



CGHC010118792019

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 737 of 2019

1. Awanti Sirdar W/o Late Amarnath, aged about 23 years R/o Village - Kandarai, Police Station - Jaynagar Tahsil and District Surajpur Chhattisgarh District : Surajpur, Chhattisgarh

2. Gurupreet (Wrongly Mentioned as Guruprati In The Impugned Order) S/o Late Amarnath, aged about 3 years Minor, Contested Through His Natural Guardian Mother and appellant No 1 namely Awanti Sirdar, R/o Village - Kandarai, Police Station Jaynagar, Tahsil And District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh

--- Appellants

versus

1. Gangeshwar Ram S/o Saraju Ram, aged about 53 years R/o Village Kandarai, Police Station Jaynagar Tahsil and District Surajpur Chhattisgarh (Owner of The Vehicle CG 15 CU 2031 met with an accident), District : Surajpur, Chhattisgarh

2. Branch Manager, The Oriental Insurance Co. Ltd, Ambedkar Chowk, Ambikapur, District - Surguja Chhattisgarh. (Insurance Company of the Vehicle CG 15 CU 2031 met with an accident), District : Surguja (Ambikapur), Chhattisgarh

--- Respondents

For appellants	:	Shri J.P. Shukla, Advocate
For Respondent No.1	:	Shri Akash Shrivastava, Advocate
For Respondent No.2	:	Shri R.N. Pusty, Advocate

MAC No. 391 of 2019

1. Branch Manager, The Oriental Insurance Co. Ltd, Ambedkar Chowk, Ambikapur, District - Surguja Chhattisgarh represented through its Assistant manager, T.P. Hub, Divisional Office, Bilaspur, CG

---Appellant

Versus

1. Awanti Sirdar W/o Late Amarnath, aged about 23 years R/o Village - Kandarai, Police Station - Jaynagar Tahsil and District Surajpur Chhattisgarh District : Surajpur, Chhattisgarh

2. Gurupreet (Wrongly Mentioned as Guruprati In The Impugned Order) S/o Late Amarnath, aged about 3 years Minor, Contested Through His Natural Guardian Mother and appellant No 1 namely Awanti Sirdar, R/o Village - Kandarai, Police Station Jaynagar, Tahsil And District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh

3. Gangeshwar Ram S/o Saraju Ram, aged about 53 years R/o Village Kandarai, Police Station Jaynagar Tahsil and District Surajpur Chhattisgarh (Owner of The Vehicle CG 15 CU 2031 met with an accident), District : Surajpur, Chhattisgarh

--- Respondents

For appellant	:	Shri R.N. Pusty, Advocate
For Respondent No.1&2	:	Shri J.P. Shukla, Advocate
For Respondent No.3	:	Shri Akash Shrivastava, Advocate

(Hon'ble Shri Justice Sachin Singh Rajput)

Order on Board dated 08.10.2026

The parties in these appeals happen to be the claimants, the employee (driver), the employer (owner) and the insurer of the offending vehicle. The claimants happen to be the wife and minor child of deceased Amarnath.

2. The aforesaid two appeals preferred by the claimants and the Insurance Company respectively arise out of the judgment dated 13.11.2018 passed by the Commissioner, Employee Compensation-cum-Labour Court, Ambikapur, District Sarguja CG in Case No. 80/EC Act/2016 (Fatal), therefore, they are being disposed of by this common order.

