



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 412 OF 2019

1. Suvarna @ Nandabai Pandit Kendre
Age : 37 years, Occu.: Household

2. Ayodhya Pandit Kendre,
Age: 17 years, Occu.: Education

3. Navnath Pandit Kendre,
Age: 15 years, Occu.: Education

4. Vaijnath Pandit Kendre
Age: 13 years, Occu.: Education

(Applicant Nos.2 to 4 being Minor
U/g. Of their real Mother and natural
guardian i.e. Applicant No.1)

5. Jijabai Vithal Kendre
Age: 65 years, Occu.: Household

6. Vithal Kondiba Kendre,
Age: 75 years, Occu.: Nil,
All R/o. Mansingh Wadi,
Tq. Kandhar, Dist. Nanded.

... Appellants
(Orig. Claimants)

VERSUS

1. Vithal Madhavrao Bhosle
Age: Major, Occu.: Business,
R/o Thogaon, Tq. & Dist. Nanded

2. The New India Assurance Co. Ltd.
Through it;s Manager,
Lahoti Complex, Vazirabad, Nanded.

... Respondents

.....
Mr. B.R. Kedar, Advocate for Applicants
Mr. V.H. Solanke, Advocate h/f Mr. B.N. Gadegaonkar, Advocate
for Respondent No.1
Mr. M.R. Deshmukh, Advocate for Respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th AUGUST, 2024

ORAL JUDGMENT :

1. Heard.
2. Admit. Taken up for final hearing with the consent of the parties.
3. Being aggrieved by the impugned judgment passed by learned Commissioner for E.C. Act and Judge, Labour Court, Nanded in E.C.F.A. No.46 of 2013, claimants have preferred this first appeal under section 30 of the Employees Compensation Act.
4. Pandit Vithal Kendre, husband of claimant no.1 and father of claimant nos.2 to 4 and son of claimant nos.5 and 6 was working as driver along with the first respondent/owner of truck No. MH-26/7961. The first respondent/owner was paying him monthly salary of Rs.8,000/- Accident occurred on 20.01.2013, while Pandit Kendre was discharging his duty as driver, in front of Chitadevi Mandir, Koka Shivar, District-Bhandara. Pandit expired in the accident. Claimants therefore filed E.C.F.A. No.46 of 2013 claiming compensation of Rs.10,00,000/-.
5. The first respondent/owner by filing say pleaded that Pandit Kendre was employed as a driver in emergency. The driver engaged by him did not obtain prior permission of the

first respondent/owner to engage the deceased as driver on the truck. The first respondent/owner had no knowledge that deceased was engaged as driver on the truck. He has not directly engaged deceased as a driver. He, therefore, denied his liability to pay compensation.

6. Respondent No.2/insurance company opposed the claim by filing written statement and denied the contentions raised by claimants.

7. Learned Commissioner, after recording evidence rejected the claim holding that claimants have failed to prove that deceased Pandit Kendre was in the employment of the first respondent. Claimants have utterly failed to prove that the truck has been owned by the first respondent and the first respondent has denied the relation of employer and employee and payment of monthly wages to deceased in his written statement. The first respondent has not identified two witnesses i.e. Sudhakar and Kashinath, who were alleged to be cleaner on the said truck. Both these witnesses are close relatives of deceased and whole proceeding itself shows that petition has been filed with collusion of police machinery and the first respondent to grab the amount of compensation from the insurance company. It is also observed by the learned

Commissioner that deceased was not having valid driving licence to drive transport vehicle.

8. Heard learned advocate for claimants, learned advocate for the owner and learned advocate for insurance company. Perused the record.

9. Neither the accident is disputed nor the death of Pandit Kendre in the said accident. FIR of the accident in question, which took place on 20.01.2013 is lodged on 23.01.2013 by another truck driver Ganpat Sambhaji Gaikwad, who was proceeding in his truck towards sugar factory after loading sugarcane. He has stated that truck No. MH-26/7961, which was loaded with sugarcane and which was being driven by Pandit Kendre, turned turtle on the slop of the road and Pandit Kendre expired by coming under the truck. Inquest panchanama and post-mortem report supports the accidental death of Pandit Kendre.

10. It appears from the evidence brought on record before the learned Commissioner that the truck No. MH-26/7961 was registered in the name of Mr. Pravinkumar Bapurao Naik and not in the name of the first respondent, Vithal Madhavrao Bhosle. The Commissioner therefore was of the view that the first respondent was not the registered

owner of the truck and therefore his evidence that deceased was under his employment is of no help to claimants. Learned Commissioner has proceeded to observe that there is no document to show that the first respondent is the registered owner of the truck. But, it is further observed that the insurance policy of the truck involved in the accident is in the name of the first respondent. Learned Commissioner therefore observed two material documents i.e. RC book and insurance policy are contrary to each other.

11. Be that as it may, fact remains that insurance policy stands in the name of the first respondent and he has deposed before the learned Commissioner that he was owner of the truck and deceased was in his employment. In view of the settled legal position that considering welfare provision of payment of compensation, if there are two interpretations available, the one supporting the case of claimants is to be relied upon. The learned Commissioner has lost sight of this settled legal position and has wrongly rejected the claim application filed by claimants.

12. Finding recorded by learned Commissioner that at the time of accident deceased was not holding valid licence for driving transport vehicle is also not proper in the peculiar

facts of present case. Admittedly, the deceased was having valid licence to drive heavy transport vehicle since 27.07.1992 till 09.07.1997, which was renewed from 14.05.2008 to 13.05.2011. So this is not a case where the deceased at no point of time had licence to drive transport vehicle.

13. Another ground on which the application is rejected is that prior notice under section 10 of Workmen's Compensation Act is not brought on record by the claimants. Claimants had placed copies of R.P.A.D. receipts of the notice forwarded to the owner before learned Commissioner, however, claimants failed to place on record the office copy of the said notice forwarded by them. Claimants have placed a copy of notice forwarded by them to owner in the compilation of first appeal.

It is submitted that inadvertently office copy of the notice under section 10 was remained to be placed before the learned Commissioner and claimants may be given an opportunity to place the same on record.

14. It is well settled that learned Commissioner is not bound by strict rules of pleadings and evidence. *Prima facie*, it appears that claimants have placed on record, sufficient material to show that deceased was under the employment of

the first respondent. But the claimants ought to have arrayed the registered owner of the truck as party respondent in the claim application, the said opportunity needs to be given to claimants to prove their claim on merits.

15. For the aforesaid reasons, Impugned judgment passed by learned Commissioner for E.C. Act and Judge Labour Court, Nanded in E.C.F.A. No.46 of 2016 is hereby quashed and set aside.

16. E.C.F.A. No.46 of 2013 is remanded back to the Court of learned Commissioner Commissioner for E.C. Act and Judge Labour Court, Nanded with liberty to claimants to add registered owner as party respondent and with further liberty to the parties to lead further evidence on record, if any.

17. The learned Commissioner is directed to decide the application as expeditiously as possible in any case within one year from the date of receipt of writ of this Court.

18. Needless to state that observations made in this order shall not influence the learned Commissioner while deciding the application on merit.

19. First Appeal is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE