

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

FIRST APPEAL NO.: 57 OF 2000

M/s New India Assurance Co. Ltd.,
having its Regd. and Head office at
87, M.G.Road, Fort, Mumbai-400 001
Branch office at Jalgaon Dist.
Jalgaon, Divisional office, at
Adalat Road, Ajay Engg. Compound,
Aurangabad through it's
Divisional Manager & Constituted
Attorney Mr. Namdeo Gangaram Mali.

... **APPELLANT**
[ORIG.RESPDT.NO.2]

VERSUS

1. Abdul Gafar S/o Abdul Ajij
Age 53 years, Occu.: Nil,
2. Mrs. Chandbee W/o Abdul Gafar,
Age: 55 years, Occ. Household work.
3. Ms. Shamina D/o Mohammed Raffiq
Aged about 7 years, since minor
u/g No.1 above.

All R/o Pahur Galli, Khanwada,
Jamner Tq. Jamner, Dist. Jalgaon.
Pune-411 043.

4. Mr. Pramod S/o Pundlik Ghodke,
Adult, Occ. Business, R/o
Behind M.J.College, Jalgaon.

... **RESPONDENTS**

Mr. Vinayak N. Upadhye, Advocate for the Appellant.
Mr. P. G. Godhamgaonkar, Advocate for Respondent Nos.1 to 3.
Mr. Vijay Bhalerao Patil, Advocate for Respondent No.4.

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CORAM:-
DATED:-

T. V. NALAWADE, J.
15th JUNE, 2015.

JUDGMENT:

1. The appeal is filed against the judgment and order of WCA No.5 of 1994 which was pending before the Commissioner of Workmen's Compensation, Labour Court, Jalgaon. In the proceeding filed by present Respondent Nos.1 to 3, for compensation in respect of death of son of Respondent Nos.1 and 2, the Commissioner has given direction to pay Rs.60,278/- with interest. Only the insurance company has challenged the decision. Both the sides are heard.

2. This Court had admitted the appeal on 15th march, 2000 but the substantial questions of law involved in the matter were not formulated. On the basis of submissions made, this Court expressed that the following points will be considered and decided.

- (i) Whether there is material to prove that the deceased was in the employment of Respondent No.4 Pramod Ghodke and he died while discharging his duties, during the course of the employment?
- (ii) Whether there was material to hold that the deceased was earning monthly Rs.700/-?

3. It is the case of the original claimants that deceased Mohammad Rafique was working as a driver on the truck of Respondent Promod Ghodke on monthly salary of Rs.400/-. It is contended that the Respondent No.4 used to pay daily allowance of Rs.15/- It is contended that on the same truck Respondent No.2 was using two drivers like Sirajuddin Shaikh and the deceased. it is contended that in March, 1988, in the last week, Sirajuddin had proceeded on leave on 3, 4 days and during this period deceased was required to do many trips between Mumbai and Aurangabad. It is contended that the deceased was required to drive the truck continuously for 1000 Kms. and due to that there was no rest to him. It is contended that on 3rd April, 1988 Respondent No.1 asked the deceased to take the truck to Mumbai in night time. it is contended that as Sirajuddin was sick the deceased was required to drive the truck for covering entire distance. it is contended that they reached Thane on 4th April, 1988 at 10.00 a.m. and from there they were required to go to Dana Bandar where the goods were offloaded. It is contended that due to traffic they were in truck continuously from Thane to Dana Bandar and deceased could not even take the meals

up to 08.00 p.m. on 4th April, 1988. It is contended that deceased had severe pains in the abdomen and so he slept in the truck after 08.00 p.m. It is contended that on 5th April, 1988 the deceased had severe pains in the abdomen and before giving any medical treatment he died in the truck itself. It is contended that due to exertion and strain the death took place.

4. The age of the deceased was 26 years and the claim of Rs.73,095/- was made by the parents.

5. The owner and Insurance company contested the matter. The owner denied everything but alternatively he contended that the vehicle was insured with Respondent No.2 and so the insurance company is bound to indemnify him.

6. Before the Commissioner, the father of deceased gave evidence which is as per the contentions made in the application. The record regarding the P.M. examination is produced. The Panchanama shows that the dead body was lying in the truck when the Panchanama was prepared on 5th April, 1988. The dead body was identified by Sirajuddin and he had informed that the deceased was present in the truck for driving the truck. The report was

given to police by Sirajuddin and he had informed that there was sever pain in the abdomen of the deceased. In view of this record, it was necessary for other side to give evidence in rebuttal if they wanted to deny the relationship between the deceased and Respondent No.1 of employer and employee. The submissions made by learned counsel for the insurance company that the deceased was second driver and so the insurance company is not liable to pay anything, is not acceptable in view of the aforesaid record.

7. The learned counsel for the insurance company submitted that only the monthly wages, salary can be considered and the allowance paid to the driver is not covered under the definition of “wages”. This submission is not acceptable as everything is denied. The definition of “wages” shows that the wages include all the benefits of privileges given to the employee other than traveling allowance, the value of traveling concession etc. The allowance which the deceased was getting cannot be called as traveling allowance in view of any specific evidence given in that regard. As no evidence is given on this contention, this Court holds that such contention cannot be accepted.

8. Learned counsel for the Appellant placed reliance on two reported cases (i) “***Oriental Insurance Company Ltd. V/s Sorumai Gogoi and others***” [AIR 2008 SCW 1477] and (ii) “***New India Assurance Co. Ltd. V/s Dahyabhai Lallubhai Padhiar and others***” [2012 (133) FLR 42]. The facts of these two reported cases were different. In both the cases there was no proof of death during the course of employment. These cases cannot be of any help to the insurance company in view of the peculiar facts and circumstances of the case. In the result, both the points are answered accordingly and the appeal is dismissed.

[T. V. NALAWADE, J.]

Dated:15/06/2015.
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