HC-KAR

NC: 2026:KHC:65048
MFA No. 759 of 2024

CNR: KAHC010059552024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

MISCELLANEOUS FIRST APPEAL NO. 759 OF 2024 (ECA)

BETWEEN:

1. KHAMARUNNISA,
   W/O LATE H.KALEEL,
   NOW AGED ABOUT 56 YEARS,

2. SMT. SALMA,
   W/O LATE ZABIULLA @ SABEEULLA,
   NOW AGED ABOUT 40 YEARS,

3. SADIQ,
   S/O LATE ZABIULLA @ SABEEULLA,
   NOW AGED ABOUT 24 YEARS,

4. MUBARAK Z,
   S/O LATE ZABIULLA @ SABEEULLA,
   NOW AGED ABOUT 19 YEARS,

5. WASEEM,
   S/O LATE ZABIULLA @ SABEEULLA,
   NOW AGED ABOUT 18 YEARS,

6. MOULANA,
   S/O LATE H.KALEEL,
   NOW AGED ABOUT 36 YEARS

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7. SHABEENA TAZ,
D/O LATE H.KALEEL,
NOW AGED ABOUT 30 YEARS,
APPELLANTS NO.1, 6 AND 7
ARE RESIDING AT
NO.418, IDGA MOHALLA,
VIJAYAPURA, DEVANAHALLI TALUK,
BANGALORE RURAL DISTRICT.

APPELLANTS NO.2 TO 5 ARE
RESIDING AT IDGA MOHALLA,
2ND WARD, VIJAYAPURA,
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT.

...APPELLANTS

(BY SRI GOPAL KRISHNA N., ADVOCATE)

AND:

1. MAHESH,
S/O LATE NANJAPPA,
MAJOR IN AGE,
RESIDING AT NTGM ROAD,
VIJAYAPURA,
DEVANAHALLI TALUK,
BANGALORE RURAL DISTRICT - 562 135.

2. THE UNITED INDIA INSURANCE COMPANY LTD.,
P.B.NO.16, SBLT BUILDING,
POLYTECHNIC ROAD,
CHINTAMANI - 563 125.
REPRESENTED BY ITS MANAGER.

...RESPONDENTS

(BY SRI G.S. MARULAIAH, ADVOCATE FOR R2;
R1 - MAHESH SERVED)

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THIS MFA IS FILED U/S 30(1) EMPLOYEES COMPENSATION ACT, AGAINST THE JUDGMENT AND AWARD DATED 17.04.2023 PASSED IN ECA NO.4/2015 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND JMFC, DEVANAHALLI, DISMISSING THE CLAIM PETITION FOR COMPENSATION.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL JUDGMENT

1. This is the appeal filed under Section 30(1) of the Employees' Compensation Act, 1923 (in short, 'the Act') by the unsuccessful claimants challenging the Judgment and award dated 17.04.2023 passed in ECA No.4/2015 on the file of Prl. Senior Civil Judge and JMFC, Devanahalli (in short, 'the Commissioner') and to allow the ECA petition and to grant compensation.

2. The parties would be referred with their ranks, as they were before the Commissioner for the sake of convenience and clarity.

3. The claimants have filed the claim petition under Section 22(1) of the Act before the Commissioner claiming compensation in respect of the death of husband

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of claimant No.1 - H. Kaleel, who died in the course of his employment with respondent No.1 in respect of the lorry bearing registration No. KA-03/C-3060 (in short, 'the offending lorry').

4. It is the case of the claimants that the deceased H. Kaleel was working as driver under respondent No.1. As per the instructions of respondent No.1, on 09.08.2011 H. Kaleel was driving the offending lorry from Koppal to Hosakote at about 02:00 am near Balenahalli gate on NH-4 road and dashed against the parked stationed lorry bearing registration No.KA-36-2124 and sustained injuries.

5. Afterwards while taking treatment in Victoria Hospital, Bengaluru, he succumbed to those injuries on 25.08.2011. Hence, claimed compensation from respondents No.1 and 2 who are the owner and insurance Company of the said vehicle. They further contended that the respondent No.1 must pay monthly wages of ₹10,000/- to the deceased.

