

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.581 OF 2023**

Reliance General Insurance Company,]
Policy Issuing Office – Thane (W),]
Office Address : - Chintamani Avenue]
4th Floor, Opp. Virwani Industrial]
Estate Besides Western Express]
Highway, Goregaon (W), Mumbai] **Appellant**

V/s

1. Tahira Imran Shaikh]
(widow of the deceased)]
Aged 32 years]

2. Kumari Mantsha Imran Shaikh]
(Minor daughter of the deceased)
Aged 10 years]

3. Master Mohd. Ayan Imran Shaikh]
(Minor son of the deceased)]
Aged 08 years]

4. Kumari Shifa Imran Shaikh]
(Minor Daughter of the deceased]
Aged 02 years)]

(Applicant No.2 to 4 Being Minors]
are represented through next friend/]
Gaurdian i.e Their Mother]
Applicant No.1.]

5. Sherbanu Mahmad Ayyas Shaikh]
(Mother of the deceased)]
Aged 74 years,]

All residing at Kokan Vaibhav Chawl]
No.1, Kamraj Nagar, E.E. Highway,]
Ghatkopar (E), Rajawadi,]
Mumbai – 400 077.]

(Original Applicants)

6. Mohd. Shafi Mohd Nabi	]	
Residing at: Near Church Na.,	]	
Saibaba Nagar, Behind Samaj Hall,	]	
Chembur, Mumbai 400 071.	]	Respondent

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Ms. Shalini Shankar, for Appellant.

Mr. Uday Mehta a/w Ms. Swati Uday Mehta, for Respondents No.1 to 5.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 12th JULY, 2023.

JUDGMENT:

1. By this appeal, the appellant-insurer challenges the judgment and order dated 5th August, 2022 rendered by the Commissioner for Workmen's Compensation & Judge 11th Labour Court, Mumbai in Application (ECA) No.122/B-23 of 2019, by which, claim of respondent Nos.1 to 5 was partly allowed awarding compensation to the dependents of the deceased on the ground that the deceased was an employee of respondent No.6 who met with an accident and succumbed to the injuries during the course of his employment.

2. Briefly stated, facts are as follows.

3. Respondent Nos.1 to 5 are the dependents of deceased Imran Shaikh (for short "deceased"). The deceased was employed as a

driver on a vehicle bearing No. MH-03-CT-0438 owned by respondent No.6-opposite party which was duly insured with the insurer.

4. On the fateful day of 10th June, 2018, when the deceased was discharging duty as a driver on the aforesaid vehicle, met with an accident on Eastern Express Highway. He was taken to K.M. Phule Municipal General Hospital, Vikhroli (East) where he was declared dead. Respondent Nos.1 to 5 – dependents, therefore, moved an application before the Commissioner for Workmen's Compensation claiming compensation under the Employee's Compensation Act, 1923.

5. Written statements were filed by the insurer as well as the owner of the vehicle. The learned Court below framed issues and after going through the evidence partly allowed the claim of respondent Nos. 1 to 5 by awarding compensation of Rs.8,15,400/- with interest @ 12% per annum from 10th June, 2018 till its realisation. The Court below also awarded penalty @ 10% of the compensation and funeral expenses to the tune of Rs.5000/-.

6. At the outset, when an application was moved for staying effect, execution and implementation of the impugned award passed by the Commissioner for Workmen's Compensation, a question was put to the learned Counsel for the appellant as to whether there is a substantial question of law involved in this appeal as per proviso to Section 30 of the Employee's Compensation Act, 1923. However, the learned Counsel was unable to point out any such substantial question of law.

7. Be that as it may. A bare perusal of the impugned judgment and award would also reveal that there is absolutely no substantial question of law involved in the appeal. Respondent Nos.1 to 5 by adducing cogent and acceptable evidence have not only proved employer employee relationship between the deceased and respondent No.6-employer but also proved the fact that at the time of the accident on 10th June, 2018, deceased was driving vehicle of respondent No.6 and, therefore, accident occurred during the course of employment and also arising out of the employment. Merely because the deceased was brother-in-law of the insured would not in itself disentitle respondent Nos. 1 to 5-dependents to claim compensation from the insurer and the owner. The evidence

adduced on behalf of respondent Nos.1 to 5 – dependents along with documents could not be rebutted during cross by the appellant.

