



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2009 OF 2019

1. Sharada @ Rupali Sanjay Jaiswal
Age: 34 years, Occupation: Household,
2. Chi. Krishi Sanjay Jaiswal
Age: 13 years, Occupation: Education,
3. Ku. Palak Sanjay Jaiswal
Age: 10 years, Occupation- Education
(Applicant no. 1 is mother and natural
guardian of Applicant No. 2 and 3 being her
children)
4. Sau. Kamalabai Ghanashyam Jaiswal
Age: 67 years, Occupation- Household
5. Shri. Ghanashyam Ramlal Jaiswal
Age: 75 years, Occupation- Nil,
All are R/o Makarand Nagar, Plot No. 603,
Varangaon, At- Varangaon, Tal. Bhusawal,
Dist. Jalgaon.

...APPELLANTS
[Ori. Claimants]

VERSUS

1. Sunil Ghanashyam Manpure @ Jaiswal
Age: Major, Occupation: Business Plot No. 603,
Varangaon, At- Varangaon, Tal. Bhusawal,
Dist. Jalgaon.
2. The Bajaj Allianz General Insurance Company Ltd.,
Through Branch Manager
G.E. Plaza, Air Port Road,
Yerwada, Pune- 411006

...RESPONDENTS
[Orig. Respondents]

.....

Mr. M.M. Bhokarikar, Advocate for appellants
Mr. D.S. Joshi, Advocate for respondent No. 1
Mr. Mohit Deshmukh, Advocate for respondent No. 2

Bhagyawant Punde

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 7th OCTOBER, 2024

ORDER :

1. Heard. With the consent of parties taken up for final hearing at the admission stage.
2. This appeal filed under Section 30 of the Workmen's Compensation Act, 1923 (for short "Act of 1923") challenges judgment and award passed by Commissioner for Workmen's Compensation & Judge, Labour Court, Jalgaon in Employee's Compensation Application No. 29/2011.
3. Appellants filed claim petition under Section 10 of the Act of 1923 for compensation of Rs. 5,76,420/-, as husband of appellant No. 1 namely Sanjay Jaiswal during the course of employment with respondent No. 1/owner of vehicle, met with an accident on 19.04.2010 and expired. Appellants contended that deceased was working as driver with respondent No. 1, who happened to be real brother of deceased and was getting salary of Rs. 6,000/- per month. Maruti Omni vehicle No. MH-19-AE-4517 involved in the accident was insured with respondent No. 2, therefore, both respondents are liable to pay the compensation of RS. 5,76,420/- to appellants.

Bhagyawant Punde

4. Respondent No. 1/Owner of vehicle filed written statement and admitted that deceased was driver of the vehicle owned by him. He contended that he was paying Rs. 5,000/- per month salary to deceased. The vehicle was insured with respondent No. 2 and hence it is liable to pay the compensation.

Respondent No. 2/Insurance Company opposed the claim by filing written statement at Exhibit-C. Apart from denying averments in the claim petition it is specifically denied that;

That the deceased is not workman as defined in the W.C. At and he was not employee of the Opponent No. 1 insured, therefore, the applicant's application deserves to be dismissed with costs. It is specifically denied that the deceased was employed as driver on the said Car MH-19-AE-4517 as alleged in the petition. Hence there is no employer employee relationship between the Opponent no. 1 and the deceased. It is evident that the deceased was younger brother of Opponent no. 1. It is crystal clear from petition itself that the address of applicants and the Opponent no. 1 is same and they are staying at same address and house. The deceased was family member of the Opponent no. 1. In such circumstances it is submitted that to grab money from insurance company the claimants have falsely alleged that deceased was in employment of Opponent no. 1 as driver. Hence the application of applicants may be dismissed with costs.

After recording evidence, learned Commissioner has dismissed the claim petition. Hence, the present appeal.

5. Heard learned advocate for appellants, learned advocate for respondent No. 1 and learned advocate for respondent No. 2.

