23,580/- is found to be correct. Hence, the quantum of compensation is correct and legal, which needs no interference for enhancement.

6. Therefore, I pass the following:

ORDER

i) The Appeal filed by the claimants is allowed in part. ii) The Order and Award dated 12.10.2009 passed in Sam.Ka.Aa.Da/Ka.Na.Pa/CR-118/2007 by the

Commissioner for Workmens Compensation, Davanagere, is modified holding that the 2nd respondent-Insurance Company is liable to pay compensation of Rs.4,23,580/- along with - 8 - NC:

2023. KHC:25045 MFA No.7285 of 2012 interest at the rate of 12% p.a., from the date of accident till realization. iii) The claimant is not entitled to interest for delayed period of 584 days. iv) The amount in deposit is directed to be transmitted to the tribunal. v) The office is directed to send the T.C.R along with copy of this Judgment to the learned Commissioner. Sd/- JUDGE BNV List No.:

2. SI No.: 1

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