IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1628 OF 2012

1.Shakuntala Tilakdhari Gupta)
aged about 38 years, Occu: Housewife,)
widow of the Deceased.)

2.Kum. Avina Tilakdhari Gupta)
aged 13 years, Occupation: Student,)
Daughter of the Deceased.

3. Kumar Arun Tilakdhari Gupta)
aged 15 years, Occupation: Student,)
Son of the Deceased.

4.Kumar Vishal Tilakdhari Gupta)
aged 10 years, Occupation: Student,)
Son of the Deceased.

(The Applicant No. 2, 3 and 4 are minors,)
therefore represented by Applicant No. 1,)
being the mother & natural guardian.))

All appellants are residing at)
Turbhe Stores, Shivshakti Nagar,)
Belapur Road, Navi Mumbai.) .....Appellants
(Original Applicants)

Versus

1. Shri Jawaharlal R. Gupta)
Plot No. A-15, Sanpada, Navi Mumbai,)
Thane 400705.)
(Owner of Jeep No. MH-04-BH-65220)
(Toyota Qualis))

2. The New India Assurance Co. Ltd.)
(Previous address "B"Cabin Naka,Shivkrupa)
Commercial Complex, Thane))

Present address :
Pinak Galaxy, 201, B Wing, 2nd floor,)
Above Mahadev Hotel, Kapurbawdi Junction)
Kapurbawdi, Thane (West) PIN : 400607)

(Insurer of Jeep No. MH-04BH-6522))
At 6th floor, Sun Magnetica, Service Road,)
Near New R.T.O., Teen Haath Naka,)
Lois Wadi, Thane (West)) ….Respondents
(Original Opposite Parties)

Mrs. Varsha Nichani a/w Mr. Roshil Nichani for the appellants.

Mr. Sanjay Krishnan i/by Leges Consultus for respondent no.2.

CORAM : JITENDRA JAIN, J.
DATED : 18 February 2026

JUDGMENT :-

1. This first appeal under Section 30 of the Employees' Compensation Act, 1923 was admitted on 28 February 2017, challenging the order dated 9 May 2012 passed by the Labour Commissioner, but no substantial question of law was framed at the time of admission. Therefore, the said question is now framed at the time of final hearing and which reads as under :-

> *"Whether the Labour Commissioner was justified in rejecting the application for compensation on the ground that the relationship between the deceased and the opponent no.1 of employer-employee was not established ?"*

2. The appellants had served opponent no.1 through paper publication

since other modes failed.

Brief Facts :-

3. As per the applicants, the deceased was working as driver for two months (short duration). It is not in dispute that on the date of accident i.e., 29 March 2009, the deceased was driving vehicle no.MH 04 BH 6522 belonging to the original opponent no.1. The deceased lost his life in the accident while driving the said vehicle and other passengers including opponent no.1 suffered injuries. It was the case of opponent no.1 before the police authorities that for attending funeral of his brother, he had to leave for Rajasthan alongwith his other family members and the deceased was driving the vehicle which met with the accident.

4. The dependents of the deceased issued legal notice to opponent no.1 for compensation which was not replied and, therefore, an application under the Employees' Compensation Act came to be filed which was rejected by the impugned order dated 9 May 2012 on the ground that the applicants have failed to prove employer-employee relationship. It is on this background that present appeal came to be instituted which got admitted and is now heard finally.

Submissions of the Appellants:-

5. The learned counsel for the appellants submits, referring to the

statement of opponent no.1 while lodging the FIR that the deceased was hired by opponent no.1 for short period to drive the vehicle to Rajasthan. It is her submission that opponent no.1 and the deceased are not relatives and also there is no dispute that the owner of the vehicle was opponent no.1. She submits that temporary hiring of a driver by opponent no.1 would constitute an employer-employee relationship between the deceased and opponent no.1. The learned counsel relied upon the contents of the FIR lodged by opponent no.1 to buttress her submissions.

