

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

FIRST APPEAL NO. 1946 OF 2011

WITH

CIVIL APPLICATION NO. 12791 OF 2009

New India Assurance Company Ltd.

And having its registered and ahead Office
at 87 M.G. Road Fort, Mumbai 400001
Branch Chandra Nagar Opp. Shahu College
Latur and Divisional Office at Ajay Engg.
Compound, Dr. R.P. Road, Aurangabad-
431005, Through its Divisional Manager
and constituted Attorney Mr. Vishwas
Bansi Gaikwad, aged 50 yrs.

APPELLANT

(Original Respondent
No. 2)

VERSUS

- 1) Rambhabai w/o Vithalrao Mugale
Age; 55 years, Occ; Household

**Name of Rambhabai is deleted by
order dated 30.07.2008 passed on
Exh. U-8.**

- 2) Sidram s/o Vithalrao Mugale
Age; 40 years, Occ; Nil
R/o Shend (HalkQ Tq. Nilanga Dist; Latur
At present Prakash Nagar, Latur.

- 3) M/s. V.L. Container Carriers
140 Central Facility, Building No. 2 1st Floor (Original Respondent
Section - 9, APMC-2 Washi, Navi Mumbai, No. 1)
District Thane.

RESPONDENTS

.....
Advocate for the Appellant : Mr. V.N. Upadhye
Respondent No. 1 is deleted.
Advocate for Respondent No. 2 : Mr. N.D. Kendre
Respondent No. 3 is served.
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CORAM : VINAY JOSHI, J.

DATE OF RESERVATION : 18.02.2022

DATE OF PRONOUNCEMENT : 01.03.2022

JUDGMENT :

1. The challenge in this appeal is to the judgment and order passed by the Commissioner for Workmen's Compensation Act, 1923, which is Labour Court, Latur in W.C.A. No. 77 of 2007, dated 08.09.2009. The Commissioner has awarded compensation to the tune of Rs. 4,39,900/- holding that the deceased Rajendra was the employee of respondent No. 3, M/s. V.L. Container Carriers, who died by accident arising out of and in the course of employment.

2. Facts in brief are such that the respondents (Original Claimants) were mother and elder brother of the deceased Rajendra, who was serving as driver with respondent No. 3 M/s. V.L. Container Carriers. On 14.11.2005, the deceased Rajendra was driving the aforesaid container, owned by respondent No. 3, bearing registration No. MH-04-BU-468, on Pune - Solapur highway. While the deceased was proceeding from village Ravangaon, at that time, another vehicle namely truck bearing registration No. AP-7-X-1366 came from opposite direction and gave forceful dash to the container, resulting into the death of Rajendra.

3. Since the deceased Rajendra was in the employment of

M/s. V.L. Container Carriers as driver and the claimants are dependents on him, the claim under the Workmen's Compensation Act was raised. The commissioner, on assessment of evidence has allowed the claim as aforesaid mentioned. This is an appeal of the Insurance Company, challenging the award. The container owned by respondent No. 3 - M/s. V.L. Container Carriers, bearing registration No. MH-04-BU-468 was duly insured with the appellant Insurance Company M/s. New India Assurance Co. Ltd., (for short 'appellant Company') at the relevant time. Incidentally, the offending truck bearing registration No. AP-7-X-1366, was also insured with appellant company.

4. The appellant company has challenged the impugned judgment, on the ground that there was no relationship of employer and employee, in between M/s. V.L. Container Carriers and the deceased Rejendra. Secondly, it is submitted that prior to the filing of the application under the Workmen's Compensation Act, the original claimants have filed a claim petition (MACP No. 153 of 2006), before the Motor Accident Claims Tribunal, Latur, which came to be dismissed. Therefore, according to the appellant, the claimants cannot resort two remedies, which is barred under Section 167 of the Motor Vehicles Act. Lastly, it is submitted that after the demise of mother of deceased Rajendra, the claim was prosecuted by his elder brother Sidram Vithalrao Mugale, who is not dependent on the deceased, within the meaning of Section 2 (d) of the Workmen's Compensation Act and

therefore, also the claim is liable to be dismissed.

