

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 169 OF 2014

Mohammed Ali Abdul Samad
Khan and ors .. Appellants
Versus
Dawood Mohd. Khati and ors .. Respondents

WITH

FIRST APPEAL NO. 246 OF 2015

The New India Assurance Company Ltd .. Appellant
Versus
Mr.Kamlesh Kumar Jaymurti
Vishwakarma and others .. Respondents

...

Mr. Amol Gatne i/b Ms.Swati Mehta for the appellants in First Appeal No.169 of 2014 and for the respondents in First Appeal No.246 of 2015.

Mr.D.R. Mahadik for the appellant in FA No.246/2015 and for respondent in FA No.169/2014.

CORAM: BHARATI DANGRE, J.
RESERVED : 18th NOVEMBER 2021
PRONOUNCED : 10th DECEMBER 2021

JUDGMENT :-

1 The two Appeals involving two claimants are tagged together since they arise out of the same incident, an accident which took place on 20th June 2010 on Western Express

Highway, South Side Road, Near Giri Guest House, Vile Parle West. Two persons who sustained injuries in the said accident and succumbed to it are Shrikant @ Deepak K.K. Vishwakarma (hereinafter referred to as 'Deepak') and Mohd Jaffer @ Sadiq Ali Mohd. Khan (referred to as 'Sadiq'). The vehicle involved in the accident was M.Tempo No. MH-06-G-8248, belonging to Mr.Dawood Mohd Kathi, which was insured with New India Assurance Co. Ltd, Mumbai.

First Appeal No.246 of 2015 is filed by the New India Assurance Co. Ltd, challenging the order passed by the Commissioner for Workmen's Compensation and Judge, 3rd Labour Court, Mumbai on 18/10/2014, in Application (WCA) No. 648/B-122 of 2011, being filed by father and mother of deceased Shrikant @ Deepak K.K. Vishwakarma. Under the said order, the claimants are held entitled for compensation of Rs.4,98,082/- along with interest @ 12% p.a from the date of the accident till its realization, the liability being fastened on the owner of the vehicle in which the deceased was travelling (insured) and the insurance company, the insurer.

2 First Appeal No.169 of 2014 is filed by the claimants/ parents of Sadiq, challenging the order passed by the same by Commissioner of Workmen's Compensation, 4th Labour Court on 30th April 2012 by which the claimants are entitled for compensation of Rs.6,28,485/- with interest @ 12% p.a. from the

date of adjudication till its final realization. The Appeal is filed by the claimants being aggrieved by the order, since the Commissioner has allowed the Application for Compensation only against the employer i.e. Opponent No.1 and has absolved the Insurance Company from its liability.

3 Having referred to the subject matter of the Appeals, I shall now refer to the facts which are common to the causes giving rise to the two Appeals.

4 On 20th June 2010, Sampat Singarve, a Police Head Constable at Worli Police Camp filed an FIR, wherein he stated that at 5.53 a.m, on 20/6/2010, he received a wireless message from the Head Quarters, that on an accident taking place on South Brad bridge, he along with his party, reached the spot which was located on South brad bridge, near Giri Guest House. On the spot, it was noticed that M.Tempo No. MH-06-G-8248 which was carrying crate of milk was stranded and in its cabin which was a pressed condition, two persons were stuck and found in an injured condition. Ahead of the said tempo, one yellow colour dumper MH-04-DV-9790 was stranded with jack being applied to its rear wheel. With the help of his associates, the injured were pulled out and carried to the hospital but were brought dead. During investigation, the name of the driver of the tempo was ascertained, to be Mangaldas Rampat Singh and the owner of the vehicle was found to be one Dawood Mohd Kazi.

The two injured were identified as Deepak and Sadiq. The cause for the accident emerged, as the driver of the vehicle MH-06-G-8248 driving the tempo rashly and it hit the dumper which was standing on the road, which resulted in death of Deepak and Sadiq. The offence was therefore, registered against the driver of the vehicle Mangaldas Singh under Section 279, 304-A of the IPC.