6. In support of her above submissions, learned counsel for the appellants has relied upon following decisions :-

(i) Shahajahan & Anr. Vs. Shri Ram General Insurance Company Limited & Anr.[1]

(iii) Bharti Axa General Insurance Co. Ltd., Nagpur Vs. Manohar Atmram Pardhi & Ors.[2]*;*

(iii) New India Assurance Company Ltd. Vs. Mohan Kumar Sahoo & Anr.[3]*;*

(iv) K. Saraswathi Vs. S. Narayanaswamy & Ors.[4]*;*

Submissions of the Insurance Company:-

7. Per contra, learned counsel for opponent no.2-Insurance Company has vehemently opposed the appeal. It is his submission that the accident

1 (2022) 19 SCC 494
2 2020 SCC OnLine Bom 11790
3 2003 (4) L.L.N. 634
4 97 L. W. 418.

happened because of the negligence of the deceased and, therefore, they could not have got any compensation before the Motor Accident Claims Tribunal (MACT) and therefore, they have lodged this claim under the Employees' Compensation Act. The learned counsel further relied upon the evidence and the cross-examination of the witness of the applicant to draw the point that the applicants have failed to prove the relationship and the onus is on them before making any claim. He further submits that even in the application, nothing is mentioned as to the period for which the deceased was hired by opponent no.1. He, therefore, submits that in the absence of any evidence to show employer-employee relationship, the Labour Commissioner was justified in rejecting the claim.

8. I have heard learned counsel for the appellants and the respondents.

Analysis & Conclusions:-

9. Relevant provisions of the Employees' Compensation Act are reproduced :-

> *Section 2(dd) "employee" means a person, who is -*
>
> *(i) … … …*
>
> *(ii)(a) … … …*
>
> *(b) … … …*
>
> *(c) a person* ***recruited as driver,*** *helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,*
>
> *(d) … … …*

(iii) employed in any such capacity as is specified in ***Schedule II,*** *whether the contract of employment was made before or after the passing of this Act and whether such contract is* ***expressed or implied, oral or in writing;*** *but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependents or any of them;*

Section 2(e) defines employer and same reads as under :-

(e)"employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him;

Relevant Schedule II to the Empolyees' Compensation Act reads as under :-

(i) … … …

(ii) … … …

(iii) … … …

(xxv) ***employed as a driver;***

(emphasis supplied)

10. Opponent no.2-Insurance Company has not led any evidence nor any question was asked to the witness of the applicants on the relationship between the deceased and opponent no.1 being that of relative. Therefore, it is undisputed that the deceased and opponent no.1 were not relatives.

11. It is also undisputed that at the time of the accident, the deceased was driving the vehicle. Opponent no.1 in his statement recorded on 30 March 2009 under Section 154 of the Code of Criminal Procedure, 1973 before the police authorities at the time of accident has stated the circumstances under which the deceased was requested by opponent no.1 to drive the vehicle for attending the funeral of brother of opponent no.1. In the said statement, it is also recorded that opponent no.1 has addressed the deceased as a "driver". In this statement, opponent no.1 has given names of other co-passengers alongwith his relationship with each one of them who were travelling in the vehicle and who were injured and how the accident happened and in which the driver died. This statement is signed by opponent no.1. The statement given at the first instance by a person at the time of lodging FIR is the best piece of evidence in such cases, the way dying declaration is at the time of death of a person. If the deceased was a friend or relative of opponent no.1, opponent no.1 would not have addressed before the police authorities the deceased as a "driver" when he expressly stated about his relationship with other passenger. The contents of the FIR when read as a whole cannot be doubted.

12. This Court cannot lose sight of the fact that, a driver who is not regularly employed or even if he is regularly employed, there will rarely be any written contract unless the driver is hired by a corporate entity. This is

a case where an individual opponent no.1 had hired and had availed the services of the deceased to drive the vehicle to Rajasthan on urgent basis for short duration. In such circumstances, there can never be a written contract or agreement between the parties to prove the relationship of employer and employee.

13. It is the circumstantial factors and evidence which have to be considered. In this case, as narrated above, the relationship between the two is not that of relatives, the vehicle is owned by opponent no.1, before the police authorities opponent no.1 has addressed the deceased as a “driver”, the deceased was hired for a short period to drive the vehicle, relationship with other passenger was mentioned etc., which leads no doubt in my mind that there was an employer-employee relationship between opponent no.1 and the deceased. If the deceased was not a relative or a friend then only conclusion that can be drawn based on FIR is that the deceased was hired by opponent no.1 to drive the vehicle.

