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

DATED THIS THE 9TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

M.F.A. NO.20003/2010 (WC)

BETWEEN

THE DIVISIONAL MANAGER
NATIONAL INSURANCE COMPANY LIMITED
DHARWAD, THROUGH THE DIVISIONAL MANGER
NATIONAL INSURANCE COMPANY LIMITED
SUJATA COMPLEX, OPPOSITE
GLASS HOUSE HUBLI, DIST:DHARWAD

...APPELLANT

(BY SRI. S K KAYAKAMATH, ADVOCATE)

AND

1. SMT. SHANKARAMMA

2. KUMARI KAVITA

3. KUMARI. SANGAMESH

4. KUMARI SAVITA

5. SRI. SURESH K.

...RESPONDENTS

(BY SRI. SHIVAKUMAR S BADAWADAGI, ADVOCATE FOR R1,
R2 TO R4 ARE MINORS REP. BY R1,
NOTICE TO R5 SERVED)

THIS APPEAL IS FILED UNDER SEC.30(1) OF THE WORKMEN COMPENSATION ACT, AGAINST THE JUDGMENT AND ORDER DATED:20-08-2009 PASSED IN WCA.F.NO.109-A/2008 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN COMPENSATION, BAGALKOT DISTRICT, BAGALKOT, AWARDED COMPENSATION OF RS.3,03,620/- WITH INTEREST AT THE RATE OF 12% P.A. FROM THE DATE OF PETITION TILL ITS DEPOSIT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the Insurance Company challenging the judgement and award passed in WCA:F/109-A/2008 dated 20.08.2009, wherein liability is fastened on the Insurance Company by granting compensation of Rs.3,03,620/- with 12% interest.

2. Factual matrix of the case of the claimants before the Workmen's Commissioner (for short, 'Commissioner') is that deceased Eranna was working as driver with respondent No.1 in respect of lorry bearing No.KA-19/B-1126 and he was taking rest near Idya village, Suratkaï by halting in the said vehicle. He died due to cardiac arrest and hence the claimants being the legal representatives of said Eranna laid a claim before the Commissioner. Respondent No.1, who is the owner of the vehicle admitted his employment and also admitted that during the course of employment Eranna died. Insurance Company has filed written statement denying the contents of the claim petition and contended that the deceased was not a workmen within the meaning of Section 2(1)(n) of Workmen's Compensation Act and also denied his avocation, income and contended that it is clear that he died due to cardiac failure. Subsequently,

Insurance Company got amended the written statement contending that he has died due to cardiac failure and not due to accidental death and he was taking intoxicated drugs, which is not covered under the policy and hence, Insurance Company is not liable to pay the compensation.

3. Claimants in order to prove their case, examined one witness i.e. wife of deceased as P.W.1 and got marked documents as Exs.P.1 to P.7 and also examined one witness as P.W.2. On the other hand, insurance company examined branch manager as R.W.1 and policy was got marked as Ex.R.1.

4. The Commissioner after considering both the oral and documentary evidence on record, allowed the claim petition by granting compensation of Rs.3,03,620/- with 12% interest.

5. Being aggrieved by the impugned judgment and award, Insurance Company is in appeal by raising the following substantial questions of law:

1. Whether the Workmen's Compensation Commissioner is justified in saddling the liability upon the appellant-insurer contrary to the Post Mortem Report conducted by the Doctor of Primary Health Centre, Suratkal, South Canara, Mangalore, which shows that the heart of the deceased was enlarged, there was a fatty deposition all over the left ventricular wall, thickness=18 mm, left coronary artery thickened and narrowed and shows 80% block. The opinion cause of the death was due to cardiac failure secondary to coronary artery disease.

2. Whether the Workmen's Compensation Commissioner is justified in fastening the liability upon the appellant-insurer when the heart attack was not due to the stress and strain factor of the employment, but due to the blockage of the left coronary artery to the extent of 80%.

