

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 FIRST APPEAL NO. 4224 OF 2017

- . Bharti AxA General Insurance
 Company Ltd.,
 Through its Manager,
 R/o.Bharti Axa General
 Insurance Company Ltd.,
 Dhole Patil Road, Pune.
- ..Appellant
(Ori.Resp.No.2)

VERSUS

- 1) Sushila W/o. Santosh Rathod
 Age: 26 yrs., Occu.: HH
 - 2) Sunil s/o Santosh Rathod
 Age: 15 years, Occu.: Education
 - 3) Anil s/o Santosh Rathod
 Age: 14 years, Occu.: Education
 - 4) Nikita d/o Santosh Rathod
 Age: 11 years, Occu.: Education
 - 5) Mangilal s/o Sawai Rathod
 Age: 61 years, Occu.: Nil
 - 6) Sau.Sagunabai w/o Mangilal Rathod
 Age: 55 years, Occu.: HH,
 R/o No.1 to 5, all resident of
 Handi (Wazar) Tq.Jintur,
 Dist.Parbhani.
- ..Respondents
Nos.1 to 6
(Ori. Petitioners)

- 7) Shyam S.o Baliram Chavan
Age: Major, Occu.: Business,
Resident of Handi (Wazar), Tq.Jintur,
Dist.Parbhani. ..Respondents
(Ori. Respondent No.1)

...

Advocate for Appellant : Mr.Dahat Rohit H. and
Mr.Patil S.S.
Advocate for Respondent Nos.1 to 6: Mr.Kulkarni A.S.

...

CORAM : M.S.SONAK, J.
DATE : 2nd FEBRUARY, 2018

ORAL JUDGMENT:-

1) Heard Mr.S.S.Patil learned counsel for the appellant and Mr.Ashutosh S.Kulkarni learned counsel for the respondent Nos.1 to 6.

2) Mr.S.S.Patil learned counsel for the appellant submits that this appeal raises substantial question of law as to whether deceased Santosh was at all a cleaner/employee of the original respondent No.1 employer or whether he was only a gratuitous passenger travelling in Tempo owned by the respondent No.1 and insured by the appellant. He submits that the respondent No.1, in the

course of deposition has clearly admitted that there are no documents to establish any employer-employee relationship between himself and deceased Santosh. He submits that in the absence any employer-employee relationship, the claim under the Employees' Compensation Act, 1923, was not maintainable. He submits that since such substantial question of law as to whether there exists any employer-employee relationship between respondent No.1 and deceased Santosh arises in this appeal, this Appeal is required to be admitted and interim reliefs be granted.

3) In this case, the original respondent No.1 employer, has infact specifically admitted that there existed employer-employee relationship between himself and deceased Santosh. Merely because the respondent No.1 in the course of his evidence has stated that there was no documentary evidence to that effect, that by itself does not mean that such relationship did not exist. Since, in

this case, the respondent No.1, the employer has himself admitted that deceased Santosh was his employee/Cleaner and since there is no dispute that the accident has taken place when the Tempo in which deceased Santosh was travelling, this appeal raises no substantial question of law. Infact, the proposition advanced by the learned counsel for the appellant, do not relate to law, but relate to factual aspect related to employer-employee relationship.

4) Taking into consideration the provisions of Section 30 the Employees' Compensation Act, 1923, no appeal can be admitted unless it involves a substantial question of law. Since, this appeal involves no question of law much-less any substantial question of law, the same cannot be entertained.

5) Accordingly, this appeal is dismissed.

6) There shall be no order as to costs.

7) Now, when this appeal is dismissed, the respondents/claimants shall be entitled to withdraw the amount deposited by the appellant before the Commissioner unconditionally.

[M.S.SONAK, J.]