14. Under the Employees' Compensation Act, the liability can be imposed on the owner and the insurance company jointly and severally. The advocate of appellants issued legal notice to opponent no.1 on 11 August 2009 seeking compensation. The said notice was never replied by opponent no.1 and the only conclusion for not replying obvious was to avoid any

financial liability. In the reply filed to the application, opponent no.1 has denied everything including the incident of accident of his vehicle. The reply is nothing short of stating lie on oath and, therefore, opponent no.2-Insurance Company cannot drive mileage from such reply. Therefore, opponent no.1 to absolve himself from any liability, filed a reply to the application on 14 February 2011, after almost 2 years of incident/notice, denying employer-employee relationship. This conduct has to be read along with his statement made at the time of accident before the police authorities.

15. The Labour Commissioner ought to have exercised powers under Section 23 of the Employees' Compensation Act and issued summons and for enforcing the attendance of opponent no.1, so that the truth could have been found out but that was not done. Therefore, when based on above documents i.e. FIR and the reply of opponent no.1, the statement was found contradictory, the Labour Commissioner could not have come to a conclusion that relationship was not established. The Commissioner while administering welfare legislation should have by virtue of his powers ought to have taken the averments made in reply and FIR to its logical conclusion rather than holding against the applicants who are powerless. The Commissioner while administering welfare legislation should exercise power in furtherance of the objective for which the Act is enacted. The

Labour Commissioner has not at all considered the FIR lodged by Opponent No.1 and the site inspection report though same were filed with the application. The Labour Commissioner accepts that the death has occurred on the basis of the documents which gives reasons and facts which have not been considered.

16. Section 2 (dd) of the Employees' Compensation Act defines “employee” to mean a person who is **recruited as driver**, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle. Section 2 (dd) does not provide that there has to be a written contract or agreement between the employer and employee, what is material is “recruited as driver.” The phrase “recruited” would cover even a driver hired for shorter duration. Section 2(dd)(iii) read with entry (xxv) of Schedule II to the Act expands the definition of “employee” to a person who is **employed** as a driver and it is expressly provided in clause (iii) of Section 2(dd) that contract can be implied or oral. The phrase “employed as a driver” and “recruited as driver” lays emphasis on the nature of work for which a person is hired and as observed above and supported by the definition, the need for anything in writing is dispel with by the legislature for proving deceased was an employee moreso in the present case based on contents of FIR lodged by opponent no.1.

17. The phrase “employed as driver” in Schedule-II is wider and would mean to give work to someone or to make use of. In the instant case, opponent no.1 in the FIR has stated that the deceased was the driver hired by him, which in my view, would amount to employing deceased for work of driving by opponent no.1. The definition emphasis the act of employment/recruitment and not the duration for which a person is employed or recruited. The expression “employed” has at least two known connotations but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. There is no dispute that opponent no.1 in FIR has admitted that the deceased was hired as driver for driving vehicle.

18. It is also important to note the wide coverage of the Employees’ Compensation Act which is borne out by Schedule II to the said Act which list down the persons who are included in the definition of employee. On a thorough reading of all the persons specified therein and looking at the object for which the Act has been enacted and applying to the facts of the present case, in my view, the employer-employee relationship gets established in the present case.

19. Section 2(e) defines “employer” inclusively to include persons specified therein. Looking at the objective of the Employees' Compensation Act and when read with definition of employee, in my view, employer would include a person who hires a driver, even for a shorter duration, to drive his vehicle. In the facts of the present case, when opponent no.1 addressed deceased as “driver” in FIR, no reply to legal notice and after perusing the contents of FIR, in my view, opponent no.1 is an employer for the purposes of the present Act. Section 2(e) does give clue that even temporary letting on hire by one person to another would treat the other person as employer. Therefore, if a person hires a driver for short period certainly person hiring would be an employer.

20. Equally, it is well established that the fact an individual is entirely free to work or not, and owes no contractual obligation to the person for whom the work is performed when not working, does not preclude a finding that the individual is a worker, or indeed an employee, at the time when he or she is working. Many casual workers will periodically work for the same employer but often neither party has any obligations to the other in the gaps or intervals between engagements. There is no reason in logic or justice why the lack of employee status in the gaps should have any bearing on the status when working. There may be no overarching or umbrella contract, and therefore no employment status in the gaps, but that

does not preclude such a status during the period of work.