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6. The respondent No.1 has not contested the petition after service of notice, but respondent No.2, the insurance Company has filed its objection statement wherein, the company has denied the averments made in the claim petition in *toto*. Hence, prayed for dismissal of the petition. Afterwards, the insurance Company has filed the additional written statement after impleading some more claimants. Even in the additional objection statement, the insurance Company denied the averments in *toto*.

7. After Recording evidence, the Commissioner concluded that the claimants failed to establish the employer and employee relationship between respondent No.1 and the deceased; they have also failed to establish that deceased died due to accidental injuries and he sustained injuries in the road traffic accident in the course of his employment.

8. Aggrieved by the said Judgment and award, the claimants/appellants are before this Court.

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9. Heard arguments of both sides.

10. The learned counsel for the appellants Sri Gopal Krishna N, would submit that RW1 in his cross-examination admitted that the deceased was the driver of the lorry at the time of accident and also admitted that respondent No.1 was its owner. Thus respondent No.2 impliedly admitted the relationship between deceased and respondent No.1. The admitted facts need not be established.

11. The learned counsel for the appellants would further submit that the accident has taken place on 09.08.2011 at 02:00 a.m. and H. Kaleel died on 25.08.2011 in Victoria Hospital. On 24.08.2011, he was operated. About 12 hours after the operation, he died. Thus, the death of H. Kaleel was due to accidental injuries. However, the Commissioner has not examined these aspects in an appropriate manner; the Commissioner has not applied Section 3 of the Act in an appropriate manner and thus the appeal is entertainable.

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12. The learned counsel for respondent No.2 Sri Marulaiah G.S., would submit that the claimants failed to establish the employer and employee relationship between the deceased and respondent No.1. The cross-examination of PW1 clearly establishes this fact. He would further submit that no material is produced to show that from 09.08.2011, deceased has taken any treatment in any hospital but he admitted to Victoria Hospital only on 17.08.2011 and died on 25.08.2011 due to HBsAg positive and not due to the accidental injuries. The evidence of PW.3 clearly established these facts. Considering these aspects, rightly the Commissioner dismissed the claim petition and thus it requires no interference.

13. Heard and perused the records and trial Court record.

14. To entertain an appeal under Section 30 (1) of the Act, the appellants have to establish that there is a substantial question of law.

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15. In this regard, reading of Section 30 of the Act is very much required. It is extracted as follows:

> ***"30. Appeals.—****(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:—*
>
> *(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;*
>
> *[(aa) an order awarding interest or penalty under section 4A;]*
>
> *(b) an order refusing to allow redemption of a half-monthly payment;*
>
> *(c) an order providing for the distribution of compensation among the dependants of a deceased [2][employee], or disallowing any claim of a person alleging himself to be such dependant;*
>
> *(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or*
>
> *(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:*

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Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than [3][ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify]:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

[4][Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]"

16. In this regard, this Court places reliance on the judgments of Hon'ble Apex Court in ***Fulmati Dhramdev Yadav & Anr. vs. New India Assurance Co. Ltd.,***[1] and wherein at paragraph No.21 reads as follows:

[1] Civil Appeal No.4713 of 2023(Arising out of SLP(C) Np.17963 of 2019

> *"21. The other ground making the order under challenge, amenable to interference when the scope of jurisdiction is circumscribed by it being exercised only in cases of "substantial question of law", is perversity in the findings. Here, the impugned Judgment does not, even remotely, reflect the observation that the findings arrived at by the Commissioner are perverse. The difference, between the two Judgments, i.e., the order of the Commissioner and the judgment in First Appeal, was on the point of the employer- employee relationship having been established. The Commissioner held such relationship to have been established however, the appeal Court observed that "claimants have clearly failed to prove this aspect"."*

17. This Court also places reliance on the judgment of the Hon'ble Apex Court in the case of ***Golla Rajanna and Others vs. Divisional Manager, United India Insurance Company Limited and Another***[2] wherein at paragraph Nos.9 and 10 reads as follows:

> *"9. The Workmen's Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for the*

[2] AIR 2016 SC 5382

insurance company that the finding is based on no evidence at all or that it is perverse.

10. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation."

