

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

First Appeal No.315 of 2010

* The Branch Manager,
National Insurance Co. Ltd.
Branch Office, Jalna,
Taluka & District Jalna. **.. Appellant.**

Versus

- 1) Yasminbano w/o Fahimoddin,
Age 24 years,
Occupation : Household,
R/o Bazar Chouki, Old Jalna,
District Jalna.
- 2) Shaikh Saeed s/o Rashid,
Age 28 years,
Occupation : Business,
R/o Ward No.40, Dukkhi Nagar,
Old Jalna, District Jalna.
- 3) Mahadeo Ganpatrao Sontakke,
Age Major,
Occupation : Business and owner of
Jeep,
R/o Gandhi Nagar, Ramanagar,
Jalna, Taluka & District Jalna.
- 4) Shaikh Khudbuddin s/o Kamruddin,
Age 50 years,
Occupation : Kabadi Business.
- 5) Rukshanabi w/o Khudbuddin,
Age 45 years,
Occupation : Household.

Both R/o Jalna,
Taluka & District Jalna.

.. Respondents.

Shri. S.P. Chapalgaonkar, Advocate, for appellant.

Shri. K.B. Jadhav, Advocate, holding for Shri. S.B. Bhapkar, Advocate, for respondent No.1.

Shri. S.S. Kazi, Advocate, for respondent No.2.

Shri. G.K. Thigale (Naik), Advocate for respondents 4 & 5.

CORAM: T.V. NALAWADE, J.

DATE : 18th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed against the judgment and award of WC Application No.24/2004 which was pending before the Commissioner, appointed under the Workmen's Compensation Act at Jalna. The insurance company has challenged the decision as the Commissioner has held that deceased was employee of respondent No.1 and the liability is fastened on the insurance company. Both the sides are heard.

2) Deceased Shaikh Fahimoddin was aged about 26 years and at the relevant time he was driving the jeep bearing No.MH-21-8227 owned by respondent No.1 and insured with respondent No.3. Respondent No.2 was

registered owner of the jeep. Respondent Nos.4 and 5 are parents of the deceased. The accident took place on 14-8-2004. One bus of MSRTC gave dash to the jeep and the husband of the claimant died in the accident. It is the case of the claimant, widow that monthly income of the deceased was at least Rs.6000/- and she is entitled to get compensation of Rs.6,45,840/- and also penalty.

3) Respondent No.1, owner filed written statement. He admitted that few days prior to the date of accident he had purchased the jeep from respondent No.2 though his name was not entered in RC/TC book. He admitted that on the date of accident he had engaged the deceased as his driver but he contended that he was not permanent employee and on that day only he was engaged as driver. Other contentions regarding salary etc. were also denied.

4) The insurance company contested the matter by filing written statement. It also denied everything. It contended that the accident took place due to dash of the bus of the MSRTC and so it cannot be held liable to pay

the compensation. It denied that the deceased was in the employment of respondent No.1 or 2.

5) Respondent Nos.4 and 5 parents of the deceased also filed written statement. It appears that they had filed claim petition before the Claims Tribunal appointed under the Motor Vehicles Act 1988. But this claim was dismissed as negligence of the bus driver was not proved by them in that proceeding.

6) To prove the claim, claimant examined herself. Respondent No.1 has examined himself and he deposed as per the aforesaid contentions. Thus the fact of accident and involvement of the jeep owned by respondent No.1 is not disputed. The insurance company did not give any evidence. The Commissioner held respondent Nos.1 to 3 jointly and severally liable. Interest at the rate of 12% per annum is given but that is given from the date of decision. There is no dispute over calculation made of the compensation under the provisions of the WC Act.

7) Learned counsel for the insurance company argued much in respect of the contentions of the owner of the vehicle that the deceased was appointed only for that day as a driver. It was submitted that he was casual labourer. Reliance is placed on a case reported as **(2006) 1 SCC 377 (Central Mine Planning and Design Institute Ltd. v. Ramu Pasi)**. It was submitted that as the driver was casual worker, it cannot be said that the deceased was employee of respondent No.1. Facts and circumstances of each and every case are always different. The driver was covered under the policy, he was employed to drive the jeep by respondent No.1 and the driver is covered by definition of worker. During arguments, learned counsel appearing for respondent No.1 did not dispute that the deceased was working as driver with respondent No.1 though the aforesaid stand is taken in written statement. In view of these circumstances, no error can be found in the order made by the Commissioner against the insurance company.

8) One more point was argued by the learned counsel for the insurance company. He produced copy of

decision given by this Court in First Appeal No.1678 of 2007. This was appeal decided by this Court by order dated 18-6-2008 and the appeal was filed by the parents of the deceased against the decision of the Claims Tribunal appointed under the Motor Vehicles Act, 1988 by which their claim was rejected. The claim was rejected only due to the reason that negligence of the driver of the bus was not proved. It appears that one circumstance was argued before the Tribunal that the deceased had committed theft and had taken away and used the jeep for commission of a crime. This circumstance is not held to be proved and that can be seen from the judgment delivered by this Court. This decision cannot affect the present matter which is filed by the widow of the deceased. On the date of the accident claimant was the wife of the deceased. It appears that she married subsequently, second time but as the rights were vested rights she is entitled to get the compensation. Thus it is not possible to interfere in the decision on any point.

9) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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