5 During investigation, the spot panchnama and Inquest Panchnama was carried out. The inquest panchnama record that the owner of tempo MH-06-8248 Dawood Mohd, identified the deceased persons with whom he was acquainted. One person was identified as Deepak who had sustained injuries all over his body and on search of pant pockets, cash of Rs.4950/- was found. From his pocket, a red colour challan with the inscription of Maharashtra Rajya Sahakari Dudh Mahasangh Maryadit, Mahanand Dairy, Western Express Highway, Goregaon, Mumbai-65, was recovered. The other person was identified as Sadiq. The dead bodies were forwarded for post mortem and the cause of death was ascertained to be Head injury and other bodily injuries.

Statement of the father of Sadiq was recorded by the Investigating Officer, when he disclosed that his son Jaffer Sadiq who was working as cleaner had proceeded to work along with Mangaldas, and on 20th June 2010, at 7.30 a.m, a person sent by

the owner of the tempo Shri Dawood had visited his place and informed him about the accident. He was also informed that another person by name Deepak has also died in the accident.

6 Two separate claims came to be filed under the Workmen's Compensation Act. On behalf of deceased Sadiq, his parents filed a claim vide WCA No. 631 of 2010 claiming compensation of Rs.6,22,545/- holding the employer and the Insurer to be jointly and severally liable to pay interest on the amount awarded from the date when it becomes due till its payment. Another claim was filed by the parents of deceased Deepak, vide application No.648/B-1BB of 2011, claiming compensation of Rs.5,09,355/- with interest and penalty, against the employer and the insurer of the accidental vehicle with costs.

7 Now, I shall deal with the two appeals in the light of the orders passed by the Commissioner for Workmen's Compensation which are impugned in two distinct Appeals.

FIRST APPEAL NO.169 OF 2014

WCA 631/B-98 was allowed by the judgment dated 30th April 2012 with the following order :-

ORDER

- 1) The application for compensation is allowed only against opponent no.1.

- 2) The application for compensation is dismissed against opponent no.2.
- 3) The opponent no.1 shall be held liable to pay the compensation Rs.6,28,485/- and the interest thereon@ 12% p.a. from the date of adjudication till its final realization.
- 4) Applicant is entitled to receive compensation amount of Rs.6,28465/- and interest thereon as ordered.
- 5) No order as to costs.
- 6) Proceeding closed".

8 The appellant in this Appeal has challenged the said order by limiting the challenge to the orders insofar as it dismissed the Application against the Insurance Company i.e. Opponent No.2 and the liability to pay compensation is fastened only on the employer i.e. opponent no.1.

9 I have heard learned Advocate Mr.Amol Gatne for the appellant and the learned counsel Shri D.R. Mahadik appearing for the Insurance Company. Mr.Gatne would submit that the order discharging the Insurance Company of its liability is erroneous and perverse as it has absolved the Insurance Company of its liability and the reasoning adopted by the learned Commissioner that the employment of the present Appeal, age group of 18 years is an offence and therefore, only the opponent i.e. the employer is liable. The learned counsel would submit that merely because the victim was minor, he do not stand excluded from the definition of 'employee' under Section 2(4)(dd) of the

Act and in fact, the Employees Compensation Act, 1923 do not impose any prohibition to engage services of a minor and in fact, several provisions of the enactment in form of various forms, indicate that even a minor is entitled for compensation, since the minor is entitled for wages as set out in the Act. The situation has been described by Mr.Gatne to be very unfortunate where a minor is engaged by an employer, for which he may be answerable under some different law, but on being engaged if the minor meet with an accident, he is not to be paid any compensation. Since the Act of 1923 do not prescribe any age limit for employment, and keeping in mind the enactment being a special enactment, which provide for payment by certain classes of employer to their employees, a compensation for injury caused by an accident, so as to avoid the hardship either to the employee or his family, the purpose of the enactment is defeated is the submission. It is argued that the learned Commissioner has lost track of the matter and has focused on the prosecution of the offenders i.e. the employer, who had engaged the deceased Sadiq though he was a minor instead of construing the provisions of the employees Compensation Act, 1923, to the benefit of his survivors.

