

The Branch Manager vs Ningegowda

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Court : Karnataka

Decided On : Dec-02-2024

Judge : N S Sanjay Gowda

Appeal No. : MFA/3993/2018

Appellant : The Branch Manager

Respondent : Ningegowda

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER, 2024 BEFORE THE HON'BLE MR JUSTICE N S SANJAY GOWDA MISCELLANEOUS FIRST APPEAL NO.3993 OF 2018 (WC) C/W MISCELLANEOUS FIRST APPEAL NO.8144 OF 2018 IN MFA NO.3993/2018: BETWEEN:

1. THE BRANCH MANAGER M/S. ICICI LOMBARD GENERAL INSURANCE COMPANY LTD., 203, MYTHRI ARCADE KANTHARAJ URS ROAD SARASWATHIPURAM MYSURU

NOW REP. BY IT LEGAL MANAGER Digitally signed M/S. ICICI LOMBARD GIC LTD., by KIRAN REGIONAL OFFICE KUMAR R THE ESTATE Location: HIGH

COURT OF 9TH FLOOR DICKENSON ROAD KARNATAKA M. G. ROAD, BENGALURU - 42. APPELLANT (BY SRI B. C. SHIVANNE GOWDA, ADVOCATE) AND:

1. NINGEGOWDA S/O. PILLIGOWDA AGED ABOUT 54 YEARS -2-
2. SHANTHAMMA W/O. NINGEGOWDA AGED ABOUT 49 YEARS
3. MUDDA @ MUDDEGOWDA S/O. NINGEGOWDA AGED ABOUT 20 YEARS
RESPONDENT NOS. 1 TO 3 ARE RESIDING AT ODUBASAPPA VILLAGE
KASABA HOBLI, MALAVALLI TALUK MANDYA DISTRICT.
4. M/S. MAK INDIA CONSTRUCTION

PROPRIETOR OF MUNE NO. 34/34, 35TH MAIN 6TH CROSS, BTM LAYOUT 2ND STAGE, BENGALURU. RESPONDENTS (BY SRI HALESHA R. G., ADVOCATE FOR R-1 TO R-3; R-4 IS SERVED AND UNREPRESENTED) THIS MFA IS FILED UNDER SECTION 30(1) OF WORKMEN'S COMPENSATION ACT, 1923, AGAINST THE

JUDGMENT AND AWARD DATED 23/02/2018, PASSED IN

ECA NO.11/2014, ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., MALAVALLI, AWARDED COMPENSATION OF RS.4,60,500/- TOGETHER WITH INTEREST AT 12% PER ANNUM FROM THE DATE OF ACCIDENT TILL THE DATE OF DEPOSIT. -3- IN MFA NO.8144/2018: BETWEEN:

1. NINGEGOWDA S/O. PILLIGOWDA AGED ABOUT 54 YEARS
2. SHANTHAMMA W/O. NINGEGOWDA AGED ABOUT 49 YEARS
3. MUDDA @ MUDDEGOWDA

S/O. NINGEGOWDA AGED ABOUT 20 YEARS ALL ARE RESIDING AT ODUBASAPPA VILLAGE KASABA HOBLI, MALAVALLI TALUK MANDYA DISTRICT. ...APPELLANTS (BY SRI HALESHA R. G., ADVOCATE) AND:

1. M/S. MAK INDIA CONSTRUCTION PROPRIETOR OF MUNEE NO. 34/34, 35TH MAIN 6TH CROSS, BTM LAYOUT 2ND STAGE, BENGALURU.

2. THE BRANCH MANAGER ICICI LOMBARD MOTOR INSURANCE 203, MYTHRI ARCADE KANTHARAJ URS ROAD SARASWATHIPURAM JAYANAGARA, MYSURU ...RESPONDENTS -4-

(BY SRI B. C. SHIVANNE GOWDA, ADVOCATE FOR R-2; VIDE ORDER DATED NOTICE TO R-1 IS DISPENSED WITH) THIS MFA IS FILED UNDER SECTION 30(1) OF WORKMEN'S COMPENSATION ACT 1923, AGAINST THE

JUDGMENT AND AWARD DATED 23.02.2018 PASSED IN

ECA NO.11/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE & JMFC, MALAVALLI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION. THESE APPEALS, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE N S SANJAY GOWDA

ORAL JUDGMENT

1. The insurer as well as the employee are in appeal.

2. The legal representatives of the employee have filed

a claim petition contending that Boregowda, who was working as a cleaner in the tipper lorry, suffered an accident which resulted in his death and this accident occurred during the course of his employment as a consequence of which the employer would be liable. -5-

3. The insurer has contested this proceeding on the

ground that the driver of the tipper lorry did not possess a valid driving licence and it was also contended that there was no proof of the deceased being the employee of the employer whom it had insured.

4. The Commissioner has recorded a finding that the deceased was engaged by the employer and merely because it was contended that he was being engaged on and off, that would not mean that he was not an employee.

5. In my view, this finding of fact is not amenable to the appellate jurisdiction under Section 30 of the Workmens Compensation Act.

6. As far as the argument that the driver of the tipper

lorry did not possess the driving licence is concerned, it is noticed that the policy did cover the risk of an employee and, therefore, whether the tipper lorry -6- driver had licence or not would be immaterial since there was a separate contract of insurance in relation to an employee who had been engaged by the employer.

7. I am, therefore, of the view that there is no question of law, muchless a substantial question of law, in the appeal filed by the insurer. The appeal filed by the insurer is dismissed.

8. As far as the appeal for enhancement is concerned, it

is noticed that the claimants themselves have stated that the deceased was earning a sum of Rs.6,000/- per month and the Commissioner has accordingly taken the monthly income of the deceased as Rs.4,000/- and paid compensation accordingly. Therefore, in my view, there is no infirmity in the

order passed by the Commissioner insofar as it

relates to award of compensation is concerned. Consequently, the appeal of the employee is dismissed. -7-

9. The amount in deposit, if any, is ordered to be transmitted to the Commissioner forthwith. Sd/- (N S SANJAY GOWDA) JUDGE HNM List No.: 1 SI No.: 22

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