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

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 721 OF 2015**

THE NEW INDIA ASSURANCE CO. LTD. ....APPELLANT  
THROUGH MUMBAI REGIONAL OFFICE  
NO. 1

V/s.

SHRI. RAMKUMAR RAMAVADH YADAV .....RESPONDENTS  
AND ORS

Mr. Devendranath S. Joshi for the appellant  
Mr. Amol Ghatne i/b Swati Uday Mehta for Respondents

**CORAM : NITIN W. SAMBRE, J.**

**DATE: AUGUST 25, 2021.**

**P.C.:**

1] In an accident occurred on 2nd June 2013, son of claimants employed in the capacity of cleaner lost his life resulting into to a claim being allowed by commissioner Employees' Compensation Act (Hereinafter referred to as 'the Act' for the sake of brevity)/Labour Court Mumbai vide award dated 24/11/2014.

2] In this appeal preferred by the insurance company, counsel for the appellant would like to to rely on following questions of law:

(a) since the owner of the vehicle i.e. insured has deposed that services of the deceased were never hired by him, whether there exist employer-employee relationship?

(b) Whether a cleaner on a commercial vehicle can be considered as 'workman' to be covered under the policy issued?

(c) whether Tribunal committed an error in appreciating the wages?.

3] So as to substantiate the aforesaid contentions, counsel for the appellant would urge that owner of the vehicle that is employer has entered into the witness box and deposed that services of the deceased were never hired by him. Services of driver were hired on trip-contract basis. It was the driver who has hired services of the deceased in his independent capacity. He would further claim that

since the insured has denied direct relationship of employer-employee, Tribunal has committed an error. Further contentions are, wages as are considered by the Tribunal to the tune of Rs. 6494/- are on higher side. As such wages not identified under the provisions of the Act. According to him, an exaggerated claim of monthly salary of Rs. 8000/- was made by the claimants which by any stretch of imagination can not be justified to be salary of the cleaner.

4] While supporting the contentions learned counsel for the claimant would urge that provisions of the Act very much protects the interest of the deceased employee. He would further claim that the very object of the Statute is required to be kept in mind while determining the award of compensation and sought dismissal of the appeal.

5] Considered rival submissions.

6] With the assistance of respective learned counsel I have

considered the definition of “employer” and “employee” as is described under section 2(e) and 2(dd) of the Act.

2(e) “employer” includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of an [employee] are temporarily lent or let on hire to another person by the person with whom the [employee] has entered into a contract of service or apprenticeship, means such other person while the [employee] is working for him.

2(dd) “employee” means a person, who is-

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989, (24 of 1989) not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other members of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a

motor vehicle.

(d) a person recruited for work abroad by a company and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them]

7] Section 2 (dd)(ii)(c) covers even cleaner on motor vehicle as an employee. In view of above, it has to be inferred that cleaner working on transport vehicle has to be treated as employee.

8] Even if learned counsel appearing for the appellant has claimed

that deceased was not employed as cleaner by the insured, however, this court cannot be oblivious to the fact that employer has employed driver on trip-contract basis. As such he left it to the discretion of such driver to employ such manpower so as to carry out the contract to its logical end. In execution of such contract of trip, if the driver who was admittedly entered into a contract with the insured, has employed deceased in the capacity of cleaner, provisions of aforesaid can be read down to mean that cleaner in such an eventuality has to be considered as employee of principal i.e. insured.

9] In the aforesaid background, the contention that cleaner is not covered under the policy and there is no employer-employee relations, cannot be accepted. There is one more reason for rejecting the aforesaid contention, once the appellant has come out with a case that there is lack of of employer-employee relationship and the cleaner is not covered under the policy issued, the burden shifts on the appellant to prove the same. From the evidence produced on record, it can hardly be inferred that appellant has discharged such burden.

10] This takes me to the last contention of the appellant that income of the deceased was considered in disproportionate to the nature of employment and the duties discharged.

11] It is already proved by the evidence, particularly from the investigation papers that deceased was employed as cleaner. Once it is proved that deceased was employed as cleaner, such employee can be considered from unskilled category. Though claimants have come out with case of salary of Rs. 8000/- per month drawn by the deceased, however, the Tribunal proceeded to consider the salary prescribed to an unskilled worker pursuant to the notification issued under the provisions of the Act. Such notification was produced by the claimant at U-17/7 and accordingly tribunal proceeded to award compensation considering the income of the claimant of Rs. 6494/- per month.

12] Such notification issued under the Act has presumptive value and unless contrary is proved by the appellant thereby

demonstrating that deceased was drawing salary less than aforesaid amount, then only such contentions could have been appreciated.

13] In the aforesaid background, I hardly see involvement of any question of law in the present appeal.

14] Appeal as such fails, stands dismissed.

15] As a consequence of dismissal of appeal of insurance company, claimant shall be entitled to withdraw balance amount of compensation with accrued interest thereon.

**[NITIN W. SAMBRE, J.]**

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