IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1760 OF 2009

	The New India Assurance Co. Ltd. Jeevan Seva, 2nd Floor, S. V. Road, Santacruz (W), Mumbai 400 054.	]]]	..	Appellant.
	v/s.			
1	Dineshkumar J. Dubey residing at R. B. Yadav Chawl Shivaji Vallabh Cross Road, New Ashokvan Ravalpada Dahisar (E), Mumbai.	]]]]]		
2	Jeelajeet B. Dubey Laxmibai Ramprasad Mishra Compound, Kokani Pada, Shiv Vallabh Cross Road, Dahisar (E), Mumbai 400 068.	]]]]]	..	Respondents.

Mr. S. M. Dange, for the Appellant.
Mr. T. J. Mendon, for Respondent No.1

CORAM: FIRDOSH P. POONIWALLA,J.
RESERVED ON : 20th NOVEMBER, 2025.
PRONOUNCED ON : 15th APRIL, 2026.

JUDGEMENT:-

The present First Appeal is filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as "the Act"), impugning the Judgement and Order dated 28th February, 2007 passed by the Commissioner for Workmen's Compensation and Judge, 6th Labour Court, Mumbai in Application No. A (WCA) 644/ C-226/2003, allowing the Application.

2 In this Judgement, the parties will be referred to as per their description in the Original Application.

FACTS:-

3 The Applicant had filed the Application for getting compensation of an amount of Rs.5,20,584/- with interest and penalty from the Opposite Party and the Insurance Company.

4 The Applicant's case is as under:-

(a) The Opposite Party is the owner of a vehicle bearing No. MH-02-QA-5370. The Opposite Party appointed the Applicant as a driver of the said vehicle and used to pay wages of Rs.4,000/- per month to him.

(b) The Applicant met with an accident in the course of employment with the Opposite Party on the highway road near Times of India signal on 13th August, 2002. He sustained the following injuries:-

> *"(a) #(Lt) Fibula*
> *(b) # Lat. Mallcola with Medical side ligament injury with unstable ankle.*
> *(c) ORIF with 9hole 1/3rd Tabular plate with 4mm CC screw as syndemotic screw and BG from upper end."*
> (hereinafter referred to as "the said injuries").

(c) The Applicant was admitted to Bhagwati Hospital on 13th August, 2002. He was discharged from the hospital on 3rd September, 2002.

Due to the said injuries, the Applicant is not in a position to continue his occupation as a driver. He has lost his earning capacity. Therefore, he is entitled to receive compensation of Rs.5,20,584/- from the Opposite Party and the Insurance Company.

5 The Opposite Party filed a Written Statement at Exh. "C-3". The Opposite Party admitted that he was the owner of the vehicle bearing No. MH-02-QA-5370. He admitted that he had employed the Applicant as a driver. He further submitted that he used to pay wages at Rs.4,000/- per month to the Applicant. He admitted that the Applicant met with an accident in the course of and arising out of the employment with the Opposite Party on 13th August, 2002. The Opposite Party stated that the said vehicle was insured with the Insurer. Hence, he prayed that the Insurance Company be directed to pay the compensation, if any.

6 The Insurance Company contested the Application by filing a Written Statement at Exh. "CA-4". The Insurer stated that the Applicant is not a workman. The Insurer further stated that there was no employer-employee relationship between the Applicant and the Opposite Party. The Insurer denied that the accident occurred in the course of, and arising out of, the employment with the Opposite Party. The Insurer denied that the

Applicant was getting wages of Rs.4,000/- per month. Finally, the Insurer denied that the Applicant is entitled to receive an amount of Rs.5,20,584/- with interest and penalty from the Insurer.

7 Considering the pleadings of the parties, the following are the Issues framed by the Commissioner and his findings thereon:-

Issues	Findings
1. Does applicant proved that he sustained injuries in an accident arising out of and in the course of employment with opp. Party from 13.8.2002?	Proved
2. Does applicant proved that he is entitled for the compensation? If yes, what extend?	As per the final order
2. What Order?	As per the final order.

