IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.3102 OF 2019

1. Sambhaji s/o Rambhau Kolhe,
Age 64 years, Occu. Agril.,
R/o Havargaon, Tq. Kallamb,
District Osmanabad

2. Sunita w/o Sambhaji Kolhe,
Age 56 years, Occu. Agril.,
R/o Havargaon, Tq. Kallamb,
District Osmanabad …APPELLANTS

<u>VERSUS</u>

1. Jyotirling Tours and Travels,
Pro. Subhashs/o Balkrishna
Charengaonkar, Age major,
Occu. Business, R/o Tembhu,
Tal. Karad, District Satara

2. The New India Assurance Co. Ltd.,
Pune, through Branch Manager,
New India Assurance Co. Ltd.,
Shivaji Chowck, Naik Niwas
Osmanabad, Dist. Osmanabad ...RESPONDENTS

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Shri Manoj Shinde, Advocate holding for
Shri S.B. Choudhary, Advocate for appellants
Shri S.M. kulkarni, Advocate for respondent No.1.
Shri M.M. Ambhore, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.
DATED : 31st AUGUST, 2021

J U D G M E N T :

The challenge in this appeal under Section 30 of the Employees Compensation Act, 1923 (EC Act) is to the judgment and order dated 24/6/2013, exonerating the respondent Insurance Company from its liability to pay compensation. Deceased – Prashant was serving as a Driver on the jeep owned by the respondent No.1. The jeep met with an accident on 23/12/2011. It was a case of collision between two vehicles, the jeep and tempo. As a result of the accident, deceased Prashant suffered injuries and succumbed thereto. His parents (appellants herein) filed an application for compensation under the EC Act since the deceased died of the injuries suffered in the course of his employment.

2. The learned Commissioner, considering the monthly income of the deceased at Rs.7500/- (Salary Rs.6000/- + Bhatta Rs.1500/-), awarded compensation amounting to Rs.8,40,000/- with interest @ 7.5% p.a. In addition thereto, the respondent No.1 (owner of the vehicle) has been directed to pay 50% of the amount of compensation as penalty. The learned Commissioner exonerated the respondent Insurance Company of its liability to pay the

compensation since he found the deceased did not have a licence to drive or transport a vehicle. The parents of the deceased have, therefore, been in appeal before this Court.

3. Heard. Perused the impugned judgment and relevant documents relied on. Considered the submissions made by the respective learned Advocates.

4. Admittedly, the accident involving the jeep and the tempo took place on 23/12/2011. Deceased Prashant, driver of the jeep, died as a result of the injuries suffered arising out of and in the course of his employment as a driver. On due investigation, the charge sheet has been filed against the driver of the tempo involved in the accident. Considering the age of the deceased and his monthly income at Rs.7500/- (Rs.6000 + Rs.1500), the Commissioner awarded the compensation. The quantum of compensation is not in issue.

5. Admittedly, the deceased Prashant held a driving licence of the category – LMV (Non Transport). The jeep he was driving at the relevant time was a transport vehicle. The learned Commissioner, therefore, held it to be a case of breach of terms and conditions of the policy of insurance.

6. Learned counsel for the respondent Insurance

Company relied on the following two authorities to submit it to be a case of breach of the conditions of insurance policy :-

(1) National Insurance Co. Ltd. Vs. Challa Bharathamma [AIR (SC) 2004 0 4882 : AIR (SCW) 2004 0 5301]

(2) Amrit Paul Singh & anr. Vs. Tata Aig General Insurance Company Ltd. & ors. [LAWS (P & H) 2016 8 261]

7. In case of Challa Bharathamma (supra), the Hon'ble Supreme Court held :-

> "Section 149(2) reads as follows : "No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :-
>
> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :-
>
> (i) a condition excluding the use of the vehicle – (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or (b) for organized racing and speed testing, or (c) for a purpose not allowed by the permit under which the vehicle is

> used, where the vehicle is a transport vehicle, or (d) without side-car being attached where the vehicle is a motorcycle . . . .”

In the case of Amrit Paul Singh (supra), the Punjab and Haryana High Court held :-

> “No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used.”

8. The Apex Court, in case of **Mukund Dewangan Vs. Oriental Insurance Company Limited [2018 ALL SCR 838]**, has held :-

> “Motor Vehicles Act (1988), Ss.10(2)(d), 10(2)(e), 2(21), 2(47) – Motor Vehicles Rules (1989), R.14 Form 4 – Driving licence – Driver holding license to drive light motor vehicle (LMV) - Such license would suffice to ply a transport vehicle of LMV category – No separate endorsement required in respect of transport vehicle.”

In view of the above, the impugned order, exonerating the respondent Insurance Company of its liability is unsustainable.

9. On the question whether the respondent, owner of the jeep held a permit to ply the transport vehicle is concerned, it is to be stated that, this ground has first time been raised in this appeal. I have, therefore, closely perused the written statement filed by the respondent Insurance Company to find no such ground has been raised therein. Whether the owner of the jeep did hold a valid permit or not is necessarily a question of fact. Unless the same is raised in the written statement and evidence is let in, in support thereof, the same cannot be considered. It is reiterated, for want of pleadings and proof, as regards a valid permit to ply the transport vehicle, the learned counsel for the respondent Insurance Company could not be heard on this point.

10. This appeal was preferred 1676 days after the period of limitation for filing the same was over. This Court, vide order dated 6/9/2019, allowed the application for condonation of delay since a statement was made on behalf of the appellants that they will not claim interest for the delayed period.

11. In view of the above, the appeal succeeds in terms of the following order :-

<u>O R D E R</u>

(i) The appeal is allowed.

(ii) The order dated 24/6/2013, passed by learned Commissioner for Employees' Compensation & C.J.S.D., Osmanabad in WCA No.30/2012, dismissing the petition against the respondent Insurance Company is hereby set aside. The WCA No.30/2012 is allowed, holding the respondent Insurance Company jointly and severally liable to pay the appellants the amount of compensation determined in the very order.

(iii) The appellants shall not be entitled for interest on the amount of compensation for the period of 1676 days.

(R. G. AVACHAT)
JUDGE

fmp/-