6. Learned advocate for appellants submits that there is no prohibition in law for a family member to work with close relative. The relationship of employer and employee is admitted by respondent No. 1. In that view of the matter, it was not necessary for appellants to prove on record that there was employer employee relationship between deceased and respondent No. 1. Learned Commissioner by ignoring this position has recorded a perverse finding that this claim is filed by claimants in collusion with Respondent No. 1 to grab money from the insurance company. He therefore submits that substantial question of law arises in the present matter that perverse finding is recorded by learned Commissioner in respect of employer employee relationship between deceased and first respondent and on that basis claim is rejected. In support of his submissions he relied on *Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Anr*, AIR 2007 SC 248, *The Divisional Manager, The Oriental Insurance Co. Ltd. v. Smt. Sayeeda Khanam w/o Late Azam Khan & Ors*, MFA No. 25711/2011 (WC),

United India Insurance co. Ltd., Belagum v. Ramesh Kamanagouda Patil and another, 2017(1) AIR KAR R 245, *Divisional Manager National Insurance Company Limited vs. Smt. Pramilabai w/o Mohan Kulkarni and Others*, MFA No. 31321/2010(WC), *Manohar Bhimappa More v. Mahadev Bhimappa More and Anr.*, 2006 ACJ 850, *Oriental Insurance Co. Ltd. v. Hanumant and Anr.* 2006 ACJ 251, *New India Assurance Co. Ltd v. Gajanan D. Dengi & Anr*, 2009 ACJ 168 and *Chattanatha Karayalar v. Ramchandra Iyer and another*, AIR 1995 SC 799.

7. Learned advocate for respondent No. 1/owner of vehicle supported appellants.

8. Learned advocate for respondent No. 2/Insurance Company supported the impugned judgment and award. He submits that statements of appellants and brothers and parents of deceased falsify the case of appellants that deceased was employed with first respondent as a driver. He therefore submits that learned Commissioner is justified in recording said finding on the basis of material placed before him and no case is made out by appellants to interfere in the same. According to him, no substantial question of law is involved in the present matter and

appeal is liable to be dismissed. In support of his submissions he relied on *Gottumukkala Appala Narasimha Raju and Others v. National Insurance Company Limited and Another*, (2007) 13 SCC 446 and judgments of this Court in First Appeal No. 1821 of 2020 and 193 of 2004.

9. Heard learned advocate for appellants, learned advocate for respondent No. 1 and learned advocate for respondent No. 2 at length. With the assistance of learned advocates for respective parties, perused the record.

10. Accidental death of Sanjay Jaiswal is not in dispute. The dispute is as to whether deceased was employed with his real brother/Respondent No. 1. A specific issue was framed by learned Commissioner in this behalf i.e. "Whether deceased Sanjay was employed by respondent No. 1 at the time of accident?" On appreciation of material on record this issue is answered in the negative by learned Commissioner, rightly so.

11. In support of claim, appellant No. 1 has examined herself and placed on record copy of FIR of accident, spot panchnama, post mortem report, death certificate etc.

12. Respondent No. 2 has brought on record certified

copies of police statements of respondent No. 1- Sunil Jaiswal, Sandip Jaiswal, Ghanshyam Jaiswal, Kalabai Jaiswal and appellant No. 1- Rupali Jaiswal and statements of employees of deceased namely Vinod Bansode and Dashrath Bavaskar recorded during the investigation of Crime No. 26 of 2010. In the statement of 1st respondent he has stated that he is employed at Ordinance Factory, Varangaon and Maruti Omni car No. MH-19-AE-4517 is owned by him. Sanjay was his younger brother. But said vehicle was being driven by younger brother Sanjay, he used to do wholesale business of selling eggs and for that business he was using said vehicle. All the family members of the deceased i.e. brother Sandip, father Ghanashyam, mother Kalabai as well as appellant No. 1 have stated the same thing in their statements before the police. Statements of two employees are also to the same effect.

13. Statement of appellant No. 1 recorded by the police was confronted to her during her cross examination and she could not give satisfactory answer. She has admitted in her cross examination that her statement was recorded by the police, so also, statements of her family members. She feigned ignorance about the statements given by family members to police. She

has stated that she has not complained about recording her incorrect statement. She has also admitted that she has no documentary evidence to show that her husband was getting salary of Rs. 6,000/- per month.

14. It is a matter of record that residential address of appellants and 1st respondent is the same. Considering the fact that respondent No. 1 was employed in Government service and statements recorded during the investigation that deceased was doing wholesale business of selling eggs and for that purpose he was using Omni vehicle involved in the accident, it is not possible to believe that he was employed with his real brother/respondent No. 1.

15. Learned advocate for appellants has relied on Smt. Sayeeda Khanam (supra), Ramesh Kamanagouda Patil (supra), Smt. Pramilabai Kulkarni (supra), Manohar Bhimappa More (supra), Hanumant and Another (supra), Gajanan Dengi (supra), to contend that family member can employ another family member and law does not prohibit a family member to employ another family member. Merely because there is blood relationship between employer and employee that cannot be a reason to suspect employer employee relationship.

