

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 17TH DAY OF JANUARY, 2014

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

MISCELLANEOUS FIRST APPEAL NO.20234/2009

C/W

M.F.A.NO. 20233/2009

& M.F.A.NO.20235/2009 (WC)

IN M.F.A.NO.20234/2009

BETWEEN:

THE NEW INDIA ASSURANCE COMPANY LTD
HUBLI,
REP. BY ITS DIVISIONAL MANAGER,
N C MARKET SHREENATH COMPLEX HUBLI
REPTD BY ITS REGIONAL MANAGER
REGIONAL OFFICE 2 B UNITY BUILDING
ANNEXE P KALIGA RAO ROAD, BANGALORE.

... APPELLANT

(BY SRI. G N RAICHUR, ADV.)

AND

1. BASAPPA BHIMAPPA KADKOLE
AGE: 33 YEARS, OCC COOLIE,
R/O HOSAHALLI, TQ RAMDURG
BELGAUM DIST,
PRESENTLY R/O MUDHOL
DIST BAGALKOT.

2. SHRI SIDDANGOUDA YALLANGOUDA PATIL
AGE 38 YEARS, OCC AGRIL
R/O HOSUR, TQ RAMDURG
DIST BELGAUM.

... RESPONDENTS

(BY SRI. N L BATAKURKI, ADV. FOR R1)

THIS MFA IS FILED U/S 30(1) OF THE W.C.ACT, AGAINST THE JUDGEMENT AND AWARD DATED: 21-2-2008 PASSED IN WC.NF.NO.130/2007 ON THE FILE OF LABOUR OFFICER AND COMMISSIONER FOR WORKMENS COMPENSATION, BAGALKOT DISTRICT, BAGALKOT, AWARDDING COMPENSATION OF RS.89,730/- ALONG WITH INTEREST AT THE RATE OF 12% P.A. FROM THE DATE OF PETITION TILL DEPOSIT.

IN M.F.A. NO.20233/2009

BETWEEN

THE NEW INDIA ASSURANCE CO LTD
HUBLI
REP BY ITS DIVISIONAL MANAGER
N C MARKEY SHREENATH COMPLEX HUBLI
REPTD BY ITS REGIONAL MANAGER
REGIONAL OFFICE 2 B UNITY BUILDING
ANNEXE P KALIGA RAO ROAD, BANGALORE

... APPELLANT

(BY SRI. G N RAICHUR, ADV.)

AND

1. HUSAINSAB KOTUBUSAB GORIKHAN
AGE: 26 YEARS, OCC COOLIE
R/O HOSAHALLI, TQ RAMDURG
BELGAUM DIST
PRESENTLY R/O MUDHOL
DIST BAGALKOT.
2. SHRI SIDDANGOUDA YALLANGOUDA PATIL
AGE 38 YEARS, OCC AGRICULTURE,

R/O HOSUR, TQ RAMDURG
DIST BELGAUM.

... RESPONDENTS

(BY SRI. N L BATAKURKI, ADV. FOR R1)

THIS MFA IS FILED U/S 30(1) OF W.C. ACT AGAINST THE JUDGMENT AND ORDER DATED:21/8/2008 PASSED IN W.C.NF.NO.129/07 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN COMPENSATION, BAGALKOT, AWARDED COMPENSATION OF RS.93,591/- ALONG WITH INTEREST OF 12% P.A.

IN M.F.A.NO.20235/2009

BETWEEN

THE NEW INDIA ASS URANCE CO LTD
HUBLI
REP BY ITS DIVISIONAL MANAGER
N C MARKEY SHREENATH COMPLEX HUBLI
REPTD BY ITS REGIONAL MANAGER
REGIONAL OFFICE 2 B UNITY BUILDING
ANNEXE P KALIGA RAO ROAD, BANGALORE.

... APPELLANT

(BY SRI. G.N.RAICHUR, ADV.)

