

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25TH DAY OF MARCH, 2008

BEFORE

THE HON'BLE MR. JUSTICE K RAMANNA

MISCELLANEOUS FIRST APPEAL NO. 4239/2006.

BETWEEN:

KHAJA MOINUDDIN HONNURI,
AGED MAJOR, CCC. NIL,
R/O. PASCHAPUR,
TQ. HUKKERI,
BELGAUM DIST.

.. APPELLANT

(BY SRI JAGADISH PATIL, ADV.)

AND:

1. RAMESH M. PATTANSHETTY,
C/O. M/s. M. I. PATTANSHETTY AND
SONS, DHARWAD ROAD,
SAUNDATTI, BELGAUM DIST.

2. THE NATIONAL INSURANCE Co. Ltd.,
SAUNDATTI, BELGAUM DIST.

.. RESPONDENTS

(BY SRI B. C. SEETHARAMA RAO, ADV. FOR R-2)

THIS APPEAL IS FILED U/S. 30(1) OF W.C. ACT, AGAINST
THE JUDGMENT DT. 21/1/06 PASSED IN WCA/MISC-6/2005 ON
THE FILE OF THE LABOUR OFFICER & COMMISSIONER FOR
WORKMEN'S COMPENSATION, BELGAUM, SUB-DIVISION-1,
BELGAUM, DISMISSING THE APPLICATION DT. 8/16-7-2005
FILED FOR RESTORATION OF PROCEEDINGS IN WCA/SR-
13/05.

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



JUDGMENT

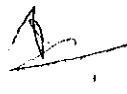
The appellant-claimant has filed this appeal challenging the order passed by the Commissioner for Workmen's Compensation in No.WCA/Misc.Application No.6/2005 dated 21-1-2006 wherein, the said Misc.application filed by the appellant for setting aside the order dated 9-6-2005 dismissing claim petition No.WCA.SR.13/2005 for non-prosecution, came to be dismissed.

2. The appellant herein filed a claim petition in case No.WCA/SR/13/2005 before the Commissioner seeking compensation for the injuries sustained by him in a motor vehicle accident. It is seen that the claim petition was filed in the year 2005 and issues have been framed on 8-4-2005 and thereafter the matter was posted for appellant's evidence on 2-5-2005. But on that day, the appellant failed to appear before the Court and lead his side of evidence. Subsequently also, several adjournments were taken but the appellant failed to lead his side of evidence nor appeared before the



Commissioner. Both the appellant and his counsel did not appear before the Commissioner on all the dates. Finally, the matter was adjourned to 9-6-2005. Even on that day, the appellant and his counsel were absent. Therefore, the Commissioner found that the appellant is not interested in prosecuting the case and dismissed the claim petition for non-prosecution. Thereafter, Miscellaneous Application No.WCA/Misc.6/2005 came to be filed before the Commissioner for restoration of the claim petition. Even that application came to be dismissed. Hence, the appellant has filed this appeal.

3. According to the appellant, he was a driver working under respondent-1 and he filed claim petition before the Commissioner seeking compensation for the injuries sustained by him in the motor vehicle accident during the course of his employment. According to him, he was suffering from illness as such he could not appear before the Commissioner to lead his evidence and that his absence was neither intentional nor malafide.



4. Considering the facts and circumstances of the case and the nature of injuries sustained by the appellant in the said accident, the appellant who is an innocent and poor workman, should not be deprived of his right to claim compensation in respect of the injuries sustained by him in the accident that occurred during the course of his employment. Therefore, it is just and necessary to give one more opportunity to the appellant to prosecute his claim petition.

5. Hence, the appeal is allowed. The order of dismissal of the Miscellaneous Application No. WCA/Misc.6/2005 dated 21-1-2006 is hereby set aside and the order dated 9-6-2005 dismissing the claim petition No.WCA.SR.13/2005 is set aside. The claim petition No.WCA.SR.13/2005 is restored to its file. Both the parties are directed to appear before the Labour Officer and Commissioner for Workmen's Compensation, Sub-division-1, Belgaum on 21-4-2008.

*sp

Sd/-
Judge