18. This Court also places reliance on the judgment of the Division Bench of this Court in the case of ***North East Karnataka Road Transport Corporation vs. Sujatha***[3] at paragraph Nos.9 to 11 it is held as under:

"9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, ***how and in what manner the accident occurred,*** *who was negligent in causing the accident,* ***whether there existed any relationship of employee and employer****, what was the age and monthly salary of the employee, how many are the dependants of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained. by the employer to cover the*

[3] 2019 ACJ 29

incident, etc., are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue/s his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of section 30 (1) of the Act with a further rider contained in first Proviso to the section that the appeal must involve substantial question of law."

(Emphasis supplied)

19. On careful perusal of Section 30 of the Act and the aforesaid Judgments of Hon'ble Apex Court, this Court opines that the appeal can be entertained if any of the grounds mentioned in sub-clause 1(a) to (e) of Section 30 of the Act exist involving the substantial question of law and not on the question of facts. If the judgment of the

trial Court on the facts is *perverse;* then also the appeal is entertainable.

20. With this background the present case is to be analyzed.

21. It is the contention of the claimants that H. Kaleel was working as a driver i.e., employee under respondent No.1.

22. To substantiate the said fact, the claimants have not produced any iota of evidence before the Commissioner. On the other hand the PW1 in her cross-examination has deposed that respondent No.1 was coming to call her husband and thus she knows him. She denied the suggestion that her husband was not working under respondent No.1. Except this evidence, no material is produced by the claimants.

23. RW.1 - the officer of respondent No.2 in his affidavit evidence has deposed that there is no employer-employee relationship between respondent No.1 and the deceased. In this regard in the cross-examination, he has

deposed that he is not having any personal knowledge about the facts of the case but based on police records, he is giving evidence. He admitted that on 09.08.2011 H. Kaleel was driver of the lorry belonged to respondent No.1. He also admitted that the deceased was holding transport vehicle driving license at the time of accident.

24. The commissioner concluded that this evidence is hardly sufficient to hold the employer-employee relationship between respondent No.1 and the deceased.

25. In ***Golla Rajanna's*** case and ***Sujatha's*** case cited supra, it is clearly held that the finding of the Commissioner about the relationship between the deceased and respondent No.1 would amount to decision on finding of fact and no substantial question of law would arose on that point.

26. The claimants have produced the Victoria Hospital records as per Ex.P.13 through PW.2 and examined the doctor who treated the deceased as PW.3. Considering the evidence of PW.2 and PW.3, the

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Commissioner concluded that deceased died due to HBsAg positive and not due to the injuries sustained by him in the road traffic accident.

27. It is to be noted here that in the Victoria Hospital records, it is noted that the patient came to the hospital on 17.08.2011 and admitted to the hospital at 06:40 a.m. The history given by the patient that he was hit by a standing lorry at around 01:00 a.m. on 08.08.2011 at Sira bypass. Except this history mentioned in Ex.P.13, there is no material to show that on 08.08.2011 or on 09.08.2011, the deceased has sustained injuries and because of those injuries, he has taken treatment in any hospital before 17.08.2011. Furthermore, as per the evidence of PW.3, the deceased was suffering from HBsAg positive and because of that he died. These are the finding of facts of the Commissioner.

28. On careful perusal of the evidence of PW.1, PW.3 and documents produced before the Commissioner and on careful perusal of the Judgment of the

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Commissioner, the trial court fairly conclude that the claimants failed to establish that the deceased died due to accidental injuries.

29. Thus, there is no *perversity* in passing the said Judgment by the Commissioner. In case, there is perversity in finding of facts of the Judgment of the Commissioner; he not at all examined the facts or examined irrelevant facts; then such judgment could be considered as *perverse*; the appellate Court can entertain the appeal under those circumstances, as per the Judgment of ***Fulmati's*** case cited supra. That is not so in this case as observed above.

30. Only if the court can draw divergent opinion from the available materials, it cannot be said that such judgment is *perverse*. However, in the instant case even that is not forthcoming.

31. Thus, only the findings of facts of the Commissioner are challenged in this appeal; thus, there is no substantial question of law would arise to decide.

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Section 3 of the Act would come into force only if the relationship between parties is established; but as discussed above; that relationship was not established in the present case and finding of the Commissioner on this point is not *perverse*. Hence, no substantial question of law would arise for consideration.

32. Hence, this Court passes the following:

ORDER

The appeal is ***dismissed***.

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(GEETHA K.B.)
JUDGE

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List No.: 1 Sl No.: 11