5. Learned counsel appearing for the appellant Company, while denying the relationship, took me through the pleadings of the petition filed under the Motor Vehicles Act. Particularly, it is pointed out that in the said petition throughout, the claimants have contended that the container was owned by one Mrs. T. Venkata Satyawathi w/o Shrinivasa Rao, residence of Lalapet Guntur, Andhra Pradesh. Whilst the claimants have taken in-consistent stand before the Commissioner stating that the container was owned by M/s. V. L. Container Carriers. On said count the relationship is primly denied. True, before the Claims Tribunal, the owner of the container was shown as some one else. However, it requires to be noted that before the Commissioner, the appellant insurance Company though denied the relationship, has not specifically denied the ownership of the container bearing registration No. MH-04-BU-468. Probably Smt. T. Venkata Satyawathi would have been the owner of offending truck. In the case at hand, before the Commissioner, the M/s. V. L. Container Carriers, though served, remained absent, meaning thereby, they have not denied the ownership of the M/s. V. L. Container Carriers, bearing registration No. MH-04-BU-468. There is specific evidence that the deceased Rajendra was in service of M/s. V. L. Container Carriers, as driver on the vehicle bearing registration No. MH-04-BU-468. If the M/s. V. L. Container Carriers was not the owner of the said container, then it was very easy

for them to produce evidence showing that the said container was owned by someone else. i.e. Smt. T. Venkata Satyawathi. Therefore, the said stand halfheartedly taken by the insurance company, cannot be accepted.

6. To the next, the challenge is on the ground that in view of Section 167 of the Motor Vehicles Act, the claimant has option to seek compensation under either Motor Vehicles Act or the Workmen's Compensation Act, 1/upload/login.phpbut not under both. Precisely, it is submitted that already the claimants have exercised their option by approaching to the Motor Accident Claims Tribunal and on dismissal of claim, they have again applied under the Workmen's Compensation Act. Therefore the application under Workmen's Compensation Act is not maintainable. In response to the said submission the learned counsel appearing for the respondent by placing reliance on the decision of this Court in the case of **The New India Assurance Co. Ltd. vs. Ms. Bharati Adhik Patil & Ors - (2016) 4 Bom CR 73**. has submitted that there is no embargo to approach under the Workmen's Compensation Act, after dismissal of claim under the Motor Vehicles Act. Having regard to the legal position, this Court has concluded the issue in above referred case by holding that after dismissal of petition under Motor Vehicles Act, the claimants can proceed under the Workmen's Compensation Act. Therefore, it is not possible to accept the submission in this regard.

7. The impugned judgment is also assailed on the ground that after the demise of claimant's mother, the elder brother has prosecuted the claim, who cannot be termed as "dependent" within the meaning of Section 2 (d) of the Workmen's Compensation Act. This issue is also covered by the decision of this Court in the case of **Naresh Dhondbaji Gondane and others Vs. Maharashtra State Electricity Board and others - 2005 (3) L.L.N. 478** wherein, it is ruled that if the claim is made jointly by the elder brother with parents, after the demise of parents, the elder brother represents the interest of parents as legal heir and therefore, his claim is maintainable.

8. With the assistance of both sides, I have gone through the impugned judgment and award. On the basis of evidence advanced by the claimants, the Commissioner has held that the deceased was earning Rs. 4,000/- p.m. Neither the employer nor the insurer has adduced any evidence in rebuttal. On the basis of the age of the deceased, the Commissioner by invoking relevant factor has properly assessed the compensation, which is well justifiable. In view of above, the appeal carries no merits, hence it is dismissed. No order as to costs.

9. Accordingly, Civil Application No. 12791 of 2009 stands disposed of.

(VINAY JOSHI, J.)