

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 1387 OF 2015

A. GANESH RAO **APPELLANT**

VERSUS

M/S UNITED INDIA INSURANCE CO. LTD. & ORS. **RESPONDENTS**

ORDER

1. The appellant-employer of the deceased-Kenneth Nischal Kunder, has filed the present appeal being aggrieved by a common judgment and order dated 30th August, 2010 passed by the Division Bench of the High Court of Karnataka at Bangalore, by which the Division Bench has disposed of two appeals, one¹ filed by the respondent no.1-Insurance Company and the other² filed by the appellant-employer, challenging the illegality of the order dated 18th November, 2005 passed by the Labour Officer-cum-Commissioner for Workmen's Compensation, Udupi, in a claim petition filed by respondents no.2 to 5 herein who are the legal heirs of the deceased, claiming compensation.
2. The brief relevant facts of the case as per the record is that the deceased who was an employee of the appellant and working as a Driver-cum-Sales Officer on probation basis, had died on 26th September, 2002 in the course of

1 MFA No. 1055/2006

2 MFA No. 10250/2006

discharging his duties while driving a Toyota Qualis from Manipal towards Chitpadi, where a bus had dashed against the Qualis and caused the accident. Respondents no. 2 to 5 lodged a claim³ under the Workmen's Compensation Act, 1923, on the ground that the deceased was a Driver-cum-Sales Officer of the appellant herein. The appellant entered appearance and took a plea that though the deceased was employed by the Company, he was not a workman; that when the accident took place, he has taken the vehicle out without permission on a day that was declared as Bharat Bandh and that he was under the influence of liquor while driving the vehicle. In other words, the appellant-Company refuted the claim contending that there was no relationship of a master and servant between it and the deceased. On its part, the respondent no.1-Insurance Company argued that since the deceased was employed with the appellant as a Sales Officer and not as a Driver, no liability to pay any amount could be fastened on the Insurance Company.

3. After examining the stand of both the parties, on going through the pleadings and the evidence brought on record, vide order dated 18th November, 2005, the Labour Officer-cum-Commissioner for Workmen's Compensation arrived at a conclusion that there was a relationship of a master and servant between the appellant-Company and the deceased and since the vehicle in question was insured with the respondent no.1-Insurance Company, it was liable to pay compensation of ₹4,42,740/- (Rupees Four Lakhs Forty Two Thousand Seven

Hundred and Forty) with simple interest @ 12% on the amount awarded.

4. Two cross appeals were filed against the order dated 18th November, 2005. The High Court allowed the appeal filed by the Insurance Company and dismissed the appeal filed by the appellant-employer herein and held that the deceased was a workman and not an officer. However, on the aspect of the liability to satisfy the award, the High Court opined that the Insurance Policy was issued by the Insurance Company only to cover the risk of a paid driver and since the deceased was not working as a paid driver, the Insurance Company was not liable to pay the awarded amount. Instead, the appellant-employer shall be made liable to pay the awarded amount to the respondents no. 2 to 5, legal heirs of the deceased.
5. Mr. P. Vishwanath Shetty, learned Senior Counsel appearing for the appellant-employer submits that the High Court has erred in interfering with the judgement of the Labour Officer-cum-Commissioner. He states that though several pleas have been taken in the present appeal to assail the impugned judgment, the primary argument of the appellant-employer is that the liability to pay the amount under the award could not have been fastened on the appellant, inasmuch as it is not in dispute that the Insurance Policy was taken out by the respondent no.1-Insurance Company which covered a paid driver and in the instant case, it could not be disputed that the deceased was discharging his duties not just as a Sales Officer, but also as a paid Driver. In support of the said plea, he seeks to place reliance on the appointment letter

dated 17th April, 2002, issued by the appellant-employer appointing the deceased on probationary basis.

6. *Per contra*, learned counsel for the respondent no.1-Insurance Company disputes the statement made by the other side and asserts that the appointment letter indicates that he was appointed as a Sales Officer and therefore, could not have been treated as being covered under the Insurance Policy as a paid Driver.
7. We have perused the appointment letter issued by the appellant-employer in favour of the deceased (Annexure P-1) and find that paragraph '5' thereof specifically required the deceased to attend the field work, go to the field, conduct test drives and meet individual customers. The appointment letter also states that the deceased was appointed as a Sales Officer on a consolidated salary and had to look after the affairs related to sales promotion of the vehicles of the appellant-employer and explain the features of the vehicles to the customers. It is apparent from a bare reading of the said appointment letter that the deceased was not just a Sales Officer, but a Sales Officer-cum-Driver, all rolled into one. His duties included sale promotion of the appellant's vehicles, explaining the features of the vehicles to the customers, conducting of test drives of the vehicles along with individual customers and reporting to his seniors. That being the position, it cannot be urged that the deceased was not a paid Driver so as to fasten the liability to pay the awarded amount on the appellant-employer. It is also not in dispute that the deceased did possess a

driving licence for a motor vehicle and the Insurance Policy taken out by the appellant-employer from the respondent no.1-Insurance Company covered a paid Driver.

8. In view of the aforesaid facts of the case, we are unable to sustain the impugned judgement as regards fastening of the liability on the appellant-employer to pay the amounts under the award to the respondents no.2 to 5, legal heirs of the deceased. It is held that the appellant-employer is not liable to satisfy the award passed in favour of the respondents no. 2 to 5. Instead, the liability is that of the respondent no.1-Insurance Company as has been held by the Labour Officer-cum-Commissioner in the award dated 18th November, 2005.
9. A perusal of the order sheets reveals that *vide* order dated 22nd January, 2015, this Court had directed that 50% of the amount payable shall be deposited by the Insurance-Company before the Labour Officer-cum-Commissioner, if not deposited earlier. It is not clear from the records as to whether the respondent no.1-Insurance Company has complied with the aforesaid order, nor are the learned counsel for the appellant or the respondent no.1 in a position to inform this Court as to whether compliances were made.
10. The respondent no.1-Insurance Company is, therefore, directed to deposit the amount awarded in favour of the respondents no.2 to 5 with the Labour Officer-cum-Commissioner within six weeks from today, after adjusting any amounts already deposited, with up-to-date interest. The said amount shall be released

through RTGS in favour of the respondent no.2-father of the deceased, as has been requested by learned counsel for respondents no. 2 to 5, within one week from the date of deposit of the amount by the respondent no.1-Insurance Company before the Labour Officer-cum-Commissioner.

11. The appeal is allowed on the above terms, while leaving the parties to bear their own expenses.

.....J.
[HIMA KOHLI]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
MARCH 13, 2024

PS

ITEM NO.106

COURT NO.11

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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A.GANESH RAO

APPELLANT(S)

VERSUS

M/S UNITED INDIA INSURANCE CO.LTD. & ORS.

RESPONDENT(S)

([HIGH UP ON BOARD])

Date : 13-03-2024 This appeal was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s) Mr. P. Vishwanath Shetty, Sr. Adv.
Mr. G. N. Reddy, AOR
Mr. Mahesh Thakur, Adv.
Mr. Pramod Mamidi, Adv.
Mr. Jonnala Veera Raghava, Adv.

For Respondent(s)
Mr. A.K.De, Adv.
Mr. Zahid Ali, Adv.
Ms. Ananya De, Adv.
Ms. Rebecca Dias, Adv.
Mr. Pramit Saxena, AOR

Mrs. Vaijyanthi Girish, AOR
Mr. Girish Ananthamurthy, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

The appeal is allowed in terms of the signed order, which is placed on
the file.

(POOJA SHARMA)
COURT MASTER (SH)

(NAND KISHOR)
COURT MASTER (NSH)