

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

First Appeal No. 105 of 2015

New India Assurance Company Ltd.,
Abbott Building Bh. Yashoda Hotel,
Kings Road, Ahmednagar,
Through its Authorized Signatory/
Divisional Manager,
Adalat Road, Aurangabad.

.. Appellant
(Original respondent no.2)

versus

1. Chandrakala @ Sangita Wd/o. Rajendra Dahiphale,
Age : 34 years,
Occupation : Household.
2. Kum. Suvarna D/o. Rajendra Dahiphale,
Age : 13 years,
Occupation : Education.
3. Kum. Pooja D/o. Rajendra Dahiphale,
Age : 10 years,
Occupation : Education.
4. Shubham S/o. Rajendra Dahiphale,
Age : 07 years,
Occupation : Nil.
5. Shubhangi S/o. Rajendra Dahiphale,
Age : 05 years,
Occupation : Nil.

All R/o. Mohata, Taluka : Pathardi,
District : Ahmednagar.

Respondent nos.2 to 5 are minor
U/G. through its Mother
i.e. respondent no.1.

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| 6. Natha s/o. Dadaba Dahiphale,
Age : Major,
Occupation : Business.
R/o. Mohata (Devigad),
Taluka : Pathardi,
District : Ahmednagar. | .. Respondents
(Nos.1 to 5 - Original claimants
&
No.6 - Original respondent
no.1) |
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Mr. S.G. Chapalgaonkar, Advocate, for the appellant.

Mr. P.V. Barde, Advocate, for respondent nos.1 to 5.

Respondent no.6 served (Absent).

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CORAM : A.M. BADAR, J.

DATE : 10TH DECEMBER 2015

ORAL JUDGMENT :

1. This is an appeal under Section 30 of the Employee's Compensation Act, 1923, by original respondent no.2 - Insurance Company. The appellant is challenging the judgment and order passed by the learned Commissioner for Workmen's Compensation & Judge, Second Labour Court, Ahmednagar, on 1-10-2014, in Application (W.C.) No. 22/2010 whereby respondents therein were directed to pay compensation of Rs. 2,71,737/- jointly as well as severally to applicants therein with interest on account of death of Rajendra Dahiphale in an accident which was held to be occurred arising out of and in the course of his employment with respondent no.1. Respondent no.1 Natha Dahiphale before the learned Commissioner is respondent no.6 herein. Respondent nos.1 to 5

are original applicants before the learned Commissioner. For the sake of convenience, parties shall be referred to in their original capacity.

2. Facts in brief are thus :

(a) Claim under Sections 3, 4, 10 and 22 of the Employee's Compensation Act, 1923, came to be lodged by applicants with an averment that Rajendra Natha Dahiphale was in employment of respondent no.1 Natha Dahiphale as driver on the jeep bearing registration No. MH-16/E-3932. It is case of applicants that Natha Dahiphale was doing the business of selling flowers, garlands, coconuts and other Pooja articles at the temple of Mohata Devi. On 29-5-2008, Rajendra while in the course of his employment with respondent no.1, was driving the jeep for carrying the articles from village Mohata to temple of Mohata Devi. During that journey, the jeep met with an accident and Rajendra succumbed to fatal injuries caused to him in that accident. According to applicants, they being legal representatives of deceased Rajendra are entitled for compensation from respondents as the jeep was owned by employer - respondent no.1 Natha and insured with respondent no.2 - Insurance Company.

(b) Respondent no.1 Natha failed to participate in the proceedings. Claim came to be opposed by filing written statement at Exhibit 3 by the Insurance Company. The Insurance Company denied the fact that deceased was serving as driver on the jeep owned by respondent no.1. Respondent no.2 - Insurance Company contended that the jeep is a private car and it was to be used for social, domestic and pleasure purpose and for

the own business of the insured. It was not to be used for hire and reward i.e. for carrying passengers. The Insurance Company contended that at the time of accident, the jeep was carrying fare paying passengers and as such it is not liable to indemnify the insured on this count also.

(c) On the basis of rival pleadings, issues were framed and the parties went for trial. Applicants adduced evidence of applicant no.1 Chandrakala @ Sangita - widow. They also examined Adinath as witness no.2 and Babasaheb as witness no.3. Respondents did not enter in the witness box.

3. After hearing the parties, the learned Commissioner came to the conclusion that deceased Rajendra was in the employment of respondent no.1 Natha and he died because of the accident arising out of and in the course of his employment with Natha. Accordingly, the application came to be allowed.