10 The learned counsel would urge that the Insurance is a Contract of Indemnity and the insurer step into the shoes of the insured/employer and therefore, the liability must be equally

fastened upon the Insurance Company in absence of which there is no chance for the appellants getting any compensation which has been awarded by the Commissioner under the Act of 1923 to the claimants on loss of their minor son who was aged 17 years.

11 In contrast, the counsel for the insurance company submit that the Commissioner has taken a just view, considering that the person engaged was a minor and the contract of Insurance Company do not cover a minor, and since the deceased was below 18 years is an admitted fact, the policy of Insurance did not cover him.

12 In the wake of the above, the substantial question of law which arise for consideration in the present Appeal can be formulated as to "Whether the Insurance Company can be absolved of its liability to pay compensation under the Employees Compensation Act, 1923, if the employee who has succumbed to an accident which took place during the course of employment, is a minor".

With the assistance of the parties, I have perused the record and proceedings in the said Appeal.

13 The claim which was filed by the appellants is based on the premise that the deceased Sadiq was aged 18 at the time of the accident and was receiving wages of Rs.5,500/- per month. The compensation of Rs.6,22,545/- was assessed as under :-

3. *The deceased was aged 18 years at the time of accident. The applicants relied on the post mortem report issued by Medical Officer. As such the applicant is entitled for compensation of Rs. 6,22,545/- (Rs. Six Lakh Twenty Two Thousand Five hundred and Forty Five Only) which has been assessed in accordance with the provision of Workmen's Compensation Act.*

50% of the wages i.e. Rs. 2750/-	Rs. 2750/-
(Rs. Two Thousand Seven Hundred and Fifty)	
(Rs. 5,500/- being the upper limit)	
Relevant factor for age 18 is 226.38	
As the workman sustained 100% permanent disability the compensation payable is (Rs. 2750/- x 226.38)	Rs.6,22,545/-
(Rs. Six Lakh Twenty two thousand five hundred and forty five only)	

14 The party no.1 - the employer filed a written statement in the Claim Petition where he admitted the employment of the deceased with him by stating as under :-

- "1 I have received claim application filed by the applicants in the office of the Commissioner for Workmen's Compensation at Mumbai and accordingly, I desire to file my written statement.*
- 2 I further say that the deceased Mohd. Jaffer @ Sadiq Mohd Ali Khan was working with me as a Cleaner, met with an accident on 20/6/2010 while sitting in M.Tempo No. MH-06-G-8248 as a cleaner. He died during the course of my employment. The said vehicle was insured with the New India Assurance Co. Ltd and also cover the accident period i.e. 20/6/2010.*

- 3 *I further say that Mr.Mohd Jaffer was drawing salary of Rs.5,500/- per month.*
- 4 *I further say that I had intimated regarding this accident to the New India Assurance Co.Ltd, Saki Naka, and submitted necessary documents also and there was a valid policy at the time of the accident"*

The employee also issued a certificate as under :-

"This is to certify that deceased Mohd Jaffer @ Sadiq Mohammed Ali Khan was working with me as 'CLEANER' on M.Tempo MH-06-G-8248 and was earning salary of Rs.5,500/- per month."

The report of accident of the workmen as informed by the Insurance Company, along with the statement of wages is also placed on record.

15 The insurer opposed the claim by filing the written statement before the Commissioner/Labour Court and it was disputed that the accident suffered by the deceased arose out of, or in the course of employment with the opposite party. It was denied that there was any nexus between the alleged injury and the alleged accident and since the police papers reveal that age of the deceased was 15 years, it was submitted that the claim was not maintainable under the Workmen's Compensation Act, 1923 and it was prayed that it shall be dismissed. The employment of deceased Sadiq with the opponent no.1 was also denied. The claim of Rs.6,22,545/- by claimants was requested to be rejected.

16 During the course of proceedings, a list of documents was tendered by the applicant which included the following documents :-

- (1) Certified police papers
- (2) Original death certificate
- (3) Original certified post mortem report.
- (4) Original salary certificate given by employer
- (5) Copy of WC Claim form given by employer.
- (6) Copy of insurance policy and premium paid receipt.
- (7) Certified copy of papers of the vehicle.