3. An application under Section 4 of the Employee Compensation Act, 1923 (for short the “EC Act”) was filed by the claimants seeking compensation of Rs. 08,90,840/- from the employer and the Insurer with interest. As per the pleadings of the claim case, deceased then aged about 21 years was a duly licensed driver of the offending vehicle i.e. Scorpio bearing registration No. CG 15 CU 2031 owned by Gangeshwar Ram and insured with Oriental Insurance Company. Monthly income of the deceased was disclosed as Rs. 08,000/-. It is reflected from the pleadings that under the instruction of the owner when the deceased was driving the offending vehicle, it met with an accident near village Rikhi, PS Udaipur. On intimation being given, Crime No. 0051/2016 was registered. Owner filed the written statement and admitted the claim averment that the deceased was being paid wages by the owner.. It was pleaded that as the vehicle was insured and the deceased was having effective and valid driving licence, liability to pay compensation is on the insurance company. Insurance company has also filed its written statement and denied the claim averments. It is pleaded that the owner has violated the terms and conditions of the insurance policy and also the registration certificate. It is pleaded that as the driver of the offending vehicle was not having valid and effective driving licence, he was solely responsible for the accident. It is also pleaded that the deceased was not the permanent employee in the offending vehicle. Since the offending vehicle was meant for personal use, by using it for Baraat purposes the owner and driver have further violated the terms and conditions of the insurance policy, and for that the insurer is not liable to pay any compensation.

4. On the basis of aforesaid pleadings, the following issues were framed:-

क्र	वाद प्रश्न	निष्कर्ष
01	क्या अमरनाथ की मृत्यु अनावेदक कं० 01 के नियोजन मे कार्य के दौरान कार्य के उपक्रम से घटित दुर्घटना के परिणामस्वरूप हुई?	हाँ

02	क्या प्रार्थीगण मृतक के आश्रित है?	हाँ
03	क्या मृत्यु के समय मृतक का प्रतिमाह वेतन 8,000/- तथा आयु 21 वर्ष थी?	वेतन 5000/--एवं आयु 22 वर्ष
04	क्या प्रार्थीगण मृतक अमरनाथ की मृत्यु क्षतिपूर्ति राशि 8.90.840/- (आठ लाख नब्बे हजार आठ सौ चालीस रुपये) अनावेदकगण से प्राप्त करने के अधिकारी है?	5,53,425
05	क्या दुर्घटना के समय वादग्रस्त वाहन के स्वामी द्वारा बीमा पालिसी की शर्तों का उल्लंघन किया गया है? यदि हाँ तो प्रभाव?	नहीं
06	सहायता एवं व्यय।	आदेशानुसार ।

5. In order to prove the pleadings, the claimant/wife has examined herself whereas one witness was examined by the insurance company.

6. Learned Commissioner on assessment of the material on record decided the issues in favour of the claimants and against the employer and insurance company and thus awarded a compensation of Rs. 05,53,425/- payable to the claimants by the judgment impugned.

7. **MAC No. 737/2019** was admitted on the following substantial question of law vide order dated 21.08.2026:-

“Whether the monthly salary of the deceased assessed at Rs. 5,000/- by the Commissioner, Employees Compensation-Cum- Labour Court, Ambikapur Distt Surguja (CG) is on the lower side?”

8. **MAC No. 391/2019** was admitted on the following substantial question of law vide order dated 21.12.2019:-

“Whether the learned Commissioner, Employees Compensation-cum-Labour Court, Ambikapur District Surguja (CG) was justified in recording a finding regarding the relationship between deceased-Amarnath and Respondent No.3-Gangeshwar Ram as employee and employer?”

9. Learned counsel for the appellants/claimants submits that the amount of

compensation is on the lower side which requires enhancement suitably. He further submits that monthly wage of the deceased was Rs. 08,000/- and the Commissioner has erred in assessing the same at Rs. 05,000/-. He thus submits that the substantial question of law framed in this appeal may be answered in favour of the claimants.