AND

1. ISWARAPPA BASAPPA HATTIKATAGI
AGE: 31 YEARS, OCC COOLIE
R/O HOSAHALLI, TQ RAMDURG
BELGAUM DIST,
PRESENTLY R/O MUDHOL
DIST BAGALKOT.
2. SHRI SIDDANGOU DA YALLANGOU DA PATIL
AGE 35 YEARS, OCC AGRICULTURE,
R/O HOSUR, TQ RAMDURG
DIST BELGAUM.

... RESPONDENTS

(BY SRI. N L BATAKURKI, ADV. FOR R1)

THIS MFA IS FILED U/S 30(1) OF THE WORKMEN'S COMPENSATION ACT 1923, AGAINST THE JUDGMENT AND ORDER DATED:21-08-2008 PASSED IN WC.NF.131/2007 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN'S COMPENSATION, BAGALKOT, AWARDED THE COMPENSATION OF RS.1,57,658/- ALONG WITH INTEREST AT THE RATE OF 12% P.A.

THESE APPEALS COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Insurer has filed these appeals challenging the order and awards passed by the Commissioner for Workmen Compensation, Bagalkot, whereunder claim petitions have been allowed in part and compensation has been awarded in favour of respective workmen.

2. By consent of learned advocates appearing for the parties, matter is taken up for final disposal.

3. Appeal is of the year 2009 and accident in question had occurred on 25.01.2007. Having heard the learned counsel appearing for the parties and on perusal of order and awards in question as also certified copies of the

depositions and exhibits made available by Sri G.N.Raichur, learned counsel for appellant/insurer, I am of the view that the following substantial questions of law would arise for my consideration:

- 1) *“Whether appellant/insurer is liable to indemnify the claim of workmen/coolies travelling in a tractor-trailer covered under farmer package policy?*
- 2) *Whether the Commissioner was justified in accepting disability as assessed by doctor to be the proportionate loss of earning capacity to workmen and awarding compensation based on such assessment?*
- 3) *Whether Commissioner was justified in awarding interest payable after one month after the date of award?”*

Re: substantial question of law No.1

The said issue is no more *res integra* in view of law laid down by the Division Bench in the case of *National Insurance Co. Ltd. Vs Maruthi and another* reported in *ILR 2011*

Karnataka 4189 as such the substantial question of law is answered against the appellant/insurer and in favour of workmen. In other words, it is held that the appellant/insurer would become liable to indemnify the claim of the workmen, travelling as coolies in the tractor-trailor which was covered under Farmer Package Policy.

Re: substantial question of law No.2

Accident in question as also the injuries sustained by the claimants and disability suffered by them, issuance of policy to the offending vehicle and same being in force as on the date of accident are all undisputed facts. Hence, they are not deived upon in these appeals, as it would be repetition of the facts.

Respondents/workmen in these appeals filed claim petitions seeking compensation contending *inter alia* that in the course of their employment they were travelling in a tractor-trailer bearing registration No.KA-24/T-4486-4487 and said tractor met with an accident namely it got toppled

resulting in workmen sustaining grievous injuries and injuries sustained by them having arisen out of their employment they are entitled for compensation. Insurer appeared and contested the matter. Commissioner after considering the pleas and evaluation evidence on record allowed all the four claim petitions. However, insurer having satisfied the award insofar as driver of the offending vehicle is concerned has filed these three appeals insofar as the claim of the workmen are concerned.

For the purpose of convenience, the appeal numbers, claim petition numbers, disability assessed by the doctor etc. are tabulated hereinbelow:

| M.F.A.No. | W.C.A.No | Percentage of the disability assessed by the doctor | Proportionate number of earning capacity taken by the Commissioner | Compensation awarded |
|------------|----------|---|--|----------------------|
| 20333/2009 | 129/2009 | 25% | 25% | 93,591/- |
| 20234/2009 | 130/2007 | 25% | 25% | 89,730/- |
| 20235/2009 | 131/2007 | 45% | 45% | 1,57,658/- |

