

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 7TH DAY OF JANUARY, 1998

BEFORE

THE HON'BLE MR. JUSTICE CHIDANANDA ULLAL

M.F.A.NO. 2064/1994

Between :

National Insurance Co.  
Ltd., having its Regd. Office  
at No. 3, Middleton Street,  
Calcutta and its Regional  
Office at No. 144, M.G.  
Road, Bangalore,  
duly represented by their  
Regional Manager.

.. APPELLANT

(by Sri. M.Sowri Raju for applt.)

A n d :

1. Sri. Uditha Kumar,  
s/o. Jagathapala  
Bhandari, Hindu, male,  
Adult, R/at. Kujumbottu  
House, Balal village,  
Belthangady, South  
Kanara Dist.

2. Sri. Govindaraja Bhat,  
s/o. Vasudeva Bhat,  
Hindu, male, adult,  
carrying on business at  
Prabhat Stores, Ujira,  
Belthangady taluk,  
South Kanara Dist.

.. RESPONDENTS

(By Sri. B.V.Pinto for R.1 and Sri.P.  
Shylaja for R.2.)

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MFA filed under Sec. 30 of the Workmen's  
Compensation Act against the order dt. 19-7-94  
passed in WCA.SR.25/88-89 on the file of the  
Commissioner for Workmen's Compensation and Labour  
Officer, D.K. sub-division-I, Mangalore, allowing  
the claim petition for compensation.

This MFA filed coming on for hearing this day, the Court delivered the following :

J U D G M E N T

This is an appeal by the Insurance Co. who had insured the vehicle of the respondent No. 1, the employer of the respondent No. 1, to challenge the order dt. 19-7-94 in case No. WCA.SR.25/88-89 passed by the Commissioner for Workmen's Compensation and Labour Officer, Dakshina Kannada District, Division I, Mangalore. In passing the said award, the Commissioner for Workmen's Compensation had awarded a sum total of Rs.94,780/- together with interest at 6% p.a. as compensation for the permanent disability the respondent No. 1 had suffered in a road accident.

2. I heard the learned Counsel for the appellant - Insurance Co. Sri. M.Sowri Raju and the learned Counsel appearing for the contesting respondent No. 1 - P.V.Pinto. The respondent No. 2 - employer is represented by Smt. P.Shylaja. I have also perused the case records.

3. The brief facts of the case are as hereunder :

That the respondent No. 1 was an auto

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driver working under the respondent No. 2 and while he was so driving the auto at about 8.30 p.m. on 30-4-87, at Machar on Belal road, Belthangady, Dakshina Kannada District, to avoid collision with the hospital van owned by Dharmasthala Manjunatheshwar Mobile Hospital, lost control of the vehicle and dashed against a culvert and in the process the auto capsized on account of the impact and thus he was injured in the accident. That the accident in question had taken place during the course of employment under the respondent No. 2 and at that time, he was drawing <sup>the</sup> monthly salary of Rs.800/- together with bata at Rs.10/- per day. That in the accident, the respondent No. 1 had suffered fracture of both the bones of the right leg and he had also suffered a permanent disability in the said leg and therefore he was ~~not~~ prevented from driving his auto for all time to come. He had filed a petition before the Commissioner for Workmen's Compensation and Labour Officer, Dakshina Kannada District - I, Mangalore (henceforth in brief as the Commissioner) claiming compensation of Rs. 94,630/-. The respondent No. 1 had examined himself as well as the doctor. In the evidence on record, it had emerged that the respondent No. 1



had suffered fractures of both the bones of the right leg below the knee and he is therefore prevented from driving the auto.

4. On perusal of the material evidence on record, the Commissioner had awarded a sum total of Rs.94,780/- by taking into account the age of the respondent as 38 years and further the monthly income of Rs.700/-.

5. The learned Counsel for the appellant argued on twin points; firstly that the respondent was not having an effective driving licence as on the date of the accident and secondly that the doctor who was examined before the Commissioner had given evidence to say that there was disability to an extent of 50% on his right leg. Therefore, according to him the computation of the compensation would have been proportionate to that disability the petitioner had suffered as deposed by the doctor before the Commissioner. Therefore he prayed that either the impugned award be set aside or in the alternative, the same be restricted to 50% of what had been awarded in passing the impugned award.

*el*

6. The learned Counsel appearing for the contesting respondent No. 1 Sri. Pinto argued that it cannot be argued by the appellant - Insurance Co. that the respondent No. 1 was not having the effective driving licence, for what is contemplated under law, according to him, is that either a person held a valid driving licence at the time of the accident or held a permanent licence other than the learner's licence and that he was not disqualified from holding or obtaining such a licence. Sri. Pinto drew my attention to the permanent driving licence the respondent No. 1 had obtained, marked as Ex.A.3. The said driving licence being a permanent driving licence, it appears to me that the argument advanced on the point that the respondent No. 1 was not having an effective driving licence cannot be accepted.

7. The other point that was canvassed by the learned Counsel for the appellant is that the medical evidence of the doctor examined by the Commissioner had clearly deposed that the disability on the right leg suffered by the respondent No. 1 was to an extent of 50% and therefore, the compensation had to be restricted to 50% of what had been awarded by the Commissioner. Even that

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argument advanced by the learned Counsel for the appellant is not acceptable to me for the reason that what was rightly considered by the Commissioner was the disability the respondent No. 1 had suffered in the matter of his future earning capacity as an auto driver . If the disability of 50% as deposed by the doctor before the Commissioner is appreciated with reference to the other part of his evidence that he cannot do work either as an agricultural labourer or driving of auto, it appears to me that the award of compensation holding that the respondent No. 1 had suffered total disability in the matter of his avocation appears to be correct.

8. In that view of the matter, I do not find any merit in the instant appeal. The appeal therefore fails and accordingly dismissed.

9. Let the appellant - Insurance Co. deposit the sum immediately, if the same is not yet done. The Registry is also directed to transfer any amount in deposit in the appeal to the Commissioner below forthwith.

mgn/-

Sd/-  
Judge