

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1064 OF 2013

The New India Assurance Co. Ltd,)
R-26 Road-A, MIDC Area, Satpur,)
Nashik-7.)
Through Mumbai Regional Office No.1,)
New India Bhavan 2nd Floor, 34/38,)
Bank Street, Fort, Mumbai – 400023.)Appellant
(Ori. Op.No.2)

Versus

1. Smt. Rijwanabano Shaik Rafique)
Age:- 28 years, Occ. Household work,)
2. Tanjila Shaik Rafique)
Age 2 ¹/₂ years, Occ. Nil,)
3. Arshin Shaik Rafique)
Age 10 months, Occ. Nil,)
4. Fatimabanu Shaik Musa)
Age 55 years, Occ. Housewife,)
All residing at Haji Ahmedpura,)
Malegaon, Dist. Nashik.)
5. Mr. Purushottam Fulaji Thakur)
Age Adult, Occ. Business,)
Residing at P. No. 1, Ganesh Colony,)
Near Vasahat, At Soyagaon,)
Tal. Malegaon, Dist. Nashik)Respondents
(Resp. 1 to 4 org. Appellant
Respondent 5 Org. Op.)

Mr. Devendranath S. Joshi for the Appellant
Mr. Sachin Gite a/w Sarfaraj J. Shaikh for Respondent Nos. 1 to 4.
Mr. Sejal Todkar i/b Ashwin Kapadnis for the Respondent No.5.

CORAM : S. G. DIGE, J.

RESERVED ON : 13th DECEMBER, 2022.

PRONOUNCED ON : 25th JANUARY, 2023

JUDGMENT. :

1. Being aggrieved and dissatisfied by the judgment and award passed by the Commissioner for Workmen's Compensations and the Judge, Labour Court, Nashik (for short 'the trial Court'), the appellant insurance company/original respondent no. 2 preferred this appeal.

2. Brief facts of the case are as under.

The deceased Shaik Rafique Shaikh Musa was serving as a driver in the employment of respondent no. 5 on monthly wages of Rs. 4,000/-. On 20th July, 2008 at about 8:00 p.m. Deceased Shaik Rafique was driving Auto Rickshaw and trolley containing gas cylinders bearing No. MH-41-G-0882 called as a delivery van on Yeola-Manmad road. At the relevant time because of high flash light of the vehicle coming from opposite direction, the delivery van of the deceased was turned down and, in that accident, the deceased died. The respondent nos.

1 to 4/original claimants (for short 'the Claimants') filed claim petition for getting compensation before the trial Court. The trial Court has awarded the compensation. Against said judgment and order, this appeal.

3. It is contention of learned counsel for appellant, that the deceased was not holding valid and effective driving license at the time of accident. There was no employer and employee relationship between deceased and respondent no. 5. To prove that deceased was not holding effective valid driving license at the time of accident, the appellant has examined the officer of RTO but, it is not considered by the trial Court and the trial Court has awarded the compensation. Hence, requested to allow the appeal.

4. It is contention of learned counsel for the claimants, that deceased was holding non transport vehicle driving license. The respondent no. 5 has admitted that deceased was his employee. So, no question arises of employer and employee relationship. Learned counsel relied on **Mukund Dewangan Vs. Oriental Insurance Company Limited 2017 14 SCC 663.**

5. I have heard both learned counsel, perused judgment and

order passed by the trial Court. The issue involved in this appeal is, employer and employee relationship between deceased and respondent no. 5 and driving license of the deceased. The respondent no. 5 who is the employer of the deceased has admitted that deceased was his employee. So, no question arise about disputing relationship between respondent no. 5 and deceased unless any evidence is produced on record. Appellant has not examined any witness to prove that deceased was not the employee of respondent no. 5. Hence, I do not find any infirmity in the observation of trial Court that there was employer and employee relationship between deceased and respondent no. 5.

6. In case of driving license of the deceased, it has come on record that deceased was holding driving license of light motor vehicle i.e. (non-transport vehicle). Whereas deceased was driving an auto containing gas cylinders that is delivery van i.e. (transport vehicle). Appellant has examined witness from RTO, Shri. Sambhaji Patil at Exhibit- "11". He has stated that as per their office record deceased was holding driving license of light motor vehicle.

7. In my view, the Hon'ble Apex Court in the case **Mukund Dewangan (supra.)** has held that license to drive light motor vehicle, it includes license to drive transport vehicle. The trial Court has observed that insurance company can recover the paid damages from policy holder in case of any technical breach of that terms of policy.

8. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed. No order as to cost.
 - ii. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. The statutory amount along with accrued interest be transferred to the tribunal. The parties are at liberty to withdraw it, as per at liberty to withdraw it, as per rule.
9. All pending applications stand disposed off.

(S. G. DIGE, J.)