



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

FIRST APPEAL NO.460 OF 2010

APPELLANT : 1. National Insurance Company Limited,
Regional Office, Mangalam Arcade 2nd
floor, Dharampeth Extension,
Nagpur – 440010,
through its authorized officer

//VERSUS//

RESPONDENTS : 1. Sau. Tara w/o Harichand Sakure,
(Ori. Applicant) Aged about adult,
R/o Kusari, Post Mohgaon,
Tahsil Mohadi, District Bhandara

Ori. N.A. No.2 2. Harichand Laxman Sakure,
Aged about adult, Occu. Cultivator,
R/o. Kusari, Post Mohgaon,
Tahsil Mohadi, District Bhandara

Mr. Cecil A. Anthony, Advocate for appellant.

Mr. R. R. Dawda, Advocate for respondent No.1.

CORAM : **G. A. SANAP, J.**

DATED : **18th JANUARY, 2024**

ORAL JUDGMENT

1. In this appeal filed under Section 30 of the Workmen's
Compensation Act, 1923 (for short, "the Act of 1923") the

challenge is to the judgment and order dated 30th December, 2009, passed by the learned Commissioner for Workmen's Compensation, Labour Court, Bhandara, whereby the commissioner allowed the claim for compensation filed by the respondent No.1.

2. This appeal was admitted on the following substantial questions of law.

- i) Whether the penalty could have been imposed on the insurance company in the facts and circumstances of the case?
- ii) Whether there was an employer-employee relationship between the deceased and the respondent No.2?

3. Facts leading to the above questions need to be stated.

Respondent No.1 (hereinafter referred to as 'claimant' is the mother of the deceased. Respondent No.2 is the father of the deceased and husband of the claimant. It is the case of the claimant that her deceased son was having a valid driving licence. Respondent No.2 owned a tractor bearing registration No.M.H.36/D/9367. The deceased was employed by respondent

No.2 on a monthly salary of Rs.4500/-. On October, 21, 2008 as instructed by respondent No.2, the deceased carried the tractor to the agricultural land of respondent No.2 for ploughing the land. It is stated that while undertaking the plowing operation, the tractor turned turtle. The deceased was found under the tractor. He died on the spot. The matter was reported to the police.

4. The appellant (hereinafter referred to as respondent No.1) is the insurer of the tractor in question. According to the claimant, she was dependent on the income of the deceased. The deceased was staying with her. It is stated that after the death of the deceased, she lost the source of her livelihood. The claimant, therefore, claimed compensation under the Act.

5. Respondent No.2-the owner of the tractor, did not appear before the Commissioner. Respondent No.1-Insurance Company filed the reply and opposed the claim. The Insurance Company has admitted the relationship as a mother and son between the claimant and the deceased. However, Insurance Company contended that there was no employer and employee relationship between the deceased and respondent No.2. They were residing together. The deceased was driving the tractor, being

the son and member of the family of the respondent No.2. In order to get compensation, a false case has been filed.

6. The claimant has examined herself. The claimant has also examined one independent witness to seek corroboration to her evidence. Respondent No.1-Insurance Company did not adduce the oral evidence. Similarly, the evidence was not adduced by respondent no.2-owner of the tractor. Respondent No.2 has admitted before the Commissioner that there was a relationship of the employer and employee between him and the deceased. Learned Commissioner on appreciation of the available evidence, found substance in the claim and accordingly granted the compensation.

7. Learned Advocate for the respondent No.1- Insurance Company submitted that the evidence adduced by the claimant woefully falls short to prove the relationship as an employer and employee between the deceased and respondent No.2. Learned Advocate pointed out that the deceased was the son of the respondent No.2-owner of the tractor, and therefore, there was no question of employing the deceased as a driver on the tractor. Learned Advocate submitted that there is no documentary

evidence to prove that respondent No.2 was paying Rs.4500/- per month towards salary to the deceased. Learned Advocate submitted that in order to claim the compensation, a false case has been filed. Learned Advocate submitted that the evidence is not credible, and therefore, ought to have been discarded by the learned Commissioner. Learned Advocate further submitted that the order of the Commissioner imposing the penalty on the respondent No.1-Insurance Company is not legal and proper. Learned Advocate for the respondent No.1 – Insurance Company relied upon the decisions in *Smt. Lata Ramchandra Ubale vs. Shri Ramchandra Shankar Ubale and another* reported at [2012(4) Mh.L.J.] and in *Gottumukkala Appala Narasimha Raju & Ors. Vs. National Insurance Co. Ltd., & Another*, reported at AIR 2007 SC 2907 to make good his submissions.

