IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 1050 OF 2012

Balajisingh Bharatsingh Rajput .. Appellant

Versus

Janabai Nagnath Kamble
and Others .. Respondents

Shri V. P. Latange, Advocate for the Appellant.
Shri Abhijit S. More, Advocate for Respondent Nos. 1 and 4.
Shri Rameshwar F. Totala, Advocate for the Respondent No. 5.

CORAM : S. V. GANGAPURWALA, J.
DATE : 26TH AUGUST, 2015.

PER COURT :

1. Mr. Latange, the learned counsel for the appellant submits that, the present Respondent Nos. 1 to 4 had filed application for compensation under the provisions of the Employees Compensation Act, on account of death of Nagnath who was driver of the tractor. The learned counsel submits that, the relationship of the deceased with the present appellant is not disputed. Further the present appeal is filed on the ground that, the Insurance Company was erroneously exonerated so also, on the ground of penalty. According to the learned counsel, the tractor was validly insured with the Respondent No. 5 / Insurance Company. Even additional premium was paid for trailer still, the Insurance Company is exonerated. The learned counsel relies on the judgment of the Apex Court in a case of **Nagashetty V/s United India Insurance Co. Ltd. and Others** reported in **AIR 2001 SC 3356.** The learned counsel submits that, it can not be said that the driver of the vehicle was not having effective driving

license only because trailer was attached. As such the Insurance Company can not be exonerated.

2. The learned counsel also submits that, the penalty has been wrongly imposed, no notice was issued for payment of penalty. The said order is bad in law. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of **Udhav Rangnathrao Pawar V/s Sheshrao Ramji Jogdand and Another** reported in **2009 (5) Bom. C. R. 523.**

3. Mr. R. F. Totala, the learned counsel for the Respondent No. 5 submits that, even if it is assumed that additional premium was paid for the tractor there was a breach of policy as stones were taken in the trolley. The tractor was supposed to be used only for the agriculture purpose or for carrying out household goods. As there is the breach of policy Insurance Company is rightly exonerated. The learned counsel relies on the judgment of the Apex Court in a case of **Oriental Insurance Co. V/s Brij Mohan and Others** reported in **2007 (7) SCC 56.**

4. Mr. More, the learned counsel for Respondent Nos. 1 and 4 states that, the order of penalty is rightly issued. Even issue is framed to that effect.

5. With the assistance of the learned counsel, I have considered the submissions.

6. The appeal can only be considered on substantial question of law as the same is arising under the provisions of the

Employees Compensation Act. The relationship of the deceased with the present appellant that of employer and employee is not disputed. It is also matter of record that, the deceased Nagnath was possessing valid license to drive tractor. The aspect of accident also has been accepted by the Commissioner Workmen's Compensation. However, has exonerated the Insurance Company only on the ground that, the deceased did not possess valid and effective driving license. The driving license was only to drive light motor vehicle, tractor and as trolley was attached the license was not valid license. The said observations would not be in tune with the judgment of the Apex Court in a case of Nagashetty referred supra. Wherein the Apex Court observed that, Insurance Company can not be absolved on grounds that, license to drive tractor becomes ineffective if trailer is attached to it. In the present case, even additional premium was paid for the trailer which is attached to the tractor meant for carrying goods. The household goods were allowed to be carried as per the policy, the loading of goods is not the cause of accident. Considering the judgment of the Apex Court referred supra the observations and the finding of the Commissioner that, the deceased does not have a valid driving license can not be sustained.

7. The judgment in a case of **Oriental Insurance Co. V/s Brij Mohan and Others** reported in **2007 (7) SCC 56** may not be relevant, as the claimant was a labour, traveling on the trolley of the tractor and he being merely a passenger his claim was not maintainable.

8. The aspect of the penalty as is agitated by the appellant cannot be considered as the issue has been specifically framed in that regard and opportunity was given to the parties to

give evidence. It has been observed that, the amount was not paid within one (1) month from the date it becomes due. The Court has properly excercised discretion in that regard.

9. In light of the above, the appeal is partly allowed. The order to the extent of exonerating the Insurance Company from payment of Rs. 3,08,925/- (Rs. Three Lacs Eight Thousand Nine Twenty Five Only) is quashed to that extent and it is held that, the present appellant and Respondent No. 5 Insurance Company are jointly and severally liable to pay the amount of compensation of Rs.3,11,425/- (Three Lacs Eleven Thousand Four Twenty Five Only) alongwith interest at the rate of 12% per annum on the amount of Rs.3,08,925/- (Rs. Three Lacs Eight Thousand Nine Twenty Five Only) from the date of petition till realization. The rest of the order is upheld.

[S. V. GANGAPURWALA, J.]

sam/Aug. 15