IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1621 OF 2017

1. Dnyanoba Fakira Favade
Age- 59 years, Occ- Agri.,
R/o. Upalai, Tq. Kallamb,
Dist. Osmanabad.

2. Mangal W/o Dnyanoba Favade
Age- 59 years, Occ- Agri.,
R/o. Upalai, Tq. Kallamb,
Dist. Osmanabad. ...APPELLANTS
[Ori. Applicants]

VERSUS

1. Padminbai Madhukar Kharade
Age- Major, Occu. Agri.,
R/o. Selu, Tal. Washi,
At Present- Upalai, Tq.Kallamb,
Dist. Osmanabad.

2. Madhukar S/o Kashinath Kharade
Age- Major, Occu. Agri.,
R/o. Selu, Tal- Washi,
At Present- Upalai, Tq. Kallamb,
Dist. Osmanabad.

3. The Branch Manager,
The Oriental Insurance Company,
Marwadi Galli, Near Hotel Gayatri,
Civil Hospital Road, Osmanabad,
Dist. Osmanabad. ...RESPONDENTS
[Ori. Opponents]

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Mr. S.B. Choudhari, Advocate for Appellants
Mr. S.S. Phatake, Advocate for respondents No. 1 and 2
Mr. V.N.Upadhye, Advocate for respondent No. 3

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th AUGUST, 2024

ORAL JUDGMENT:

1. Heard.

2. **Admit**. Taken up for final hearing with the consent of parties.

3. Original claimants/appellants have filed this appeal, under section 30 of the Employee's Compensation Act, 1923, (for short 'said Act') challenging exoneration of respondent No. 3/Insurance Company by learned Commissioner for Employee's Compensation, Osmanabad in W.C.A. No. 51/2012.

4. Undisputed facts are that, Nanasaheb Favade was working as driver on tractor No. MH-25-H-1951. On 16.08.2012, tractor driven by Nanasaheb turned turtle and he expired in the said accident. At the time of accident, deceased was 26 years old and drawing salary of Rs. 7,000/- per month and daily *bhatta* of Rs. 100/-. Tractor and trolley attached to it were insured with respondent No. 3. Hence, claimants being parents of deceased claimed compensation.

5. Claim was opposed by respondents No. 1 and 2/owners of tractor and trolley. They admitted that deceased was their employee, accident was not disputed. Tractor and trolley were insured with respondent No. 3 and there was no breach of policy and therefore insurance company is liable to pay the compensation.

6. Insurance Company opposed the claim contending that there was breach of policy as tractor head and trolley was driven contrary to the provisions of Motor Vehicles Act, deceased was not possessing valid and effective driving license of tractor head and attached trolley and therefore insurance company is not liable to pay the compensation.

After recording evidence and hearing the parties, learned Commissioner partly allowed the claim and awarded compensation of Rs. 8,07,300/- along with 7.5% interest and further directed employers to pay penalty of Rs. 4,03,650/-, however, claim against respondent No. 3/Insurance Company was dismissed. Claimants are aggrieved by dismissal of claim petition against insurance company.

7. Heard learned advocate for appellants, learned advocate for respondent No. 2 and learned advocate for

respondent No. 3.

8. Learned advocate for claimants by relying on ***Nagashetty vs. United India Insurance Co. Ltd and Others***, AIR 2001 SC 3356 submits that learned Commissioner has committed an error in exonerating insurance company from payment of amount of compensation. He submits that meager interest is awarded by learned Commissioner contrary to Section 4 of the said Act.

9. Learned advocate for respondents No. 1 and 2 i.e. owners of tractor and trolley also relied on the same decision to contend that insurance company is liable to pay the amount of compensation as tractor and trolley both were insured with respondent No. 3.

10. Learned advocate for insurance company, on the other hand, supported the impugned judgment and award. He relied on the observations of learned Commissioner while dismissing the claim as against insurance company. He submits that this a case of clear cut breach of policy and learned Commissioner was justified in dismissing the claim against insurance company. According to him, no case is made out by

claimants to interfere in the impugned judgment and award.

11. Heard learned advocate for claimants, learned advocate for respondents No. 1 and 2 and learned advocate for insurance company at length. Perused the record.

12. Learned Commissioner while dismissing the claim against insurance company has observed that "*deceased was not holding license to drive tractor head and attached trolley*." According to learned Commissioner it was fundamental breach of policy and hence insurance company is not liable to pay the compensation. It is observed that, "*deceased was possessing LMV tractor driving license. It is therefore clear that deceased was not possessing valid, effective driving license so that he could drive the tractor to which trolley was attached*."

13. In Nagashetty (supra) it is held:

> *"Undoubtedly under Section 10 a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C. Sharda is to be accepted then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the*

light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle. "

14. The case of appellants is squarely covered by the aforesaid ratio. Admittedly, in the present case deceased was possessing LMV tractor driving license and tractor and trolley both were insured with the third respondent/Insurance Company. Therefore, finding recorded by the learned Commissioner that there was breach of policy as deceased did not possess license to drive tractor attached with trolley and therefore insurance company is not liable to be pay the compensation cannot be sustained.

15. Learned Commissioner has awarded 7.5% interest per annum on the compensation amount w.e.f. 09.11.2012 till its

realization. Learned advocate for claimants is justified in relying on Section 4A 3(a) of the said Act, which provides for payment of simple interest @ 12% per annum. In view of this provision, claimants are entitled for simple interest of 12% per annum on the compensation amount. In the result, following order:

ORDER

i) First Appeal is allowed with proportionate costs.

ii) Impugned judgment and award dated 30.07.2013, passed by learned Commissioner for Employee's Compensation & C.J.S.D. Osmanabad in W.C.A. No. 51/2012 to the extent it dismisses claim petition against respondent No. 3/Insurance Company is quashed and set aside.

iii) W.C.A. No. 51/2012 is partly allowed.

iv) Respondents No. 1 to 3 are jointly and severally held liable to pay compensation of Rs. 8,07,300/- to the claimants along with 12% simple interest w.e.f 09.11.2012 till realization.

v) Respondent No. 2/Insurance Company shall deposit compensation along with accrued interest before learned Commissioner for Employee's Compensation & C.J.S.D. Osmanabad within 12 weeks from the date of uploading of this judgment.

vi) Rest of the judgment and award is maintained.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde