

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1393 OF 2015

The Reliance General Insurance Company,
Through It's Authorized Signatory / Manager,
Office at Opposite District Court New
Building, 2nd Floor,
Aurangabad Business Center, Adalat Road,
Aurangabad

..APPELLANT
(Orig. Resp. No.2)

VERSUS

1. Nilawatibai @ Nilabai Wd/o
Kamaji Jadhav,
Age : 42 years, Occupation : Household,

2. Shivaji S/o Kamaji Jadhav,
Age : 32 years, Occupation : Labour,

Both R/o Chondhi (B),
Tq. Basmat, Dist. Hingoli at Present
Chayatanya Nagar, Nanded

3. Sanjaikumar Subhashchandra Bagdiya,
Age : Major, Occu. Business,
R/o Prakash Trading company,
New Plot Line,
Tq. and Dist. Hingoli

..RESPONDENTS
(Resp. Nos. 1 & 2 – Orig.
Claimants & Resp. No.3-
Orig. Resp. No.1)

Mr S.G. Chapalgaonkar, Advocate for appellant;
Mr V.B. Dhage, Advocate for respondents no.1 & 2;
Mr S.S. Deshmukh, Advocate for respondent no.3

CORAM : N.W. SAMBRE, J.

DATE : 11th August, 2015

ORAL ORDER :

This appeal by original respondent no.2 - insurance company, is directed against the judgment and award dated 3rd February, 2014, rendered by the Commissioner for Employees Compensation Act and Judge, Labour Court, Nanded, in E.C.F.A. No.16 of 2012.

2. Heard Mr Chapalgaonkar, learned Counsel appearing on behalf of the appellant. He tried to raise following substantial questions of law :-

(a) Whether the learned Commissioner for Employees Compensation Act has committed an error of law in recording finding as regards employer – employee relationship between deceased claimant and the vehicle owner ?

(b) Whether the monthly income of deceased was rightly appreciated ?

3. So as to substantiate his contentions, the learned Counsel has invited attention of this Court to the fact that, claimant no.1 – wife of deceased employee Kamaji Jadhav, had specifically narrated in the first

information report that the deceased was carrying his own goods in the vehicle, which were being taken for selling the same in weekly market and in that event, the vehicle in question met with an accident resulting into death of Kamaji. According to him, Kamaji's involvement in the said accident, was as a gratuitous passenger and not an employee, as his own goods were being transported, at the relevant time. According to him, in view thereof, since the employer – employee relationship was not established, the appellant – insurance company is not liable for the claim. He would urge that this Court needs to draw appropriate inference, particularly in view of the conduct of the employer, who had intentionally remained absent in the proceedings.

4. So far as the above referred submission of Mr Chapalgaonkar is concerned, it is required to be noted that the claimants have brought on record, that deceased Kamaji was an employee of the vehicle owner and was working since about one year for loading and unloading of goods on the vehicle bearing registration No.MH-38-E-1069. In support thereof, the Driver of the vehicle was also examined, who has stated that deceased Kamaji was an employee hired on the vehicle in question, which met with an accident.

5. Though the appellant – insurance company has not examined an independent witness, yet it has cross-examined the said witness Driver,

however, nothing could be elicited from the cross-examination of the said witness, so as to substantiate the case of the appellant that deceased was not an employee, at the relevant time. In view thereof, in my opinion, once the claimants have established that deceased Kamaji was an employee and was hired for working on the vehicle in question, which was insured with the appellant and since the said vehicle had met with an accident, the issue to that effect, needs to be answered against the present appellant.

6. So far as the next contention as regards the quantum of compensation is concerned, the Commissioner has taken into account the monthly income of deceased Kamaji at the rate of Rs.8,000/- per month. The notification dated 10th July, 2011, issued by the Government, prescribes the said wages to an employee like the one hired in the present case.

7. In view of above, the submissions made on behalf of the appellant stand rejected. Thus, no substantial question of law is involved in the appeal. The appeal fails and stands dismissed with no order as to costs.

8. In view of dismissal of the appeal, respondents no.1 & 2/original claimants are at liberty to apply for withdrawal of the amount before the Commissioner.

9. In view of dismissal of the appeal, Civil Application No.12648 of 2014 does not survive and stands dismissed.

(N.W. SAMBRE, J.)

amj