

Smt. Jayamma Vs. C. Munikrishnappa and Others

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Court : Karnataka

Decided On : Jan-15-1998

Reported in : I(1998)ACC424; 1998ACJ1165; [1998(79)FLR55];
1998(2)KarLJ555

Judge : B.K. Sangalad, J.

Acts : Workmen's Compensation Act, 1923 - Sections 3(1) and 4-A(3); [Motor Vehicles Act, 1988](#) - Sections 147 and 167

Appeal No. : Miscellaneous First Appeal No. 82 of 1997

Appellant : Smt. Jayamma

Respondent : C. Munikrishnappa and Others

Advocate for Def. : Sri H.G. Ramesh, Adv.

Advocate for Pet/Ap. : Sri R.S. Ravi, Adv.

Judgement :

1. The Commissioner for Workmen Compensation, Kolar has awarded the compensation of Rs. 89,084/- in favour of respondents 1 and 2-Claimants for the death of one Shasikumar who was driving the taxi under the employment of the appellant. The respondents 1 and 2 are the parents of the deceased-Shasikumar. In addition to awarding the compensation, the Commissioner has also directed the

appellant to pay the penalty of Rs. 30,000/- and the interest at the rate of 6% p.a. on the compensation amount of Rs. 89,084/-. Being aggrieved by this the present appeal arises.

2. Mr. R.S. Ravi, learned Counsel for the appellants submits that imposing of penalty and interest on the appellant is contrary to law and facts of the case. On the other hand Mr. H.G. Ramesh, learned Counsel for R-3-Insurance Company submitted that the death of the said Shasikumar did not arise in the course of the employment. He also filed cross objections to that effect and according to him the finding of the Commissioner is erroneous.

3. The learned Commissioner has considered the aspect of the employment and injury. According to the appellant, he was just employed one day prior to the alleged incident. It is an admitted fact that the appellant is the owner of the Taxi bearing No. MYK 7453. It is also an admitted fact that as on the date of the incident, the appellant was driving the taxi. Unfortunately the deceased Shasikumar according to the Insurance Company has met with homicidal death as such there was no nexus between the injury and the course of the employment. It is also pertinent to note that the Commissioner for Workmen Compensation has relied upon the decisions in National Insurance Company Limited v Smt. Balawwa and Others, Union of India and Another v Shantaben and Others , United India Insurance Company Limited v Heera Bai and Senior Divisional Personnel Officer, Southern Railway, Tiruchi v Kanakambal . Especially in the case of Shantaben, supra, it is held that in the course of the employment even if a person is murdered there could be nexus between the injury and the course of the employment. Even in the case on hand the deceased was the driver of the taxi on the date of the alleged incident. He had taken the taxi to Siddalghatta. Unfortunately for the reasons best known, he was done to death and subsequently there was chargesheet also. Merely the deceased was murdered, it cannot be said that the deceased invited trouble on his own. However, it is made clear by the admission of the appellant that she had employed him to drive the taxi. But in the case on hand, the peculiar circumstance is that he was employed just one day prior to the unfortunate incident. The facts eloquently speak that he was driving the taxi under the employment of the appellant and at the time of the incident, he had taken taxi

and as such, it could be stated that he died in the course of the employment. This is made clear in the case of Shantaben, supra, wherein the deceased who was an employee working as sub-post master was murdered and his murder was an accident. In view of this decision it goes without saying that the finding of the Commissioner on Issue 2 is correct. Hence the cross-objections of the respondent 3 that the alleged incident did not take place in the course of the employment has to be negated.

4. The other findings of the Commissioner are that the appellant should pay the interest at the rate of 6% p.a. in addition to paying penalty of Rs. 30,000/-. According to Mr. R.S. Ravi, the appellant is not liable to pay the same because there was an insurance policy which was valid on the date of the alleged incident. The Insurance Company should pay the compensation amount. No doubt the Commissioner has directed the Insurance Company to make the payment. When he has done so, he could have further directed the Insurance Company to pay the interest because it goes without saying that the person who pays the compensation is saddled with the responsibility of paying the interest proportionately. This is made clear by the Supreme Court in the case of Ved Prakash Garg v Premi Devi and Others.

5. The next question that would arise whether the appellant is liable to pay the penalty of Rs. 30,000/-. Section 4-A(2) of the Workmen's Compensation Act, 1923 reads as follows:

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts and as such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

6. No doubt the appellant has not participated in the proceedings. Whether this alone is sufficient to hold that the appellant is liable to pay the penalty. If there was no insurance, it is obligatory on the party of the owner necessarily to participate in the proceedings. In the event he was not accepting the liability, according to the above stated provision, the extent of liability which he accepts, shall be deposited

with the Commissioner. In the case on hand there was Insurance Company and in the event of any liability, the Insurance Company was saddled with the responsibility of making the payment. Under such circumstances, it is not justifiable for the Commissioner to levy the penalty to the appellant. Hence the order of penalty is set aside.

In the result, the petition is allowed. The order of the Commissioner directing the appellant to pay the penalty and interest is set aside. The respondent 3 is directed to pay the interest at 6% p.a, to the respondents 1 and 2 from 13-7-1994 to till the payment.

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