

Karnataka High Court

M/S The New India Assurance Co Ltd vs Prakash S/O Avvappa Sanni on 27 October, 2009

Author: A.S.Pachhapure

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IN THE HIGH COURT OF KARNATAKA CIRCUIT BENCH  
AT GULBARGA

DATED THIS THE 27<sup>th</sup> DAY OF OCTOBER, 2009

BEFORE

THE HONBLE MR JUSTICE A.S.PACHHAJE, J.  
MISC. FIRST APPEAL NO. 5002/ZOOAIAAMRCFL -A

cgw \_ \_ '  
MFA CR0B.No.1032,/2008 \_ , A

BETWEEN

M/s. The New India Assurance Co. Ltd. vs. S/O. Avvappa Sanni,

P.Kali:{18a1 Raga Rfiafl.' T  
Bangalore--"27 " \*-- =

By duiy C0nSi\_ifi1;\_fed Mtfariaey. ....Appellant.  
[Sri.Veereeh.B.'PafiI; for Appellant).

S/O.AVVappa Sanni,

\_ Ag'ed"a\_b'evut 23 years.  
« 'R,/';...\_Jy'1ly Galli, Bijapur.

2] Rev-ahna Siddappa Mallappa  
" Tdnashyal,  
.,\_ Major in age,  
Residing at Honnali, Bijapur. ....Respondents.

\_{Sri.Um.esh.V.Mamadapur, Advocate for C / R. 1].  
{Sri.Bapugouda Siddappa, Advocate for R. 1}.

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This MFA filed U/sec. 30 (1) of Workmen's  
Compensation Act against the order dated: 30.3.2004  
passed in WCA/SR/104/2003, on the file of the Labour  
Officer and Commissioner for Workmen's  
Compensation, Sub-Division 1, Bijapur, awarding  
compensation of Rs.2, 15, 137/-- and directed it to be paid to the  
appellant herein to pay the same). -.

This appeal Coming on for hearing

court delivered the following: \_ \_ \_ .  
JUDGMENT.'

The appellant -- insurer has eh:a~i\_leilg%ecl

compensation awarded to thefirst res'p.orrd.ent'lvherein for V

the by..llVV1V9i'im in a Motor Vehicle

Accident in thevpe0Afurse..pof«his employment.

v'.l'h-e.\_\_f\_a\_ets relevant for the purpose of this

' pappealv areas under:

A it referring to the parties as per the rank

beforethe Commissioner for Workmen's Compensation

Cf for"-the purpose of convenience.

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The appellant herein is the second respondent and

the insurer of the vehicle bearing Reg.No.i{A\*28/H»---.i 927

owned by the second respondent herein the

first respondent before the Conlmission\_er;-..V. dfirst!'

respondent herein filed a

was the cleaner on the yehicle"referrediV.tuoabove; tandfl

while cleaning the lorry on the Vehicle  
was parked by the of \_ near the cotton  
market at Hubli, 2;... the opposite

direction there'by'v\*ne sustained fracture of

his leg He was admitted in the

I-Iospitai aridAt?flser--eafter he took treatment with the

Dopctors;"'------fie sustained disability and averred

he\_;'vifas.:getting salary of Rs.3,00o/+ PM and daily

that of In the circumstances, he claimed

compensation by submitting an application under the provisions of the Workmen's Compensation Act.

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3. In pursuance of the notice issued, the first respondent admitting the employment of the petitioner as the cleaner on the Vehicle alleged that he was earning

Rs.2,500/- per month as salary in addition to};

day as bata. He also contended

respondent insurer is liable

Whereas, the second respondent denying the relationship of and employee between first respondent

and also the liability and the disability. On these grounds.' it of the application.

basis of these pleadings, the learned

Commissioner framed that issues and it is thereafter,

examined as AW-1 and the Doctor

was as AW-2 and in the evidence, the

documents A-1 to A-7 were got marked." The first

respondent did not lead any oral evidence but the

"second respondent got marked the Insurance Policy HR-

a/.".,

2(1)] with consent. The learned Commissioner for Workmen's Compensation, on material on record assessed the wages of at Rs.2,000/- per month and at 70% adopted the relevant factors granted the compensation of Rs.1,406.70 and the interest of at 18%.

Aggrieved by the insurer  
has filed an appeal. The first  
respondent: 3; = the " " erhss~obj ections seeking  
enhancement ' ' .

It heard the Learned Counsel for the

also the first respondent {cross--oi;>jeotor}.

' ' 6.' point that arise for my consideration is: "  
"Whether the compensation awarded to the  
first respondent herein is on the higher side and

whether it requires any modification?

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70% and therefore, he submits that the compensation

has to be enhanced.

9. I have carefully scrutinized the material placed  
on record in the context of the submissions made by the

learned counsel. There is no dispute

employment of the applicant on the vehicle ..

and the applicant having sustained 'injury' in  
accident in the course of his employment, 'Thesis'

applicant has produced injury certificate and

it reveals he "sustained a cut lacerated wound  
over the right "the X-ray reveals fracture of both

the bones of the right leg and ankle level. The Doctor

that the injury sustained is grievous in

as could be seen from the disability

certificate produced at Ex.A--4 issued by AW-2, the

Doctor on examination of the applicant: states that the

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ORDER

The appeal is allowed in part and Objection is dismissed. In modification of the award passed by the Workmen's Compensation Commission (the applicant) is the compensation of Rs. 1,60,351/- with interest @ 12% per annum on its deposit. Before this Court the Commissioner for Workmen's Compensation and the excess amount refunded to the Insurance Company. V. . ., directed to send the records to the Commissioner for Workmen's Compensation for his consideration.

Sd/-

JUDGE S.W.K.\* .....«....,,