

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No. 691 of 2015**

1. Smt. Tebha Bai S/o Late Shankar Pradhan Aged About 46 Years
2. Ku. Lata Kumari Pradhan D/o Late Shankar Pradhan Aged About 26 Years
3. Vikram Kumar Pradhan S/o Late Shankar Pradhan Aged About 25 Years
4. Ravi Kumar Pradhan S/o Late Shankar Pradhan Aged About 20 Years

All the R/o Near Shiv Mandir Pandri Raipur, Police Station Raipur Tehsil Raipur
Distt. Raipur Chhattisgarh

---- Appellants**Versus**

1A. Raj Kumar Keshwani S/o Late Mangu Ram Keshwani

B. Vijay Keshwani S/o Late Mangu Keshwani

C. Sanjay Keshwani S/o Late Mangu Ram

2. The United India Insurance Company Ltd. Branch Office No. 4, Nagpur, Through
Divisional Manager, Divisional Office, Kachahari Chowk Jail Road Raipur
Chhattisgarh Policy No. 161602/34/1/000301/89 Due Date 14/2/1989 to till
13/02/1990

---- Respondents

For Appellants : Shri Pawan Kesharwani, Advocate.
For Respondent No.1 : Ms. Renu Singh, Advocate.
For Respondent No.2 : Shri Aman Kesharwani, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****18/04/2016**

1. The present appeal has been preferred against the order dated 29.11.2011 passed by the Commissioner, Workmen Compensation Act, rejecting the claim of the Appellants for grant of compensation against the Respondents on the ground that the deceased was in the employment of Respondent No.1 and

died in an accident while on duty.

2. Learned Counsel for the Appellants submits that earlier a claim was wrongly preferred before the Motor Accident Claims Tribunal, Bhandara in the State of Maharashtra which was subsequently withdrawn and the present application was filed thereafter. The Learned Commissioner erred in holding that the claim was barred by limitation without adequately considering that a wrong remedy was being pursued erroneously but was bonafide. The findings that the deceased was not working with the father of Respondent No.1 as a driver and that there were any discrepancies on facts between the claim as laid before the Court at Bhandara and in the impugned order, are perverse findings. The Learned Commissioner erred in casting the burden of proof on to the Appellants to establish that the deceased was employed with the father of Respondent No.1. On the aforesaid grounds it was submitted that the order of the Learned Commissioner is not sustainable and calls for interference.

3. Learned Counsel for the Respondents submitted that the appeal does not raise any substantial question of law requiring determination by this Court under Section 30 of the Employee's Compensation Act, 1923 (hereinafter called as 'the Act'). The Tribunal has given adequate findings with regard to material discrepancies in the claim as raised before the Court at Bhandara and now sought to be urged before the Learned Commissioner. The burden of proof was on the Appellants to establish the factum of employment which they failed to discharge.

4. We have considered the submissions on behalf of the parties and do not find that the present appeal raises any substantial question of law for determination of the Court.

5. All issues sought to be urged are pure question of fact on which the findings have been given on the basis of material placed by the parties before the Learned Commissioner.

6. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE

Anu