3. *Whether the Workmen's Compensation Commissioner is justified in saddling the liability upon the appellant-insurer although the insured-owner has lodged the complaint to the police stating that the deceased was addicted to alcohol and consuming everyday.*

4. *Whether the Workmen's Compensation Commissioner is justified in saddling the liability upon the appellant-insurer though the policy has been issued under the provisions Motor Vehicles Act and it must be incumbent that there must be a causal connection between the death and the use of the vehicle.*

5. *The judgment and order passed by the Commissioner is opposed to law, probabilities of the case and evidence on record.*

6. *No legal proceedings or litigations either past or present concerning any part of the subject matter of the dispute is pending.*

6. Learned counsel for the appellant-Insurance Company would vehemently contend that the death is on account of cardiac failure and the

same is not a ground of usage of vehicle and Commissioner is not justified in saddling liability on the insurer. He also contended that the death was on account of blockage in the heart. The insured owner has lodged complaint stating that he was in the habit of intoxication everyday and when he was consuming alcohol, there is no liability on the employer to pay the compensation and there must be a casual connection between the death and the use of vehicle. In support of his argument, he has relied upon the order passed in MFA No.5142/2010, wherein this Court modified judgement exonerating the liability of the Insurance Company. Counsel also relied upon order passed in MFA No.21749/2010, wherein also liability is fastened on the owner of the vehicle and exonerated the liability of the Insurance Company. Counsel also relied upon order passed in MFA No.20365/2008, wherein

also appeal of the Insurance Company is allowed and liability is fastened on the employer.

7. Counsel also relied on judgement reported in **(2010) 10 SCC 536** in the case of **Mamtaj Bi Bapusab Nadaf and Others vs. United India Insurance Company and Others** and brought to notice of this Court para 13, wherein Insurance Company was exonerated from its liability. He also relied upon judgement reported in **(2007) 11 SCC 668** in the case of **Shakuntala Chandrakant Shreshti vs. Prabhakar Maruti Garvali and Another**. Referring to this judgement, counsel brought to notice of this Court para Nos.17 & 18, wherein Apex Court observed that Commissioner came to the conclusion that the death took place during the course of the employment but then no evidence has been brought on record to show that it had a casual connection between accident and serious

injury so as to fulfill requirements of the terms 'out of employment'.

8. Per contra, the learned counsel for the claimants would vehemently contend that the Commissioner has considered the material on record and death is not in dispute. Though learned counsel for the Insurance Company contends that he was consuming alcohol but no evidence is placed before the Court. The same is only indicated in the charge sheet based on the complaint of the employer but the owner has not stepped into the witness box and in the absence of any evidence and except the contention, the Court cannot rely upon the said contention in the absence of any evidence.

9. Counsel brought to notice of this Court Ex.P.4-postmortem report and contends that the vehicle involved in the incident is a tipper lorry and

the same is a heavy vehicle and it involves stress and heart attack is also on account of stress involved in his employment and nature of employment.

10. Counsel for the claimants has relied upon the judgement in the case of ***Poonami Devi and Others vs. Oriental Insurance Company limited*** passed in Civil Appeal No1836/2020. He also relied upon judgement reported in ***ILR 2019 KAR 539*** in the case of ***National Insurance Company Limited, Chitradurga Branch vs. Smt.Renukamma and Others***, wherein also Insurance Company challenged the finding of the Commissioner that the workmen died due to heart attack during the course of employment and contention of the insurer was that workmen had suffered Accute Myo Cardial Infarction/heart attack which is a natural death. This Court considering the material on record held that the driving job is undoubtedly a tension filled job,

particularly, to cope up with present day traffic and other things. There cannot be any presumption that even when a person dies while actually working in the job that his death may not be due to employment, but may be due to something else. Such presumption is nothing short of a perversity. Further, it is held that workman was on duty and he was taking rest beneath the tree and during the course of employment, he suffered heart attack and there is a casual contention between the death of the deceased and his employment and since he was on duty of driving the vehicle, which loaded with iron ore, the contention of Insurance Company that it is natural death cannot be accepted. Here it is a case of death due to heart attack and the vehicle involved in the incident is also a heavy vehicle i.e. tipper vehicle.

