

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

FIRST APPEAL NO.109 OF 2019

[I.C.I.C.I. Lombard General Insurance Company Limited **..Vrs..** Baby
Mahadeorao Khiratkar and Ors.]

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

Court's or Judge's

Shri. R. D. Bhuihar, Advocate for the Appellant
Shri. A. C. Suryawanshi, Advocate for the Respondent Nos.1
and 2.

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

DATE : **6th SEPTEMBER, 2021.**

1. Heard respective Counsel for the parties.
2. Under the provision of Section 22 of the Workmen's Compensation Act, 1923, the Judge Labour Court, Yavatmal/Commissioner, awarded the following compensation :

O r d e r

- "1. Application is allowed.
2. Non-applicant No.1 and 2 are directed to deposit Employee's compensation amount of Rs.8,31,920/- (Rs. Eight Lakh Thirty One Thousand Nine Hundred Twenty only) in this court with interest thereon @ 12% p.a. from the date of death on 09/02/2012 till its actual realization.
3. Non-applicant No.1 is directed to pay amount of Rs.4,00,000/- towards penalty u/s.4(A)(3)(b) of the Employee's Compensation Act, 1923.
4. Non-applicant No.1 is further directed to pay Rs.5000/- to the applicants towards funeral

expenses u/s.4(4) of the Employee's Compensation Act, 1923."

3. This appeal is by the original Respondent No.2/Insurance Company.

4. Shri. R. D. Bhuibhar, learned Counsel appearing for the Appellant/Insurance Company would urge that the appeal needs consideration on the following question of law.

- i) Whether the employer employee relationship between the deceased and the Respondent No.1 was duly established ? and
- ii) Whether the compensation awarded is in breach of the policy conditions ?

5. So as to substantiate the said contentions, Shri. R. D. Bhuibhar, would invite my attention to the observations made by the Commissioner, Workmen's Compensation Act. According to him, the deceased was alleged to be employed by the owner of the offending vehicle i.e. one Mr. Sunil Bhagat. Even, if the vehicle was insured with the Appellant through a comprehensive policy, the driver was never insured. Based on the above, he would try to establish the perversity in the findings recorded and seeks admission of the appeal on question of law No.2.

6. Apart from above, he would invite attention of this Court to the findings recorded on the issue of presumption drawn as regards employer employee relationship, which according to him, is contrary to law.

7. The Counsel for the Respondent Nos. 1 and 2 supports the impugned judgment and sought dismissal of the appeal.

8. Considered the submissions.

9. Deceased Prashant died on 09.02.2012 in an accident of Moter Cycle No.MH-29-AC-4982. It is not in dispute that the deceased was holding a valid driving license and the vehicle was insured with the Appellant. The claimants have come out with the case of monthly salary drawn by the deceased Prashant at the rate of 8,000/-, which fact was duly admitted by the employer i.e. Respondent No.3 owner/employer. The documents issued by the Police Authority while investigating Crime No.5/2012 punishable under Sections 279 and 304-A of the Indian Penal Code arising out of accident in question were duly relied on.

10. Though, it is claimed by Shri. R. D. Bhuibhar that the employer employee relationship was not established. However, this Court needs to be sensitive to the plea in defence raised by the Respondent No.3/employer admitting the relationship and also the salary.

11. In the backdrop of these admissions given by the Respondent No.3/employer in response to claim of employment by claimants, burden shifts on the Appellant to prove that there was no employer employee relationship. The Appellant has failed to establish the said case by examining any independent witness or by bringing on record any evidence to that

effect, but for canvassing the baseless ground.

12. As such the plea that the employer employee relationship cannot be established, was rightly inferred against the Appellant, thereby recording a finding that there exists employer employee relationship.

13. As regards second question of law is concerned, the award of compensation is based on admitted fact that the deceased Prashant drawing salary of Rs.8,000/-. Though, the Insurance Company has claimed that there is breach of insurance policy, the Appellant/Insurance Company has failed to establish the same by discharging its burden. Even, if the deceased Prashant was not owner of the vehicle, his riding was lawful as he was holding a valid driving license.

14. In that view of the matter, in my opinion, the appeal lacks any substantial question of law and the same is **dismissed**.

(NITIN W. SAMBRE, J.)