

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

**907 FIRST APPEAL NO.2217 OF 2012
WITH CA/6707/2012**

**UNITED INDIA INSURANCE CO. LTD.
VERSUS
JAYASHREE PRAKASH UNDRE AND ORS**

...
Advocate for Appellant : Mr. Chapalgaonkar S.G.
Advocate for Respondents : Mr. A.N. Nagargoje for R/7
...

**CORAM : M.G. SEWLIKAR, J.
DATE : 27.01.2021**

PC.:-

Heard Shri Chapalgaonkar learned counsel for the appellant and Shri Nagargoje learned counsel for the respondent no.7. Respondent nos.1 to 4 and 6 have been served but they have not caused appearance in this appeal. Therefore, appeal proceeded *ex parte* against them.

2. The only question involved in this appeal is whether the deceased-Prakash Undre was the 'Workman' on the date of the accident which occurred on 07.03.2005.

3. Facts leading to this appeal are that the deceased-Prakash Undre was driving tractor no.MH-25-1934 on the date of the accident. The tractor turned turtle, owing to which, the deceased-Prakash Undre died in the

accident. Respondent nos.1 to 6 are the legal heir of the deceased-Prakash Undre. Respondent no.5 died during the pendency of the appeal. His name came to be deleted by order dated 30.11.2012. Respondent no.7 is alleged to be the owner of the tractor involved in the accident.

4. It is alleged by the respondent nos.1 to 6 that on the date of the accident the deceased-Prakash Undre was not the owner of the tractor involved in the accident. He had transferred the vehicle to respondent no.7 prior to the date of the accident. Learned counsel Shri Chapalgaonkar submitted that respondent no.7 filed written statement contending that the tractor was so transferred to respondent no.7.

5. Admitted facts are that the deceased-Prakash Undre was the owner of the tractor and he was driving tractor on the date of the accident. It is not in dispute that the tractor was insured by the appellant-insurance company and on the date of the accident policy was in force. The only point in dispute is whether the deceased-Prakash Undre had transferred the tractor involved in the accident to respondent no.7 before the date of the accident.

6. No document is placed on record to show that any such agreement had taken place. Shri Chapalgaonkar submitted that spot panchanama as well as FIR show the deceased-Prakash Undre to be the owner

of the tractor involved in the accident. Shri Chapalgaonkar submitted that respondent no.1 made an application to the appellant for claiming compensation on the basis of the policy. In the said application, the respondent no.1 had claimed that the deceased-Prakash Undre was the owner of the vehicle. Shri Nagargoje does not dispute this position. Therefore, the position that emerges is that on the date of the accident the deceased-Prakash Undre was the owner. Therefore, owner cannot become a 'Workman' within the scope of Employees' Compensation Act. The learned Commissioner proceeded on the footing that even if the vehicle is transferred the policy goes with the vehicle.

7. The question involved in this appeal is whether the deceased was the owner on the date of the accident or he had transferred the ownership in goods to respondent no.7. No documentary evidence is placed on record to that effect. Rather the evidence placed on record i.e. the application made by the respondent no.1 (Exhibit-46) in the record before the Commissioner shows that respondent no.7 had claimed that the deceased-Prakash Undre was the owner of the vehicle. Therefore, I find substance in the contention of Shri Chapalgaonkar that respondent no.7 is in collusion with respondent no.1. In this view of the matter, deceased-Prakash Undre cannot be said to be the 'Workman' within the meaning of Employees Compensation Act as the

evidence on record indicates that the deceased himself was the owner of the tractor involved in the accident. In this view of the matter, no alternative is there before this Court but to allow this appeal. In view of this, the appeal is allowed. The judgment and order passed by the learned Workmen's Commissioner, Osmanabad dated 21.11.2011 in W.C.A. No.32 of 2005 is set aside. The amount deposited by the insurance company be refunded to it.

8. In view of disposal of appeal, Civil Application for stay also stands disposed of.

[M.G. SEWLIKAR, J.]