17 Upon the rival contentions, the Commissioner/ Labour Court framed the following issue :-

- 1) Do applicant prove that deceased died in the accident arising out of and during the course of employment with Opponent No.1?
- 2) Do applicants prove that deceased was aged 18 years and was getting salary of Rs.5,500 p.m at the time of the accident?
- 3) Whether applicant is entitled for the compensation as claimed for?

18 The claimants filed an evidence affidavit in lieu of oral evidence in support of the claim and was cross-examined by the counsel for opponent nos.1 and 2. The documents filed on record were exhibited through the said witness. In support of the claim, the employer/opponent no.1 entered the witness box and admitted the employment of Sadiq with him in the capacity as a cleaner along with the details of his salary and the salary

certificate. He admitted that deceased was working with him since last 3 to 4 months and he had disclosed his age to be 18 years. He denied the suggestion that the age of the boy was 15 years. The insurer examined the investigation of Insurance Company Mr.Pramod Labade who had collected information about the accident. He deposed that he discovered the age of Jaffer Sadiq to be 15 years 6 months and 11 days on the basis of his School Leaving Certificate. The insurer also examined the Administrative Officer of the Insurance Company in Andheri Branch on being confronted with the Insurance policy dated 11th January 2010 in the name of Mr.Dawood Mohd. Kathi - opponent no.1, admitted that in the said policy, two claimants are covered. She assert that the claim was not payable to the claimants since the deceased was minor and the claim was outside the purview of the cover of the policy. She admit that the employer had approached insurance company informing about the accident and had revealed that during accident, the driver and two other boys were travelling in the vehicle. She produced on record the original insurance policy and also gave the bifurcation of the premium as Rs.4,847/- for damages, Rs.5580 as third party, basic premium Rs.100/- for PA owner driver and Rs.50 for legal liability to be paid driver and cleaner Rs.25/- each, Rs.1089/- as service tax and total premium is Rs.1,166/-

19 In cross-examination, the witness admit that "original terms and conditions of contract" of Insurance Policy is not filed in the Court. She admit as under :-

“It is correct to say that as per bifurcation given by me of premium, two persons are covered in the policy. It is correct to say that the policy covers the claim under the Workmen's Compensation Act and other liability to the paid driver and cleaner. It is correct to say that the age of the workmen is not mentioned in the policy but the provisions of Workmen's Compensation Act is binding under the Insurance contract. It is correct to sat that the said policy is a comprehensive policy”.

With the aforesaid evidence brought on record, when the policy which is placed on record is perused, the policy-cum-certificate of insurance is of vehicle no. MH-06-G-8248 with Model -- MM/LOADKING. The type of vehicle is described as "Goods carrying - public carrier". The Schedule of premium in the policy is as under :-

Own damage		Liability	
Basic OD Cover		Basic TP Cover	
		Compulsory PA cover by Owner Driver, LL to persons employed for opn/ and/or maint. and/or loading and/or unloading	
OD Premium in Rs.	4847	TP Premium in Rs.	5730

20 When the policy is carefully perused and read in the light of evidence of witness of the insurer, the schedule of

premium cover the damage to the vehicle under the Basic O.D cover. In the liability clause, it cover the basic third party cover with compulsory Personal Accident cover (PA) for owner driver, legal liability (LL) to persons employed for operation and/or maintenance and/or loading and/or unloading. The OD Premium is paid as Rs.4847/-, whereas third party premium is Rs.5730/- and the bifurcation of the same has been given by witness no.1 for the insurer, who has admitted that as per bifurcation of premium, the two persons are covered in the policy and it also covers the claim under the Workmen's Compensation Act. No condition in the policy, which has been produced before the Commissioner or the terms and conditions of policy prohibit, it being extended to a minor. There is no clause in the insurance policy indicative of the policy being applicable only to a major person. Though the insurer's counsel vehemently opposed the claim on the ground that the policy do not cover a minor, no clause in the policy to that effect is brought to the notice of the Commissioner, but still the Court got swayed away by the fact that the deceased was a minor.

Assuming for a moment that deceased was a minor, the question which ought to have been determined by the Commissioner was whether he could have been kept out of the purview of the Workmen's Compensation Act, 1923, which is a special enactment which provide for compensation from the employer in case of certain contingencies and is a beneficial piece

of legislation which ought to have accorded an interpretation which would achieve the intention of the legislature.