21. A mere error, if at all, in drafting of the application cannot be held against the applicants. The fact of the deceased having been employed as a driver by opponent no.1 is recorded in the very first paragraph of the application and merely because the period for which he was recruited or employed is not mentioned that cannot be a ground to reject the claim. The submission of opponent no.2 that applicant could not have got relief before the MACT and, therefore, he made application under present Act cannot be accepted to reject the appeal. There is no bar in litigant electing one forum when more than one forum is available. It is not a case of forum shopping nor any bar is brought to my notice. Merely because opponent no.2 thinks that the MACT would have not given any relief cannot preclude the applicants to make application under the Employees' Compensation Act. Insofar as the civil suit is concerned, there is a bar to make application under Section 3(5) of the Employees' Compensation Act if the civil suit is filed.

22. In the evidence of the witness of the applicant admittedly no document was produced to show that the deceased was a driver of opponent no.1 but as I have observed above in such cases, there can never be a written agreement or document but on the contrary there is direct

admission by opponent no.1 while lodging FIR and impliedly by not replying to legal notice and then speaking total lie in reply. Even Section 2(dd)(iii) states there need not be contract in writing but oral or implied contract is sufficient to treat a person as "employee."

23. The learned counsel for the appellants is justified in relying upon the decisions which are reproduced above in support of her contention that the employer-employee relationship, in such cases, can be said to have been established. I propose to discuss two of them.

(a) In ***K. Saraswathi (supra)***, the question raised before the High Court was whether the deceased is a workman as defined in Section 2(i)(n) of the Workmen's Compensation Act. The relevant observation in paragraph 7 of the said decision is reproduced herein:

> *"7. The Additional Commissioner for Workmen's Compensation came to the conclusion that the deceased Gurusami was a workman under the second respondent. This finding is challenged by the second respondent on the ground that late Gurusami was not employed under him and he was only working for a few days as a substitute driver for the lorry. But in a statement before the police the second respondent stated that late Gurusami was his employee for 15 days prior to his death. According to S.2 (1)(n) of the. Workmen's Compensation Act, 'workman' means an person who is employed on monthly wages of not exceeding one thous and rupees in any capacity as is specified in Schedule II of the Act. A workman whose employment is of a casual nature for the purpose of the trade or business of the employer falls within the definition of workman in S.2 (1) (n). In this case the evidence of the second respondent before the Additional Commissioner for Workmen's Compensation is that the deceased was employed only for 2 or 3 days as a substitute driver. But before the police he had stated that the deceased was under his employment for 15 days prior to his death. Considering the evidence in*

the case the conclusion arrived at by the Additional Commissioner for Workmen's Compensation that the deceased was a workman within the meaning of S.2 (1)(n) of the Workmen's Compensation Act cannot be said to be incorrect."

The present Act is much wider in its scope than its erstwhile avtar because the exclusion of casual worker under the erstwhile Act has been done away with under the new Act.

(b) In ***Mohan Kumar Sahoo & Anr. (supra)***, the Orissa High Court was faced with very similar situation like the present case. Relevant paragraphs read as under :-

"17. The case at hand, stands on a better footing because there is direct relationship between the employer and the deceased. The evidence in that regard goes unimpeached. The owner had admitted to have engaged the deceased and directed him to drive his vehicle which means, the deceased was engaged in the service of the employer and died while performing the work and duty for his employer. It was proved that he was retained for the service of the employer, which is the paramount consideration.

18. Even assuming that the deceased's employment on that day was of a casual nature, that by itself is not enough to push him out of the ambit of the definition of "workman" because the casual nature of his engagement must couple with the definition that such employment should not be for the trade or business of the employer. In the present case, the deceased was engaged by the employer for the purpose of performing, duties for the employer and the accident so occurred can safely be construed to be in course of his employment."

24. The Rajasthan High Court in the case of ***Mahendra Shah Vs. Baldev Singh***[5] under the erstwhile Workmen's Compensation Act has taken a view

5 2011 SCC OnLine Raj 2775

that a person employed on daily basis would also be covered by definition of workman.

25. In view of above and for the reasons stated above, the appeal is allowed and the impugned order dated 9 May 2012 is quashed and set aside. It is clarified that this judgment is rendered in the peculiar facts of the present case.

26. Looking at the facts that the accident happened in 2009 and the first appeal is decided in 2026 i.e., almost after 16 years which has deprived the applicant of their legitimate dues, I deem fit to request the Labour Commissioner to calculate compensation within 8 weeks from the applicants making an application enclosing the present order so that applicants can receive the compensation at the earliest without any further delay.

27. The above order is dictated in the open Court and all the contentions raised by both the parties have been recorded.

28. The appeal is allowed in above terms.

(JITENDRA JAIN, J.)