8 Before the Commissioner, the Applicant has examined himself. The Applicant also examined Dr. Azgaonkar. The Applicant produced the certified copies of the police statement, medical case papers and the follow up card of Bhagwati Hospital from September, 2002 to March, 2003, disability certificate, Insurance Policy, Tax Certificate, Driving License, Copy of the W.C. Claim Form and the Wage Certificate. Both the Opposite Party and the Insurer did not give any evidence.

9 By a Judgement and Order dated 28th February, 2007, the

Commissioner passed the following order:-

> *" ORDER*
> *1. Application is allowed.*
> *2. Opp. Party and Insurer who are jointly and severally liable are directed to deposit a sum of Rs.5,20,584/- with interest at the rate of 12% on it from the date of present order till the date of realization within a period of 2 months from today.*
> *3. No order as to the costs."*

QUESTIONS OF LAW:-

10 By an Order dated 18th February, 2010 passed by this Court, the present First Appeal was admitted on the substantial questions of law as contained in paragraph Nos. 5, 6 and 7 of the Appeal Memo, which are as under:-

> *"5 The entire evidence regarding employment of Applicant was bogus and unreliable. Hence the Ld. Judge ought to have rejected it.*
> *6. The Ld. Judge ought to have seen that the father-son due had concocted the story of employment for their illicit gains.*
> *7. On these very facts, the Ld. Judge ought to have held that this was a collusive proceeding by father and son to dupe the insurance company, which was a public body."*

ARGUMENTS OF THE PARTIES:-

11 Mr. S. M. Dange, the learned Counsel appearing on behalf of the Insurer (Appellant), submitted that there was no evidence regarding

the employment of the Applicant by the Opposite Party nor of the Opposite Party paying salary to the Applicant. Mr. Dange further submitted that it was admitted by the Applicant that he was the son of the Opposite Party. He submitted that the Commissioner ought to have seen that the father-son duo had concocted the story of employment for their illicit gains. The Commissioner ought to have held that this was a collusive proceeding by father and son to dupe the Insurer, which was a public body.

12 Mr. Dange took me through the Affidavit-in-lieu of oral evidence of the Applicant and the cross examination of the Applicant. Mr. Dange submitted that, in his cross examination, the Applicant admitted that the Opposite Party was his father and further he also admitted that he had no evidence to show that he was drawing wages of Rs.4,000/- per month from the Opposite Party. Mr. Dange submitted that, in light of the said evidence, the case of the Applicant ought to have been rejected.

13 Mr. Dange submitted that, in the impugned Judgement, the Commissioner failed to appreciate this.

14 Mr. Dange further submitted that there must be evidence to establish employer-employee relationship. However, in the present case,

there was no documentary evidence to establish an employer-employee relationship between the Applicant and the Opposite Party.

15 In support of his submissions, Mr. Dange relied upon the Judgements of the Hon'ble Supreme Court in ***Manjusha & Others v/s. United India Assurance Co. Ltd. & Another, AIR 2025 SC 3446, National Insurance Co. Ltd. v/s. Mubasir Ahmed & Another, (2007) 2 SCC 349,*** and ***C. Manjamma & Another v/s. Divisional Manager, New India Assurance Co. Ltd. 2022 ACJ 2661.***

16 Mr. Dange submitted that, for all the aforesaid reasons, the present First Appeal should be allowed.

17 On the other hand, Mr. Mendon, the learned Counsel appearing on behalf of Respondent No.1, supported the impugned Judgement and Order dated 28th February, 2007.

18 Mr. Mendon referred to Section 30 of the Act and submitted that the First Appeal could be filed under Section 30 only on a substantial question of law. Mr. Mendon submitted that an employer-employee relationship is a question of fact and not a question of law. In support of his submission, Mr. Mendon relied upon the Judgement of the Hon'ble

Supreme Court in ***North East Karnataka Road Transport Corporation v/s. Sujatha (2019) ACJ 29.***

19 Further, Mr. Mendon submitted that the Courts have held that, just because a person is a relative of the owner of the vehicle, does not mean that he cannot be his employee. In support of his submission, Mr. Mendon relied upon the following Judgements:-