In the instant case, doctor (Orthopediac surgeon) has been examined by the workmen. Workmen contended before the Commissioner that on account of disability sustained by them, their earning capacity got reduced in same proportion to the disability assessed by the Doctor. Respective workmen had produced wound certificates as well as disability certificates. To prove the contents of wound certificates as well as disability certificate, doctor was examined on their behalf. These wound certificates which came to be marked as Ex.P-10, P-11 and P-12 respectively and disability certificates produced and marked as Ex.P-15, P-17 and P-19 would indicate that workmen had sustained the following injuries:

1) Hussain Sab:

“ಅವರು 2ನೇ ಅರ್ಜಿದಾರನ ಹುಸೇನಸಾಬ ಇವನ ಬಗ್ಗೆ ಅಭಿಪ್ರಾಯ ಪಡುತ್ತಾ ಅವನ ಎಡಗೈ ಹ್ಯುಮರಸ್ ಎಲುಬಿನ ತಲೆಯ ಭಾಗ ಮುರಿದಿದೆ. ಅವನು ತಮ್ಮ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ಚಿಕಿತ್ಸೆ ಪಡೆದಿದ್ದಾನೆ. ಈಗ ಅವನನ್ನು ದೈಹಿಕವಾಗಿ ಪರೀಕ್ಷಿಸಿದಾಗ, ಅವನ ಎಡ ಮೊಣಕೈ ಕೀಲಿನಲ್ಲಿ ನೋವು ಮತ್ತು ನಿರ್ಬಂಧತೆ ಇದೆ. ಎಡಗೈ ಮಾಂಸಖಂಡಗಳಲ್ಲಿ ಮತ್ತು ಸ್ನಾಯುಗಳಲ್ಲಿ ಶಕ್ತಿಹೀನತೆ ಇದೆ. ಇದರಿಂದ ಅವನಿಗೆ ಸರಿಯಾಗಿ ನಡೆದಾಡಲು, ಕೂಲಿ ಕೆಲಸ ಮಾಡಲು ತೊಂದರೆ ಇದ್ದು,

ಅವನಿಗೆ ಪ್ರತಿಶತ-25 ರಷ್ಟು ದೈಹಿಕ ಮತ್ತು ಶಾಶ್ವತ ಅಂಗನ್ಯೂನತೆ ಇದೆ ಎಂದು ಅವರು ಅಭಿಪ್ರಾಯಪಟ್ಟಿದ್ದಾರೆ.

2) Basappa Kadakol

ಅವರು 3ನೇ ಆರ್ಜಿದಾರನಾದ ಬಸಪ್ಪನ ಬಗ್ಗೆ ಅಭಿಪ್ರಾಯಪಡುತ್ತಾ ಅವನಿಗೆ ಸದರಿ ಅಪಘಾತದಲ್ಲಿ ಬಲ ಪಾದದ ಕೀಲು ಮುರಿದಿದೆ ಮತ್ತು ಬಲ ಪಾದದ 5ನೇ ಬೆರಳಿನ ಎಲಬು ಮುರಿದಿದೆ. ಅವನು ತಮ್ಮ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ಚಿಕಿತ್ಸೆ ಪಡೆದಿದ್ದಾನೆ. ಈಗ ಅವನನ್ನು ದೈಹಿಕವಾಗಿ ಪರೀಕ್ಷಿಸಿದಾಗ, ಅವನ ಬಲ ಪಾದದ ಕೀಲಿನಲ್ಲಿ ನೋವು ಮತ್ತು ನಿರ್ಬಂಧತೆ ಇದೆ. ಬಲ ಪಾದದ ಮಾಂಸಖಂಡಗಳಲ್ಲಿ ಮತ್ತು ಸ್ನಾಯುಗಳಲ್ಲಿ ಶಕ್ತಿಹೀನತೆ ಇದೆ. ಇದರಿಂದ ಅವನಿಗೆ ಸರಿಯಾಗಿ ನಡೆದಾಡಲು ಕೂಲಿ ಕೆಲಸ ಮಾಡಲು ತೊಂದರೆ ಇದ್ದು, ಅವನಿಗೆ ಪ್ರತಿಶತ-25 ರಷ್ಟು ದೈಹಿಕ ಮತ್ತು ಶಾಶ್ವತ ಅಂಗನ್ಯೂನತೆ ಇದೆ ಎಂದು ಅವರು ಅಭಿಪ್ರಾಯಪಟ್ಟಿದ್ದಾರೆ.

