

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.688 OF 2015

The New India Assurance Co. Ltd. .. Appellant

Vs.

Smt.Jyoti Mukesh Tiwari and others .. Respondents

Mr.Milind V. More for the appellant

CORAM : K.K.TATED, J.
DATED : 29/07/2015

PC:

1 Heard the learned counsel for the appellant.

2 This Appeal is preferred by the New India Assurance Co. Ltd. challenging the judgment and order dated 26.3.2015 passed by Commissioner for Employees Compensation and Judge, 9th Labour Court, Mumbai in Application (WCA) 129/B-12 of 2013 holding that the respondents claimants are entitled to recover compensation of Rs.6,77,760/- with interest @ 12% p.a. from 2.1.2013 till realisation.

3 Being aggrieved by the said judgment and award passed by Labour Court, the Insurance Company preferred the present First Appeal.

Few facts of the matter are as under:

4 The deceased Mukesh, husband of Claimant no.1 and father of Claimant nos.2 and 3 was employed as a Driver on Motor Vehicle bearing No.MH-04-EB-6690, owned by respondent no.4. He was getting the salary of Rs.10,000/- per month. On 2.1.2013 while he was on duty he had developed a cardiac problem, for which he was hospitalised. Mukesh died in hospital. Hence, the legal heirs of deceased Mukesh filed application for compensation under Employees Compensation Act, 1923. Though the respondent no.4 was duly served, no one appeared on behalf of him. The appellant Insurance Company appeared before the Labour Court. No one entered into the witness box on behalf of Insurance Company to justify their objections for compensation claimed by the claimants. That application was allowed by the Labour Court holding that the legal heirs of deceased Mukesh are entitled Rs.6,77,760/- with interest @ 12% p.a. by way of compensation.

5 The learned counsel for the appellant Insurance Company submits that the Labour Court erred in coming to the conclusion that the Insurance Company is liable to pay compensation to the legal heirs of deceased Mukesh. He submits that Mukesh who was working as a driver with respondent no.4 died because of heart attack. Hence, same cannot be termed as died in the course of employment. In support of this contention, Advocate for the appellant relied on the statement of one, Rajendrakumar Dnyanchandji Mehta, owner of the vehicle. In the said statement before the police authority respondent no.4 specifically stated that the deceased Mukesh Tiwari had heart attack

stroke before 8/9 months. He submits that the statement made by the respondent no.4 before the police authority itself shows that the deceased Mukesh was suffering by cardiac problem and therefore, Insurance Company is not liable to pay any compensation.

6 The second contention raised by the Advocate for the appellant Insurance Company that the deceased Mukesh was not holding valid driving licence on the date of accident. He submits that these facts were not considered by the Labour Court properly and hence, Insurance Company is not liable to pay any compensation.

7 I have heard the learned counsel for the appellant at length. I have gone through the documents placed on record by the appellant. In the present proceeding, on 2.1.2013 deceased Mukesh was performing his duty as a driver on a vehicle in question. When he was on duty he felt some chest pain and restlessness.

8 Hence, he contacted respondent no.4 owner of the vehicle on telephone and requested him to send some other driver for his assistance. In the meanwhile, he was admitted in hospital and in the hospital he died. This itself shows that when the deceased Mukesh was on duty he suffered heart attack stroke and he was hospitalised and died there. As per section 3 of the Workmen's Compensation Act, 1923 the injury in the course of employment means in the course of work.

9 In the present proceeding the deceased Mukesh was on duty as a driver and at that time he was suffered a heart attack and died. Therefore, it is difficult to accept the contention by the learned counsel

for the appellant Insurance Company that the deceased Mukesh was not on duty during the course of employment. *Madras High Court in the matter of Management of Devon Estate vs. Nabeesa and Anr.*¹ and *High Court of Kerala in the matter of United India Insurance Co.Ltd. vs. Yashodhara Amma and Anr.*² held that if the workmen is died because of heart attack in the course of employment then, employer and or Insurance Company is liable to pay compensation. Similar view has been taken by the Apex Court in the matter of *General Manager, B.E.S.T. Undertaking, Bombay v/s. Mrs.Agnes.*³

10 The learned counsel for the appellant contended that the material on record was not sufficient to hold that the deceased Mukesh died in the course of employment. Keeping in view of the limited scope of interference in appeal under section 3 of the Act, I am unable to accept the said contention, since the finding of the Commissioner are based on discussion of relevant material on record. Not only that, no one entered into the witness box on behalf of Insurance Company to justify their contention. Hence, first objection raised by the Insurance Company cannot be termed as substantial question of law in the facts and circumstances of the present case.

11 The second objection raised by Advocate for Appellant is that the deceased Mukesh was not holding valid licence at the relevant time. It is to be noted that the Labour Court in paragraph 19 of the impugned Judgment specifically held that the Driving Licence of deceased Mukesh was placed on record as Exh.U-16. This itself shows that the deceased had valid license on the date of accident. In any case, no one entered

1 1991 ACJ 489

2 1989 ACJ 1075

3 AIR 1964 SC 193

into the witness box on behalf of Insurance Company to justify that on the date of accident, deceased Mukesh was not holding valid licence.

12 Considering these facts, I do not find any reason to accept the submission made by the learned counsel for the appellant that on the date of accident, the deceased was not holding valid licence. In any case, that cannot be a substantial question of law in the present matter.

13 In view of the above mentioned facts and circumstances, I am of the opinion that appellant failed to point out any substantial question of law involved in the First Appeal.

14 First Appeal stands dismissed. No order as to costs.

(K.K.TATED, J.)