



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1908 OF 2018

1. Dropadi W/o Balasaheb Pawane
Age: 27, Occu.: Household,
R/o. Kolhar (Bk), Tal. Rahata,
Dist. Ahmednagar
At present, Nalwandi, Tal. Patoda
Dist. Beed.

2. Kalyani D/o Balasaheb Pawane,
Age : 07, Occu. Education

3. Dadasaheb S/o Balasaheb Pawane
Age : 10 years, Occu.: Education.

[Appellant Nos. 2 and 3 are Minors and
U/G of Appellant No.1 their real mother]

.... Appellants
(Orig. Claimants)

Versus

1. Kamlakar S/. Krishna Holkar,
Age : Major, Occu.: Business,
R/o Malewadi, Tal. Rahuri,
Dist. Ahmednagar.

2. The Manager,
Shriram General Insurance Co. Ltd.,
Office No. 7 & 8, First Floor,
Opp. SFS School, Akashwani, Jalna Road,
Aurangabad, Dist. Aurangabad.

3. Nanda W/o Govind Pawane,
Age : 55, Occu.: Household,
R/o. Kotan, Tal. Patoda,
Dist. Beed,
At present Kolhar, Tal. Rahata,
Dist. Ahmednagar

4. Govind S/o Banda Pawane,
Age: 60, Occu.: Household,
R/o. Kotan, Tal. Patoda,
Dist. Beed,
At present Kolhar, Tal. Rahata,
Dist. Ahmednagar

.... Respondents
(Orig. Respondents)

.....
Mr. S.B. Choudhari, Advocate for the Appellants
Mr. S.S. Rathi, Advocate for Respondent Nos.2
Mr. A.M. Lauharale, Advocate h/f Mr. A.B. Gaikwad, Advocate
for Respondent Nos.3 and 4
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th DECEMBER, 2023

ORDER :

1. Judgment and award passed by learned Commissioner, Workmen's Compensation, Beed in W.M.C. No.32 of 2013 is impugned in the present appeal.

2. Brief facts leading to the first appeal are as follows:

Appellants/claimants filed above claim petition on account of death of Balasaheb Govind Pawane, who at the relevant time was working as a driver on Truck bearing No.MH-18/M-8137 owned by respondent No.1. On 18.03.2013, at about 3.30 a.m. deceased was going from Nashik to Mumbai by Mumbai-Agra National Highway No.3. When he reached at Kasara Ghat, driver side tyre got burst, due to which deceased lost his control over the vehicle and the Truck turned turtle. In the said accident, Balasaheb suffered serious injuries and died on the spot. Father of Truck owner namely Krishna Hanumanta Holkar lodged complaint in Police Station Kasara

against deceased claiming that the accident occurred due to rash and negligent driving of deceased. Crime No.31/2013 was registered by Kasara Police Station for offences punishable under Sections 304-A, 279, 337, 338, 427 of the Indian Penal Code. Appellants/claimants therefore filed claim petition claiming compensation of Rs.11,74,635/- against respondent No.1 being registered owner and respondent No.2 Insurance Company as the Truck was insured with respondent No.2, and the policy was valid from 29/07/2012 to 28/07/2013.

3. In support of claim, wife of deceased/appellant No.1 examined herself and placed on record copy of F.I.R. (Exhibit 36), Inquest *Panchanama* (Exhibit 37). She deposed in terms of claim petition. The Insurance Company has not led any evidence.

4. Respondent No.1 did not appear in the claim and claim proceeded *ex parte* against him, under Section 3 of the Workmen's Compensation Act.

5. Learned Commissioner after appreciating evidence brought on record, dismissed the claim on the ground that claimants have failed to prove that deceased was working as a

driver with respondent No.1 and his death was caused during employment. Hence, the present appeal.

6. Learned advocate for appellants has assailed the impugned judgment and award contending that the Commissioner has recorded perverse findings in coming to a conclusion that claimants have failed to prove that deceased was driver on the truck owned by the first respondent. According to him, there is sufficient evidence on record to show that deceased was working as a driver on the truck owned by the first respondent. The fact of accident is not seriously disputed by the Insurance Company. Therefore, the impugned judgment and award passed by learned Commissioner is liable to be quashed and set aside, and the claim filed by appellants/claimants deserves to be allowed.

7. Learned advocate for Insurance Company has strongly opposed the first appeal. He submits that there is nothing on record to show that deceased was employee of the first respondent and in view of admission given by claimant No.1/appellant No.1, that she does not know as to where her deceased husband was working and to whom he was an employee, the Commissioner is justified in rejecting the claim petition. He further submits that there is no notice issued by

the claimants either to the owner or Insurance Company. He therefore supports the impugned judgment and award.