3) Ishwarappa Hattikatagi

ಅವರು 4ನೇ ಆರ್ಜಿದಾರನಾದ ಈಶ್ವರಪ್ಪನ ಬಗ್ಗೆ ಅಭಿಪ್ರಾಯಪಡುತ್ತಾ ಅವನಿಗೆ ಸದರಿ ಅಪಘಾತದಲ್ಲಿ ಎಡಗಾಲಿನ ಫಿಬ್ಯುಲಾ ಎಲಬು ಮುರಿದಿದೆ ಮತ್ತು ಎಡ ಪಾದದ 4 ಮತ್ತು 5 ನೇ ಎಲಬುಗಳು ಮುರಿದಿದೆ. ಅವನು ತಮ್ಮ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ಚಿಕಿತ್ಸೆ ಪಡೆದಿದ್ದಾನೆ. ಈಗ ಅವನನ್ನು ದೈಹಿಕವಾಗಿ ಪರೀಕ್ಷಿಸಿದಾಗ, ಅವನ ಎಡ ಪಾದದ ಕೀಲಿನಲ್ಲಿ ನೋವು ಮತ್ತು ನಿರ್ಬಂಧತೆ ಇದೆ. ಎಡ ಪಾದದ ಮಾಂಸಖಂಡಗಳಲ್ಲಿ ಮತ್ತು ಸ್ನಾಯುಗಳಲ್ಲಿ ಶಕ್ತಿಹೀನತೆ ಇದೆ. ಇದರಿಂದ ಅವನಿಗೆ ಸರಿಯಾಗಿ ನಡೆದಾಡಲು ಕೂಲಿ ಕೆಲಸ ಮಾಡಲು ತೊಂದರೆ ಇದ್ದು, ಅವನಿಗೆ

ಪ್ರತಿಶತ-45 ರಷ್ಟು ದೈಹಿಕ ಮತ್ತು ಶಾಶ್ವತ ಅಂಗನ್ಯೂನತೆ ಇದೆ ಎಂದು ಅವರು ಅಭಿಪ್ರಾಯಪಟ್ಟಿದ್ದಾರೆ.”

The doctor has opined that workmen have sustained permanent physical disability to an extent of 25%, 25% and 45% respectively. Undisputedly, all these claimants were working as coolies. The nature of their avocation involves loading and unloading, carrying or lifting heavy weights, squatting and standing, bending etc. Any amount of physical disability would consequentially reduce their earning capacity namely they would not be able to work for the same number of hours or same number of days, as they were working till the date of accident. In this background, when the nature of injuries sustained by the respective workmen are seen as reflected in the disability certificates, it leaves no doubt in the mind of this Court that percentage of disability assessed by doctor would be the loss of earning capacity to them. Hussain Sab had sustained fracture of surgical of left humerous and contusion over chest. Essential part of the human body for carrying the weight would be neck and on

account of injury sustained by him, he would certainly find difficulty in carrying weights and lifting his shoulder and neck. Hence, loss of earning capacity assessed by the Commissioner at 25% based on permanent physical disability assessed by the doctor cannot be held to be disproportionate.

Insofar as workmen-Basappa kadkol is concerned the disability certificate produced along with wound certificate, would indicate that he had sustained fracture of right ankle joint, fracture of 5th metatarsal bone and he had also sustained CLW over medial side over right feet and had clinically and radiologically been evaluated by the doctor who had opined there is 25% permanent physical disability to workman. Like in the case of Hussain Sab, Basappa Kadakol is also a coolie and he would also be in the same position as that of Hussain Sab. Hence, loss of earning capacity as assessed by Commissioner to be at 25% cannot be find fault with.

