

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO. 24439 OF 2012
WITH
CIVIL APPLICATION NO. 3398 OF 2012

Oriental Insurance Co. Ltd. ..Appellant
vs.
Smt. Sangita Raosaheb Narale & Ors. ..Respondents

Mr. D. S. Joshi for Appellant.
Mr. B. A. Lawate for Respondent Nos. 1 to 5.

CORAM : M. S. SONAK, J.
DATE: 06 FEBRUARY 2017

P.C :

1] This appeal is directed against the order dated 22 March 2012 / 26 March 2012 made by the Employees Compensation Commissioner, under the provisions of section 22 of the Employees Compensation Act, 1923 (said Act) awarding the respondents compensation at Rs.3,98,800/- with interest at the rate of 8% per annum from the date of the accident until realization of the amount in full. The impugned order also directs the original opponent nos. 1 and 2, who were the employees of Raosaheb Hariba Narale, whose death led to the institution of the claim by his dependents, to pay penalty of Rs.1,99,400/-.

2] As against the order for payment of penalty, the original opponent nos. 1 and 2 have not appealed and therefore there is no

necessity to decide as to whether the award was correct or not.

3] The appellant, was the original opponent no. 3 in the proceedings before the Commissioner, since, the original opponent nos. 1 and 2 had taken out an insurance policy.

4] There is no dispute in this case that the deceased Narale was appointed as a driver by original opponent nos. 1 and 2. There is also no dispute that deceased Narale expired in the truck whilst on duty. The truck was parked at the time of demise of Mr. Narale and there is material on record that Narale was guarding / protecting the parked truck when he died of a heart attack in the truck itself. The opponent nos. 1 and 2 did not appear before the Commissioner. Appellant – opponent no. 3 defended the proceedings but no witness was examined on their behalf.

5] Mr. Joshi, learned counsel for the appellant submits that the appeal raises substantial questions of law, since, it is the case of the appellant that the demise of Narale was not as a result of any 'accident'. In any case, Mr. Joshi submits that the so-called accident cannot be said to be one arising out of the employment of Narale with his employers. Finally, Mr. Joshi submits that there is material on record that Narale was addicted to alcohol and his demise was a result of over consumption of alcohol on the fateful

day. For these reasons, Mr. Joshi submitted that the appeal may be admitted since, it raises substantial questions of law.

6] From the material on record, it is quite clear that Narale died whilst on duty on account of heart attack. There is material on record that Narale was required to protect truck which was parked on account of breakdown for virtually 5-6 days at a stretch. Naturally, this must have induced severe stress, as a result of which, Narale suffered a heart attack and expired. These are findings recorded by the Commissioner on the basis of material on record. There is no perversity in the record of such findings. In fact such findings are quite consistent with the material on record. The term '*accident*' has to be liberally construed. In this sense, it means some untoward incident not expected or designed. Thus, construed, it is quite clear that Narale died as a result of the accident. Further, such accident, in the facts and circumstances of this case, clearly arose out of and in the course of his employment. There is accordingly, no merit in the two submissions raised by Mr. Joshi.

7] In so far as the third submission is concerned, once again, there is no evidence laid by either the appellant or the original opponent nos. 1 and 2. On the basis that the opponent no. 2, in his FIR had stated that Narale was addicted to alcohol, it cannot be concluded that his demise was related to over consumption of

alcohol. In fact, the Commissioner, has rightly refused to take into account the statement in the FIR which is even otherwise not any substantive piece of evidence. The Commissioner, was justified in the facts and circumstances of the present case to rely upon post mortem report or the inquest panchnama, both of which ruled out the possibility of demise of Narale on account of consumption or over consumption of alcohol. In the aforesaid circumstances, it cannot be said that the appeal raises any question of law, much less, any substantial question of law. There is accordingly, no need to admit this appeal. This appeal is therefore dismissed without any order as to costs.

8] The amount deposited by appellant before the Commissioner can be withdrawn by the respondent nos. 1 to 5 unconditionally.

9] In view of dismissal of appeal, civil application does not survive and is disposed of accordingly.

(M. S. SONAK, J.)