8. Heard the learned advocate for appellants and learned advocate for respective respondents at length. None appears for respondent No.1. Perused the record.

9. Wife of deceased/appellant No.1 examined herself in support of the claim. She has deposed in terms of the claim petition. In cross-examination, she has stated that she does not know as to where her husband was working and with whom he was an employee. In view of of this admission, learned Commissioner has come to a conclusion that no evidence is adduced to support the claim regarding work of deceased as a driver with respondent No.1 and accident occurred during the course of employment. Learned Commissioner has held that mere testimony of single witness is not sufficient to prove the claim. The learned Commissioner has further held that respondent No.1 has not admitted that deceased was his employee as the matter was proceeded *ex parte* against him. Therefore, strict responsibility shifts on claimants/petitioners to prove that deceased was working as a driver to respondent No.1. *"If in case, where a truck owner has admitted that deceased was driver on his truck, then the*

insurance company cannot shrink its responsibility. Here in this case it is not happened."

10. It is a matter of record that claimant/appellant No.1 has brought on record F.I.R. (exhibit 36), which is admittedly lodged by father of the first respondent/owner of the truck. In the F.I.R., it is specifically stated that deceased was working as a driver on the said truck with respondent No.1 and the said truck met with an accident allegedly on account of rash and negligent driving on the part of deceased. Accidental death of deceased is therefore is not disputed. Merely because the first respondent did not appear in the matter and the matter proceeded *ex parte* against him, does not mean that he has not admitted that deceased was working with him. While recording the said finding, learned Commissioner has ignored the F.I.R. (exhibit 36). Due to non appearance on the part of respondent No.1, averments in the claim petition to the extent of they related to the first respondent have gone uncontroverted. Learned Commissioner has failed to appreciate this aspect.

11. There is sufficient evidence on record to prove accidental death of deceased in the accident in question. Insurance Company has not seriously disputed the fact of

accident and death of deceased in the accident. While recording finding adverse to the claimants, learned Commissioner has ignored relevant evidence on record, and therefore, the said finding can be termed as perverse.

12. In ***Gurdeep Singh vs. Bhim Singh and others, (2013) 11 SCC 507***, Apex Court held;

"15. It is a matter of common knowledge that in motor road accident's claim cases, it is very difficult to get witness. The eye witness are also not readily available. Even if available, they are not easily ready and willing to come and depose in court of last for many reasons. Thus, we have to go by the oath of the claimant only. From the materials available on record, it is established and crystal clear that the appellant had definitely met with the accident. He was also travelling in the bus, operated by M/s Kataria Tours and Travellers. It is also proved that the accident was between two buses on the intervening night of 28-9-1994 and 29-9-1994."

13. In view of above ratio and F.I.R. at exhibit-36, finding recorded by the learned Commissioner that claimant has failed to adduce sufficient evidence that her husband was working as a driver with respondent No.1 and he died during the course of employment, and no other independent witnesses have been examined to prove contentions of claim petition cannot be

sustained. The learned Commissioner has in fact misdirected himself in rejecting the claim of petitioners/claimants.

14. In the light of evidence on record, claimants have proved their claim and the claim petition deserves to be allowed.

15. Learned advocate for Insurance Company has rightly pointed out that in the claim petition, claimants have claimed that deceased was getting Rs.8,000/- per month by way of salary. However, while calculating the compensation amount, salary of deceased is taken at Rs.11,000/- per month. He therefore rightly pointed that claim of Rs.11,74,635 is not proper. According to him, at the most claimants may be granted compensation of Rs.8,54,280/-.

16. For the aforestated reasons, the first Appeal deserves to be allowed. Hence the following order:

ORDER

- (I) First Appeal is allowed.
- (II) Impugned judgment and award dated 09/03/2018 passed by the learned Commissioner, Workmen's Compensation, Beed in W.M.C. No.32/2013 is hereby quashed and set aside.

- (III) Claim W.M.C. No. 32/2013 is allowed.
- (IV) Claimants are entitled for compensation of Rs. Rs.8,54,280/- to be paid by Respondent Nos.1 and 2 jointly and severally with interest @ 12% p.a from the date of claim petition till realization of the amount.
- (V) The first respondent is liable to pay penalty of 50% of compensation amount in terms of Section 4A of the Workmen's Compensation Act.
- (VI) 50% of the compensation amount including interest to be given to the widow/appellant No.1 and remaining 50% of the compensation amount be equally distributed amongst the remaining claimants.
- (VII) Award be prepared accordingly.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane