

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

FIRST APPEAL NO.: 193 OF 2004

Shri. Shirishkumar Kevalchand Jain,
Age: 41 years, Occ. Nil, R/o:
Chinchpada, Tq. Navapur,
Dist. Nandurbar.

... **APPELLANT**

VERSUS

1. Shri. Prakash S/o Kevalchand Jain,
Age: Major 47 years, Occu.: Business,
R/o: Chinchpada, Dist. Nandurbar,
Tq. Navapur.

2. Oriental Insurance Company,
Aurangabad Divisional Office,
Indar Prakash, Adalat Road,
Aurangabad - 431 001.
(Summons to be served on
Dhule Branch-Lane No.2,
Dhule).

... **RESPONDENTS**

Advocate for the Appellant: Mr. S. J. Jain.
Advocate for the Respondent No.1: Mr. N. C. Garud.
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CORAM:-
DATED:-

T. V. NALAWADE, J.
18th JANUARY, 2016.

JUDGMENT:

1. The appeal is filed by original claimant from WCA No.74
of 1999 which was pending before the Commissioner of

Workmens Compensation, Dhule. The claimant had claimed the compensation in respect of injuries sustained by him in motor vehicle accident from his employer and from insurance company of the vehicle. The Commissioner has allowed the application and has directed Respondent, owner to pay Rs.1,43,568/- as the compensation but the Commissioner has held that the claimant was not employee of Respondent No.1 who is a real brother of the claimant and so no liability is fastened on insurance company. Due to this circumstance, the decision is challenged. Both the claimant and the owner are interested in fastening the liability on the insurance company of the vehicle. Both the sides are heard.

2. This Court admitted the Appeal on 23rd February, 2004 but no substantial question of law as such was formulated. In view of the contents of the appeal memo and the submissions made, this Court allowed both the sides to argue on following substantial question of Law:

"Whether there was material for proving that claimant was the employee of Respondent No.1, brother of claimant at the relevant time and the Commissioner has committed error

in not considering the material on the record?”

3. The learned counsel for the claimant and the owner argued mainly on one circumstance that on one hand the Commissioner has held that the claimant was working as a driver of Respondent No.1, on the other hand the Commissioner has held that the insurance company has proved that there was no relationship of employer-employee between claimant and Respondent No.1.

4. The vehicle involved was Tata Sumo vehicle bearing No. MH-20-E-9521 and it was a private car. It is the case of claimant that he was employed by Respondent No.1, brother as a driver and as he sustained injuries during the course of employment he is entitled to get the compensation. The accident had taken place on 3rd February, 1996.

5. The Insurance company contested the matter by filing written statement. It denied that there was employer-employee relationship between the claimant and Respondent No.1. The owner, however, contended that he had employed the claimant as a driver.

6. In view of the aforesaid pleading issue was framed on the point of relationship between the claimant and Respondent No.1 of employer and employee. The evidence of the claimant is as per aforesaid contentions. Respondent No.1 has given evidence to admit the relationship as employer and employee. The Insurance Company has examined its officer but there is no need to discuss his evidence as there is only the denial of aforesaid relationship and the burden was on the claimant to prove this issue.

7. It appears that the claimant and his brother, Respondent No.1 placed reliance on some record like account maintained by Respondent No.1 of his cloth business. In the account, Respondent No.1 had shown that he had spent amount on salary and even the name of claimant was mentioned in some accounts. Even if that record is considered as it is, it cannot be said that he was appointed as a driver. It was a cloth business and there is a clear probability that it was a business of the family and the salary was separately shown by a brother. As there is no entry to show that he was being paid salary as a driver that record

cannot help Respondent No.1 or the claimant. In the account prepared at the end of the year salary amount of Rs.16,500/- is shown to have been spent for ascertaining the actual profit made in the business and it can be said that this was the salary of all the employees working in the shop. In that yearly account, names are not mentioned of the employees. In any case, for fastening liability on third party, on the basis of entries made in the account, firstly, they need to be proved duly by showing that they were regularly made in properly maintained account and there needs to be independent corroboration to the entries. There is no such independent corroboration and the entries are of aforesaid nature. It was a private car and a brother of owner was driving the car and so it cannot be said that the brother was employed as a driver on private car. No log book was maintained of the vehicle to show that it was being used by the owner and every time the claimant was driving it as employee of Respondent No.1. There is no independent evidence at all to prove that the claimant was appointed as a driver at any time by Respondent No.1. In view of these circumstances, the Commissioner has held that the claimant

has failed to prove that he was employee of Respondent No.1 for the purpose of Workmens' Compensation Act.

8. The learned counsel for claimant, appellant placed reliance on a case of Karnataka High Court reported as **LAWS (KAR)-1997-9-79/KANTLJ-1998-4-66 (National Insurance Company, Bangalore V/s Thimma Reddy)**. The case was in respect of a goods vehicle, truck and the facts were different. On this point, learned counsel for the Insurance Company placed reliance on a case reported as **(2007) 13 SCC 446 (Gottumukkala Appala Narasimha Raju And Others V/s National Insurance Company Limited and Another)**. In this case, the Apex Court has made observations in similar circumstances at para No.22, which reads as under:

"22. In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that only for the purpose of proceeding under the 1923 Act have the appellants concocted the story of husband and wife living separately. If they

have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one."

9. In view of the observations made above, and the facts and circumstances of the present case, this Court holds that in the present case, the claimant has failed to prove that there was specific contract between the claimant and Respondent No.1 and due to that there was relationship of employer-employee between them.

10. In the result, this Court holds that it is not possible to interfere in the decision of the Commissioner. The point is answered accordingly, against the claimant and the appeal is dismissed.

(T. V. NALAWADE, J.)

Dated:18/01/2016.
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