

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

FIRST APPEAL NO. 2753 OF 2013
WITH
CIVIL APPLICATION NO. 15939 OF 2015

Bajaj Allianz General Insurance Co. Ltd.
Through it's Branch Manager,
2nd Floor, Adalat Road, Aurangabad.

....Appellant.

(Ori. Respondent No. 2)

Versus

1. Rekha wd/o. Maruti Oval,
Age 27 years, Occu. Household,
R/o. Uplai, Taluka Kallam,
District Osmanabad.

2. Divyashi d/o. Maruti Oval,
Age 9 years, Occu. Education,

3. Monika d/o. Maruti Oval,
Age 7 years, Occu. Education,

(Respondent Nos. 2 & 3 are minors,
U/g. of their real mother respondent
No. 1)

4. Tolabai w/o. Pandit @ Pandu Oval,
Age 49 years, Occu. Household,
R/o. As above.

5. Machindra R. Chaudhari,
Age Major, Occu. Business,
R/o. 27/D1/15, Radha Nagar,
Varve Road, Kalyan, District Thanke.

....Respondents.

(Resp. 1 to 4 - Ori. Claimants
& Resp. 5 - Ori. Resp. 1)

Mr. S.G. Chapalgaonkar, Advocate for appellant.

Mr. Amit Mukhedkar, Advocate for respondent Nos. 1 to 4.

CORAM : T.V. NALAWADE, J.

DATED : 22nd February, 2016.

ORDER :

1) The appeal is filed by the Insurance Company against the judgment and award of claim filed before the Commissioner, Osmanabad appointed under the Workmen's Compensation Act and bearing No. 16/2012. Both the sides are heard.

2) The accident took place on 1.11.2011 within local jurisdiction of Balapur Police Station, District Akola. It is contended that deceased Maruti Pandit Oval was working as a driver with respondent No. 1 - Shri. Choudhary on his four wheeler bearing No. MH-05/AX-9727. This vehicle was insured with original respondent No. 2, Insurance Company. The claim was filed by widow, minor issues and mother of the deceased.

3) It is the case of claimants that on the day of accident as employee of respondent No. 1, the deceased was driving the aforesaid vehicle and the vehicle turned turtle. Maruti died in the accident.

4) It is the case of claimants that deceased was getting monthly salary of Rs. 8000/- and he was getting daily Bhatta of

Rs. 100/- from respondent No. 1. They had claimed compensation of Rs. 10,00,000/-. Penalty was also claimed against the employer by the claimants.

5) The Insurance Company filed written statement and contested the matter. The Insurance Company contended that there is collusion between claimants and respondent No. 1. The Insurance Company, however, admitted that the aforesaid vehicle was insured by respondent No. 1 with it. The Insurance Company contended that the vehicle was probably given on hire basis by respondent No. 1 on that day and the persons, who were travelling in the vehicle, were not the members of the family of respondent No. 1. It is contended that the vehicle was to be used as a private car, but by carrying passengers, there is breach committed of the terms and conditions of policy. Another contention was made that there was no relationship of employee and employer between the deceased and respondent No. 1.

6) For admission of the appeal, substantial question of law needs to be formulated. The learned counsel for Insurance Company submitted that there was no sufficient material before the Commissioner for proving the relationship of employee and employer between the deceased and respondent No. 1 and on

that point, substantial question of law needs to be formulated.

7) To prove the claim, the widow has given evidence and her evidence is as per the aforesaid contentions. The learned counsel for Insurance Company argued much on the basis of one admission given during cross examination by this lady that the vehicle was taken on hire basis by some persons from respondent No. 1 and those persons were travelling in the vehicle. Not much can be made from this isolated admission and evidence as a whole of the widow needs to be considered. She has no personal knowledge regarding the accident and also the persons, who were travelling in the vehicle. She has given evidence in examination-in-chief that as employee of respondent No. 1, the deceased was taking the friends of respondent No. 1 in the vehicle at the relevant time. One employee of the Insurance Company has given evidence and he has stated on the basis of police papers that the vehicle was given on hire basis by respondent No. 1. However, there is no specific denial that deceased was not working as a driver on the vehicle of respondent No. 1.

8) It appears that the Commissioner has given Exh. 40, to a copy of police statement of one Smt. Vaishali. Smt. Vaishali

is a person, who was travelling in the vehicle at the relevant time, but she is not examined by the Insurance Company, there is no substantive evidence of this lady on the record. The police papers do not show that the crime was registered for carrying fare paying passengers in a private car. In view of these circumstances, this Court holds that the Commissioner has not committed any error in holding that the deceased was employee of respondent No. 1. No convincing evidence is there to prove breach of terms and conditions of policy.

9) The evidence is given by widow of the deceased that deceased was earning Rs. 8000/- per month as wages and he was getting daily allowance also. The accident took place after coming into force of the amendment to the table given in Workmen's Compensation Act and due to that, such income of the deceased can be considered for calculation of the compensation. The Commissioner has calculated the compensation as per the provisions of Workmen's Compensation Act. Thus, it is not possible to interfere in the decision of Commissioner on the point of quantum of compensation also.

10) The learned counsel for Insurance Company placed reliance on the case reported as **AIR 2006 SUPREME COURT**

577 [National Insurance Co. Ltd. Vs. Mastan and Anr.] and he submitted that the Insurance Company can raise the defences which are available to the insurer even in a matter filed under the Workmen's Compensation Act. There is no dispute over this proposition. The defence of the Insurance Company is considered by this Court.

11) In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/