8. Learned Advocate for the claimant submitted that there is no legal bar to employ a son by the father as a driver. Learned Advocate further submitted that considering the relationship between the parties, the claim, which is otherwise tenable under the law, cannot be rejected. Learned Advocate submitted that the question is whether there was a relationship of the employer and employee. The question of fact was therefore required to be

addressed on the basis of the evidence adduced by the parties. Learned Advocate submitted that learned Commissioner has found the evidence cogent, concrete and reliable. Learned Advocate submitted that no evidence has been adduced by the Insurance Company to rebut the evidence adduced by the claimant. Learned Advocate submitted that therefore, the order passed by the learned Commissioner does not warrant interference. Learned Advocate for the claimant relied upon the judgments in the case of *New India Assurance Co. Ltd. Vs. Gajanan D. Dengi and another* reported at *2008 LawSuit (Kar) 518*, and in *Oriental Insurance Co. Ltd, Vs. Narinder Kaur and others* reported at *2014 LawSuit (P&H) 397* to support his contentions.

9. I have perused the judgments relied upon by the learned Advocates for the parties. It is seen on perusal of the decisions relied upon by the learned Advocate for the appellant-Insurance Company that while addressing a similar question of fact, the claim seeking compensation was rejected. It is evident that the evidence adduced was not found sufficient to prove the question of fact. It is seen on perusal of the decisions relied upon by the learned Advocate for the claimant that in the similar set of facts the Karnataka High Court was pleased to accept the claim.

10. Whether the relationship between an employer and employee exists or not is a question of fact? There is no bar in the law that family member cannot be employed by another family member. There is no bar that a father cannot employ his son as a driver to ply a vehicle owned by him. In this case, the deceased was the son of the claimant as well as respondent No.2, the owner of the tractor. The death in the vehicular accident is not disputed. It is contended that the deceased, being the son of respondent No.2 was his family member and therefore, the claim was not at all maintainable. It is true that the initial burden was on the claimant to establish the relationship as an employer and employee between the deceased and respondent No.2-the owner of the tractor. It was also incumbent on the claimant to prove that the deceased was employed and salary was paid to him. In this case, admittedly, evidence has not been adduced by the appellant-Insurance Company. The only question that needs to be considered is whether the evidence adduced on record is sufficient to prove that the deceased was employed by the owner of tractor respondent No.2 as a driver. Respondent No.2 owner of the tractor, who is father of the deceased has admitted the contention of the claimant that the deceased was employed by him as a driver on a monthly

salary of Rs.4500/-.

11. The learned Commissioner, on appreciation of the evidence adduced by the claimant, found that indeed the relationship of employer and employee existed between the deceased and respondent No.2. As stated above, there is no bar in the law to employ the son by father as a driver on his vehicle. It is not uncommon in a society that a son after attaining the majority, is required to earn his own livelihood. Son therefore, can be employed by the father as a driver. The claimant has stated that she was residing with the deceased separately from her husband. In order to seek corroboration to her oral evidence on all these material facts, one independent witness has been examined. Learned Commissioner found the evidence cogent and reliable. The claimant and her witness were subjected to searching cross-examination. Perusal of the cross-examination would show that nothing has been brought on record in the cross-examination to discard and disbelieve the evidence. Learned Commissioner found the evidence credible. Learned Commissioner recorded the reasons for accepting the evidence as credible. On re-appreciation of the evidence, I am convinced that learned Commissioner did not commit any mistake in accepting the oral evidence and

ultimately granting the claim.

12. It was open for the appellant-Insurance Company to call the respondent No.2 and subject him to cross-examination. Insurance Company could have relied on police case papers to make good its defence. No evidence has been adduced in rebuttal. The defence of the appellant-Insurance Company has not been supported by any evidence. In the facts and circumstances, I conclude that there was no error on the part of the learned Commissioner in granting the claim filed by the claimant. Accordingly, I answered both the questions in the affirmative.

13. As a result, thereof appeal is dismissed.

14. 50% of amount of compensation has already been paid to the claimant. The balance 50% of the amount of compensation be paid over to the claimant. The entire amount of compensation has been deposited. 50% amount is lying deposited as on date. Accordingly, it is ordered that balance 50% amount be paid over to respondent No.1.

Corrected as per
court's order dated
26.03.2024.

15. First appeal stands disposed of. No order as to costs.
Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

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