10. Learned counsel for the Insurance Company submits that the driver of the offending vehicle was admittedly the son of the employer and that the claimants have failed to establish the employer-employee relationship between the deceased and his father. He submits that in common parlance it is not seen that father would employ his son as paid driver in the vehicle owned by him. He further submits that statement of the father indicates that the deceased was driving the offending vehicle in the capacity of son of the owner, and as there is no relationship of employer-employee between the deceased and his father, learned Commissioner has erred in law and fact in deciding issue No.1 against the insurance company. In support of his submissions, reliance is placed on the decisions of the Supreme Court in the matter of **Gottumukkala Appala Narsimha Raju and others v. National Insurance Company Limited and another** reported in (2007) 13 SCC 446, and in the matter of **New India Assurance Co. Ltd. vs. Sadanand Mukhi and others** reported in (2009) 2 SCC 417 on the decision of Bombay High Court in the matter of **Lata Ramchandra Ubale vs. Ramchandra Shankar Ubale and another** reported in 2012 (4) Mh.LJ 747, that of Madras High Court in the matter of **Tmt. Rani and others vs. M. Ganesan** reported in 2021 Supreme(Online) (Mad) 1678. He thus submits that substantial question of law so framed may be answered in favour of the insurance company and the judgment impugned may be set aside.

11. On the other hand, counsel for the claimants submits that the claimants have been able to show the employer-employee relationship between the owner of the offending vehicle and his son and once the initial burden is discharged, the onus shifts to the insurance company to disprove the same. He submits that in the case in hand the insurance company has failed to prove that there is no such relations

between the owner and the deceased. In support of his submissions, reliance is placed on the decision of Karnataka High Court in the matter of **The Divisional Manager, the Oriental Insurance Co. Ltd vs. Sayeeda Khanam and others** rendered in **MFA No. 25711/2011 (WC)**.

12. Learned counsel for the owner of the offending vehicle supports the impugned judgment.

13. Heard counsel for the parties and perused the material available on record.

14. Firstly, this Court is required to see whether the deceased was an employee of the owner of the offending vehicle at the relevant time and whether the finding recorded by the Commissioner in respect of issue No.1 stands the scrutiny of this Court? The burden to prove this fact was initially on the claimants. Claimant No. 1 was examined as CW-1 who in her affidavit has categorically stated that the employer had engaged the deceased as driver by paying Rs. 08,000/- per month. In cross examination by the insurance company she however has denied the suggestion that her husband was not a regular driver of the owner of the offending vehicle or that at the relevant time the said vehicle was used for carrying people of a marriage party by taking money. The owner of the offending vehicle has also examined himself and in his affidavit under Order XVIII Rule 4 CPC has categorically stated that wife and son of the deceased were residing separately from him whereas he resided separately along with his wife. In cross-examination he has admitted the fact that the deceased being son used to drive the offending vehicle. However, no suggestion was given to him that the deceased was not a regular driver engaged in the offending vehicle. Rather, his cross examination indicates that the offending vehicle was used on hire and reward basis for carrying BaraatIs and thus there was violation of the insurance policy.

15. There is no dispute that the deceased was the son of the owner of the offending vehicle which met with the accident while being driven it was insured with the insurance company. Claimants have pleaded that the deceased was employed by the owner of the offending vehicle as driver on the monthly wage of Rs. 08,000/-.

Owner in his written statement has admitted the claim of the claimants. He however has pleaded that the offending vehicle was insured and was driven by its duly licensed driver and therefore, the insurance company is liable to pay compensation.

16. The insurance company in its written statement has denied the averments of the claim application and pleaded that the deceased was not employed in the offending vehicle. The additional pleadings would indicate that the insurance company wanted to establish that the deceased was not the permanent employee of the owner of offending vehicle rather in the hour of need he used to drive, and thus he was not a paid employee. It is pleaded that vehicle was being plied in violation of the insurance policy as it was not meant for Baraat purposes. However, this fact was not proved by the insurance company nor an issue to this effect was framed.

17. Insurance company examined one Ankit Gupta, Administrative Officer as its witness who in the examination in chief has not deposed that the deceased was not the driver of the offending vehicle and there was no employer-employee relationship between them, rather he has deposed that the offending vehicle was used on hire and reward basis though it was registered for personal use. Thus though the pleading has been taken by the insurance company in the written statement disputing the employer-employee relationship however this witness has not whispered about the same in the evidence before the Commissioner. It is true that in common parlance it is not seen that the son is engaged as employee by a father. However, law does not prohibit such engagement. Learned Commissioner has carefully examined the evidence on record and gave a positive finding on issue No.1.

