

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

969 FIRST APPEAL NO.2071 OF 2020

Shriram General Insurance Co. Ltd.
Regd. Office : E-RIICO Industrial Area Sitapura
Jaipur, 302022 (Rajasthan) and Branch at
Jalna Road, Aurangabad
Through it's Authorized Officer .. **APPELLANT**

VERSUS

- 1] Sangita Rohidas Rathod,
Age : 39 years Occu : Household.
- 2] Manoj Rohidas Rathod,
Age: 21 years, Occu : Education.
- 3] Priyanka Rohidas Rathod,
Age: 19 years, Occu : Education.
- 4] Sarika Rohidas Rathod
Age: 15 years, Occu : Education.
- 5] Vinod Rohidas Rathod,
Age: 13 years, Occu : Education.
No.4 and 4 being minors represented through
Respondent No.1 above
all r/o. Keshpuri Tanda,
Tq and Dist. Aurangabad
- 6] Ramesh s/o. Tofan Rathod,
Age Major, Occup : Business & Agril.
R/o. Bandu Naik Tanda Varzadi
Tq and Dist. Aurangabad.
Owner of the Tractor bearing
Registration No. MH20AY7197 .. **RESPONDENTS**

...

Mr.V.N.Upadhye, Advocate for the appellant

Mr.Amol P. Khedkar, Advocate for respondent nos.1 to 5

Mr.A.A.Mukhedkar, Advocate for respondent no.6

...

CORAM : S.G.DIGE, J.

DATE : 04.10.2022

P.C. :

1] Being aggrieved and dissatisfied by the judgment and order passed by the Commissioner for Employees Compensation Act and Judge, Labour Court-1, Aurangabad [for short 'the Commissioner']. This appeal is preferred by the appellant – Insurance Company – original respondent no.2.

Brief facts of the case are as under:-

2] The deceased Rohidas was working as a driver with respondent no.6 – Ramesh Tofan Rathod. On 18th May, 2016, as per the direction of respondent no.6, the deceased was cultivating the land by using the tractor. At that time the said tractor turtled from embankment [bandh] and the deceased fell down on the ground, due to which he

sustained serious injuries. Immediately he was shifted to the Government Hospital, Aurangabad, but he died on the same day. The Daulatabad Police Station registered A.D.No.13/2016 and investigated into the matter.

3] Respondent nos. 1 to 5 - original claimants filed claim petition under the provisions of the Employees Compensation Act, 1923 before the Commissioner for getting the compensation. The Commissioner has awarded the compensation. Against the said judgment and order, this appeal.

4] It is the contention of the learned counsel for the appellant that there was no relationship of employer and employee between the deceased and respondent no.6. The deceased was working in his own land when the accident was occurred. The accident was occurred at 11.00 p.m. No first information report was filed in respect of the accident. The spot panchnama shows that the place of accident is the own land of the deceased. The appellant had appointed investigator to investigate the case. He has been

examined before the Commissioner. He has stated that respondent nos.1 to 5 in collusion with respondent no.6 filed a false case against Insurance Company, hence, requested to allow the appeal. The learned counsel for the appellant relied on the judgment in the case of **Oriental Insurance Company Limited Vs. Baldev Singh & Anr.** reported in **2018 STPL 226 Delhi**.

5] It is the contention of the learned counsel for respondent nos.1 to 5 that in written statement, the appellant has taken only defence that there was no relationship of employee and employer between the deceased and respondent no.6. The other defences were not taken as argued by the learned counsel for the appellant. Respondent no.6 has admitted the relationship of employee and employer between the deceased and himself. He was working as per the direction of respondent no.6. The Tribunal has considered all the aspects while awarding the compensation, hence, requested to dismiss the appeal.

6] I have heard all learned counsel. Perused the judgment and order passed by the Commissioner. The issues involved in this appeal are whether the deceased died due to accident and whether the relationship of employer and employee between the deceased and respondent no.6 are proved. It appears from record that respondent no.6 has admitted that the deceased was his employee and he was giving salary of Rs.12,000/- per month and Rs.100/- per day bhatta to deceased. On 18th May, 2016, according to respondent no.6, deceased was doing work as per his instruction. It is contention of the learned counsel for the appellant that there is collusion between respondent nos.1 to 5 and respondent no.6, the accident occurred in the own field of deceased at 11.00 p.m. When the deceased was working in his own field how it can be said that he was working under direction of employer i.e. respondent no.6. In my view, respondent no.6 has admitted the relationship with deceased as his employee. The offending tractor is registered in the name of respondent no.6. Though the

accident is occurred in the field of the deceased, he was under the employment of the deceased as he was driving the tractor of respondent no.6. Respondent no.6 has not disputed the relationship with deceased. Driving the tractor in own field cannot be a ground to say that the deceased was not under employment of respondent no.6. The appellant has examined witness to prove that there was collusion between respondent nos.1 to 5 and respondent no.6. Witness Mangesh Inamdar Exh. C-5 has stated that there was collusion between respondent nos.1 to 5 and respondent no.6, the accident was occurred in the field of deceased. The deceased died due to his own fault. As observed above, respondent no.6 has admitted that the deceased was working on his instructions. If the deceased was not working on his instructions why he had carried the tractor which is in the name of respondent no.6. Moreover, investigator's report is not produced on record on which basis, witness Mangesh has given his evidence so evidence of this witness is hearsay evidence. Hence, I do not find merit in the contention of learned counsel for the appellant

that false claim was filed by respondent nos.1 to 5. It is the contention of the learned counsel for the appellant that the accident was occurred at 11.00 p.m. In my view, there is no restriction to working hours. The accident was occurred on 18th May, 2016. It was month of May. Summer season was at its peak. In summer days generally the farmers prefer to work in early hours of morning or late night. It is the contention of the learned counsel for the appellant that no FIR was lodged in respect of the accident. It has come on record that when deceased was admitted in hospital, MLC was recorded. Police has prepared spot panchanama on the basis of MLC. Taking the cognizance of incident and filing the FIR is work of police department. Hence, it cannot be a ground to raise dispute about occurrence of accident. Moreover, MLC dated 18th May, 2016 shows that the deceased got injured due to falling from the tractor. The spot panchnama shows that there were wheel marks of the tractors appearing on the embankment of the field. It proves that the deceased got injured due to falling from the tractor.

7] It is the contention of the learned counsel for the appellant that the income of deceased is considered on higher side. It has come on record that deceased was getting salary of Rs.12,000/- per month from respondent no.6. The Commissioner has considered it Rs.8000/-, and while calculating compensation the Commissioner has considered 50% of it i.e. Rs.4000/-. On that basis compensation is awarded. I do not find infirmity in it. I have gone through the case law cited by the learned counsel for the appellant. The facts of the cited case and case at hand are different. In the facts of cited case there was accident between two vehicles. Here the accident occurred due to turtle of vehicle and deceased was working as per instruction of his employer [respondent no.6].

8] In view of the above, I pass the following order:-

ORDER

i] Appeal is dismissed.

ii] No order as to costs.

iii] Respondent nos.1 to 5 are permitted to withdraw the amount deposited by the appellant along with accrued interest thereon.

iv] In view of dismissal of appeal, all pending Civil Applications do not survive and the same stand disposed of accordingly.

[S.G.DIGE]
JUDGE

DDC