

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.4412 OF 2013
IN
FIRST APPEAL (ST) NO.12594 OF 2013**

NATIONAL Insurance Company Limited)
Mumbai Regional Office)
5th Floor, Sterling Cinema Building)
65, Murzban Road, Fort, Mumbai - 400 001)
Original Insurer
..(Applicant)

Versus

- 1.Mr.Akbaari Mohd. Naim Qureshi)
Wife of the deceased, aged 45 years)
Original Applicant No.1
- 2.Naseem Mohd. Naim Qureshi)
Son of the deceased aged 25 years)
Original Applicant No.2
- 3.Taufiq Ahmed Mohd. Naim Qureshi)
Son of the deceased, aged 21 years)
Original Applicant No.3
- 4.Sajma Mohd. Naim Qureshi)
Daughter of the deceased, aged 19 years)
Original Applicant No.4
- 5.Salman Mohd. Naim Qureshi)
Daughter of the deceased, aged 17 years)
Original Applicant No.5
- 6.Saim Mohd. Naim Qureshi)
Daughter of the deceased, aged 14 years)
All R/o Plot No.12, Banwari Compound)
Sion Mahim Link Road)
Dharavi, Mumbai-400 017)
Original Applicant No.6

7.Mrs. K.H. Manocha
D/2/F-2, Sector-3
Nerul, Navi Mumbai
Dist - Thane

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Original Opposite Party
.. (**Respondents**)

Mr. Rahul Mehta h/f KMC Legal Venture , for the Applicant.
Mr. Nikhil P. Wagh a/w Amrin Khan i/b A.M. Gokhale , for the
Respondent Nos.1 to 6.

CORAM : S.G. DIGE, J.

DATE : 22 DECEMBER 2022

JUDGMENT:-

1. The issue involved in this appeal is relationship of employer and employee.

2. It is the contention of learned counsel for appellant that no relationship of employer and employee between deceased and respondent no.7 is proved before the Trial Court but without considering this fact the Trial Court has passed the impugned order.

3. Learned counsel for respondents/original claimants (for short claimants) submits that at the time of accident, deceased was driving a truck. The owner of truck was

respondent no.7. It was insured with the appellant. From the police paper, it reveals that deceased was the employee of respondent no.7 and on that basis, the Trial Court has passed the order which is legal and valid.

4. I have heard both learned counsel.

5. Perused judgment and order passed by the Commissioner for Workmen's Compensation & 2nd Labour Court Judge, Mumbai (for short 'the Trial Court'). The accident was occurred on 27th July 2003, on that date original claimant Shri Mohamed Naim Mohamed Ayub was driving the Motor Vehicle bearing Registration No. MCU 4212, he was proceeding from Mumbai towards Nasik along Bombay Agra Road. When he reached Swami Vivekanand Nagar, Nashik, the said vehicle collided with another vehicle coming from opposite direction as a result of which the original claimant received serious fracture injuries. The original claimant filed claim petition for getting compensation before the Trial Court, during pendency of petition. The original claimant died. Considering, the evidence on record, the Trial Court has

awarded the compensation. The said judgment and order is under challenge.

6. It is the contention of learned counsel for appellant that no employer and employee relationship has been proved between deceased and respondent no.7. The Trial Court has observed that the police papers produced on record i.e. complaint Exh. U21 and statement of witnesses at Exh.12 Ramkrishana Tukaram Gamane i.e. statement of Ramkrishana Tukaram Gamane and statement of Jibhau Bhimrao Bachhav vide Exh. U-25 and statement of Deepak Govind Landge Exh. U-13 shows that original claimant was the employee of Rahaj Ahmed Chheddi Khan. The learned Trial Court has observed that the owner of the vehicle was Mrs. K.H. Manocha. The Rahaj Ahmed Chheddi Khan is relative of Mrs. K.H. Manocha who was looking after the business of the vehicle as Mrs. Monocha was Pardanasin lady.

7. I do not find any infirmity in the observation of the Trial Court as admittedly, at the time of accident deceased was driving the truck which belonged to respondent no.7

and this fact is not disputed by the appellant before Trial Court. The witnesses have stated before the police that deceased was the employee of respondent no.7. Hence, I find appeal is devoid of merit and I pass following order.

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. All pending civil applications are disposed of.
- iii. The respondent nos. 1 to 6 /original claimants are permitted to withdraw the deposited amount alongwith accrued interest thereon deposited by appellant, if not withdrawn earlier.

(S.G. DIGE, J.)