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Duration :- Y. M. D.
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CNR No. MHLC30-000300-2022.

**BEFORE THE COMMISSIONER, UNDER THE EMPLOYEES COMPENSATION
ACT, 1923 AND JUDGE, LABOUR COURT, AT AKOLA.**

W. C. A. Application No. 15/2022

Exh. O-5

- 1] **Bharti Sunil Kurhade,**
Aged about 30 Years, Occ.- Household,
- 2] **Shyam Sunil Kurhade,**
Aged about 11 Years, Occ.- Student,
- 3] **Om Sunil Kurhade,**
Aged about 10 Years, Occ.- Student,
- 4] **Shantabai Savla Kurhade,**
Aged about 58 Years, Occ.- Nil,
- 5] **Savla Shamrao Kurhade,**
Aged about 60 Years, Occ.- Nil,

Applicant No. 2 and 3 being minor presented
through his natural guardian mother applicant No. 1.

All R/o. Dhanora Ghadge,
Tq. Manora, Dist. Washim.

----- **APPLICANTS.**

Versus

- 1] **Shree Chadda Roadlines,**
through its Divisional Manager,
KSR Flight Carriers Ghugus, Road Khutala,
Chandrapur, Maharashtra-442401.

2] National Insurance Co. Ltd.,
Through its Manager,
M.G. Road Opposite open theater
Akola, Tq. & Dist. Akola, Maharashtra. ----- **RESPONDENTS.**

CORAM :-Shri. S.K. Bangad, Commissioner, the E.C. Act,1923.

APPEARANCES :- Shri. Kafeel N. Hussain, Adv. for Applicants.

Shri. R. R. Deshpande, Adv. for Non-applicant No. 1

Shri. R. S. Agrawal, Adv. for Non-applicant No. 2

: JUDGMENT :
(Delivered on 19th December, 2023)

In the matter of application for compensation under the Employees' Compensation Act, 1923.

Facts in brief are as under:-

01] Deceased Sunil Kurhade was working with non-applicant No. 1 on the salary of Rs. 15000/- per month. He was on duty on 20/08/2022 on Truck No. MH-34 BZ 0582 proceeding from Chandrapur to Jalna. When he reached at village Tapowan another truck applied sudden break so, the truck of deceased gave dash to the said truck from behind. He sustained multiple injuries and thereafter died on way to hospital. Applicants are the legal heirs of the deceased and dependent upon him.

02] Offence of the incident is registered with police station Karanja (Gramin). Date of birth of deceased is 06/03/1982 and so he was 40 years old at the time of incident. He was getting salary of Rs. 15000/- and allowance of

Rs. 100/- per day from non-applicant No.1. Considering the age of the deceased the factor for calculating the compensation is 184.17. The truck of the non-applicant No.1 was insured with non-applicant No. 2 and was holding valid policy. The amount of compensation comes to Rs. 16,57,530/-. Both non-applicants were liable to pay the amount of compensation but have not paid the same. So, the non-applicants are liable to pay the amount of compensation with 50 % penalty and interest @ 15 % p.a.

03] Non-applicant No. 1 was served with the notice but, did not file its written statement. Hence, matter is proceeded without its written statement.

04] Non-applicant No. 2 has filed his reply below **Exh. C-3** and stated that all the contentions made by the applicants in their application are false. They have stated that the deceased was responsible for the accident. Applicants have not produced any document to show the relationship of deceased with non-applicant No. 1. Non-applicant No. 1 have not lodged any claim with non-applicant No. 2. The deceased was not holding valid license nor the truck had fitness certificate, required permit and so there was breach of the terms of the policy. So, they have prayed for dismissal of application.

05] Issues were framed below **Exh. O-4**. I have reproduced those issues and given my findings to those issues along-with reasons as follows :-

Sr.No.	Issues	Findings
1.	Do the applicants prove that deceased Sunil Savla Kurhade died on 20 th August, 2022 due the course of arising out of his employment with non-applicant No. 1?	Yes.

