

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

FIRST APPEAL NO.1908 OF 2019

[Cholamandalam MS General Insurance Co. Ltd. .vs. Pralhad Maroti Shinde and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Mrunal Naik, Advocate h/f Mr. A.J. Pophaly, Advocate for the
appellant,
Mr A.S. Chakotkar, Advocate for respondent nos.1 and 2.
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CORAM: M.S. SONAK, J.

DATED: DECEMBER 08, 2021.

This is an appeal under Section 30 of the
Employees Compensation Act, challenging the judgment
and order dated 8.3.2019 made by the Commissioner.

2. Learned counsel for the appellant submits that, in this case, the issue of employer and employee relationship between Nandkishor and Sultan Shaikh has not been proved. She submits that Sultan had, in fact, filed a written statement, in which, he had stated that the truck in question had been contracted to M/s Balaji Roadlines and Nandkishor was working with Balaji Roadlines. She submits that despite this Balaji Roadlines was not impleaded as a respondent and the claim was pursued without joinder of the necessary party. Based on aforesaid, she submits that the following substantial question of law arises for determination in this appeal :

“(1) The issue about the relationship of employer and employee has not been proved by the Applicants inspite of that the learned Commissioner had recorded the finding that the issue of employment with Nandkishor driver has been proved when the Non-Applicant No.3 came with specific plea that the deceased was appointed by Balaji Roadlines but there is no discussion on this issue which goes to the route of the matter. Therefore, the finding recorded by the Commissioner is a perverse finding not base on the facts and evidence on record. Therefore, this finding about the relationship of employer and employee is liable to be quashed and set aside.”

3. I have heard the learned counsel for the parties and perused the impugned order made by the Commissioner. This precise issue has been dealt with by the Commissioner in paragraph 18 of the impugned order which reads as follows :

“18. While perusing the documents filed on record, there is no agreement on record to show that the truck bearing No.MH12/KP-3165 of N.A. No.1 was given on rent to Balaji Roadlines. Similarly, there is no any contract on record. It is their contention that there is a contract between the Balaji Roadlines and N.A. No.1 However, he had not filed any contract on record. Not only this N.A. No.1 has failed to enter into the witness box. Even

it is contention that deceased was working with Balaji Roadlines the N.A. No.1 should have examined the Proprietor of the Balaji Roadlines. Therefore, there is nothing on record to prove the contention which has been taken against the deceased by the N.A. No.1 before this Court. The documents clearly shows that at the relevant time of the said accident the deceased was driving the said truck bearing No. MH-12/KP-3165 belonging to N.A. No.1. The FIR which is filed on record and the other police papers clearly shows that deceased was driving the said truck which was owned by the N.A. No.1. Therefore, once the accident is admitted and once it is proved that the said truck was driven by deceased Nandkishor. It cannot be said that deceased was not in the employment of N.A. No.1. Therefore, the Applicants have proved that there is employer and employee relationship between the N.A. No.1 and the deceased was died in the employment of N.A. No.1 and the accident has arisen during the course of employment while performing the duty of N.A. No.1. Therefore, I answer to issue No.1 in the affirmative.

4. In my judgment, there is no perversity pointed out in the aforesaid record of findings of fact or for that matter, the reasoning supporting the same. This is significant to note that, in this case, apart from taking up some defenses in the written statement, neither Sultan nor any representative of the Insurance Company stepped into the witness box. No summons

was sought for Balaji Roadlines or its representative to depose in the matter. On the test of preponderance of probability, the claimants have made out a case that the deceased was indeed an employee of Sultan Shaikh in whose name the truck still stands registered.

5. This is a case of a challenge to pure findings of fact. Since such facts are borne out from the evidence on record, there is no case of perversity made out, giving rise to any substantial question of law. An appeal under Section 30 of the said Act is maintainable only where the substantial question of law is involved in the matter. In this case, no substantial question of law is involved. The appeal is therefore liable to be dismissed and is hereby dismissed.

6. Upon the dismissal of this appeal, the amount deposited by the appellant can now be withdrawn by the respondent nos.1 and 2. The Commissioner to ensure that this amount is transferred to the bank accounts of the original claimants, as expeditiously as possible and, in any case, within four weeks from today.

[M.S. SONAK, J.]

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