

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.375 OF 2023

1. Smt. Kavita Hanmantu Bagali
Age: 37 years, Occ: Household

2. Kum. Pallavi Hanmantu Bagali
Age: 17 years, Occ. Education

3. Chi. Onkar Hanmantu Bagali
Age: 13 years, Occ: Education

(Applicant No. 2 & 3 being minor)
Representative through Applicant No. 1)
All R/c- House No. 247/82, Maddi Vasti)
Bhawani Peth, Solapur)

...Appellants
(Original Applicants)

1. Shri. Tukaram Vitthal Shinde
Age: 54 years, Occ: Business
R/o. 48/2/7, Maddi Vasti, Solapur

2. Shri. Anand Basavraj Hashetti
Age: 54 years, Occ: Business
R/o. 5/B, Moraya Housing Society,
Vijapur Road, Solapur

3. Manager,
Sriram General Insurance Co. Ltd.
E-8, RICO Industrial Area,
Sitapur, Jaipur, Rajasthan 302022

4. Sou. Yamnamma Bhimanna Bagali
Age: 64 years, Occ: Household

5. Shri. Bhimanna Hanmantu Bagali
Age: 69 years, Occ: Nil

Both R/o. C/o. Basavraj Shantappa Koli,
House No. 15, Juni Mil Chawl,
Opp. Nagoba Mandir, Solapur

...Respondents
(Original Respondents)

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Mr. R.S. Alange with V.S. Kupwade for Appellants.

Ms. Shalini Shankar a/w Mr. Avesh Ghadge for Respondent No.3-
Insurance Company.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 15th OCTOBER, 2025

ORAL JUDGMENT :

1. This appeal is preferred by the Appellants-Claimants against the Judgment and order passed by the learned Commissioner, Workman Compensation and Judge, Labour Court Solapur (for short the “trial Court”).

2. It is contention of learned counsel for the Appellants - Claimants that the deceased was working as cleaner on the truck of Respondent No.1. While travelling, due to rash and negligent driving of the driver, the deceased fell on the road and came under the wheel of truck and died. The accident occurred during employment. The Respondent No.1 admits the relationship of employer and employee with the deceased, but these facts are not considered by the trial Court and has dismissed the claim Petition, which is erroneous.

Learned counsel further submits that at the time of accident, the offending truck was ensured with the Respondent No.3 – Insurance Company and it was a package policy which covered every occupant of the said truck. Hence, Requested to allow the Appeal.

3. It is the contention of learned counsel for Respondent No.3 – Insurance company that the deceased was not employee of Respondent No.1. The Respondent No.1 has not admitted the employer - employee relationship. The insurance policy did not cover cleaner and the premium of the cleaner was not paid. The deceased died due to his negligence. The appellants have not produced the evidence on record to prove the employer and employee relationship. There are contradictions in the statement of Appellant No.1 given before the police and the Court. In the statement given before the Police, she had stated that the deceased was working as a mason, whereas in the statement given before the Court, she has stated that the deceased was working as a cleaner. The learned trial Court has passed well reasoned order. No interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsels, perused the impugned Judgment and order. It is claimants case that on 27th May, 2015, the deceased was travelling in truck No. MH-13 R4609 with

truck driver Allauddin Dongre. When they were proceeding, the truck driver applied brakes suddenly, due to which the deceased fell down on road and came under the wheels of truck. The wheels of truck ran over his legs and he died. It is claimants case that the deceased was working as cleaner on the said truck prior to one month of the accident and getting Rs.8,000/- per month as salary. To prove their case, the Appellant-Claimant No.1 Kavita Bagali, wife of the deceased has examined herself. She has stated that the deceased was working as cleaner on the truck of the Respondent No.1. He was employee of the Respondent No.1 and earned Rs.8,000/- as monthly salary. Nothing elicited in cross examination of this witness. To prove its defence, the Respondent No.3-Insurance Company have examined their Legal Officer Mr.Abhijit Santikar. He has produced the insurance policy, it is at Exhibit C-29. He has stated that, as per the policy, it applies to third party, owner, driver and paid driver and premium for these persons were paid. In the police papers, it is mentioned that the deceased was cleaner and due to dizziness, he fell down on the road and died as he came under the wheel of truck. In cross examination, he admits that the insurance policy was a package policy and as per the insurance Policy, the Insurance Company is liable to pay compensation under the provisions of Workmen's Compensation Act,

1923. While dealing with the issue of employer and employee relationship and awarding compensation, the learned trial Court has observed that at the time of accident, the Respondent No.3 Insurance Company has admitted that at the time of accident, the deceased was travelling in the offending truck and the Insurance Policy is applicable to him under the Workmen's Compensation Act, 1923, but it has not been proved that the deceased was employee of the Respondent No.1. On that ground, the trial Court has dismissed the claim Petition. I am unable to understand the observations of the trial Court. Admittedly, the deceased died when he was travelling in the insured truck. The accident occurred due to negligence of the driver of offending truck. The Respondent No.1, who is employer of the deceased has filed written statement in which he admits that the deceased was travelling in the said truck at the time of accident. It is mentioned that the driver of said truck had taken the deceased with him for assistance but to deny the relationship with the deceased, the respondent No.1 did not step into witness box. It is settled principle of law that to prove the defence, mere filing of the written statement cannot be considered. It has not come on record that the deceased was not an employee of the Respondent No.1. It has come on record that at the time of accident, only driver and the deceased were travelling in the

truck for the purpose of unloading the goods of the Respondent No.1. It proves that the deceased was under employment of the Respondent No.1., but this fact has not been considered by the trial Court. On wrong assumptions, the trial Court has concluded that no employer and employee relationship is proved as no salary slips and other documents were produced on record. It is specific case of the Appellants-claimants that prior to one month of the accident, the deceased was working as cleaner with Respondent No.1. As he was working as cleaner, no question of appointment letter or other documents arise and for such post, no employer gives salary slip or salary by bank transaction. Generally, the salary is paid in cash. The DW-1, Legal Officer of Insurance Company has admitted that the Insurance Company is liable to pay compensation under Workmen's Compensation Act, 1923. His admission is crucial and claimants are also claiming the compensation under the Workmen's Compensation Act, 1923. The accident is occurred due to negligence of the driver of said truck. The deceased died as he came under wheels of said truck. So Insurance Company is liable to pay compensation on the ground of third party also. The employer and employee relationship between Respondent No.1 and the deceased is proved. Hence, the Appellants – Claimants are entitled for the compensation as follows:

Particulars	Amount
Relevant Age Factor (As Deceased 40 years old)	184.17
Monthly Salary	8,000/-
50% Monthly Salary	4,000/-
Total (Rs.4,000 X 184.17)	7,36,680/-

5. In view of the above, I pass following order :

ORDER

(i) The Appeal is allowed;

(ii) The claimants are entitled for compensation amount of **Rs.7,36,680/-** at the rate of 12% per annum from the date of filing claim Petition till realisation of amount;

(iii) The Respondent No.3 - Insurance Company shall deposit the compensation amount along with accrued interest thereon, within six weeks from the date of receipt of this order;

(iv) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

6. The Appeal is disposed off in the aforesaid terms.

7. All pending applications, if any also stand disposed off.

(SHIVKUMAR DIGE, J.)