2.	Whether the applicants entitled to claim compensation under the Employee's Compensation Act, 1923 as claimed?	Yes.
3.	Does non-applicant No. 2 prove that it is not liable to pay compensation to the applicants as the owner of the insured vehicle (N.A. No. 1) breach the terms and conditions of the insurance policy?	No.
4	Whether the applicants entitled to interest and penalty as claimed?	Partly Affirmative.
5	What Order?	As per final order.

REASONS

06] Applicant in support of her application has examined herself by filing her affidavit in examination in chief below **Exh. U-7**. Apart from oral evidence the applicants have relied upon documentary evidence such AA Form below **Exh. U-13**, F.I.R. dt. 21/08/2022 below **Exh. U-14**, Spot Panchnama below **Exh. U-15**, Inquest Panchanama below **Exh. U-16**, P.M. Report below **Exh. U-17**, R.C. book of truck below **Exh. U-18**, Insurance certificate of either truck bearing No. MH-34/BZ 0582 below **Exh. U-19**, Permit below **Exh. U-20**, Fitness below **Exh. U-21**, Driving License of deceased below **Exh. U-22**, Notice to non-applicants below **Exh. U-23**, Two postal receipts below **Exh. U-24**, Online delivery receipt of notice to N.A. No. 1, Online delivery Receipt of notice to N.A. No. 2. On the contrary, both the non-applicants have not entered in to the witness box nor examined any witness.

07] Applicants are the legal heirs of deceased Sunil Kurhade. They have produced the copies of inquest panchnama, spot panchnama, first report, P.M. report on record. On perusal of these documents, it is seen that the deceased was driving the truck bearing No. MH-34 BZ 0582 on the day of incident. His death has been occurred due to injuries sustained in the accident. These facts are not disputed.

08] Non-applicant No. 1 is the owner of the truck involved in the accident. Applicants are the legal heirs of the deceased who was driving the said truck on the day of incident. Non-applicant was served with the notice but he did not resist the application. He was the best person to state whether the deceased was his employee or not. Applicants have stated that the deceased was employee of non-applicant No. 1 and was driving the said truck on the instructions of non-applicant No.1. On perusal of police papers it is proved that the deceased was driving the truck when accident occurred. So, the non-applicant No. 2 can not deny the relationship of deceased with non-applicant No. 1.

09] Non-applicant No. 2 has stated that the applicants have not produced any document with respect to the salary of the deceased. They have stated that mere driving the truck at the time of accident does not establish the employment of deceased with non-applicant No. 1. In support of their contentions they relied upon the ratio laid down in the cases below :-

1] National Insurance Company Ltd. V/s. Smt. Prema Devi & Ors., 2013 (5) All MR (Journal) 6, wherein it is held that in absence of any documentary evidence the salary can be taken as per the notification of state government.

2] Minu Rout & Another V/s. Satya Pradyumna Mohapatra & Ors., 2013 All SCR 3156, wherein it is held that, in absence of documentary evidence with regard to the salary the same can be determined by the work done by the deceased i.e. skilled work of driver.

3] Chandra @ Chanda @ Chandraram & Anr. V/s. Mukesh Kumar Yadav & Ors., IV (2021) ACC 343 (SC), wherein it is held that, wherein it is held that, in absence of documentary evidence with regard to the salary the same can be determined by the work done by the deceased i.e. skilled work of driver.

4] United India Insurance Company Ltd. V/s. Amidabi w/o Dulushah and Others, 2010(7) Mh. L.J. 617, wherein it is held that, the term wages does not include the allowance paid to the driver in addition to his salary. In the present case, the allowance was paid to the deceased as he was visiting out station.

5] National Insurance Company Ltd. V/s. Suresh Pal & Anr., I (1999) ACC 605 (DB), wherein it is held that, the insurance company is not liable to pay the penalty.