16. In Chattanatha Karayalar (supra), the Apex Court has held that, *"under the Hindu law, there is no presumption that a business standing in the name of any member is a joint family one even when that member is the manager of the family, and it makes no difference in this respect that the manager is the father of the coparceners."*

There cannot be any dispute about said proposition, however, considering the material on record, which is discussed hereinabove, these decisions are of no assistance to the case of appellants.

17. In Gottumukkala Appala Narasimha (supra), husband was claimed to be employed by wife as driver on tractor. It is held;

22. In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, have the appellants concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.

23. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been

taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

24. No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also known (sic not) borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under 1923 Act certainly would not lie. Only because Section 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, proprio vigore would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of 1988 Act to the provisions of 1923 Act save and except to the extent noticed hereinbefore."

18. In First Appeal No. 1821 of 2020 in similar facts this Court observed;

"7. The appellant Insurance Company has a justification to contend that, it is a collusive claim. The petitioner – claimant is mother of the deceased. The truck belonged to her husband, respondent No.2. As such, the claim has been filed by a wife against her husband. True, the deceased held a valid and effective driving licence. Admittedly, the deceased, his father

and a few labours had been to the river bed for loading of sand in the truck. It is also undisputed that, while the deceased was engaged in excavating the sand, so as to fill the truck therewith, a cliff of sand caved in. The deceased and one of the labours were buried thereunder. Both died on the spot.

8.-----

15. It is not that no master-servant or employer-employee relationship could exist between blood relations. There has to be cogent and reliable evidence in proof of such relationship. The evidence in the case undoubtedly indicates that, it was the respondent No.2 (truck owner) who would ply his own truck. Although the deceased held a valid and effective driving licence, he would assist his father as a labour. On the same lines are the statements recorded during investigation of the accidental death. The petitioner, mother of the deceased, did not have personal knowledge as to who were serving with her husband and in what capacity as well. There is no documentary evidence in proof of the employer- employee relationship. The respondent No.2 (truck owner) consciously remained absent in the proceedings before the Commissioner. Both the petitioner and he himself have been residing together. No other conclusion from the evidence on record could be drawn than that it is a case of collusion between the petitioner and respondent No.2, her husband. The learned Commissioner ought not to have relied on the evidence of witness Rahemankhan in view of there being voluminous, cogent and reliable evidence to indicate that on the given day the respondent No.2 drove the truck to the river bed. The deceased and others had accompanied him in the truck as the labours to load the truck with sand. The unfortunate death of Azar, therefore, could not be said to have occurred as a result of personal injury caused to him

by accident arising out of and in the course of his employment."

19. This Court in First Appeal No. 193 of 2004 in similar facts held;

"7. It appears that the claimant and his brother, Respondent No.1 placed reliance on some record like account maintained by Respondent No.1 of his cloth business. In the account, Respondent No.1 had shown that he had spent amount on salary and even the name of claimant was mentioned in some accounts. Even if that record is considered as it is, it cannot be said that he was appointed as a driver. It was a cloth business and there is a clear probability that it was a business of the family and the salary was separately shown by a brother. As there is no entry to show that he was being paid salary as a driver that record cannot help Respondent No.1 or the claimant. In the account prepared at the end of the year salary amount of Rs.16,500/ is shown to have been spent for ascertaining the actual profit made in the business and it can be said that this was the salary of all the employees working in the shop. In that yearly account, names are not mentioned of the employees. In any case, for fastening liability on third party, on the basis of entries made in the account, firstly, they need to be proved duly by showing that they were regularly made in properly maintained account and there needs to be independent corroboration to the entries. There is no such independent corroboration and the entries are of aforesaid nature. It was a private car and a brother of owner was driving the car and so it cannot be said that the brother was employed as a driver on private car. No log book was maintained of the vehicle to show that it was being used by the owner and every time the claimant was

driving it as employee of Respondent No.1. There is no independent evidence at all to prove that the claimant was appointed as a driver at any time by Respondent No.1. In view of these circumstances, the Commissioner has held that the claimant has failed to prove that he was employee of Respondent No.1 for the purpose of Workmens' Compensation Act.

8.----

9. In view of the observations made above, and the facts and circumstances of the present case, this Court holds that in the present case, the claimant has failed to prove that there was specific contract between the claimant and Respondent No.1 and due to that there was relationship of employer employee between them."

Above observations support the case of respondent No. 2.

20. Learned Commissioner has properly analyzed the evidence and has recorded a finding of fact. No case is made out by appellants to interfere in the same. No substantial question of law is involved in the first appeal. First appeal being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]