

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2ND DAY OF SEPTEMBER 1988

B E F O R E

THE HON'BLE MR. JUSTICE B.K. SANGALAD

M.F.A. NO. 1864/1989

BETWEEN:

Narayana Shetty,
Editor, Printer and Publisher,
'Hithavani' News Daily,
Proprietor - Hithavani Power Press,
Virajpet, Kodagu District.

... APPELLANT

(By Sri Narayana Shetty for
A.K.Subbaiah, Adv.)

AND:

1. Sri Ramesh,
S/o Sri Kariyappa,
Aged about 25 years,
C/o. Secretary, Kodagu
District, General Workers
Union, Virajpet.

... RESPONDENT

(By Sri K.S.Gowrishankar, Adv.
for R1)

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This is an M.F.A. which was earlier filed as a writ petition under Section 30(1)(a) of the Workmen Compensation Act against the Order dt. 30.6.1988 passed in Case No. KAM:WC:22/83-84 on the file of the Workmen Compensation Commissioner, Madikeri, allowing the claim petition for compensation.

This M.F.A. coming on for hearing this day the Court delivered the following:-



J U D G M E N T

This appeal is against the award passed by the Commissioner for Workmen Compensation, Madikeri dated 30.6.1988 passed in Case No.KAM:WC:22/83-84.

2, The respondent-1 filed an application for the compensation, stating that he was working in the printing press and at that time, his right index finger was got in the machine and was smashed and fractured. In spite of the medical attendance, the finger cannot be restored to the normalcy. As such it has become 70% disablement. As such he has developed 70% disability. The Doctor has also issued the certificate. Basing upon this, the Tribunal has awarded the compensation of Rs.20,640/-, including the fine of Rs.3,000/- .

3. Mr. Narayan Swamy, learned Counsel for the appellant submits that, the respondent-1 was not at all an employee and the Doctor is not examined to speak of the definite percentage of disability. On the other hand, Mr. Gowrishankar, supported the award.

4. The submission that he was not an employee cannot be accepted. First of all, there is no



rebuttal evidence. There is no reason to disbelieve the version of the claimant. There is no material on record to show that he is trying to falsely implicate the appellant and more over he has produced some letters. It is not the case of the appellant that these letters were addressed to the claimants, subsequent to the accident. These letters will indicate the position and the placement of the respondent-1. Hence, his submission that he was not at all an employee cannot be accepted.

5. As far as the quantum of compensation, on the basis of the certificate issued by the Doctor is concerned, the matter has to be remanded because the Doctor is not examined. When the Tribunal has considered that there is a disability of 70%, it is better to give an opportunity to both sides to adduce the proper evidence, [^] If the Doctor is subjected to cross-examine the truth, [^] will come to the surface. [^] Hence, the appeal is allowed in part and the matter remanded back only to fix up the quantum of compensation after the medical officer is examined.

The money deposited here shall stand transferred to the Commissioner, Workmen Compensation of Madikeri.

Sd/-
Judge

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