18. On due assessment of the pleadings and evidence on record, this Court is not able to take a different view particularly when the insurance company itself has not stated anything in the evidence to dispute the employer-employee relationship. Hence the finding recorded on issue No.1 is hereby affirmed, and substantial

question of law so formulated is answered in negative against the insurance company.

18. As in the case of *Gottumukkala Appala Narsimha Raju* (supra) the Supreme Court held that the claimants could not prove the relationship of employer and employee between the husband and wife and thus the deceased was not the workman within the meaning of Section 2(1)(n) of WC Act. It further held that there was no documentary proof to establish the contract of employment between the wife and husband. In the case in hand, evidence on record clearly suggests that the deceased was residing separately from his parents and the claimants were able to prove the relationship of employer and employee and there is no whisper from the insurance company disputing this fact. Thus the case referred to above does not come to the rescue of the insurance company in the case in hand.

19. In the case of *Lata Ramchandra Ubale* (supra), Bombay High Court in paragraph No.12 has held as under:-

“12. There are neither specific rules nor straight-jacket formula can be applied to prove the fact of employment of one family member with other family member. It entirely depends on the facts and circumstances of each and every case independently. However, it is necessary for the applicant to tender the evidence to prove the fact of the employment and the fact of accident as taken place in the course of the employment. The burden lies on the applicant. Once the evidence is tendered then onus shifts on the insurance company to disprove this particular fact. If evidence goes uncontroverted or evidence of the Applicant is found believable then on the point of employment the Commissioner may accept evidence of the Applicant. Though, a mathematical formula of the evidence cannot be set in the form of rules, the Commissioner is required to apply yardstick of reasonable common sense and accept the evidence which satisfies his rational thinking and conscious. The word "employment" used in Section 3 of the Act is with specific purpose and the Courts are required to give the correct and appropriate meaning to the said word. Under such circumstances, I hold that the view taken by the Commissioner is a correct view. Thus, the Judgment and Order passed by the Commissioner is not illegal, bad in law and requires no interference. Appeal is accordingly dismissed.”

20. It is thus clear that there cannot be any straightjacket formula to prove the fact of employment of one family member with other family member. It entirely

depends on the facts and circumstances of each and every case independently. Thus the case of Bombay High Court referred to above also does not seem to be of any help to the Insurance Company. Case of Madras High Court in *Tmt. Rani* (supra) being entirely different on facts is also not applicable to the case in hand. Likewise, the decision of the Supreme Court in *New India Assurance Co. Ltd. vs. Sadanand Mukhi* (supra) being based under Motor Vehicles Act is not applicable in this case.

21. Now the second and last question is whether learned Commissioner has erred in assessing the monthly income of the deceased at Rs. 05,000/- instead of Rs. 08,000/- for which issue No. 3 was framed by the Commissioner. Looking to the minimum wages prevailing at the relevant time of a skilled worker, the income taken by the Commissioner appears to be on the lower side, which is hereby replaced by Rs. 6,500/-. Since for calculation of compensation under Section 4(1)(a) of EC Act, half of the monthly income is taken, it comes to Rs. 3250/- and if multiplied by relevant factor i.e. 221.37, the total compensation for which the claimants are entitled comes to Rs. 07,19,425.5, which they are entitled to receive within a period of 60 days from the date of receipt of copy of this order. Failure to pay within the time stipulated, shall carry 9% annual interest till its realisation. Needless to say that the amount paid so far if any shall be adjustable in the long run.

22. Appeal of the claimants is thus partly allowed whereas that of the Insurance Company is dismissed.

23. Accordingly, both the appeals are disposed of.

Sd/-
(Sachin Singh Rajput)
Judge

Jyotishi