



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 972 OF 2022

The New India Assurance Company Limited,
Through its Branch Manager,
Branch at Chandra Nagar, Main Road,
Latur, Dist. Latur.

Through it's Authorized Signatory /
New India Assurance Company Limited,
Senior Divisional Manager / In-Charge Legal Hub,
Mahesh Compound, Adalat Road, Aurangabad. **.. Appellant**
(Org. Respdt. No.02)

Versus

- 1) Shakila Rasul @ Babul Kiniwale
Age : 42 Years, Occu. Household,
- 2) Soheli Rasul @ Babul Kiniwale
Age : 24 Years, Occu. Education,
- 3) Feroj Rasul @ Babul Kiniwale
Age : 22 Years, Occu. Education,
- 4) Faizal Rasul @ Babul Kiniwale
Age : 20 Years, Occu. Education,
- 5) Aman Rasul @ Babul Kiniwale
Age : 18 Years, Occu. Education,

(Respondent Nos. 2 to 5 are minors and
they are U/G of their natural mother
i.e. applicant No. 1.)

All R/o. Shirur Tajband, Tq. Ahmedpur,
Dist. Latur.

- 6) Ganpat Madhavrao Patil
Age : 45 years, Occu. Agril & Business,
R/o. Shelgaon, Tq. Chakur,
Dist. Latur.

.. Respondents

(Respdt. Nos.01 to 5 – Orig. Claimants
Respdt. No.06 – Orig. Respdt.No.01)

Mr. Mohit R. Deshmukh, Advocate for the Appellant.
Mr. Fayaz K. Patel, Advocate for Respondent Nos. 1 to 5.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 06th December, 2024.

Date on which order pronounced : 22nd January, 2025.

ORDER :-

. This appeal is filed by the Insurance Company challenging the judgment and order passed by the Commissioner for Employees' Compensation Act and Judge, Labour Court, Latur in Application (W.C.A.) No. 37/2012. The Commissioner for Employees' Compensation Act and Judge, Labour Court, Latur by way of impugned judgment and order allowed the claim of the claimants and directed the Insurance Company to pay, towards compensation, an amount of Rs. 7,58,240/- (Rupees Seven Lakh Fifty Eight Thousand Two Hundred & Forty) to the claimants along with simple interest @ 12% per annum from the date of accident till actual realisation of the compensation amount.

2. It is the case of the respondents/claimants that, the respondent No. 1 is the wife of the deceased. The respondent Nos. 2 to 5 are sons of the deceased. The respondent Nos. 6 is an employer who appointed the deceased as a driver.

3. It is the case of the claimants that, deceased was employed as a driver by respondent No. 6 on Mahindra Jeep bearing registration No. MH-24-F-3265. The deceased was getting salary of Rs. 8,000/- per month. On 19.01.2012 the deceased was driving a Jeep. He was proceeding from Shrirur to Udgir. One tractor with trolley coming from opposite direction gave dash to the vehicle of the deceased. Due to dash the deceased got seriously injured. Subsequently, he died because of the injuries. The claimants therefore approached the learned Commissioner by claiming an amount of Rs. 7,88,240/-.

4. It is the defence of the Insurance Company that, the deceased was not in an employment as a driver on the vehicle of respondent No. 6. The income is also denied. Even the calculation and the amount of compensation prayed for is disputed. It is stated in the written statement that the deceased, in fact, was working as a mechanic. The Jeep was already sold to the deceased. There was an agreement executed between respondent No. 6 and the deceased on 15.05.2012. Thus, it is stated that, the deceased was driving his own vehicle. The vehicle was transferred in the name of deceased on 20.09.2006. The claim of the claimants was thus denied.

5. The respondent No. 6 also denied the relationship as employer-employee. He also took a stand that the vehicle was already sold to the

deceased and denied the liability.

6. In the proceedings, claimant No. 1 filed her affidavit of evidence. She reiterated the contents in the claim petition. In the cross-examination, she denied that the deceased was the owner of the vehicle. She accepted that, she had signed a statement recorded by the investigator, however, denied the contents of the said statement. The appellant produced the agreement between respondent No. 6 and the deceased wherein, she gave up the right to claim compensation against respondent No. 6 and she would withdraw the claim against respondent No. 6.

7. The appellant in support of it's case examined the witness who had done the work of investigator. This investigator happens to be an advocate and notary from Latur. He deposed that the document Article- A i.e. kararnama was signed before him. He deposed that, one agreement was registered before notary on 20.09.2006 between the deceased and the respondent No. 6 for transfer of a vehicle, however, he claimed ignorance about the contents of the documents. On recording this evidence, the learned Commissioner held that, the claimants have proved their case and has passed the judgment directing the appellant to pay compensation.

8. The learned advocate for the appellant vehemently argued that, the deceased was the owner of the vehicle on the date of accident. Thus, there is no relationship as employer – employee between the deceased and respondent No. 6. The claimant No. 1 in her cross-examination admitted execution of the deed of transfer of the vehicle. The witness No. 2 who happens to be notary has clearly stated that the document was registered before him. The vehicle was insured after the agreement of sale. The learned Commissioner has failed to appreciate these basic facts and has committed error. He relies upon the judgment of the Hon'ble Apex Court in the case of Vaibhav Jain Vs. Hindustan Motors Pvt. Ltd. in Civil Appeal No. 10192/2024.

9. The learned advocate for the claimants vehemently opposes the appeal. He submits that the F.I.R. was lodged by brother of the deceased immediately after the accident. The Insurance Company has filed vague written statement. No specific date is given of alleged transfer of the vehicle. The insurance policy and R.C. book both show respondent No. 6 as the owner of the vehicle. The respondent No. 1 has not stepped into witness box to prove her defence. Though the execution of the document is executed in order to evidence, however, the contents are not proved in view of Section 17. He invited attention to the cross-examination of notary. In view of the cross-examination,

the case of the appellant is not proved. He relies on Sections 28 and 29 of the Workmen's Compensation Act.

10. On going through the submissions, the main question appears to be about the employer-employee relationship. Though the appellant has tried to show that, on the date of accident it was the deceased who was the owner of the vehicle, there is nothing to prove this fact specifically on record. The appellant has failed to prove that the ownership of the vehicle was transferred in the name of deceased.

11. So far as the judgment in the case of Vaibhav Jain (*supra*), the Hon'ble Apex Court in the facts of that case held that, the deceased was not an employee.

12. In the present case, though respondent No. 6 has denied the relationship by filing written statement, he has not examined himself to prove the contents of his written statement on oath. The alleged document of transfer of vehicle is not properly executed. In view of the fact that, the insurance policy and the RTO record still stands in the name of respondent No. 6. This Court thus holds that, the appellant has failed to show that the vehicle was transferred in the name of deceased. There is no material to ignore the record maintained with the RTO authority which shows the vehicle stands in the name of respondent

No. 6. Even while insuring the vehicle it is insured in the name of respondent No. 6. In view of these two things, it is difficult to accept the case of the appellant that the vehicle was owned by the deceased. There is no serious dispute about the income of the deceased.

13. Considering all above discussion, this Court holds that, the appellant has failed to prove it's case. No perversity is noticed by this Court in the judgment of the learned Labour Court. Consequently, there is no merit in the appeal, the appeal therefore stands dismissed. No order as to costs.

(KISHORE C. SANT, J.)

. At this stage, learned advocate for the respondents/original claimants informs that, the amount deposited by the appellant is lying with the learned Commissioner under the Employees Compensation Act at Latur.

2. The said amount be disbursed to the respondents/original claimants with accrued interest.

(KISHORE C. SANT, J.)

PS.B.