

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

FIRST APPEAL NO.3137 OF 2011

The new India Assurance Company Ltd.
a Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional office at
Adalat Road, Aurangabad
Through its Manager (Legal Hub) &
Authorized signatory :
Shri Sanjeev s/o Ramrao Gaisamudre,
Age : 52 years, Occu.: Service at
The New India Assurance Co.
D.O.No.1, Adalat Road, Aurangabad APPELLANT
(Original Respondent No.2)

VERSUS

1. Kishor Pyarachand Mantala,
Age ; 42 years, Occu. : Nil,
R/o.: Gandhi lane, Rahata,
Tq. Rahata, District : Ahmednagar
2. Mrs. Sunita Keshav Jadhav,
Age : Major, Occu.: Van owner,
R/o.: Puntamba road, Shirdi,
Tq. Shirdi, District : Ahmednagar ... RESPONDENTS
(R.No.1: Org. claimant
& R.No.2: Org. R.No.1)

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Advocate for Appellant : Mr. A. B. Kadethankar
Advocate for Respondent No.1 : Mr. N. C. Garud
Advocate for Respondent No.2 : Mr. A. T. Kanawade

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 12/08/2022

PRONOUNCED ON : 26/08/2022

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JUDGMENT :

1. The appellant-insurance company being dissatisfied with the judgment and award dated 28/03/2011 in Workmen's Compensation Case No. 27 of 2008 passed by the learned Judge, Labour Court and Commissioner of Workmen's Compensation, Ahmednagar (hereinafter referred to as the trial court), preferred this appeal. Under the impugned judgment and award, the learned trial court has awarded compensation to the tune of Rs.4,06,656/- to the original claimant, who is present respondent No.1. For paying such compensation, the appellant- insurance company and respondent No.2, who is the owner of Maruti Omni car bearing Registration No. MH-15-BN-1203 involved in the accident, are jointly and severally held liable to pay the amount of compensation to the respondent No.1 herein.

2. The record shows that the appellant - insurance company has challenged the impugned award and judgment only on one ground that respondent No.1, who is the original claimant, failed to establish employee - employer relationship between himself and present respondent No.2, but still the learned trial court gave too much weightage to the oral evidence of respondent No.1 and also erroneously relied upon an affidavit of present respondent No.2 filed before the learned trial court alleging that the claimant was her employee being a driver on the said Maruti Omni car.

3. The learned counsel for the appellant - insurance company strenuously submits that there is no satisfactory evidence on

record about the employer-employee relationship between the present respondent Nos.1 & 2. Moreover, cross-examination of the original claimant definitely suggests that the Maruti Omni car involved in the accident in fact was borrowed by the original claimant from respondent No.2 as her husband was his best friend. Further, at the time of accident, the original claimant was not carrying any passenger but his own relatives i.e. his mother and sister. The learned counsel for the appellant - insurance company further submits that present respondent No.2 i.e. owner of the Maruti Omni car did not enter into the witness box to give evidence in respect of employer-employee relation between herself and the claimant. No documentary evidence in respect of such relationship is on record, but the learned trial court erroneously considered the affidavit of respondent No.2 and concluded that the claimant was working as a driver of respondent No.2.

4. On the contrary, the learned counsel for respondent No.1 - claimant strongly replied that the learned trial court in para 10 and 11 of the impugned judgment has given satisfactory finding, which leads to an inference that respondent No.1 claimant was under the employment of respondent No.2 as her driver at the time of accident. He pointed out that there was no cross-examination of respondent No.1 - claimant on behalf of the appellant- insurance company in the trial court in respect of the affidavit of respondent No.2. He further pointed out that the appellant - insurance company itself did not lead any evidence and though there was an opportunity for it for taking cross-examination of respondent no.2 in respect of her affidavit, appellant - insurance company utterly

failed to do so. Such as, the learned counsel for respondent No.1-claimant supported the impugned judgment.

5. On the other hand, the learned counsel for respondent No.2 also supported the judgment of Tribunal and submitted that the learned trial court rightly believed the affidavit of respondent No.2 for arriving at a conclusion that there was relationship between respondent Nos.1 and 2 as that of employee and employer. With these submissions, the learned counsel for both the respondents prayed for dismissal of the appeal.

6. I have gone through the impugned judgment and award along with entire documents on record and also record and proceedings of the learned trial court.

7. It is significant to note that the present appeal is only challenged on the ground that there was no employer-employee relationship established between the respondent No.1 - original claimant and respondent No.2. According to the learned counsel for the appellant - insurance company, the claimant i.e. respondent No.1 herein has put up a concocted story in respect of such relationship only to bring himself under the purview of Section 4 of the Workmen's Compensation Act to secure the compensation in respect of the accident. In fact the claimant i.e. respondent No.1 was not driver of respondent No.2 but out of good relationship between himself and husband of respondent No.2, he had borrowed the Maruti Omni car involved in the accident for taking his mother for medical treatment. Since this is the only ground for challenge to the impugned judgment and award, the evidence on this aspect needs to be scrutinized.

8. On going through the record, it appears that besides the oral evidence of respondent No.1 - claimant in respect of such relationship, there is only one affidavit of respondent No.2 on record, wherein she has stated that at the time of accident she was owner of the Maruti van and had kept the claimant on the said van as a driver on the basis of monthly salary of Rs.4,000/- and out-station allowance of Rs.40/- per day. Respondent No.1 - claimant in his evidence affidavit in para No.5 has stated about his employment under respondent No.2 as a driver. It is most important to note that this is the only evidence on record in respect of employer-employee relationship between the present respondents. The learned counsel for the appellant - insurance company submits that the cross-examination of claimant-respondent No.1 itself shows that how a concocted story as regards aforesaid relationship is made out.

9. On perusal of the impugned judgment, the learned trial court has observed in para Nos.10 & 11 of the judgment that the applicant deposed on oath that the accident took place during the course of his employment with respondent No.2 and he specifically denied the suggestion given to him on behalf of the appellant - insurance company that at the time of accident he was not serving as a driver of respondent No.2 and that because husband of respondent No.2 was his friend, he had taken the said Maruti Omni vehicle to bring his mother and sister from Sangamner to Rahata. He also deposed that respondent No.2 had also filed an affidavit showing that he was engaged by her as a driver on monthly salary of RS.4,000/- plus Rs.40/- as out-station Bhatta. In light of this, if we peruse the cross-examination of respondent

No.1 - claimant, then it is evident that certain answers are there on record given by respondent No.1 in his cross-examination that at the time of accident only his mother and sister were travelling in his vehicle and no other person was there. The learned counsel for the appellant - insurance company pointed out these admissions and argued that these admissions are sufficient to prove that respondent No.1 claimant was not employed as a driver because only close relatives were there in the car at the time of accident and therefore, inference cannot be drawn that he was working as a driver at the relevant time. However, the claimant has flatly denied the suggestion that out of his good relations with respondent No.2 owner, he had taken the said Maruti Omni car only for bringing her mother and sister from Sangamner to Rahata without there being any employer-employee relationship.

10. It is extremely important to note that though it is stated by this claimant about an affidavit of respondent No.2 herein, wherein the aforesaid employer-employee relationship is mentioned, but there is no cross-examination of respondent No.1 to that effect in respect of the same. Moreover, the appellant-insurance company was definitely having an opportunity to summon respondent No.2 for cross-examination on the contents of her such affidavit. However, the appellant - insurance company for the reasons best known to it did not do so. Merely by saying that the learned Tribunal erroneously placed reliance on such affidavit of respondent No.2 without seeking any opportunity to cross-examine her, the appellant - insurance company cannot contend that the contents of such affidavit were false or in form of a concocted story. In fact, the affidavit shows that the appellant - insurance company

had sanctioned own damage claim in respect of the said Maruti Omni car and also paid the amount of Rs.1,64,000/- to respondent No.2. Not only this but the appellant - insurance company under pursis Exhibit-7 before the learned trial court has accepted this fact. It is extremely important to note that the appellant - insurance company despite having an opportunity, failed to cross-examine respondent No.2 in respect of the alleged employer-employee relationship, which they have denied. Further, the appellant - insurance company itself has not led any evidence to prove that there was no employer-employee relationship between the respondents at the time of accident. In absence of such evidence and in view of denial by the claimant to the suggestions on behalf of the appellant - insurance company that he was not under employment of respondent No.2 at the time of accident, it can safely be inferred that respondent No.1 - claimant has established such employer-employee relationship between himself and respondent No.2.

11. Considering all these aspects and the challenge to the impugned judgment and award only on the aforesaid ground of relationship of employer-employee between the respondents, I come to the conclusion that the appellant - insurance company has miserably failed to establish the fact that there was no employer-employee relationship between the respondents at the time of accident. Since this is the only ground of challenge in the instant appeal, I find that there is no substance in the appeal.

12. It appears that during pendency of this appeal, the appellant - insurance company has deposited the entire amount of award

and out of the same, respondent No.1 has also withdrawn an amount of Rs.3,00,000/-. As such, if such amount is withdrawn by respondent No.1- original claimant, then remaining amount along with interest accrued thereon till date be paid to the respondent No.1- claimant from concerned trial court i.e. Labour Court and Commissioner of Workmen's Compensation, Ahmednagar. Accordingly, the appeal is hereby dismissed.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-