The Employees Compensation Act, 1923 defined "employee" in 2(dd) as a person working in different capacity as specified therein. Pertinent to note that it do not speak of any age, to bring a person within the purview of the definition of "employee". Clause (ff) define 'minor' as a person who has not attained the age of 18 years.

21 Section (3) of the Act provide for the Employee's liability for compensation and it stipulate that if a personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. When the Schedule appended to the said Act is carefully perused along with the forms provided therein, one can find mention of the age and for example in Form A {see Rule 6(1) which is for deposit of compensation for fatal accident} after giving the details of the workman who has died, the clause reads as under :-

"His/her monthly wages are estimated at ₹.....
He/She was over/under the age of 15 years at the
time of his/her death".

Further, the format of the application for compensation by workmen to be preferred to the Commissioner for Workmen's Compensation under the Workmen Compensation Rules, 1924, while setting out various clauses also contain a following clause :

"(3) The monthly wages of the applicant amounts to ₹ The applicant is over/under the age of 15 years.

22 This clearly indicate that the Workmen's Compensation, 1923 do not prohibit payment of compensation to a minor. There is no age limit for a person to be employed as an employee under the Workmen's Compensation Act, though Article of the Constitution of India, employment of child labour before 14 years in any factory or mine or any hazardous employment, there are enactments in the form of Child & Adolescent Labour (Prohibition & Regulation Act), 1986 where engaging services of children below 14, in any hazardous avocation is an offence. However, considering the fact that the Workmen's Compensation is a beneficial piece of legislation and if a person engaged by an employer, as an employee is a minor and his appointment, though is prohibited by any law in existence, meet with an accident and sustain a disability which can be a total or partial disability, the moot question is whether he should be denied the compensation merely on the ground that the employer had engaged him by contravening the law and he shall be kept out of the benefits which would have been otherwise available to him on account of an accident which he has suffered, which occurred in his work place and out of the course of his employment or whether his family can be denied compensation on his death.

The impugned judgment unfortunately takes a harsh stand and refuse to fasten the liability of compensation on the Insurance Company by recording that the deceased was minor and the insurance company is not liable to pay compensation on that count. There is no clause in the insurance policy taken by the employer, which do not permit third party claim if a person is a minor. The insurance policy clearly covered two persons and the liability covered a person employed by the insured for operation and maintenance or loading/unloading which covered a cleaner. The fact that the policy covered two persons is admitted by the insurer and the validity and the cover of the policy is not disputed.

The approach adopted by the learned Commissioner/Labour Court defeat the very spirit and rationale behind the Employees Compensation Act, 1923 and the claimants who are the parents of the deceased, are held entitled to recover compensation only from the employer with very negligible chance of recovering the compensation.

I am unable to approve the approach of the learned Commissioner and I am of the opinion that the Insurance Company cannot be absolved of its liability to pay compensation to the claimants, the dependents of deceased Sadiq. The impugned judgment of the Commissioner therefore, is modified to the limited extent of fixing the liability jointly and severally upon the employer and the Insurance Company. Rest of the

judgment awarding compensation do not warrant any interference and it is upheld as regards the quantum of compensation.

FIRST APPEAL NO. 246 OF 2015

23 The present Appeal is filed by the Insurance Company being aggrieved by the award of compensation to the parents of deceased Deepak, who succumbed to the injuries in the accident, which in detail has been narrated in the earlier paragraphs.

24 The Commissioner/3rd Labour Court allowed the application on 18th October 2014, thereby directing the party nos.1 and 3 i.e. employer and the Insurance Company jointly and severally liable to pay compensation of Rs.4,98,082/- along with interest @ 12 % p.a. from the date of accident till its realization.

