

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

FIRST APPEAL NO. 435 OF 2012

1. Satva s/o. Kondiba Dongare,
Age 67 years, Occu. Labour,
R/o. Chardari, Tq. Dharur,
Dist. Beed.
2. Jigabai w/o. Satva Dongare,
Age 62 years, Occu. Household,
R/o. As above.
3. Vanita w/o. Vishnu Dongare,
Age 37 years, Occu. Labour,
R/o. As above.
4. Shailash s/o. Vishnu Dongare,
Age 5 years, Occu. Nil,
R/o. As above.
5. Sonali d/o. Vishnu Dongare,
Age 13 years, Occu. Nil,
R/o. As above.
6. Rupali d/o. Vishnu Dongare,
Age 11 years, Occu. Nil,
R/o. As above.
7. Pratiksha d/o. Vishnu Dongare,
Age 9 years, Occu. Nil,
R/o. As above.
8. Payal d/o. Vishnu Dongare,
Age 7 years, Occu. Nil,
R/o. As above.

(Applicants No. 4 to 8 are minor
U/g. of applicant No. 1)

**....Appellant.
(Ori. Claimant)**

Versus

1. Sanjay s/o. Keshavrao Andhale,
Age Major, Occu. Business & Agri,
R/o. Wadvani, Taluka Wadvani,
District Beed.
2. Keshavrao s/o. Yadhavrao Andhale,
Age Major, Occu. Business & Agri,
R/o. As above.
3. The New India Insurance Co. Ltd.,
Through its Branch Manager, Beed,
Asiana Building, Jalna Road, Beed.**Respondents.**
(Ori. Respondents)

Mr. S.G. Jadhavar, Advocate for appellants.

Mr. K.D. Khade, Advocate for respondent Nos. 1 and 2.

Mr. Mukul Kulkarni, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE, J.
DATED : 11th February, 2016.

JUDGMENT :

1) The appeal is filed to challenge the judgment and award of W.M.C. No. 1/2009, which was pending before the Commissioner, appointed under Workmen's Compensation Act, Beed. The claim filed in respect of death of Vishnu Dongare by his parents, widow and minor issues is dismissed by the Commissioner by holding that the relationship between the deceased and the original owner of the vehicle, of employee employer is not proved. Both the sides are heard.

2) It appears that by order dated 15.7.2013, this Court had expressed that matter will be heard finally at admission stage and then in order dated 15.7.2013, the appeal was admitted on following substantial question of law.

"Whether learned Commissioner has committed patent error in appreciating whole of the evidence on record and that he came to the conclusion that the deceased was not employee within the provisions of Workmen Compensation Act ?"

3) In the claim filed by the legal heirs of deceased, they have specifically contended that the deceased was in service of respondent Nos. 1 and 2 as driver and he was driving their truck bearing No. MH-26/7612. They had contended that respondent No. 1 - Sanjay is the registered owner of the vehicle when respondent No. 2- Keshavrao is the registered owner of the vehicle. Respondent No. 1 - Sanjay is son of respondent No. 2.

4) It is the case of claimants that age of the deceased was 40 years and he was getting Rs. 5,000/- as a salary from respondent Nos. 1 and 2. It is their case that the vehicle was insured with respondent No. 3 at the relevant time and so, all the respondents are liable to pay the compensation. They had

claimed compensation of Rs. 4.5 lakh.

5) The Insurance Company filed written statement to contest the matter. It contended that respondent Nos. 1 and 2 had not informed anything about the accident to it and there is possibility that the claim filed by legal heirs of deceased was in collusion with respondent Nos. 1 and 2. Alternate defence was taken that deceased was not holding valid and effective driving licence to drive such vehicle.

6) Respondent Nos. 1 and 2 filed joint written statement and denied everything. Alternatively, they contended that the vehicle was insured with respondent No. 3 and Insurance Company is bound to indemnify them.

7) Father of deceased gave evidence, which is in accordance with the aforesaid contentions. His evidence shows that at the relevant time, sugarcane was loaded in the truck and as the truck went in to a ditch, it turned turtle and the deceased virtually came under the truck and died in the accident. He has denied that the deceased was not holding the licence to drive the truck. Similar evidence is given by the widow of the deceased. Copy of driving licence of the deceased is produced

on the record on which date of birth is mentioned as 1.6.1968. The licence was obtained for transport vehicle in 1989 and it shows that it was valid on the date of accident i.e. on 3.3.2008.

8) Police papers like crime detail form, inquest panchanama show that the deceased was on driver's seat at the relevant time and the truck turned turtle as it went in to the ditch. P.M. report shows that Vishnu died due to injuries sustained in the accident. Report about the accident was given by cleaner of the truck and he had specifically informed that the deceased was working as a driver on this truck. This cleaner is examined by the claimants and his evidence shows that deceased was working as a driver with respondent Nos. 1 and 2.

9) Respondent No. 1 - Sanjay has denied in his evidence that the deceased was employed with him. His father, respondent No. 2 was Member of Legislative Assembly (M.L.A.). His evidence shows that he tried to deny even the employment of the deceased as a driver by them.

10) Copy of certificate of insurance is produced on the record and it shows that truck was insured by respondent No. 2 - Keshavrao with respondent No. 3 for the period starting from

3.4.2007 to 2.4.2008. The accident took place on 3.3.2008.

11) When there is evidence of aforesaid nature, which is not rebutted, the Commissioner held that there was no evidence to prove that the deceased was employee of registered owner. It is clear that the Commissioner has not considered the aforesaid material, which is more than sufficient to establish that the deceased was working as a driver with the insured. Copy of driving licence was also on record. In view of these circumstances, the Commissioner ought to have awarded the compensation as provided under the Workmen's Compensation Act. Considering the age of the deceased and the salary, which was around Rs. 4,000/- per month, the compensation comes to Rs. 3.68 lakh. In view of the date of accident, interest at the rate of 12% p.a. needs to be given from the date of accident. In the result following order is made.

ORDER

(I) Appeal is allowed. Judgment and Award of the Commissioner appointed under the Workmen's Compensation Act is hereby set aside. The claim of the original claimants, appellants is allowed. Respondent Nos. 2 and 3 do jointly and severally deposit the amount of Rs. 3,68,000/- (Rupees three lakh sixty eight thousand) as amount of compensation with

interest at the rate of 12% p.a. The interest will be payable from the date of accident till the date of realisation. Award is to be prepared accordingly.

[T.V. NALAWADE, J.]

SSC/