

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

FIRST APPEAL NO. 2520 OF 2015

The Divisional Manager Oriental
Insurance Co. Ltd. Aurangabad .. Appellant

Versus

1. Sangita Amrut @ Sanjay Pawar Bhil
and others .. Respondents

Shri M. K. Goyanka, Advocate for the Appellant.
Shri Amol S. Sawant, Advocate for Respondent No. 1, 4 and 5.
Shri L. S. Mahajan, Advocate for the Respondent No. 6.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 30TH SEPTEMBER, 2015.**

PER COURT :-

. The present respondent Nos. 1 to 5 had filed application for compensation under the provisions of the Workmen's Compensation Act. The said application is partly allowed. Aggrieved thereby the insurance company has filed the present appeal.

2. Mr. Goyanka, the learned counsel for the appellant submits that, the order of the Commissioner is assailed on two counts (1) the deceased was driver of the tractor and was holding light motor vehicle (tractor) non transport license and (2) at

the time of accident trolley was attached to the tractor, as such it become a transport vehicle. It is a clear case of breach of policy. The insurance company could not have been made liable. The learned counsel relies on the judgment of the Apex Court in the case of New India Assurance Co. Ltd. V/s. Prabhu Lal reported in *AIR 2008 SC 614(1)*. So also another judgment of the Apex Court in the case of Oriental Insurance Co. Ltd. V/s. Angal Kol and others reported in *AIR 2009 S. C. 2151*, to contend that, a transport vehicle may be a light transport vehicle, but for the purpose of driving the same a distinct license is required to be obtained. According to the learned counsel as deceased had only license to drive the non transport vehicle and as trolley was attached to the tractor, it became a transport vehicle. The deceased was not having a valid license. It is a case of clear breach of policy. The insurance company ought to have been exonerated.

3. The learned counsel further submits that, income has also not been rightly considered. It has been considered on higher side without proof of income. There was no document placed on record to show the income of the deceased as Rs. 8,000/- per month. The employer also did not step into the witness box nor had appeared before the Commissioner to substantiate the case of applicants.

4. Mr. Sawant, the learned counsel for the respondents/claimants supports the judgment and submits that, the work of driver is a skilled work. Rs. 8,000/- per month has been rightly considered. The learned counsel further submits that, the deceased was having the license to drive the tractor. Only because the trolley was attached to it, the same does not become defective. The learned counsel relies on the judgment of the Apex Court in the case of **Nagashetty V/s United India Insurance Co. Ltd.** reported in **(2001) 8 SCC 56.**

5. With the assistance of learned counsel I have considered the submissions of learned counsel for respective parties.

6. This being an appeal under the provisions of the Employee's Compensation Act, can only be considered by substantial question of law. As far as income of the deceased is concerned the claimants have specifically led the evidence to that effect. The said evidence is not shattered. Even as per the amendment made under Section 4 of the Employees Compensation Act, the limit has been raised from Rs. 4,000/- to Rs. 8,000/-. It cannot be disputed that, the job of a driver is a skilled job. The accident is of the year, 2012. Considering the same the Court has properly considered the income of the deceased as Rs. 8,000/- per month.

7. The aspect of the breach of policy also cannot give rise to substantial question of law. The deceased admittedly was holding a license of light motor vehicle tractor (non transport). At the relevant time the deceased was driving the tractor to which the trolley was attached and the same was empty. Nothing has been transported in the same. The Apex Court in a case of **Nagashetty V/s United India Insurance Co. Ltd.**

referred to supra has observed as under :

"WE are unable to accept the submissions of Mr. S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly under Section 10 a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C. Sharda is to be accepted then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a

trailer is added to that vehicle."

8. Perusal of the above judgment, it is manifest that, the Apex Court has clearly laid down that, merely because the trolley is attached to the tractor or to a motor vehicle by itself does not make tractor or motor vehicle a transport vehicle. The Commissioner has also rightly relied on the said judgment.

9. In light of the above, the appeal does not involve any substantial question of law. As such the appeal is dismissed. No costs.

10. The respondents/claimants are entitled to withdraw the amount as awarded by the Commissioner Workmen's Compensation.

[S. V. GANGAPURWALA, J.]