25 The learned counsel for the Insurance Company would argue that the learned Commissioner has accepted the evidence of the claimants, the dependents of the deceased without any other independent and cogent evidence and the Commissioner has failed to take into account the police statement given by one of the relative of the deceased, his uncle as also that of his employer, which lead to an irresistible inference that Deepak was not engaged as employee by the employer Dawood

Kathi, and in absence of the relationship between the employer and employee, the provisions of the Workmen's Compensation Act, would disentitle the claimants from claiming any compensation. Even assuming that the relationship is established, the submission is as per the insurance policy coverage, only one workman was covered and when nothing was brought on record as to whether the claim of Mohd. Sadiq was settled or not, the Insurance Company cannot be cast with an obligation to pay compensation to the legal heirs of the deceased. Furthermore, the amount awarded is also disputed since the actual salary received by the deceased was never brought on record, is the submission.

Per contra, the learned counsel Mr.Gatne appearing for the claimants/respondents would submit that the papers placed on record in form of papers of investigation of the C.R registered, pursuant to the occurrence of the accident would not leave any doubt that the deceased Deepak was also present in the vehicle which met with an accident and the vehicle belonged to the party no.1 which was insured with the New India Assurance Co.Ltd. He submit that the death of deceased Deepak took place in the course of employment and in the statement given by the employer before the Investigating Officer, he had admitted that Deepak was engaged by him as a loader, which is covered by the definition of workmen/employee under the Workmen's Compensation Act. Since the employer has admitted his relationship with employee Deepak, the argument is, it is not

open for the Insurance Company to cast a doubt about the relationship. As far as the salary earned by Deepak is concerned, the submission is since the employer has admitted the same, considering that the Workmen's Compensation Act is a beneficial legislation, any pedantic and technical approach shall be avoided to deny the compensation to his dependents.

26 Pertinent to note that the Workmen's Compensation Act 1923 is a piece of social and beneficial legislation, enacted in the year 1923 with the avowed object of awarded compensation to those who meet with accident and sustain partial or total disability and to those who are dependent on the deceased for their livelihood. The intention of the legislature is very apparent, being to offer some solace to the persons in distress, financially and emotionally, and in the state of helplessness and to ensure that the dependents of the deceased have some source of their livelihood, on account of the demise of the bread earner for them. In the proceedings under the said Act, though the procedure to be followed by the Commissioner who is vested with all the powers of Civil Court in determining the compensation is set out, the hyper-technical approach must be avoided.

With this principle being kept in mind, when the evidence brought on record is perused, it can be seen that the claimant no.1 set up a claim under the Workmen's Compensation Act by filing the application claiming that his son Shrikant @

Deepak was employed by opposite party on his Motor Tempo No. MH-06-G-8248 as loader on daily wages of Rs.180/- per day. The said tempo met with an accident on 20th June 2010, and his son died in the accident, which took place during the course of his employment. He categorically state that at the time of his accident, his son was aged 18 years and he was engaged by the employer three days back. Claiming that he along with his wife were totally dependent upon their son, since the Insurance Company had failed to deposit any amount of compensation, the notice was served, the compensation claim was instituted. Along with the application, he placed on record a copy of the notices, certified police papers, original salary certificate by the employer, insurance policy and premium paid receipt along with the papers of the vehicle. The compensation was claimed at the following rate and as per the following calculation :

Age 18 yrs	Factor 226.38 x 50% of the wages (estimated Rs.4500/- p.m. on the basis of daily wages of Rs.180/-. = Rs.22,500/-
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The total compensation calculated was Rs.5,09,355/- and it was claimed along with 12% p.a. interest from the date of accident till its realization.

27 The said witness was extensively cross-examined by the Insurance Company. He deny the suggestion that his son was

not working with opponent no.1 and he admit that earlier, he was working with Mahananda Dairy but thereafter, he was working on the tempo which met with an accident. The employer himself did not enter inside the witness box though he filed his written statement.

On behalf of the Insurance Company, the Administrative Officer stepped into the witness box and she brought on record the copy of the FIR, Inquest Panchnama, Spot panchnama and statement of several persons and also statement signed by the employer at Exhibit-15. The investigation is also placed on record. On being cross-examined, she admit that the policy involved, cover the liability under the Workmen's Compensation Act and state that the policy cover one person and deny the suggestion that more persons are covered. It is admitted by her that Mr.Dawood Kathi is the owner of the vehicle and the insured took the package policy and paid the premium of Rs.11,667/-. She admit that she had not produced a copy of the terms and conditions of the policy and deny that the copy of claim form along with salary certificate was received from the insured. It is also denied that the deceased was working as a loader with the insured on salary of Rs.4,500/- per month.

