Hanumantha Gowda Vs. Devaraju

Hanumantha Gowda Vs. Devaraju

SooperKanoon Citation : sooperkanoon.com/378126

Court : Karnataka

Decided On : May-31-1995

Reported in : 1996ACJ1253; [1995(71)FLR722]; ILR1995KAR1916

Judge : V.P. Mohan Kumar, J.

Appeal No. : M.F.A. Nos. 1591 and 1592/1993

Appellant : Hanumantha Gowda

Respondent : Devaraju

Judgement :

1. These Appeals have been preferred by the Employer as also the Insurance company with respect to an award passed under the Workmen's Compensation Act, 1923. The 1st appellant is the alleged employer and the 2nd appellant is the Insurance Company. M.F.A. 1591/93 arises out of W.C.A/NF-2/92 and M.F.A. 1592/93 is against the award in W.C.A/NF-I/92. The claimant in MFA 1591/93 is the driver of the lorry CTX 9525 and the claimant in MFA 1592/93 is its cleaner. It is claimed by them that the lorry belonged to the 1st appellant and the claimants were employed as a driver and cleaner. In an accident that took place at about 6 a.m. on December 6, 1991 while the lorry was returning from Madras the claimants sustained certain grevious injuries. They were treated at the Sanjay Gandhi Accident Rehabilitation Centre, Jayanagar, Bangalore. After treatment they were discharged. They claimed to have sustained 'total disablement' and

claimed compensation accordingly under the Act. The claimant in MFA 1591/93 claimed his monthly wage to be at Rs. 1,500/- while the claimant in MFA 1592/93 claimed Rs. 1,000/- as his wage per month. The compensation is claimed accordingly.

2. The owner of the vehicle did not contest, nor file any statement. He did not dispute the status of the applicant, the quantum of wages or the disabilities pleaded. The owner 1st respondent remained ex parte. The 2nd respondent Insurance Company contested and disputed the claim of the claimants. It participated in the enquiry.

3. The claimants were examined and they deposed in terms of their pleadings. They also stated on oath the monthly wages paid to them. They produced documents to prove the injuries sustained by them and they examined the Doctor who treated them to support the contentions that they have suffered total disablement.

4. The Commissioner found that the claimants sustained the injuries in the accident. It was also found that the claimants were the workers of the 1st appellant. On the basis of the oral evidence it found that the wages of the workers is as claimed by them. It further found relying on the evidence of the claimants as also that of the Doctors who examined them that the claimants had suffered total disablement, and that they cannot carry on their avocation thereafter. The monetary compensation was assessed accordingly, and passed the award impugned in these appeals.

5. The Appeals are filed jointly by the owner as also the Insurance Company. The owner had remained ex parte before the Commissioner despite notice. He did not file any statement. He did not cross examine the claimants or the doctor. In other words, the owner admitted the gravity of the injury sustained, the status of the claimants, the monthly wages claimed by them, the total disablement pleaded and the total compensation claimed. Nothing is stated in the grounds of appeal before this Court as to why the owner did not appear before the Commissioner and contest the claim. As such, the owner, who is the 1st appellant herein cannot challenge any of the findings entered by the Tribunal on the basis of the evidence

tendered. Therefore, this Court need not consider any of the contentions urged on behalf of the owner in these Appeals in so far as it relates to the findings of fact entered by the Commissioner.

6. This Court has time and again stated that, the Insurance company cannot dispute the quantum of compensation awarded by the Commissioner for Workmen's Compensation, invoking the said principle applicable in a Motor Accidents Claim. Further, the grounds of appeal urged before this Court does not show that the challenge against the award is on any of the permitted grounds under Section 149 of the Motor Vehicles Act. As such the challenge of the Insurer against the quantum of compensation made by the Commissioner has to fail.

7. But the learned Counsel for the appellants submitted that the Insurer is entitled to challenge the findings of the Commissioner that the claimants have sustained 'total disablement', as according to him, the finding goes to the root of the assessment of compensation. According to the learned Counsel, the claimants have not sustained any 'total disablement' as defined in Section 2(1) of the Workmen's Compensation Act. The doctor's evidence shows that the claimants can carry on some other work and even the same work that they were doing and the injuries have not in any way impaired their ability to do the work.

