IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3548 OF 2018

The United India Insurance Company Ltd.,
Through its Branch Manager,
Branch Office at Dayawan Complex,
2nd Floor, Station Road, Parbhani

Through its Authorised Signatory,
Manager (Legal Hub), at Aurangabad … **Appellant**
[Orig. Respondent No.2]

Versus

1. Baburao S/o Devrao Bodke
Age: 62 years, Occu.: Labour,

2. Sumitra W/o Baburao Bodke
Age: 59 years, Occu: Household

Both R/o Falegaon,
Taluka and District: Hingoli
At present Taroda (Bk.)
Taluka and District: Nanded [Orig. Claimant Nos. 1 and 2]

3. Raju S/o Kundlikrao Khorne
Age: 44 Yrs, Ocu: Business,
R/o: Falegaon, Taluke and
District Hingoli … **Respondents**
[Original Respondent No.3]

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Mr. V. R. Mundada, Advocate for appellant
Mr. V. B. Dhage, Advocate for respondent Nos. 1 and 2

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 23rd AUGUST, 2021
PRONOUNCED ON : 21st JANUARY, 2022

<u>O R D E R</u> :-

. This is Insurance Company's appeal, taking exception to the judgment and order dated 11.09.2017 passed by the Commissioner for Employees Compensation Act and Judge, Labour Court, Nanded in E.C.F.A. No.65 of 2014, granting compensation under the Employees Compensation Act, on account of death occurred as a result of injuries suffered in the course of employment.

2. The facts giving rise to the present appeal are as under:

The Tractor (No.MH-38-B-4121) met with an accident on 04.06.2013 while it was on its way carrying sand in a trolley attached thereto. The deceased Vishnu, along with three others was travelling on the tractor. As a result of the injuries suffered, the deceased died. His parents therefore preferred application for compensation under the Employees Compensation Act (for short, 'EC Act') contending that the deceased had been employed by the tractor owner, respondent No.3 herein for loading and unloading of goods. The deceased was returning with the tractor after loading sand therein. It is the case that the deceased was paid salary of Rs.10,000/- per month.

3. Before the Commissioner under the EC Act, the tractor owner did not file written statement. The appellant – Insurance Company took exception to the claim contending that there was no employer - employee relationship. The insurance cover granted towards tractor is in the nature of agricultural package policy. The deceased was travelling as unauthorised passenger. Passenger carrying capacity of the tractor is only one. The tractor was being used for commercial purpose, etc.

4. The Commissioner, on appreciation of the evidence, allowed the claim granting compensation of Rs. 8,85,480/- with interest at the rate 12% p.a. A sum of Rs. 5,000/- was also awarded towards funeral expenses. The appellant – Insurance Company takes exception to the impugned order on the very ground on which the claim was opposed before the Commissioner. Learned Advocate for the appellant – Insurance Company would submit that there was no iota of evidence to establish employer - employee relationship. It was agricultural package policy. The deceased was travelling as unauthorised passenger. The tractor was being used for commercial purpose. In support of his contentions, the learned Advocate has relied on the following authorities.

(i) Oriental Insurance Co. Ltd. Vs. Brij Mohan & Ors 2007(7) SCC 56;

(ii) United India Insurance Company Ltd. Vs. Sarjerao and Ors – 2008(7) SCC 425;

(iii) New India Assurance Company Ltd. Vs. Diwakar S/o Daulatrao Rohankar and others – 2005(4) Mh.L.J. 773;

(iv) Shivaraj Vs. Rajendra and another – 2019(4) Mh.L.J. 16.

The learned Advocate, ultimately, urged for allowing the appeal.

5. Learned Advocate for the respondents – claimants would, on the other hand, submit that the tractor owner did not file his written statement. The appellant – Insurance Company had appointed an Advocate to make investigation of the accident. The Advocate had admitted in his report that the deceased was employed by the tractor owner for loading and unloading of goods. The appellant – Insurance Company did not lead any evidence in proof of its claim. The sand was being transported in the tractor for making a bed/floor in a cattle shed. The same was nothing short of an agricultural purpose. The policy of insurance covers risk of an employee engaged for loading and unloading of goods. In the alternative, learned Advocate urged for passing order of pay and recover the amount of compensation.

6. Considered the submissions advanced. Perused the evidence in the case. Although the employer - employee relationship has been disputed by the appellant – Insurance Company, the report of investigation made by its official admits that the deceased was employee of the tractor owner for unloading and loading of goods. The appellant – Insurance Company, therefore, could not be heard to say that there was no such relationship between the deceased and the tractor owner. Quantum of salary of the deceased is a fact within the knowledge of the claimants and the tractor owner. No written statement was filed by the tractor owner. The Commissioner considered the claim of the applicants and held the deceased was employed at a monthly pay of Rs.8,000/-. Under the EC Act, compensation on account of death arising out of and in the course of employment is awarded considering the maximum pay of Rs.8,000/- per month. 50% thereof is only to be taken into consideration for grant of compensation. The accident took place in June 2013. For want of any evidence in the rebuttal, this Court has no reason to interfere with the findings recorded by the Commissioner that the deceased was serving at a monthly pay of Rs.8,000/-.

7. The facts undoubtedly indicate that the deceased died as a result of injuries suffered during the course of his employment. The cause of death has causal connection with the nature of his employment. The question is whether the appellant – Insurance Company is liable to pay the claimants compensation. The policy of insurance (Exh.C-21) is on record. It is '*Farmer's Package Policy* '. The accident took place during the policy was in force. The appellant – Insurance Company charged the tractor owner Rs.4,760/- as premium for own damage claim and Rs.1,608/- towards third party. As such, the terms of the policy of insurance do indicate that no risk of employees of the tractor owner engaged on the tractor was covered. It has, therefore, to be held that the appellant – Insurance Company has no liability to indemnify the tractor owner for compensation required to be paid under the impugned award. The learned Commissioner simply went by the policy of insurance without looking into the terms thereof.

8. The authorities relied on by the learned Advocate for the appellant – Insurance Company do indicate that in spite of Insurance Company having not been held liable to pay compensation, have

been directed to pay the same and recover from the owner of the vehicle. True, the cases relied on, were arising out of the award passed under the Motor Vehicles Act. The same analogy needs to be adopted here. The claimants are the poor parents of the deceased. They are, however, not entitled to receive compensation as of right. This Court is therefore inclined to direct the appellant – Insurance Company to pay 70% of the amount under the impugned order to the respondents – claimants and recover the same from the tractor owner. With this, the appeal succeeds in terms of following order.

ORDER

(i) The appeal is allowed.

(ii) The order dated 11.09.2017, passed by the Commissioner for Employees Compensation Act and Judge, Labour Court, Nanded in E.C.F.A. No.65 of 2014, is hereby set aside as against the appellant – Insurance Company.

(iii) The appellant – Insurance Company, is however directed to pay 70% of the amount under the impugned order to the respondents – claimants and recover the same from the tractor owner directly taking recourse of execution proceedings.

(iv) 70% amount in deposit with this Court or the Commissioner, be paid to the respondents – claimants with interest accrued thereon. The balance amount be paid back to the appellant – Insurance Company with interest accrued thereon.

(v) Pending civil application Nos.11662 of 2018 and 9737 of 2019 stand disposed of.

[R. G. AVACHAT, J.]

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