

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 08TH DAY OF NOVEMBER 2011

PRESENT

THE HON'BLE MR. JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE H.S. KEMPANNA

MFA.NO.12035 OF 2006 (WC)

BETWEEN:

The General Manager
Karnataka Milk Federation (KMF)
Cattle Feeds Department
Pashu Ashara Mishrana Karkane
Rajanakunte
Bangalore Rural District.

...APPELLANT

(By Sri. M.R.C.Ravi, Adv.,)

AND:

1. Sri. B.K.Shivaraju
S/o Sri.Kalleshappa
Hadigenahalli
Rajangunte Post
Yelahanka Hobli
Bangalore North Taluk.
2. Sri. Subhadeva
Mehukote Post
Doddaallapur Taluk

Bangalore Rural District.

...RESPONDENTS

(By Sri. Suresh M.Latur, Adv., for C/R-1)

This MFA is filed under Section 30(1) of WC Act, against the judgment dated 12.06.2006 passed in CWC-3/nfc/cr-10/2003 on the file of the Labour Officer and Commissioner for Workmen compensation, sub-Division-3, Bannerghatta Road, Karmik Bhavan, Bangalore, awarding compensation of Rs.3,81,222/- with interest at 12% p.a from 09.08.2002 till deposit.

This MFA coming on for Admission this day, **N.KUMAR J.**, delivered the following:

J U D G M E N T

This appeal is preferred challenging the order passed by the Commissioner, Workmens' Compensation awarding compensation in a sum of Rs.3,81,222/- and apportioning the same in the ratio 30:70 on the appellant and second respondent.

2. The Workman B.K.Shivaraju was working as a contract labourer with Subhadeva. The appellant herein availed the services of these contract labourers. On 09.07.2002 at about 6.45 a.m. when the workman

was performing his functions assigned to him, he fell on a machine under operation from a height of 10.15 feet due to which his right leg was cut off. He filed a petition under the provisions of the Workmens' Compensation Act, 1923 claiming compensation. The appellant contended that he was not employed under him, but he was employed by the contractor. In the agreement entered into between him and the contract employer, clause (9) makes it clear, it is the contract employer who has to bare entire expenses payable under the provisions of the Workmens' Compensation Act, 1923. Therefore, they are not liable to pay any compensation. After enquiry, the Commissioner held that a sum of Rs.3,81,222/- is the compensation liable to be paid to the workman by apportioning the said amount in the ratio 70:30 by its order dated 12.06.2006.

Aggrieved by the said order, both the workman as well as the appellant herein have preferred appeal. The workman sought for enhancement of compensation in

MFA.No.5088/2009, which came to be dismissed for non-prosecution on 07.02.2011. In this appeal the appellant is assailing the impugned order insofar as foisting 30% of the liability on them.

3. It is true in the contract entered into between the appellant and the contractor/employer, there is a specific clause that the employer undertakes to pay entire compensation under the provisions of the Workmen's Compensation Act, 1923. However, Section 12 of the Act specifically provides, the principal employer shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the



employer by whom he is immediately employed. Sub-Section (2) of Section 12 makes it abundantly clear, where the principal is liable to pay compensation in this Section, he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation; and where a contractor who is himself a principal is liable to pay compensation or to indemnify the principal under the Section, he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all question as to the right whom and the amount of any such indemnity shall, in default on agreement, be settled by the Commissioner.

4. This statutory right conferred on the principal is given effect to by introducing clause (9) in the agreement entered into between the parties. Therefore, the principal employer i.e., the appellant has to pay



compensation and the employer shall indemnify the appellant.

In that view of the matter, no substantial question of law is involved which merits admission of this appeal. Hence, dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

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