8. I am of the view, the finding entered by the Tribunal in this behalf is a question of fact and there is no substantial question of law arising out of the finding. It cannot be said that the appreciation of the evidence is perverse warranting interference. That apart, the Doctor's evidence clearly shows that the claimants have sustained physical disability resulting in their suffering total disablement. The total disablement should be assessed vis-a-vis the work the worker was carrying. If the worker, is disabled to perform all the work he was engaged to perform it amounts to total disablement. It is to be noted that the compensation is claimed under the Workmen's Compensation Act, 1923 by the worker as defined under the Act. That worker, due to the injury sustained by him, loses the capacity to do that work, which capacity earned him the status of a worker under the employer. If so, the disablement that he suffers should be understood vis-a-vis the work he carried on or for which he was employed. If by the accident, he becomes totally disabled

to carry on that work, as far as he is concerned, it is a total disablement. A driver employed is employed to drive. He is not to work as a sweeper or a manual labourer. If due to the accident, a driver becomes incapable of performing his duties as a driver there is total disablement as far as he is concerned. He will cease to be a driver under his employer and consequently a worker under that employer. The fact that the he can do some other work elsewhere is no ground to state that he is not totally disabled. His disablement should be assessed with reference to the work he was employed to perform at the time of accident. His capacity to do some other type of work did not earn him the status of worker under the particular employer. If by the accident, the worker loses his employment under his employer, thereby ceases to be a worker as defined under the Act under that particular employer which employment brought him under the purview of the Act and the relationship of employer-worker is brought to an end, then that amounts to the 'total disablement' contemplated under the Act. To repeat his capacity to do some other work either under the same employer or another employer or independently is of no consequence. It has to be remembered that a skilled worker, if by an accident is disabled to do the particular skilled work, may not be in a position to be employed as an unskilled worker in the same industry for a variety of reasons. He may be over aged or there may be opposition from other unskilled worker since the new employer may mar their employment prospects. Hence with the employee being disabled to carry the work for which he was originally employed, it will be a virtual exit from the establishment. It may be contradiction in terms if we are still to hold that there is no 'total disablement' for the employee. This is what is expressed in a different manner by the Andhra Pradesh High Court in National Insurance Co. Ltd. v. Mohd. Saleem Khan and Another (1992-II-LLJ-377). It is stated as hereunder :

'5. Section 2(1), Workmen's Compensation Act, 1923 defines that total disability, which is as under :-

'Total disablement' means such disablement, whether of a temporary or permanent nature as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.' By the date of the accident R-1 herein was working as a driver of the truck a heavy vehicle. It

is in evidence that in view of the injuries R-1 herein is not fit to drive the heavy vehicle. Thus it is a case of disablement which incapacitated R-1 herein from driving the heavy vehicle i.e. the work which he was capable of performing at the time of the accident. Such disablement comes within the purview of total disablement as defined in Section 2(1), Workmen's Compensation Act, though the doctor held that physical impairment and loss of physical function was to the extent of 50% only. The work which the workmen was capable of performing at the time of the accident was material to consider whether it is a case of total disablement or not, in view of the injuries sustained in the accident.

9. If the workmen is incapacitated to do all the work which he was capable of performing at the time of the accident, it is a case of total disablement. It may be that in view of the above injuries, the workmen is capable enough to render some other sort of work but still when there is incapacity to do the work which he was capable of performing by the date of the accident, it is a case of total disablement. The judgments in Pratap Narain Singh Deo v. Shrinivas Sabata (1976-1-LLJ-235) (SC) and Punambhai Hodabhai Parmar v. G. Kenel Constructions (1985-I-LLJ-98) (Guj), support the above contention for R-1 herein. Hence I find that Lower Tribunal is right in awarding compensation by treating it as a case of total disablement when R-1 herein is incapable of performing the duty of driver of a heavy vehicle i.e., the work which he was performing by the time of the accident.'

10. I am in respectful agreement with what is stated above. The Insurance Company has joined the owner in the appeals merely to enable them to challenge the quantum awarded and the findings of facts entered by the Commissioner. As noticed earlier, the owner did not either appear or participate before the Commissioner and had not contested the claim; he remained ex parte evincing total disinterest in the proceeding. Neither the owner nor the Insurer have given any valid reason before this court as to why the owner did not participate before the Commissioner. The owner has simply lent his name to enable the insurer to file the Appeals and question the quantum. Therefore, this is a case where the appellant should be mulcted with costs of the respondents. Both the Appeals are therefore dismissed with costs.