



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1497 OF 2024

WITH
CIVIL APPLICATION NO. 5183 OF 2024
IN
FIRST APPEAL NO. 1497 OF 2024

The New India Assurance Co. Ltd.,
Through it's Branch Manager,
2nd Floor, Mahesh Auto, Adalat Road,
Aurangabad.
Through its Authorized Official
and Divisional Manager, Legal Hub
Adalat Road, Aurangabad

...Appellant
(Orig. Resp. No.2)

VERSUS

1. Kamaluddin s/o. Ismail Dhande, (Dead)
Age : 42 years, Occ. Labourer,
R/o. Nehru Chowk, Paithan,
Tal. Paithan, Dist. Aurangabad.

2. Nasim w/o. Kamaluddin Dhande,
Age : 38 years, occ. Household,
R/o. As above.

3. Rajesh s/o. Bhimrao Ekade,
Age : Major, Occ. Business,
R/o. Janseva Saw Mill, Tilak Road,
Ahmednagar- 414 001.

... Respondents.
(Res. no.1 & 2 orig. claimants
& Res. no. 3 Orig. resp. no. 1)

.....
Mr. U.S.Usmanpurkar : Advocate for the appellant
Mr. A.S.Usmanpurkar : Advocate for Respondent No.1
Mr. Shaikh Kayyum Najir : Advocate for Respondent No.2
Mr. V.P. Golewar : Advocate for Respondent No.3
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CORAM : S. G. CHAPALGAONKAR, J.
Dated : 06.02.2025

JUDGMENT :-

1. Appellant insurer takes an exception to judgment and award dated 29.09.2023 passed the Ld. Commissioner of Employees Compensation and Judge, Labour Court-2, Aurangabad in Application W.C.A. (C) No.09 of 2022. (The parties are referred to as per their original status.)

2. Respondent Nos. 1 & 2 herein instituted proceeding under Section 22 of the Employees Compensation Act, 1923 before the Commissioner of Employees Compensation and judge Labour Court, Aurangabad raising claim for compensation contending that deceased Wasim Kamaluddin Dhande was employee on truck bearing registration No. MH-16-AE-7911, owned by Original respondent No. 1, which was insured with respondent No. 2. On 14.11.2010, while he was on duty, said truck met with an accident in Malshet Ghat. Deceased got pressed under truck and died on the spot. The incident was reported to Police Station. Consequently Crime No. 57 of 2010 was registered with Tokawade Gramin (Rural) Police Station. According to Claimants, deceased was getting salary of Rs. 4,000/- p.m. He was aged about 22 years. Respondent No. 1 being owner and respondent No. 2 being insurer are jointly and severally liable to pay compensation. Claimants were dependent upon deceased.

3. Respondent No. 1 owner of vehicle filed his Written Statement and admitted that he used to hire services of deceased Vasim as driver as and when work was available with him, but denied that deceased was his permanent employee. He states that accident occurred due to negligence on the part of deceased, who was driver of vehicle, at the time of accident.

4. Respondent No. 2 insurer denied its liability contending that there was no employee-employer relationship between deceased and

respondent No. 1. It is further pleaded that claim was filed after 11 years, hence deserves to be dismissed.

5. Tribunal after evaluation of pleadings and evidence allowed claim and directed respondent Nos.1 & 2 to pay compensation of Rs. 4,23,580/- along with interest @ 12% a.m. from the date of filing of proceeding i.e. from 24.07.2017 till actual realization of amount. In addition, respondent No. 1/Employer is saddled with liability to pay penalty of Rs. 2,11,790/-.

6. Aggrieved, insurer filed present appeal assailing award passed by the Commissioner for Employees Compensation. Mr. U.S. Usmanpurkar, learned Advocate appearing for appellant Insurance Company vehemently submits that proceeding seeking compensation has been instituted after 11 years, however, the Commissioner without plausible explanation condoned inordinate delay. Similarly except admission of respondent No. 1, there is no material to indicate that there was employee-employer relation between deceased and respondent No. 1 or death of deceased is arising out of said employment. According to Mr. Usmanpurkar, there is difference in the name of deceased as per Post-mortem report and the name pleaded in the Claim Petition. He would therefore, urge that there are many substantial questions of law which require consideration in this appeal.

7. Mr. Shaikh Kayyum Nazir, learned Advocate appearing for respondent however justifies the award.

8. Having considered submissions advanced following points are highlighted on behalf of appellant. Firstly, there is objection as to employee-employer relationship between deceased and respondent No. 1. Secondly, difference of name as compared with postmortem report, which

raises suspicion and thirdly, claim has been entertained after inordinate delay. The issue of limitation would go to the root of the matter, therefore, the submissions on this count are considered at the first instance. It can be observed that Claimants had initially filed Misc. WCA No.30 of 2017, thereby, praying for condonation of delay caused in filing application for compensation. The Commissioner decided said application vide order dated 05.02.2022 and condoned delay. Pertinently, order passed on Misc. WCA No. 30 of 2017 dated 05.02.2022 was never challenged and attained finality. As a result of condonation of delay, present WCA (C) Application No.9 of 2022 has been registered. In this background now it would not be open for appellant insurer to raise ground of limitation in this appeal, which has been filed against final award.

9. Second contention raised on behalf of appellant is that there is nothing to prove employee-employer relationship between deceased and the owner of vehicle. Pertinently, respondent No. 1 owner of vehicle caused his appearance and filed Written Statement, wherein, he categorically admits that on the date of accident, deceased was employed as driver on the insured vehicle bearing registration No. MH-16-AE-7911 and suffered accidental death. He admits that although deceased was not permanent employee, his services were hired as and when required. Aforesaid statement in written statement filed by respondent No. 1 clearly suggest that deceased was employed on insured truck and his death occurred during the course of and arising out of the employment with respondent No. 1. As per evidence, deceased was on driver's seat at the time of death, which suggests that he was employee on truck at the time of accident. Insurer could not bring any evidence on record to discredit statement of employer or Claimants on the point of employee-employer relationship. Admission of respondent No. 1 which is not controverted by respondent No. 2 Insurance Company is sufficient to hold that deceased was employee on truck of respondent No. 1 at the time of accident.

10. Last submission advanced on behalf of insurer is that there is difference in the name of deceased and post-mortem report Exhibit No. U-19. Perusal of post-mortem report would show that name of deceased is mentioned as Vasim Kamal Dhande instead of Vasim Kamaluddin Dhande. As such there is bare difference of suffix against name of father. Appellant cannot make any capital out of this minor discrepancy. Police papers relating to accident, driving license of deceased and evidence laid by Claimants is sufficient to establish identity of deceased.

11. Learned Commissioner has rightly considered relevant legal and factual aspects and passed award. No infirmity is discernible in approach of Commissioner. No substantial question of law arises for consideration in this appeal. Hence, First Appeal stands dismissed.

12. In view of dismissal of First Appeal, Civil Applications, if any, shall stand disposed off.

13. Amount deposited by appellant insurer with Commissioner of Employees Compensation be released in favour Claimants along with accrued interest thereon, if any.

(S. G. CHAPALGAONKAR)
JUDGE

mahajansb/