(i) Judgement of the Hon'ble Supreme Court in **T. S. Shylaja v/s. Oriental Insurance Co. Ltd. 2014 ACJ 480;**

(ii) Judgement of this Court in **Chitrarekha Chandrarao Chaudhari v/s. C. R. Chaudhari & Another (in First Appeal No. 141 of 2012);**

(iii) Judgement of the Karnataka High Court in **Divisional Manager v/s. Pramilabai & Others [in MFA No. 31321/2010 (WC)];**

(iv) Judgement of the Himachal Pradesh High Court in **Bajaj Allianz General Insurance v/s. Smt. Gulab Devi Gopen & Others [in FAO (WC) No. 359/2010]**; and

(v) Judgement of the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. v/s. Siby George & Others (2012) ACJ 2126.**

20 In conclusion, Mr. Mendon submitted that there was no error in the Judgement and Order dated 28th February, 2007 passed by the

Commissioner and, therefore, the present First Appeal should be dismissed with costs.

ANALYSIS AND FINDINGS:-

21 As far as the submission of Mr. Mendon, that no substantial question of law arises in this Appeal, is concerned, I am unable to accept the same. As pointed out earlier by me, this Court, by an Order dated 18th February, 2010, admitted the Appeal on three substantial questions of law. Hence, I am not inclined to hold that the Appeal does not raise any substantial question of law.

22 The three questions of law, on which this Appeal was admitted are as under:-

> *"5 The entire evidence regarding employment of Applicant was bogus and unreliable. Hence the Ld. Judge ought to have rejected it.*
> *6. The Ld. Judge ought to have seen that the father-son due had concocted the story of employment for their illicit gains.*
> *7. On these very facts, the Ld. Judge ought to have held that this was a collusive proceeding by father and son to dupe the insurance company, which was a public body."*

23 Since all these questions of law are interlinked, I will decide all of them together.

24 The question that really arises is whether the Applicant, being the son of the Opposite Party, could have been his employee.

25 In this context, it is important to note that the Courts have held that, just because a person is a relative of the owner of the vehicle, the same does not mean that he cannot be his /her employee. In this context, the following Judgements are relevant.

26 Paragraphs 2 to 8 of this Court's judgement in ***Chitrarekha Chandrarao Chaudhari (supra)*** are relevant and are set out hereunder:-

> *"2. This appeal challenges an order dated 24 February 2011 passed by the Labour Court, Mumbai dismissing the application made by the appellant-original applicant under Workmen's Compensation Act, 1923 (WC Act) seeking compensation of Rs.4,33,060/- along with interest.*
>
> *3. On 20 November 2008, the deceased died in an accident while driving vehicle no.MH-05-R-4613. The vehicle was owned by the father of the deceased.*
>
> *4. The Labour Court has come to a conclusion that no evidence has been led by the appellant-applicant to prove employer-employee relationship and, therefore, the application is required to be dismissed. The Labour Court has referred to the examination-in-chief of the mother of the deceased and her cross-examination and has arrived at this finding.*
>
> *5. There is no dispute that the mother of the deceased in her examination-in-chief has stated that the deceased was employed with his father for driving the vehicle. In the cross-examination of the mother of the deceased, it has come on record that the father of the deceased was paying Rs.4,000/- as salary.*
>
> *6. In my view, in the family where small businesses are run, the father and son do work together without any written*

contract of employment between the two. Merely because there is no written contract between the father and son for the purpose of driving the vehicle, it cannot be said that there was no employer-employee relationship between them. The mother of the deceased in her affidavit in evidence and cross has explained that the deceased was working as a driver and drawing a salary of Rs.4,000/-. This evidence in the facts of the present case could not have been rejected, moreso when we are concerned with a welfare legislation.

7. The learned counsel for the appellant is justified in relying on following decisions:-

(i) Oriental Insurance Co. Ltd. vs. Hanumant & Anr.

(ii) Divisional Manager vs. Pramilabai w/o Mohan Rao Kulkarni

(iii) New India Assurance Co. Ltd. vs. G. D. Dengi & Anr.

(iv) United India Insurance Co. Ltd. vs. Jhonsa & Ors.