11. In **Poonam Devi's** case, referred supra the vehicle involved is a truck which was not air

conditioned and it is held that the truck would have been a baking oven in the middle of the afternoon in the sultry monsoon heat of June, 2003, when the temperature was touching 42.60C. Referring to this judgement, he would contend that the present case is a better footing than Poonam Devi and in the case on hand he lost his life when he was sleeping in the vehicle itself and there need not necessarily be use of vehicle only while driving and hence, judgements relied upon by counsel for the Insurance Company are not applicable to the facts of the case on hand. Each facts and circumstances has to be taken note of and hence, it does not require any interference.

12. In view of the rival contentions of the parties, the following points would arise for consideration:

- i. Whether in the case of death of driver of a insured vehicle in non usage of vehicle*

at the time of his death due to heart attack, it absolves liability of the Insurance Company?

ii. What order?

13. **Regarding Point No.1:** Having heard the learned counsel for the parties and on perusal of the material on record, it is not in dispute that deceased was working as a driver with respondent No.1 and respondent No.1 also filed written statement admitting his employment and in the written statement in para No.2 respondent No.1 categorically admitted that he was driver of the said tipper lorry and also said accident caused during the course of employment, but he only denied regarding salary, bhatta and other emoluments. No doubt, he also took defence that death is due to cardiac failure. Insurance Company also took the same defence. The death is due to cardiac failure and denied that it is not arising out of

and in the course of alleged employment with respondent No.1 in his vehicle. It has to be noted that in the evidence of R.W.1 he has also not disputed the death, but only contention taken both in written statement as well as in his evidence is that the death was due to cardiac failure and not due to accidental death and also contended that documents clearly shows that the deceased was taking intoxicated drugs and denied that death was not due to employment. R.W.1 categorically admitted that he died during the course of employment. Insurance Company cannot contend that death was not during the course of employment and other contention was taken by Insurance Company is that police documents clearly shows that deceased was taking intoxicated drugs and he died due to cardiac failure and no doubt in the complaint as well as in the charge sheet based on the complaint given by the employer the same is stated

but in order to prove the factum of he has consumed the alcohol, no material is placed before the court. The postmortem report is also very silent and nothing is on record.

14. It is also important to note that owner of the vehicle has not been examined and the very allegation in the complaint as well in the charge sheet has not been corroborated by examining the owner. The owner did not step into the witness box, except taking the defence. No doubt, the postmortem report also discloses that the cause of death is due to cardiac failure and the same is also not disputed and it is also claim of the claimants that he died due to heart attack. The fact that he was working as driver is not in dispute. The fact that vehicle was parked near the petrol bunk and he was taking rest is also not in dispute and whether it is a case of exonerating the

liability of Insurance Company on the ground of non-usage of the vehicle at the time of death is a question.

15. No doubt, at the time of his heart attack he was not driving the vehicle but the fact is that after completing his work he was taking rest in the vehicle itself and on the next day the owner came to know about his death and time of death is also not mentioned in the postmortem report. This Court also in the judgement referred taken note of death due to heart attack during the course of employment and I have already pointed out that respondent No.1 admitted that the death is during course of employment. In case of **Renukamma**, supra, this Court taken note that driving job is undoubtedly a tension filled job, particularly to cope up with present day traffic and other things and stress involved in the job. The Court has to take note of policy taken in order to cover the risk of the driver during the course

of employment. I have already pointed out that respondent No.1 in the written statement in para No.2 categorically admitted that the death is in the course of employment and the same cannot be disputed by the insurer. The Apex Court in the judgement reported in **2017 (1) G.L.H. 150** in the case of **Golla Rajanna etc. vs. The Divisional Manager and Another** in a case dealing with WC Act considering proviso of Section 30 of WC Act, has categorically held that Commissioner is the last authority on facts. The Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High is not within the competence of the

High Court under Section 30 of the WC Act. In para No.10, the Apex Court has held that Commissioner having regard to the evidence, had written a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for Insurance Company that the finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c)(ii) of the Act, the percentage of permanent disability needs to be assessed only by a qualified medical practitioner. It is also observed that Commissioner has passed the order based on the certificate of disability issued by the doctor and which has been duly proved before the Commissioner. In para No.9 held with regard to substantial question of law and the Commissioner in the present case on hand given finding purely a question of fact and hence the above judgement is applicable to the facts of the

case on hand regarding finding of fact and no question of substantive law.