4. Heard Shri Chapalgaonkar, the learned Counsel appearing for appellant - Insurance Company. He vehemently argued that it is not in dispute that deceased Rajendra was son of respondent no.1 Natha - owner of the jeep involved in the accident. As such in submission of Shri Chapalgaonkar, the learned Counsel, applicants have failed to prove that the deceased was in employment of respondent no.1 as driver. He further argued that all evidence coming on record is through interested witnesses and as such the same cannot be accepted to hold that the son would be the employee of the father and that too as driver of the jeep. Shri Chapalgaonkar, the learned Counsel, placed reliance on judgment of the Hon'ble Apex Court in the case of *Gottumukkala Appala Narasimha Raju &*

others Vs. National Insurance Company Ltd., reported in *AIR 2007 SC 2907*, and contended that the story put forth by applicants is concocted story in order to extract compensation from the Insurance Company.

5. As against this, by placing reliance on judgment of this Court in the case of *Smt. Lata Ramchandra Ubale Vs. Shri Ramchandra Shankar Ubale & another*, reported in *2012(7) ALL MR 791*, Shri Barde, the learned Counsel appearing for respondents - original claimants, contended that each case proceed on its own facts and it cannot be said as a matter of course that son cannot be employed as driver by father. The learned Counsel for respondents - original claimants further argued that in the case in hand, evidence on record do show that the deceased was in employment of his father as driver and therefore the learned Commissioner has arrived at a right conclusion.

6. Perused record and proceedings including oral as well as documentary evidence tendered on record by the parties. This being an appeal under Section 30 of the Employee's Compensation Act, 1923, can be entertained only on demonstrating substantial question of law. Finding of a fact overlooking the material evidence on record or by relying on inadmissible evidence can certainly give rise to the question of law. In submission of Chapalgaonkar, the learned Counsel appearing for the appellant, alleged employment of Rajendra by his father - owner of the vehicle considered to be a proved fact on the basis of interested testimony of family members resulted in perverse finding recorded by the learned Tribunal on this aspect and as such amounts to substantial question of law. Now let us examine evidence on record in order to ascertain whether such

finding can be said to be perverse one unsupported by the evidence on record.

7. Claimant Chandrakala is widow of deceased Rajendra. She has stated in her evidence affidavit that her husband Rajendra was driver on the jeep owned by respondent no.1 Natha. Her evidence makes it r that respondent no.1 Natha was doing the business of selling Puja articles at the temple of Mohata Devi situated at a hill. Version of Chandrakala shows that on 29-5-2008, deceased Rajendra was carrying Puja articles required for business of respondent no.1 Natha to the temple of Mohata Devi by the jeep and in the course of this journey, he met with an accident resulting in his death. Applicant Chandrakala was subjected to cross examination by the Insurance Company. Her cross examination shows that she does not have any documentary evidence to show that her husband was residing separately from his parents. However, she showed her willingness to place on record ration card to reflect this fact. She denied the suggestion that her husband was residing jointly with his father. She denied the suggestion that at the time of accident her husband was not working as driver with respondent no.1.

8. The next witness examined by applicants is Adinath Dahiphale. He is brother of the deceased and son of respondent no.1. Adinath also came up with the version that deceased Rajendra was residing separately from his father as well as from him. This witness stated that ration card of deceased Rajendra is separate. Evidence of Adinath shows that Rajendra married prior to 15 - 16 years of his death. Adinath further deposed that respondent no.1 Natha is having shop of

selling Puja articles at the temple of Mohata Devi and deceased Rajendra was working as driver with respondent no.1 Natha. Adinath testified that at the time of the accident, deceased Rajendra was carrying Puja articles from Mohata village to the temple of Mohata Devi by jeep owned by respondent no.1 Natha. Even in cross examination of this witness, the Insurance Company brought on record that Natha is having shop at temple of Mohata Devi for selling Puja articles.

9. The next witness is Babasaheb Dahiphale. He is resident of village Mohata and had deposed that the respondent no.1 Natha is owner of the shop selling Puja articles at temple of Mohata Devi and at the time of accident, deceased Rajendra was driving the jeep.