Insofar as Ishwarappa Hattikatagi is concerned, when records are examined namely wound certificate Ex.P-12 and disability certificate Ex.P-19, it would clearly indicate that workman had sustained fracture of left fibula and he had sustained degloving injury over the left lower third leg C crushing of muscles and torn tendon of 4 and 5 toe sustaining complete grade injury. Workman was an inpatient for nearly 26 days i.e. from 25.01.2007 to 15.02.2007 at Sri Sai Orthopaedic and Trauma Center, Mudhol. He was also operated upon on 26.01.2007 and it was found at the time of radiological and clinical evaluation by the doctor that fracture of left fibula is malunited. In fact he has opined there is restriction up to 10° plantar flexion to the workman. In this background of medical evidence, doctor has opined there is permanent physical disability to an extent of 45% which has been considered to be proportionate loss of earning capacity by the Commissioner. The disability certificate Ex.P-19 would indicate that assessment of the physical disability by the doctor was to the left lower limb. The said Ishwarappa Hattikatagi is also a coolie and on account of fracture of left

fibula being malunited, he would not be able to discharge his normal duties as a coolie. However, it cannot be said that he would be completely out of his employment and only earning capacity would get reduced as to whether it would be 45% as per evidence of the doctor is the moot question. The doctor who has been examined on his behalf has not opined that loss of earning capacity of the claimant would be in same proportion to that of disability assessed by him. On the other hand, he has opined that left lower limb disability suffered by workman is to an extent of 45%. Though the nature of avocation of the workman being that of a coolie i.e. loader and unloader, I am of the considered view that loss of earning capacity cannot exceed 30% inasmuch as the workman would be able to discharge his duties with this disability. However, his earning capacity would get reduced to an extent of 30% and as such the percentage of loss of earning capacity considered by Commissioner is on the higher side and as such the substantial question of law formulated hereinabove requires to be answered partly negative in favour of the appellant/insurer insofar as M.F.A.

No.20235/2009 is concerned. Accordingly, it is answered and in view of the same, compensation requires to be recomputed.

Commissioner has taken into consideration the income of workman to be at Rs.3,000/- p.m. and adopted the prescribed relevant factor viz. 194.64 which is just and proper. Hence, considering these aspects and loss of earning capacity at 30%, compensation payable to the workman in M.F.A. No.20235/2009 (WCA No.131/2007) would be Rs.1,05,105.60/- which is as under:

$Rs.3,000 \times 60/100 = 18,000 \times 194.64 \times 30/100 = 1,05,105.6/-$.

Accordingly, substantial question of law No.3 is partly answered in favour of appellant/insurer

Re: substantial question of law No.3

This issue is no more *res integra* in view of law laid down by the Hon'ble Apex Court in *Oriental Insurance Co. Ltd. Ciby George reported in 2012 ACJ 2126* and as such it is held that the workmen would be entitled to interest at the

rate of 12% p.a payable one month after the date of accident till payment or deposit whichever is earlier.

Hence, the following :

ORDER

- (i) M.F.A.No.20233/2009 and 20234/2009 are hereby dismissed.
- (ii) Order and awards passed by Commissioner for Workmen Compensation, Bagalkot in W.C.A. Nos.129/2007 and 130/2007, dated 21.08.2008 are hereby modified and it is ordered that interest that would be payable to the workmen would be one month from the date of accident till the date of payment or deposit whichever is earlier.
- (iii) MFA No.20235/2009 is hereby allowed in part and order and award passed by the Commissioner in WCA No.131/2007 dated 21.08.2008 is hereby modified in substitution to what has been awarded by Commissioner for

Workmen Compensation a sum of Rs.1,05,105.60 is hereby awarded which shall carry interest at the rate of 12% p.a. payable from one month after the accident.

The amount in deposit is ordered to be transmitted to the jurisdictional Commissioner by the Registry forthwith.

In view of disposal of appeals, I.A.No.1/2013 pending in all these appeals do not survive for consideration and accordingly, they are dismissed.

SD/-
JUDGE

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