

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

4 FIRST APPEAL NO. 311 OF 2017

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED
VERSUS
SAKUBAI PRABHAKAR BADGUJAR AND OTHERS

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Advocate for Appellant : Mr. S. G. Chapalgaonkar.
Advocate for Respondent Nos.1 to 4 : Mr. Madhav M. Bhokarikar.
Advocate for Respondent No.5 : Mr. Surendra V. Suryawanshi.
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CORAM : **V. K. JADHAV, J.**
DATE : 11th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the Commissioner for Employee's Compensation, Jalgaon dated 29th June, 2016 in ECA No.26 of 2013, original Respondent No.2 has preferred this appeal.

3 Brief facts giving rise to the present appeal are as follows:

- a) Deceased Prabhakar Hari Badgujar was working as a driver with original Opponent No.1 on his tractor bearing registration No.MH-19/P4826. The said tractor alongwith trolley was used for agriculture purpose. Deceased Prabhakar was getting the

salary of Rs.8,000/- per month. On 19th April, 2013, as per the instructions of original Opponent No.1, deceased Prabhakar had taken the tractor and trolley for bringing the road metal (Khadi) for being used in the field. He was filling the road metal (Khadi) in the trolley and suddenly the stopper fixed to the tyres of the tractor got dislocated and the tractor dashed to deceased Prabhakar. In consequence of which, deceased Prabhakar sustained grievous injuries. He was immediately shifted to Niramay Hospital, Pachora and thereafter, to a hospital at Jalgaon. However, deceased Prabhakar succumbed to the injuries while under treatment.

- b) Thus, the Claimants / dependents of deceased Prabhakar approached the Commissioner for Employee's Compensation by filing ECA No.26 of 2013 for grant of compensation.
- c) Original Opponent No.1 / employer has strongly resisted the claim application by filing written statement. He has denied all the averments made

in the claim application. Original Opponent No.1 has denied the employer-employee relationship and also contended that deceased Prabhakar never worked as a driver on his tractor. It has also been contended that on 19th April, 2013, deceased Prabhakar had not taken the tractor and trolley for bringing the road metal (Khadi) and sustained the injuries in the said accident. He had denied the happening of the accident.

- d) The Appellant / Insurer has also strongly resisted the application by filing the written statement. It has been contended that there is no employer-employee relationship between Opponent No.1 and deceased Prabhakar. It has been contended that at one place, the Claimants are claiming that deceased Prabhakar was working as a driver with Opponent No.1 and another place, the Respondents / Claimants claiming that deceased Prabhakar was working as a labour. It has also been contended that deceased Prabhakar was not holding valid and effective driving licence at the time

of accident and therefore, there has been a breach of terms and conditions of the insurance policy. Thus, the Appellant / Insurer is not liable to pay the compensation.

- e) The Respondents / Claimants have adduced oral and documentary evidence in support of their contentions. The Appellant / Insurer has examined two witnesses and also produced on record extract of the driving licence Exhibit C-22, insurance policy Exhibit C-26 and statement of one Appa Daga Thakare recorded by police at Exhibit C-27. The learned Commissioner vide its impugned judgment and award partly allowed the application thereby directed the Respondents to pay jointly and severally an amount of Rs.5,00,102/- to the Applicants alongwith interest at the rate of 12% per annum from the date of accident till realization of the entire amount. Hence, this appeal.

4 The learned counsel for Appellant / Insurer submits that there is no employer-employee relationship between original Opponent

No.1 and deceased Prabhakar. Opponent No.1 has also denied the said relationship. The learned counsel submits that the Claimants have also taken a contrary stand to the effect that deceased Prabhakar was working as a driver and in the oral evidence stated that deceased Prabhakar was working as a labour with Opponent No.1. The learned counsel submits that during the course of investigation, the Investigating Officer has recorded the statement of Appa Daga Thakare at Exhibit C-27 wherein he has stated before the police that deceased Prabhakar was filling the stones in the trolley for taking the said stones to his agricultural land. The learned counsel submits that on the basis of the statement of said Appa Daga Thakare, it can be safely inferred that deceased Prabhakar was not working as a driver with Opponent No.1 or that the accident had not taken place out of and during the course of his alleged employment. The learned counsel submits that the Appellant / Insurer has examined an officer of the company and also an officer of RTO. It is clear that deceased Prabhakar was having valid and effective driving licence to drive light motor vehicles and since the trolley was attached to the tractor, he was not having the valid and effective driving licence to drive the said tractor at the time of alleged accident. The learned counsel submits that, thus the Appellant / Insurer is not liable to pay any compensation.