16. The contention raised in this case that there is no usage of vehicle but the fact that he died in the vehicle itself is not in dispute and the fact that on that day he attended his duty is also not in dispute. I have already pointed out that he died during the course of employment and admitted fact need not to be proved. Insured admitted the same and Insurance Company cannot dispute the same and only to indemnify the insured I have pointed out that there need not necessarily the vehicle must be in usage at the time of his death and Court has to take note of casual connection with employment and death and the policy is taken to cover the risk of the driver. The very contention of Insurance Company that it was only a natural death and company is not liable to pay the compensation cannot be accepted. I have already

pointed out with regard to fact of allegation that he was consuming alcohol regularly that no material is placed before the Court and when such being the case, the very contention of the Insurance Company cannot be accepted. No doubt, Insurance Company relied upon order passed in MFA 5142/2010, wherein the factual matrix of that case is restricted in the order except referring the contention of the Insurance Company. In MFA No.21749/2010, the factual matrix of the case is that driver of the lorry while sleeping on the load, died because of fall therefrom to the ground and the said facts are not applicable to the present case.

17. Counsel also relied upon the order passed in MFA No.20365/2008, wherein factual matrix is that vehicle was to be used for agricultural purpose, wherein it was used for commercial purpose i.e. mainly for loading and unloading of mud for the

purpose of laying the road and it amounts to violation of policy conditions and as such Insurance Company was not liable to indemnify the claim of the owner. The factual aspects of the said case are altogether different from the facts of the case on hand. The facts of all those three cases referred by the learned counsel for the appellant-Insurance Company is different from the facts of present case and scope of an appeal as against judgment and award of Commissioner is limited in view of Section 30 of WC Act.

18. No doubt, the counsel for the Insurance Company relied on **Mamtaj Bi's** case, wherein Apex Court held that vehicle was not involved in the accident and death of workmen by no stretch of imagination could be said to have any proximate or direct connection with vehicle. The said decision is not applicable to the facts of the present case having

considered the factual aspects of the case on hand that deceased died during the course of employment and the same is also admitted by respondent No.1 and specifically he has pleaded that death is during the course of employment and the fact that he was working as driver and also driving the heavy vehicle of tipper is also not in dispute.

19. Counsel for the claimants relied upon **Poonam Devi's** case and in the said case the driver loaded the truck and he went to canal to bring the water and in that circumstance he passed away. But the claimants' case stands in better footing than the case of **Poonam Devi** as he was taking rest in the very same vehicle parked near the petrol bunk after the work. The other judgement relied on by the counsel for Insurance Company in **Shakuntala's** case, no doubt, the Apex Court held that there must be casual connection between accident and serious

injury so as to fulfill the requirements of the terms out of employment.

20. I have already pointed out that it is specific claim of the claimants before the Commissioner that on account of stress involved in the employment he died due to heart attack and nothing is placed before the Court that there is no casual connection with cause of death and also his employment and taking of notional extension is to be considered while appreciating each facts and circumstances. I have already pointed out that he died while he was sleeping in the vehicle itself and the fact that he was working in the very same day with respondent No.1 is not in dispute and the owner has also admitted that he was died during the course of employment. I have already pointed out that usage of vehicle does not mean that at the time of his death he need not necessarily drive the vehicle but in casual connection of his

employment only he was sleeping in the lorry and while taking rest he suffered heart attack and hence very contention of Insurance Company cannot be accepted that it is not liable to pay the compensation. Hence point No.1 is answered in negative.

21. **Regarding point No.2:** In view of the discussions made above, I pass the following:

ORDER

Appeal is dismissed.

Amount in deposit, if any, is ordered to be transferred to the concerned Court forthwith.

The registry is directed to transmit the trial records to the concerned Court forthwith.

**Sd/-
JUDGE**

SH