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CR 105005/21
S. V. K. Kalyan Kumar

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 06TH DAY OF JULY 2021

BEFORE

THE HON'BLE MR. JUSTICE P. KRISHNA BHAT

MFA NO.20815 OF 2009 (W.C)

BETWEEN

THE DIVISIONAL MANAGER,
THE ORIENTAL INSURANCE COMPANY LTD,
ENKAY COMPLEX, KESHWAPUR, HUBLI
REPRESENTED BY THE ORIENTAL INSURANCE
COMPANY LTD., REGIONAL OFFICE,
SUMANGALA COMPLEX, II FLOOR,
LAMINGTON ROAD, HUBLI-580020

...APPELLANT

(BY SRI. S. K. KAYAKAMATH, ADV.,)

AND

1. SRI. HANUMANTAPPA
S/O. GAGNAPPA LAMANI
R/O: HANUMAPUR,
TQ: RANEBENNUR, DIST: HAVERI.
2. MOORTY S. K.
R/O: JAYANAGAR, BANGALORE



...RESPONDENTS

(BY SRI. G. M. NARASAMMANAVAR, ADV., FOR
SRI. LOKESH MALAVALLI, ADV., FOR R1;
SRI. P. V. GUNJAL, ADV., FOR R2)

THIS MFA IS FILED U/S 30(1) OF THE WORKMEN
COMPENSATION ACT, 1923 PRAYING TO SET ASIDE THE JUDGMENT
AND ORDER DATED 14.11.2008 PASSED IN WCA/NF No.143/2006 ON
THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR
WORKMEN'S COMPENSATION, HAVERI, DISTRICT HAVERI.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This is an appeal by the insurer calling in question the legality and validity of the award dated 14.11.2008 in WCA/NF No.143/2006 passed by the learned Labour Officer and Commissioner for Workmen's Compensation, Haveri, District Haveri (for short "the Commissioner").

2. Brief facts are that claim petition proceeded on the allegation that claimant was working as a Hamali in lorry bearing registration No.KA-05/D-4257 owned by Moorty S. K, respondent No.1, and insured with the appellant herein. On 07.05.2006, while the claimant was unloading drums from the lorry, the driver of the lorry in question drove the same in negligent manner by reversing it and on account of the same, claimant suffered grievous injuries.

3. Respondent No.1-owner of the lorry, Sri.Moorty S. K. did not file any written statement before the learned Commissioner and he remained exparte. Appellant filed a

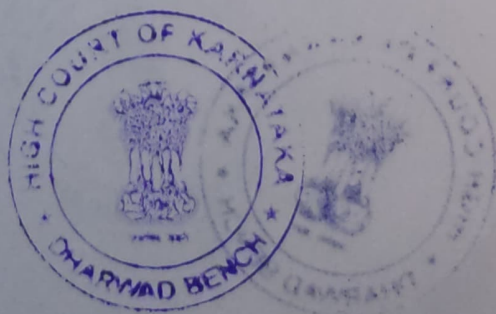


separate written statement denying all the material averments made in the claim petition.

4. During the enquiry, claimant examined himself as PW1 and he examined a qualified medical practitioner Dr.Umanath R Ullal as PW2. Ex.P1 to 8 were also marked. The appellant examined one of its officials as RW1 and policy of insurance was marked as Ex.R2(1).

5. Upon consideration of the entire materials, learned Commissioner has answered the points arising for consideration in favour of the claimant and as against the appellant and awarded a compensation of Rs.1,74,040/- with interest thereon at 12% per annum.

6. Learned counsel for the appellant-insurance company contended that the claimant has stated in the claim petition that he suffered fracture of both bones of left leg and he produced the wound certificate, Ex.P3, which also reflects the same. It was further contended that in Ex.P7, which is a certificate of assessment of physical disability issued by PW2-Dr.Umanath R Ullal, the fracture and deformity noticed were on



the middle ½ of the right leg and assessment of 50% disability of the said limb was made by PW2 and no injury or deformity was noticed by him on the left leg. He, therefore, submits that the medical evidence is contradictory and the learned Commissioner without noticing the said aspect has awarded compensation and therefore, the claim petition is liable to be dismissed.

7. Learned counsel appearing for the claimant-respondent submits that PW2 has committed a mistake in giving report and therefore, matter may be remanded for fresh consideration of the disability by the learned Commissioner.

8. I have perused Ex.P3-wound certificate and also Ex.P7-disability certificate pertaining to the claimant. Both wound certificate as well as the disability certificate are issued by the same qualified medical practitioner namely Dr.Umanath R Ullal. While in the wound certificate this doctor had noticed fracture in the left leg of the claimant, in Ex.P7-disability certificate he noted deformity on the right leg of the claimant. Ex.P3-wound certificate reflects that PW2 had examined the



claimant on 19.05.2006 at 6.30 p.m. Ex.P7-disability certificate shows that same doctor i.e. PW2 had examined the claimant on 22.02.2007 for the purpose of issuing disability certificate. It is obvious that PW2 has indulged in malpractice as is obvious from the contradictory observations made by him in Ex.P3 and Ex.P7. In any case, it is equally obvious that claimant is the beneficiary of such malpractice and therefore, he is not entitled to grant of any compensation. In that view of the matter, the appeal is liable to be dismissed. Hence, the following:

ORDER

The above appeal is allowed.

The judgment and award dated 14.11.2008 in WCA/NF No.143/2006 passed by the learned Labour Officer and Commissioner for Workmen's Compensation, Haveri, is set aside and claim petition is dismissed.

The amount in deposit, if any, before this registry, shall be refunded to the appellant-insurance company.



Issue direction to the Karnataka Medical Council to hold an inquiry into the professional misconduct of Dr.Umanath R Ullal in issuing two contradictory certificates in respect of alleged injuries suffered by the claimant and for the said purpose, registry to enclose along with copy of this judgment, the copies of Ex.P3 and Ex.P7.

The Karnataka Medical Council, after holding inquiry, shall submit a copy of the report to the Additional Registrar General, High Court of Karnataka, Dharwad Bench on or before 31.12.2021.

Put up the case on receipt of such a report.

In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration.



"TRUE COPY"

[Signature]
Section Officer

Copying Branch

High Court of Karnataka
Bench, Dharwad.

Sd/-
JUDGE

- a) The date on which the application was made *07/12/2021*
- b) The date on which charges and additional charges, if any, are called for.....
- c) The date on which charges and additional charges, if any, are deposited /Paid.....
- d) The date on which the copies ready..... *09/12/2021*
- e) The date on which the copy is ready for delivery.....
- f) The Date on which the applicant is required to appear on.....
- g) The date on which copy is delivered to the applicant..... *12/12/2021*
- h) Examined by..... *[Signature]*