5 The learned counsel for Respondents / original Claimants submits that the learned Commissioner after appreciation of the evidence has recorded the findings on facts that deceased Prabhakar met with an accident and died arising out of and during the course of his employment with Opponent No.1. The learned counsel submits that there is no perversity in the findings and as such, no substantial question of law involved in the present appeal and as such, in terms of the provisions of Section 30 of the Employee's Compensation Act, this appeal is liable to be dismissed on this ground alone. The learned counsel submits that the Respondents / Claimants have examined said witness Appa Daga Thakare Exhibit 26. He has deposed before the Commissioner that deceased Prabhakar was working as a driver with Opponent No.1 on his tractor on monthly salary of Rs.8,000/-. So far as the police statement Exhibit C-27 is concerned, the said portion of his police statement is not confronted with him during the course of his cross-examination. He has further denied in the cross-examination that deceased Prabhakar was filling the said tractor with stones for the purpose of taking the said stones to his agricultural land. The learned Commissioner has therefore, rightly ignored the said part of the police statement and observed that the said part of the statement is not sufficient to draw inference that deceased Prabhakar was working for

himself. The learned Commissioner has also observed that there is no explanation tendered by original Opponent No.1 as to how deceased Prabhakar had taken the tractor and trolley on that day for filling the stones near the stone crusher. The learned counsel submits that so far as the question of holding the valid and effective driving licence at the time of said accident is concerned, admittedly deceased Prabhakar was not driving the tractor at the time of accident and he stood behind the tractor and at that time suddenly the stopper fixed to the tyres of the tractor got dislocated. The learned counsel submits that the issue of possessing the driving licence at the time of accident does not involve in this case and the Commissioner has therefore, rightly awarded the compensation in accordance with law. No substantial question of law involved in the appeal and the appeal is thus, liable to be dismissed.

6 On perusal of the pleadings, evidence and the impugned judgment and award passed by the Commissioner, I do not find any substantial question of law involved in the matter as contemplated under Section 30 of the Employee's Compensation Act. The Respondent / owner though denied the employer-employee relationship in the written statement, failed to examine himself before the Commissioner. The Respondent / owner has failed to tender any

explanation as to how deceased Prabhakar had taken that tractor alongwith trolley to the crusher on the day of accident. The Appellant / Insurer has placed reliance on the statement of one witness Appa Daga Thakare recorded during the course of investigation by the concerned Investigating Officer. However, the Respondents / Claimants have examined said Appa Daga Thakare before the Commissioner, who has deposed that deceased Prabhakar was working as a driver on the tractor owned by Respondent / owner on monthly salary of Rs.8,000/- and on the day of accident, deceased Prabhakar had been to crusher for collecting the stones as directed to him by his employer. The learned Commissioner has rightly considered the substantial oral evidence of said witness Appa Daga Thakare instead of considering the admissions given in the police statement. Even the said portion of his statement was not confronted with the said witness Appa Daga Thakare during the course of his cross-examination before the Commissioner. He would have offered some explanation to the said admissions in the police statement. However, in absence of the said confrontation of the part of the police statement, his substantial statement on oath before the Court requires consideration. On the basis of the oral as well as documentary evidence on record, the learned Commissioner has recorded the

finding of facts. I do not find any perversity in the said finding and as such, no substantial question of law involve in the matter.

7 So far as the defence of driving licence as raised by the Appellant / Insurer is concerned, deceased Prabhakar was filling the road metal (Khadi) in the trolley and suddenly the stopper fixed to the tyres of the tractor got dislocated. The learned counsel for Appellant / Insurer vehemently submitted that even for applying the stopper below the tyres requires a driving skill and therefore, the Appellant / Insurer is not liable to pay the compensation as there has been a specified breach of the conditions of the policy. It is purely an accident for which hardly the question of possessing valid driving licence involves. I do not find any substance in the defence that deceased Prabhakar was not having valid and effective driving licence at the time of accident.

8 The learned counsel for Appellant has not made any submission so far as the quantum of compensation is concerned. In view of the above discussions, I do not find any substantial question of law involves in the appeal. There is no merit in the appeal. The appeal is thus, liable to be dismissed. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed with costs.
- II. The Respondents/ Claimants are permitted to withdraw the compensation deposited before the Commissioner.
- III. The appeal is accordingly disposed of.
- IV. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

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