



**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH
DATED THIS THE 11TH DAY OF APRIL, 2023
BEFORE**

**THE HON'BLE MR JUSTICE G BASAVARAJA
MISCL. FIRST APPEAL NO. 31875 OF 2012 (WC)**

BETWEEN:

THE BRANCH MANAGER,
THE ORIENTAL INSURANCE CO. LTD.,
S.S. FRONT ROAD, BIJAPUR,
REPRESENTED BY THE DIVISIONAL MANAGER,
THE ORIENTAL INSURANCE COMPANY LTD.,
1ST FLOOR, N.G. COMPLEX,
OPP. MINI VIDHANA SOUDHA,
GULBARGA

...APPELLANT

(BY SRI SANJAY M. JOSHI, ADVOCATE)

AND:

1. SRI ERANNA
@ HIRANNA BASANNA BSHETTY
AGE: MAJOR OCC: CLEANER,
R/O AT BASARKOD, TQ. MUDEBIHAL,
DIST. BIJAPUR-586102
2. SRI. VINAY KUMARSWAMI VIRAKTAMATH
AGE: MAJOR, R/O VIDYAGIRI,
BAGALKOT-586103
3. PRABHU
S/O KARIBASAPPA BIDDALL
AGE: MAJOR OCC: NOT KNOWN
R/O BASARKOD, TQ. MUDDEBIHAL
DIST. VIJAYAPUR-586116.

...RESPONDENTS

(BY SMT RATNA N. SHIVAYOGIMATH, ADVOCATE FOR R1;
N/R2 SERVED; PROPOSED R3 SERVED)

THIS MFA IS FILED U/S 30(1) OF W.C. ACT PRAYING TO CALL
FOR THE RECORDS OF THE COMMISSIONER FOR WORKMEN'S
COMPENSATION NO.II BIJAPUR IN WCA NO.170/2008 AND SET
ASIDE THE JUDGMENT AND AWARD GRANTING COMPENSATION OF
RS.1,63,984/-.

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



JUDGMENT

Though matter is listed for arguments, with the consent of learned counsel for both parties it is taken up for final disposal.

2. This appeal is filed by the insurance company seeking to set aside the judgment and award dated 08.06.2012 passed by the Commissioner for Workmen's Compensation in WCA No.170/2008 awarding a compensation of Rs.1,63,984/- to the workmen.

3. Learned counsel for the appellant has submitted his arguments that claimant had filed petition against respondent No.1 and suddenly he changed his stand that respondent No.1 was not the owner as on the date of accident and the same has been transferred to respondent No.3. Therefore, the claimant has failed to prove as to the relationship of Employer and Employee. On all these grounds sought for allowing this appeal.



4. On hearing the arguments, this Court has admitted this appeal by formulating the following substantial question of law:

- (i) Whether the Commissioner for Workmen Compensation, Bijapur, is justified in awarding compensation of Rs.1,63,984/-, ignoring the fact that the original petitioner changed his version of who his employer was only after the original respondent No.1 in the written statement contended that he sold the vehicle to original respondent No.3?
- (ii) Whether the Commissioner for Workmen Compensation, Bijapur, is justified in awarding compensation of Rs.1,63,984/-, in the facts and circumstances of the present case?

5. A perusal of the records placed before this Court it is crystal clear that claimant-Eranna has filed the application under Section 22 of the Workmen's Compensation Act against respondent No.1 - Sri.Vinay and respondent No.2-Branch Manager. After filing this claim



petition, the claimant had filed an application under Order VI Rule 17 CPC to permit the claimant to amend the petition at para 2 and substitute it to para 2(a) as prayed in the application. This amendment application was allowed by the Commissioner and thereafter amendment was carried out by impleading Sri.Prabhu S/o. Karibasappa Biddall as respondent No.3.

6. To substantiate the claim of the claimant, Eranna himself examined as PW1. He has deposed in his evidence that respondent No.1 was the owner of the vehicle bearing No.KA-29/3086, at that time also respondent No.3 was working as a driver and claimant was working as a cleaner. At the time of accident the respondent No.3 was also a driver of the vehicle. The vehicle was in the possession of respondent No.3. He used to pay his payment after taking it from respondent No.1 along with his payment. Further he has deposed that he did not know the fact that respondent No.1 has transferred his vehicle to the driver i.e., respondent No.3



on the date of accident. Respondent No.3 took him in the vehicle, engaged him as a cleaner in the said vehicle as usual.

7. Considering this evidence, the Commissioner for Workmen's Compensation has held that respondent No.2 – insurance company is liable to pay the compensation. Claimant has produced the copy of station dairy, spot mahazar, translation copy of the spot mahazar, confession statement, medico legal certificate, wound certificate and accident report. Same are marked as exhibits. On the basis of this oral and documentary evidence the Tribunal has passed the impugned judgment. While awarding compensation of Rs.1,63,984/- the Commissioner has properly appreciated the evidence on record in accordance with law and passed the just compensation. I do not find any materials to interfere with the impugned award passed by the Commissioner for Workmen's Compensation. Hence, I answer substantial questions of law in favour of respondent No.1 and against the appellant.



8. For the reasons aforesaid, I proceed to pass the following;

ORDER

(1) Appeal is ***dismissed***.

**Sd/-
JUDGE**

DR
LIST NO.: 1 SL NO.: 39