10. FIR relied by applicants is at Exhibit U-4. It is lodged by witness Adinath. In the FIR, Adinath had referred the jeep as vehicle owned by the family. Perusal of evidence adduced on record by three witnesses examined by applicant goes to show that undisputedly respondent no.1 Natha was having shop selling Puja articles at the temple of Mohata Devi. He is owner of the jeep. Evidence of witness Chandrakala as well as Adinath goes to show that at the time of accident, Rajendra was carrying Puja articles for the shop of respondent no.1 Natha. Written statement of Insurance Company goes to show that the jeep can be used for own business of the insured. Evidence of Chandrakala as well as Adinath goes to show that deceased Rajendra was driver on the said jeep. In cross examination of these witnesses, except denial to the suggestion put forth by the Insurance Company, nothing more came on record to disbelieve their version so far employment of deceased Rajendra as driver

on the jeep owned by respondent no.1 Natha. There is no contra evidence on record in order to infer something else. In the case of **Smt. Lata Ramchandra Ubale (supra)**, this aspect is considered by the learned Single Judge of this Court. The learned Single Judge in para 6 of the judgment has observed thus :-

" The issue involved in the Appeal is short. The fact of the employment and the relationship of the deceased and Respondent No.1 as employer employee is challenged by the insurance company. The Act is a beneficial legislature enacted in the interest of the workman should get immediate financial aid to assist his family to come out of the sudden financial crisis they have faced due e accident which has taken place in the course of the employment. Under the Act, the burden lies on the Applicant to prove the basis fact of the employment and the accident had taken place in the course of the employment. In the present case, the fact of accident is not disputed but the relationship of the deceased with his father as a employer and employee is under challenge. It is made clear that a member of the family can be employed by the other member of the family. A wife or a son can be employed the husband or father and the wages can be paid in the capacity of employer to the other family member. Law acknowledges such employer employee relationship amongst the family members of one family. Court cannot turn the Nelson's eye to the ground realities in the urban as well as rural families and their work culture. India still joint family system exists. Brothers or son and father or spouses form partnership or a company and can be employed in such establishment. In rural areas such employment in agricultural, dairy business is possible. The issue is not res integra. In

Oriental Insurance Company Ltd. Vs. Hanumant & Another (2006 ACJ 251) where the Single Judge of Karnataka High Court that :

"2. The contention of the insurer that there exists no relationship of employer and employee since the respondent No.1 (driver) happens to be the son of the owner of the jeep, respondent No.2, therefore, there cannot be a relationship of employer and employee is an untenable argument. It is not uncommon amongst the business family to engage their own kith and kin on employment for doing the business or commercial activity. Merely business in such a situation no wages are paid in cash is also not a ground to infer absence of a legal relationship of employer and employee, since there would always be consideration in kind computable in terms of money for the services rendered. The parties would not go for documentation of the contract nor create any documentary material to prove payment of wages in view of the peculiar family relationship. Therefore, the fact that the respondent No.1 and Respondent No.2 are father and son, is not a ground in law to infer the absence of the relationship of employer and employee under Workmen's Compensation Act. " (Emphasis supplied)

Ground realities of the rural as well as urban community is considered by the learned Single Judge in the said matter. In rural areas, there is possibility of employing the member of family for the purpose of carrying on the business of the father. In the present case also for smooth running of business of respondent no.1 Natha, it is seen that he had employed his son as driver on the jeep in order to carry the Puja articles for sale at his

shop. As an owner of the shop at Mohta Devi temple, Natha is not expected to be present at the shop and at the same time to purchase and bring articles for sale at the shop. Thus evidence of witnesses examined by applicant probablises the fact that the deceased was employed by his father Natha as a driver on the jeep involved in the accident.

11. Shri Chapalgaonkar, the learned Counsel for the appellant has placed reliance on judgment of the Hon'ble Apex Court in the case of ***Gottumukkala Appala Narasimha Raju & others (supra)***. Para 22 and 23 of the said report reads thus :-

"22. In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceedings under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.

23. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide. "

In the said matter, on facts, the Hon'ble Apex Court has concluded that

story of employment of the husband with his wife seems to have been concocted. However, in the case in hand, if the fact that respondent no.1 Natha is owner of shop of selling Puja articles at famous temple of Mohata Devi is kept in mind, then evidence of both witnesses examined by claimants probablize that deceased Rajendra, though son of respondent no.1 Natha, was certainly employed by Natha for smooth running of his business of selling Puja articles at the temple. The finding of fact on this aspect recorded by the learned Commissioner to the effect that the deceased was an employee of respondent no.1 Natha as such cannot be said to be perverse or unsupported by evidence on record. Consequently, his death in the accident which took place on 29-5-2008 while driving the jeep needs to be held as arising out of his employment and in the course of his employment as driver with respondent no.1 Natha. Therefore, the learned Commissioner has rightly awarded compensation as well as interest. As such no substantial question has arisen so as to entertain the appeal.

12. In the result, the Appeal fails and the same is dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

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