

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1578 OF 2016
WITH
CIVIL APPLICATION NO.847 OF 2017**

The New India Assurance Co.Ltd. ... Appellants
Versus
Mr.Lahanya Govind Wagh and ors. .. Respondents

.....

MS.Poonam Mittal for Appellants
Mr.S.S.Kothiya i/b Ramesh Chavanke for Respondent Nos.1 and 2.

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**CORAM : S.C.GUPTE, J.
DATE : 20 APRIL 2017**

P.C. :

1. Heard learned counsel for the parties.
2. The first appeal challenges an order dated 29 January 2014, passed by the Commissioner for Workmen Compensation and Judge, 3rd Labour Court at Thane, in an application made to him under the Workmen's Compensation Act.
3. It is the Applicants' case that the concerned workman was a labourer working with Opponent No.1. Opponent No.2 is a loading and unloading contractor. The deceased workman, after loading bricks in the truck at Khandbar village, was returning by the truck, when the truck met with an accident. He sustained severe injuries and was immediately rushed to Sanjivani hospital at Virar and from there shifted to Bhagwati hospital, Borivali. He succumbed to the injuries before he was admitted in the latter hospital. On these facts, the Applicants, who are legal heirs of

the deceased workman, made an application to the Commissioner under Workmen's Compensation Act. The Appellant/Insurer, who was Opponent No.3 in the original application, disputed the relationship of employer-employee as between the deceased and Opponent No.1 or Opponent No.2.

4. On the basis of the pleadings of the parties and material placed before the Court, the Commissioner came to the conclusion that there was material to show that the deceased was working as a labourer on truck No.MH-04-P-4322. The truck was owned by Opponent No.1, whereas, Opponent No.2, who was a loading and unloading contractor, had engaged the deceased to work on the truck. The deceased's own statement recorded by the police, which was consistent with the First Information Report filed in respect of the incident, is not a matter of serious dispute. The deceased was on the truck when the incident occurred. Besides this, oral testimony of Applicant No.1, who testified to the engagement of the deceased on the Opponents' truck, also supported the relationship of employer-employee.

5. Learned Counsel for the Appellant took me through the discussion of the cross-examination of Applicant No.1 in the impugned order. She particularly relied on the admissions of the Applicant noted by the trial court that there was no documentary proof to show that the deceased was in the employment of Opponent No.1 or that Opponent No.2 was operating the truck owned by Opponent No.1. In the case of labour employed on daily wages, there is hardly any likelihood of there being any documentary record of such engagement. The material before the Court, which included the testimony of the Applicants together with the deceased's own statement recorded by the police, which was consistent with the First Information

Report lodged by the deceased, was adequate. Coupled with the fact that there was no contrary material produced by the Appellant, this material can very well be made the basis for an order of compensation.

6. In the premises, the impugned order passed by the commissioner, *inter-alia* holding the deceased to be a workman and servant of the opponent, does not suffer from any error of law or of appreciation of evidence.

7. In the premises, there is no merit in the first appeal. The same is dismissed. No order as to costs.

8. In view of the dismissal of the first appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)