Shailaja

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION
## FIRST APPEAL NO.202 OF 2023

1. Sulbha Dilip Pawar ]
Aged 55 years, Widow of deceased ]

2. Swapnali Dilip Pawar ]
Aged 26 years, Daughter of deceased ]

3. Krishnabai Bhimrao Pawar, ]
Aged 73 years, Mother of deceased, ]

All residing at Rajebageshwar Nagar, ]
At & Post Islampur, Tal. Valva, ]
Islampur URN, Islampur, Sangli. ] Appellants
(Original Applicants)

Versus

1. Sameer Dilwar Ibuse ]
A/Post Akbar Mohalla, Islampur, ]
Tal. Sangli – 415 409. ] Respondent No.1
(Org. Opp. Party)

2. United India General Insurance ]
Co. Ltd. ]
TP Hub Universal Insurance Building, ]
4th Floor, Mumbai – 400 001. ]
Service to be effected at ]
Mumbai Regional Office No. II, ]
MTPC Hub, Union Co-op. Insurance ]
Bldg., 5th Floor, 23, Sir P.M. Road, ]
Fort, Mumbai – 400 001. ] Respondent No.2
(Org. Insurer)

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Mr. Devendra S. Joshi a/w Ms. Swati Mehta, for Appellants.

Mr. Nitesh Bhutekar a/w Mr. Aniket Nangare, for Respondent No.2.

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**CORAM : PRITHVIRAJ K. CHAVAN, J.**
**RESERVED ON : 18th JULY, 2023.**
**PRONOUNCED ON: 24th JULY, 2023**

**JUDGMENT:**

1. This is an appeal by the original claimants-dependents of deceased Dilip Bhimrao Pawar (for short "deceased") who are aggrieved with rejection of their Application (W.C.A) No.360/B-87 of 2016 by the Commissioner for Employee's Compensation, Mumbai on 17th September, 2018.

2. Facts, in brief, are as follows.

3. Deceased was an employee of respondent No.1 who was working as a Drive-cum-cleaner. On 16th September, 2014, while on duty, he suffered heart attack and died during the course of his employment. Deceased was 45 years old at the relevant time and was drawing salary of Rs.9,000/- per month. It is the contention of the appellants that the deceased, because of nature of his job, was under stress and tension as he had to drive a heavy vehicle for long distance. It has resulted into a heart disease and, therefore, death of the deceased was due to tension and stress during the course of his

employment with respondent No.1. The appellants, therefore, claimed compensation from respondent No. 1 and respondent No.2 i.e insurer since the insurer is also liable to indemnify respondent No.1.

4. The learned Commissioner for Employees Compensation, after evaluating the evidence on record, rejected the claim of the appellants on the ground that the appellants have failed to prove casual connection between death of the deceased and the nature of his duty. The claim has also been rejected on the ground that the deceased was not holding a valid driving licence to drive a Heavy Goods Vehicle (HGV) as the deceased had a licence to drive only Light Motor Vehicle (LMV).

5. I heard Mr. Joshi, learned Counsel for the appellants as well as Mr. Bhutekar, learned Counsel for respondent No.2-the insurer.

6. According to Mr. Joshi, death of the deceased was in the course of employment as he was working as a driver-cum-cleaner which has been deposed by appellant No.1. It is his contention that since the deceased used to be on duty of driving for long distance

and, therefore, was not getting enough sleeps. The deceased used to complain appellant No.1 about the stress of the job.

7. Admittedly, the deceased was not driving the vehicle at the relevant time. One Mr. Ganesh Pawar was driving the truck at the relevant time. The second important aspect is that even if it is considered for the sake of arguments that he was driving a vehicle at the relevant time, the record shows that the deceased was not authorized to drive heavy vehicle in the light of the fact that as per the certificate issued by the Deputy R.T.O on 4th January, 2017, the deceased was authorized to drive light motor vehicle (N/T) that too, non transport vehicle. The deceased was not even permitted to drive a transport light motor vehicle, and as such, the learned Counsel for the insurer has rightly argued that the plea taken by the appellants that the deceased was driving heavy vehicle and, therefore, was under stress is without any merit.

8. Even medical certificate as regards the final cause of death issued by K.E.M. Hospital, Bombay indicates cause of death as "Coronary Artery Narrowing" (Natural). As such, it cannot be said that the deceased had suffered death because of his nature of

employment as a driver on the heavy goods vehicle during the course of his employment. Death certificate also indicates cause of death as “right coronary artery was 50% blocked and left coronary artery was 60 percent blocked and the left circumflex artery was 50% blocked”. It is evident that the deceased died due to heart attack because of pre-existing blockages as stated hereinabove.

9. Copy of certificate of insurance *qua* the vehicle bearing registration No.MH-10-AQ-5391 stipulates the condition that any person including insured provided that the person driving holds an effective and valid driving licence to drive the category of vehicle insured hereunder, at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that a person holding an effective and valid Learner’s Licence to drive the category of the vehicle insured hereunder may also drive the vehicle when not used for transport of passengers at the time of accident and that the person satisfies the requirements of Rule 3 of Central Motor Vehicle Rule, 1989.

10. Thus, in view of the said class, insurer cannot be held liable to indemnify the owner of the goods vehicle.

11. Interestingly, Mr. Joshi argues that merely because deceased did not possess a valid licence to drive heavy goods vehicle, the insurer cannot be absolved from it's liability for the reason that the deceased was not driving the vehicle at the relevant time. On one hand, Counsel wants this Court to believe that the deceased died due to stress and tension resulting from driving heavy goods vehicle. By taking a somersault, the Counsel argues that since the deceased was a cleaner at the relevant time, there was no question of holding a valid licence. As such, argument merits to be laughed at as law would not permit to take such contrary stands. Argument of Mr. Joshi, therefore, needs to be rejected.

12. Above all, there is no substantial question of law and, therefore, the appeal needs to be dismissed on that count itself.

13. Mr. Bhutekar has relied on the judgment of the Hon'ble Hon'ble Supreme Court in case of **Mayan Vs. Mustafa and another in Civil Appeal No.6614 of 2021 @ Special Leave Petition © No.10229 of 2015**. In the said case, the appellant lost his right leg which got stuck in a Harvesting Machine. The appellant was working as a worker in the agricultural farm of the respondent

since 1997. The learned Compensation Commissioner awarded a sum of Rs.1,21,997/- with 12% interest. It is observed that an appeal against the said award was maintainable only on substantial question of law in terms of section 30 of the Employees Compensation Act, 1923. However, High Court of Judicature at Madras interfered with the Award on the ground of territorial jurisdiction on the make belief stand that the insurer pleaded in his claim petition that he was residing within the jurisdiction of the Compensation Commissioner, Trichirapalli. The Hon'ble Supreme Court, therefore, set aside the order passed by the High Court and restored the order of compensation commissioner.

14. As such, there is no substance in the appeal and, therefore, it deserves to be dismissed. Hence, the appeal stands dismissed with costs.

**[PRITHVIRAJ K. CHAVAN, J.]**