

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

**FIRST APPEAL NO. 2260 OF 2015
WITH
CIVIL APPLICATION NO. 11059 OF 2015**

United India Insurance Co. Ltd. .. Appellant
Versus
Rohini Chandrashekhar @ Shekhar Chattar .. Respondents
and others.

Mr.Sudhir V. Kulkarni, Advocate for the appellant.
Mr.D.R. Markad, Advocate for respondent Nos. 1 to 4.

**CORAM : A.V.NIRGUDE, J
DATED : 29.08.2016**

P.C. :-

1. This is insurance company's first appeal challenging judgment and award dated 21.04.2015 passed by learned Commissioner for Workmen's Compensation, Ahmednagar in W.C. No.60 of 2013. Respondent Nos.1 to 4 were claimants before the Commissioner, whereas respondent No.4 was the employee. Let us refer the parties as per their designation in the Lower Court.

2. The claimants came with a case that Chandrashekhar Chattar was in employment of respondent - Yogesh. While he was performing his duty as a driver, he met with an accident and died. They then claimed that as per the age and income of Chandrashekhar, they were entitled to certain compensation as compensation for workman's death while on duty. Respondent - Yogesh almost admitted claim saying that Chandrashekhar was working with him and Chandrashekhar was

his employee. But the appellant/insurance company opposed the case mainly on the ground that the claimants could not be able to prove that Chandrashekhar was in employment of Yogesh. During cross examination of claimant No.1-Rohini, she was confronted with contemporaneous document which were submitted under section 161 of the Cr.P.C. recorded by police during the course of investigation of the crime which was registered on account of accidental death of Chandrashekhar. In the statement, Yogesh clearly stated that though the Car belonged to him, he, Chandrashekhar and other two persons who were his friends were travelling in the car and at the relevant time his friend Chandrashekhar was driving the vehicle. The learned Commissioner, however, rejected this part of the evidence and placed reliance on admission given by Yogesh that Chandrashekhar was his employee etc.

3. In my view, having regard to the facts and evidence that came on record, the claimants were unable to prove relationship between Yogesh and Chandrashekhar as employer - employee. The case apparently was a false claim. The appeal to that extent should, therefore, succeed.

4. However, I am partly allowing the appeal holding that this would not be a case referred by provisions of the Workmen's Compensation Act, but this would be a case where compensation would still be possible to be given to Chandrashekhar's next of kins. Learned Counsel for the appellant insurance company took me through the policy document in which it is clearly mentioned that the driver of

the car would be covered to the extent of Rs.2 lakhs. Learned Counsel for the appellant, however, suggested that this being Workmen's Compensation case, the Court cannot place reliance on the terms of the insurance company which could have been utilized, had the case been filed under section 166 of the Motor Vehicles Act.

5. Hence, the appeal is partly allowed. The impugned order against appellant is set aside. The respondents are given liberty to file fresh application under section 166 of the Motor Vehicles Act. Copy of agreement of insurance be handed over to the respondent's advocate. The amount deposited by insurance company in this Court shall be refunded to them.

6. In view disposal of First Appeal, connected Civil Application for stay does not survive and stands disposed of.

[A.V.NIRGUDE, J.]