

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

First Appeal No.485 of 2019

Sanjay Shrawan Surbhalavi & another
 vs.
Laxmikant Shrawan Surbhalavi & another

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Shri B.S. Mandhare, Advocate h/f Shri P.S. Mirache, Advocate for the Appellants.
Shri C.A. Anthony, Advocate for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 8th FEBRUARY, 2021.

The appellants herein seek to challenge the impugned judgment and award dated 14/05/2018 passed by the Commissioner under the Employee's Compensation Act in E.C.A. Case No.B-6/2015.

02] The applicants herein are the parents of the deceased, who expired in a vehicular accident involving car No.MH31-CP-7499. The appellants had filed an application under Section 22 of the Employee's Compensation Act claiming that the deceased was employed with respondent No.1 as a driver and that their son had died in an accident arising out of and in the course of his employment. The appellants, therefore, prayed for determination of the amount of compensation.

03] The application has been dismissed mainly on the ground that the son of the appellants had not died in an accident arising out of and in the course of the employment. While arriving at this finding, learned Commissioner has relied upon the F.I.R. at

Exh.26 lodged by Sandip Chunnilal Tikapache, wherein he had stated that the deceased had come to his house by Tata Indica Car No.MH31-CP-7499, belonging to his paternal uncle and had requested to accompany him to a Pan Shop. The first informant had stated that thereafter the deceased had taken the Car near the house of his paternal uncle and that Nanu Surbhalavi, the son of his paternal uncle (Respondent No.1), had also accompanied them. He has further stated that they had told respondent No.1 that they are just going out for a ride and after going to Futala Lake, they proceeded towards Amravati Road, Ravinagar. He has stated that the accident was caused while they were proceeding towards Amravati Road, Ravinagar. On the basis of the F.I.R. at Exh.26, learned Commissioner has held that the accident was not caused in the course of employment. The appellants, therefore, have preferred this appeal.

04] Heard learned Counsel for the appellants. I have perused the record. In the application under Section 22 of the Employee's Compensation Act, the appellants had claimed that their son was employed as a driver with respondent No.1, who was his paternal uncle. It is stated that on 03/10/2014, the said car turned turtle and that their son sustained fatal injuries in the said accident. The appellants have stated that the accident had occurred in the course of the employment and, hence, the respondents are liable to pay compensation. Apart from these averments, the appellants had not given any further detail including the time of the accident. The appellants have not adduced any evidence to prove

that their son was in the employment of respondent No.1 and that he was on duty at the time of the accident. There is absolutely no evidence on record to prove that the son of the appellants had expired in an accident arising out of and in the course of his employment. On the contrary, the F.I.R. at Exh.26 reveals that the accident was caused while the deceased had gone for a drive along with his friends.

05] The appeal has no merits and, accordingly, it is dismissed.

JUDGE

**sandesh*