8. Stand was taken by the appellant that deceased did not possess a valid driving licence at the time of the accident, however, despite granting an opportunity to the appellant to lead evidence in rebuttal, it failed and, therefore, there was no reason to disbelieve the evidence of respondent Nos. 1 to 5-dependents.

9. Having considered the findings returned by the learned Commissioner for Workmen's Compensation, I find that there is no substantial question of law in this appeal.

10. It would not be out of place to rely upon a judgment of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. Vs. Mastan and another, 2006 ACJ 528**, wherein the Hon'ble Supreme Court answered a question as to whether insurer, while defending any action initiated under the Workmen's Compensation Act, 1923 (1923 Act) is precluded from raising any defence as envisaged under sub-section 2 of Section 149 of the Motor Vehicles Act, 1988. It was pursuant to a question referred to the Full Bench

of the High Court of Karnataka which reads as under;

“Whether the restrictions on the defences available to an insurance company in terms of section 149 (2) of the Motor Vehicles Act have any application to the proceedings under the Workmen’s Compensation Act?

The Full Bench of the Karnataka High Court held;

“Under the circumstances, under the Workmen’s Compensation Act, the insurance company can only agitate violation of any condition of the policy to make substantial question of law and, therefore, the question of raising other defences available in terms of section 149 (2) of the Motor Vehicles Act does not arise”.

11. The Hon’ble Supreme Court did not subscribe to the view of the Full Bench of the Karnataka High Court. It would be advantageous to refer to paragraphs 19 to 21 of the judgment of the Hon’ble Supreme Court;

“19. Right of appeal is a creature of statute. The scope and ambit of an appeal in terms of Section 30 of the 1923 Act and Section 173 of the 1988 Act are distinct and different. They arise under different situations. In a case falling under the 1923 Act, negligence on the part of the owner may not be required to be proved. Therein what is required to be proved is that the workman suffered injuries or died in course of employment. The amount of compensation would be determined

having regard to the nature of injuries suffered by the worker and other factors as specified in the Act. The findings of fact arrived at by the Commissioner for Workmen's Compensation are final and binding. Subject to the limitations contained in Section 30 of the 1923 Act, an appeal would be maintainable before the High Court; but to put the insurer to further disadvantages would lead to an incongruous situation.

20. An insurer, subject to the terms and conditions of contract of insurance, is bound to indemnify the insured under the 1923 Act as also the 1988 Act. But as noticed hereinbefore, keeping in view the nature and purport of the two statutes, the defences which can be raised by the insurer being different, the scope and ambit of appeal are also different.

21. Under the 1988 Act, the driver of the vehicle is liable but he would not be liable in a case arising under the 1923 Act. If the driver of the vehicle has no licence, the insurer would not be liable to indemnify the insured. In a given situation, the Accident Claims Tribunal, having regard to its rights and liabilities vis-a-vis the third person may direct the insurance company to meet the liabilities of the insurer, permitting it to recover the same from the insured. The 1923 Act does not envisage such a situation. Role of Reference by incorporation has a limited application. A limited right to defend a claim petition arising under one statute cannot be held to be applicable in a claim petition arising under a different statute unless there exists express provision therefor. Section 143 of the 1988 Act

makes the provisions of the 1923 Act applicable only in a case arising out of no fault liability, as contained in Chapter X of the 1988 Act. The provisions of Section 143, therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. A fortiori in a claim arising under Chapter XI, the provisions of the 1923 Act will have no application. A party to a lis, having regard to the different provisions of the two Acts cannot enforce liabilities of the insurer under both the Acts. He has to elect for one”.

It is implicit that negligence on the part of the owner may not be required to be proved if a case falls under the 1923 Act. What is required to be proved is that the workman suffered injuries or died in course of employment.

12. Thus, as already stated hereinabove, since there are no substantial questions of law, there is hardly anything to be discussed in this appeal.

13. Ms. Shalini Shankar though vehemently urged by emphasizing grounds (e) and (f) of the memo of appeal, I am afraid these grounds, by no stretch of imagination, could be said to be substantial questions of law. Since there are no substantial questions

of law, the appeal needs to be dismissed and as such, it is dismissed with costs.

[PRITHVIRAJ K. CHAVAN, J.]