

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**FIRST APPEAL NO.1475 OF 2018
WITH
CIVIL APPLICATION NO.11689/2019
IN FA/1475/2018**

The New India Assurance Company Ltd.,
D.O. No.1 Adalat Road, Aurangabad,
Through Its Authorised Signatory,
Aurangabad.

...Appellant
(Orig.Resp.2)

VERSUS

- 1) Zarinabegum Abdul Haq Momin,
Age 52 years, Occupation Household,
R/o Deoni Tq. Deoni Dist. Latur.
- 2) Abdul Haq Razzak Momin,
Age 65 years, Occupation Nil,
R/o Deoni Tq. Deoni Dist. Latur.
- 3) Mahmudi Abdul Haq Momin,
Age 22 years, Occupation Education,
R/o Deoni Tq. Deoni Dist. Latur.
- 4) Hasina Abdul Haq Momin,
Age 21 years, Occupation Education,
R/o Deoni Tq. Deoni Dist. Latur.
- 5) Nagma Abdul Haq Momin,
Age 17 years, Occupation Education,
R/o Deoni Tq. Deoni Dist. Latur. (Ori.Claimants)
- 6) Prakash Narsingh Rao Darnole,
Age Major, Occupation Business,
R/o Deoni Tq. Deoni Dist. Latur. **...Respondents**

....
Mr. M. M. Ambhore, Advocate for appellant.
Mr. Fayaz K. Patel, Advocate for Respondents No.1 to 5.
Mr. Amol G. Vasmatkar, Advocate for Respondent No.6.
....

CORAM : SMT.VIBHA KANKANWADI, J.

Date : 24-09-2019.

ORDER :

1. Present appeal has been filed by the Insurance Company, challenging the Judgment and award passed in WCA No.63 of 2012, by learned Commissioner of Employees Compensation Act and Judge Labour Court, Latur, dated 28-10-2015, thereby the petition filed by present respondents No.1 to 5 came to be allowed.

2. The original claimants had come with a case that, the claimants No.1 and 2 are the parents and claimants No.3 to 5 are the sisters of deceased Anwar-UI-Haq. It was stated that, he was employed as driver on Toyota Quallis bearing No.MH-24/C-3047 owned by respondent No.1. Anwar-UI-Haq was getting salary of Rs.8,000/- per month from respondent No.1. The said vehicle was insured with respondent No.2 for the period between 21-02-2012 to 20-02-2013. It is stated that, respondent No.1 had taken deceased on his car to Hyderabad where respondent No.1 was taking treatment for his eyes in Apollo Hospital. It is stated that, on 05-03-2012 it was noticed by respondent No.1 and deceased that, the vehicle has developed mechanical defect and it needs repair. Respondent No.1 had then asked his driver to call mechanic. Since deceased was not a local person, he was accompanied by another

local person of his acquaintance and on the basis of directions given by the employer, deceased went on the motorcycle of the said person from Hyderabad to search mechanic. However, the said motorcycle dashed to the road divider and deceased sustained multiple injuries. He was admitted to Osmania General Hospital, Hyderabad but expired during treatment. Offence was registered in respect of the said incident. It is stated that, the said accident had taken place during the course of employment with respondent No.1, and therefore, both the respondents are liable to pay compensation.

3. Respondent No.1 filed written statement and admitted that, he is the owner of the said Toyota Quallis car and the vehicle was insured with respondent No.2 on the date of the accident. He also admitted that, deceased was his employee and he used to pay monthly salary of Rs.8,000/-. He also admitted that, the accident had taken place at Hyderabad when deceased was discharging his duty. It is stated that, after he had received the notice from the claimants, he had informed the fact to the Insurance Company with a request to pay the compensation.

4. The Insurance Company by filing written statement denied all the averments in the petition. The employer - employee relationship between the respondent No.1 and the deceased, age, occupation and income of the deceased as well as the manner in which the accident had taken place as narrated in the petition, have been

denied. It is stated that, the provisions of Workmen's Compensation Act were not applicable, and therefore, the petition itself was not maintainable. Statutory defence has also been taken that, the deceased was not holding valid and effective driving licence to drive Quallis car.

5. After the issues were framed, claimants have led evidence in the form of oral as well as documentary. Respondent No.1 has filed documentary evidence as well as examined himself. After hearing both sides, the learned Trial Court has come to the conclusion that, deceased died 'during the course of the employment' and there was relationship of employer-employee. Compensation of Rs.8,39,680/- has been awarded to the claimants to be recovered from the respondents together with interest @ 12 % per annum from the date of the accident till depositing of the entire amount. Further the respondent No.1 has been directed to pay compensation of Rs.4,19,840/- as penalty. The Insurance Company has challenged the part of the award which is against it.

6. Heard learned advocate Mr. M. M. Ambhore, appearing on behalf of appellant, learned advocate Mr. Fayaz K. Patel, appearing on behalf of respondents No.1 to 5, and learned advocate Mr. A. G. Vasmatkar, appearing on behalf of respondent No.6.

7. It has been vehemently submitted on behalf of the appellant that, as per the contention of the claimants, deceased was serving

with respondent No.1, however no documentary evidence to that effect has been filed. It appears from the documents which were before the learned Court that, respondent No.1 had no idea as to where the deceased had gone and with whom on the date of accident. The contents of the First Information Report which was lodged by the brother of the deceased, would show that, deceased went along with another person to meet his friend. Therefore, it cannot be said that the accident had occurred 'during the course of employment'. He relied on the decision in, *Mackinnon Machenzie And Co. (P) Ltd. Versus Ibrahim Mahmmmed Issak*, reported in 1969 (2) *Supreme Court Cases 607*, wherein meaning of, "in the course of employment" and "arising out of employment", have been explained. Further reliance has been placed on the decision in, *Malikarjuna G. Hiremath Versus Branch Manager, The Oriental Insurance Co. Ltd. And Anr.*, reported in (2009) 13 SCC 405, wherein the deceased was driving the vehicle on direction of insured, had gone to temple with passengers. He was then sitting on the steps of the pond in the temple. He slipped and fell into the water and died due to drowning. Under that circumstance, it was held that, there was no liability either on the insurer or the insured to pay compensation.

8. Per contra, both the learned advocates for the respondents No.1 to 6 supported the reasons given by the learned Trial Court.

9. It is not in dispute that, Anwar-Ul-Haq expired in motor vehicular accident which was caused due to the hitting of the motorcycle to the divider at Hyderabad. The claimants as well as the respondent No.1 have stated that, deceased was in the employment of respondent No.1. Under such circumstance, when the employer himself is admitting the said fact, the Insurance Company cannot dispute it. When it is an admitted fact, there was no necessity for the claimants to produce any documentary evidence. It is also not in dispute that, deceased had gone along with respondent No.1 to Hyderabad as driver on the vehicle owned by respondent No.1. Insurance Company has not come with a case that there was collusion between claimants and respondent No. 1 and had not led any evidence in this direction. Now the narrow point for the consideration is, as to whether at the time when the accident took place, deceased was 'in the employment', or in other words, the accident had taken place 'arising out of employment'. The facts which were within the knowledge of claimants and they have been stated in the claim petition itself, have been admitted by the respondent No.1. The respondent No.1 admits that, as the car developed mechanical defect, he had asked deceased to fetch a mechanic. Under such circumstance, the Insurance company only on the basis of certified copy of the FIR and in absence of proof to that effect, cannot come with a case that, deceased was proceeding to meet his friend at the relevant time.

10. In his examination in chief, the respondent No.1 has clearly stated that, he had asked deceased to bring mechanic. He has stated that, treatment was given to the deceased on 05-03-2012 but then in cross examination it has come on record that, he has no knowledge as to where deceased and his friend were proceeding on motorcycle on 29-02-2012, that is not the date on which the accident had taken place. Therefore, his said statement that, he had asked deceased to fetch mechanic can be said to have gone unchallenged on record. The person who was driving the motorcycle appears to be one Sangmeswar. Perusal of the police papers would show that, said Sangmeswar was resident of Hyderabad. The Insurance Company has only relied on the certified copy of the First Information Report, but has not adduced any evidence to show that, that Sangmeswar was the friend of deceased or he was the common friend of deceased and his friend, to whom deceased was proceeding to meet. Therefore, when in clear terms, the respondent No.1, who is the owner of the car says that, he had directed deceased to fetch mechanic, it was part of his employment and when the accident had taken place while he was searching mechanic, definitely it will have to be held that, the said accident had taken place "during the course of the employment". Therefore, no fault can be found with the Judgment and award passed by the learned Trial Court. There is no merit in the present appeal, it deserves to be dismissed, accordingly

it is dismissed. The civil application stands disposed of. Respondents No.1 to 5 – original claimants, are entitled to withdraw the amount deposited with learned Trial Court, if they are not withdrawn up till now.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.