6] Oriental Fire and General Insurance Co. Ltd. V/s. Ramlal @ Ramu & Ors., III (2006) ACC 204, wherein it is held that, it is the duty of the employer to pay the compensation in time and if not paid, the insurance company is not liable to pay the penalty.

10] Applicants have produced the vehicle particulars, copy of policy, permit in respect of goods permit issued by transport department Maharashtra, certificate of fitness of the truck and the copy of driving license of the deceased. All these documents are proved by the applicants. So, the stand taken by non-applicant No. 2 with regard to breach of terms of policy are not

sustainable. Even otherwise the duty would be of the employer to produce all these documents.

11] Applicants have produced the copy of driving license of the deceased. On perusal of said license the date of birth of the deceased is shown to be 06/03/1982. The incident has occurred has 20/08/2022. So, at the time of incident the age of the deceased was 40 years. Applicants have stated that the salary of deceased was 15000/- per month and Rs. 100/- allowance per day at the time of incident. He was working as a driver on the truck and the salary stated by the applicant seems to be reasonable. So, considering the age of the deceased at the time of the incident the factor for calculation of amount of compensation is 184.17.

12] The applicants are claiming the allowance of Rs. 100/- was the part of salary. Allowance is paid to the drivers for visiting outstation and meet their expenses. So, the allowance though paid on daily basis can not be the part of salary. So, for calculation of compensation the amount of salary can be taken only Rs. 15000/-. This fact was within the knowledge of deceased and non-applicant No. 1. As the non-applicant No. 1 has not come forward to deny the said fact, it can be presumed that the said fact is admitted to him. All the relevant documents of salary were with non-applicant No. 1 and he has not produced any document or evidence on record. So, on the said count also adverse inference can be drawn against him.

13] Non-applicants have not deposited the amount of compensation in the court nor paid to the applicants. So, considering the factor and salary of the deceased the amount of compensation comes to Rs. $7500 \times 184.17 = 13,81,275/-$. Non-applicant No. 1 was aware about the amount of

compensation and has not informed non-applicant No. 2 to pay the amount. Non-applicant No. 2 has indemnified non-applicant No. 1 for payment of compensation under the valid policy which is produced on record. After the incident, applicants have send notice to both the non-applicants. But, non-applicant No. 2 even after receipt of letter from applicants has not paid the amount of compensation nor deposited the same in court. So, both the non-applicants are jointly and severally liable to pay the amount of compensation along-with interest @ 9 % p.a. since the date of filing of application in the court i.e. since 07/12/2022.

14] Non-applicant No. 1 being the employer was aware about the liability to pay the amount of compensation. Even after receipt of notice from applicants and after the notice of present petition has not paid the amount to the applicants nor deposited in the court. Applicants have not received the amount of compensation even after the death of Sunil Kurhade who was in employment with non-applicant No. 1. So, the non-applicant No. 1 is liable to pay the amount of penalty to the extent of 50 % of the amount of compensation. In the result, Issues No. 1 and 2 are answered in affirmative, Issue No. 3 in negative, Issue No. 4 in partly affirmative and in answer to Issue No. 5, I proceed to pass following award:

:A W A R D :

1] It is hereby declared that deceased Sunil Kurhade died in an accident arising out of and in the course of his employment with non-applicant No. 1 on 20/08/2022.

- 2] Non-applicant No. 1 and 2 are jointly and severally liable to pay the amount of compensation Rs. 13,81,275/- to applicant along-with interest @ 9 % p.a. from the date of application i.e. 07/12/2022 till the realization of entire amount.
- 3] Non-applicant No. 1 is directed to pay an amount of Rs. 6,90,637/- to the applicant towards penalty.
- 4] Applicants are directed to pay the deficit court fees, if any.

Akola.

Date :- 19/12/2023.

(S. K. Bangad)
Commissioner Under the E. C. Act &
Judge, Labour Court, Akola.

Argued on	:- 19/12/2023.
Judgment dictated on	:- 19/12/2023.
Judgment checked & signed on	:- 19/12/2023.