Another witness examined is the Investigating Officer appointed by the Insurance Company who claim to have conducted the investigation in the said matter along with the connected matter. He depose that the insured had disclosed to

him that though the deceased was travelling by his vehicle, he was not his employee, but he has not collected any document to that effect from the owner of the vehicle.

28 Pertinent to note that the papers of investigation are common in both the cases and the FIR refer to two persons who were found in the cabin of the tempo carrying canters of milk and the name of these two have surfaced as Deepak and Sadiq. The driver of the truck was Mangaldas Singh. The Inquest Panchnama record that one person by name Dawood Kathi stated that the vehicle which met with an accident belong to him and he knew the persons seated in the cabin. The persons were identified by him and in his statement recorded by the police on 20th June 2010, he has stated that Sadiq was his employee but when he made inquiry about another person Deepak, the driver informed him that he was from his district and came to meet him and hence, he was travelling in the same vehicle.

In the written statement filed before the Commissioner, the employer Mr.Dawood Mohd, Kathi, the following statement is made :-

- (1) "I further say that Shri Kamlesh Kumar Vishwakarma was working with him as a loader, met with an accident on 20/6/2010 during the course of my employment on my vehicle MH-06-G-8248 as a loader.
- (2) He sustained injuries during the course of my employment. The said vehicle was insured with

New India Assurance Co.Ltd and also cover the accident period.

- (3) I use to pay wages of Rs.180/- daily. He has worked for 3 days and died.
- (4) I further say that I had intimated regarding this accident to the New India Assurance Co. Ltd and submitted necessary documents".

29 This statement made on oath has impressed the learned Commissioner to award compensation in favour of the dependents of deceased Deepak. Apart, the employer Mr.Kathi on 21/10/2010 has issued a certificate certifying @ Deepak son of Kamlesh Kumar Vishwakarma was working with him as loader and getting daily wages of Rs.180/-. He also certified that his estimated monthly wages was Rs.2500/-. He also certify that his employer Deepak was sincere and hardworking.

The report of accident forwarded to the Insurance Company also contain the details of deceased Deepak and it is mentioned that he was working as loader with the employer.

When the written statement on oath before the Commissioner and the certificate issued by the employer is juxtaposed against his statement recorded by the police during the course of investigation, the statement recorded under oath, admitting that deceased Deepak was his employee, assumed importance. In the statement before the police, it is stated by him that when he made inquiry in respect of the other person, who has succumbed to the accident, he was informed that the

person was Deepak and he was travelling in the vehicle as a relative of Mangaldas Singh, the driver of the vehicle. However, this statement recorded during the course of investigation cannot be given any weightage, being not given while on oath. Similarly, the investigator of the Insurance Company who has been examined as a witness of the Insurance Company also deny the relationship of employer-employee on the ground that the employer had made such statement to the police.

30 In view of the aforesaid inconsistency in the statement given to the police by the employer, denying any employer-employee relationship on one hand and the statement on oath filed in the form of written statement before the Commissioner, the Commissioner has rightly given weightage to the statement on oath and accepted the employer-employee relationship. Further, as far as the statement of the uncle of the deceased i.e. Dinesh Kumar Vishwakarma, who has received the dead body, his nephew and who has stated that his nephew Shrikant @ Deepak Vishwakarma was working with Mahananda Dairy on Tempo number MH-04-BU-3590, is also not of any consequence since this uncle of the deceased is resident of Taluka Hariya, Allahabad, and therefore, it is possible that when his nephew had taken a new job three days back, he is not aware of the said development. Once the employer himself has admitted the relationship with deceased Deepak, as his employee, in absence of

any admissible evidence to the contrary, being brought on record, the claim of the employee cannot be refuted. I see no reason to interfere with the finding of the learned Commissioner allowing the claim under the impugned judgment which is challenged in the Appeal by the Insurance Company. The impugned judgment is therefore, upheld and the First Appeal filed by the Insurance Company is dismissed.

(SMT.BHARATI DANGRE, J)