(v) T. S. Shylaja vs. Oriental Insurance Co. Ltd. & Anr.

8. In the above decisions, the facts were very similar to the facts before me, wherein it has been held that in the case of father and son there need not be any documentary evidence for establishing the relationship of employer and employee.

27 Paragraphs 22, 23 and 26 of the Judgement of the Himachal Pradesh High Court in ***Bajaj Allianz General Insurance (supra)*** are relevant and are set out hereunder:-

"*22. In law, there is no bar or prohibition that a real brother cannot be engaged as an employee. As it was the allegation of the Insurance Company that the claim preferred by the claimants before the learned Commissioner was collusive with the owner of the vehicle and further that there was no relationship of employer and employee between the deceased and the owner of the vehicle, the onus to prove the same, but obvious was upon the Insurance Company. As I have already mentioned hereinabove, there is not even an iota of evidence placed on record by the Insurance Company to substantiate that*

either the Claim Petition was collusive or that there was no relationship of employer and employee between the deceased and the owner of the vehicle.

23. In the light of the fact that the owner of the vehicle had admitted deceased being engaged by him as a driver, nothing more was required to be proved by the claimants in view of the law laid down by Hon'ble Supreme Court in T.S. Shylaja Versus Oriental Insurance Company & Another, (2014) 2 SCC 587, in which judgment, Hon'ble Supreme Court has held as under:-

> *"10. The Commissioner for Workmen's Compensation had, in the case at hand, appraised the evidence adduced before him and recorded a finding of fact that the deceased was indeed employed as a driver by the owner of the vehicle no matter that the owner happened to be his brother. The finding could not be lightly interfered with or reversed by the High Court. The High Court overlooked the fact that the respondent owner of the vehicle had appeared as a witness and clearly stated that the deceased was his younger brother, but was working as a paid driver under him. The Commissioner had, in this regard, observed:*
>
> *"After examining the judgment of the Andhra Pradesh High Court relied upon by the second opponent it is seen that the owner of the vehicle being the sole witness has been unsuccessful in establishing his case but in this proceeding the owner of the vehicle has appeared before this Court even though he is a relative of the deceased, and has submitted in his objections, even evidence that even though the deceased was his younger brother he was working as a driver under him, and has admitted that he was paying salary to him. The applicant in support of his case has submitted that Hon'ble High Court judgment in United India Insurance Co. Ltd. v. Yallappa Bhimappa alagudi which I have examined in depth which holds that there is no law that relatives cannot be in employer-employee relationship. Therefore it is not possible to ignore the oral and documentary evidence in favour of the applicant and such evidence has to be weighed in favour of the applicant. For these reasons I hold that the deceased was working as driver under first opponent and driving Toyota*

Quails No.KA 02 C 423, that he died in accident on 3-9-2000, that he is a 'workman' as defined in the Workmen's Compensation Act and it is held that he has caused accident in the course of employment in a negligent fashion which has resulted in his death".

11. The only reason which the High Court has given to upset the above findings of the Commissioner is that the Commissioner could not blindly accept the oral evidence without analyzing the documentary evidence on record. We fail to appreciate as to what was the documentary evidence which the High Court had failed to appreciate and what was the contradiction. If any, between such documents and the version given by the witnesses examined before the Commissioner. The High Court could not have, without adverting to the documents vaguely referred to by it have upset the finding of fact which the Commissioner was entitled to record. Suffice it to say that apart from appreciation of evidence adduced before the Commissioner the High Court has neither referred to nor determined any question of law much less a substantial question of law existence whereof was a condition precedent for the maintainability of any appeal under Section 30. Inasmuch as the High Court remained oblivious of the basic requirement of law for the maintainability of an appeal before it and inasmuch as it treated the appeal to be one on facts it committed an error which needs to be corrected".

26. There is nothing placed on record by the Insurance Company to prove that the deceased was otherwise gainfully employed or engaged somewhere else. Thus, in the absence of any such evidence being on record and in the light of admission being there of the employer that the deceased was duly engaged by him as a driver with his vehicle, who incidently also happened to be of his real brother, it cannot be said that the learned Commissioner erred in allowing the claim application. This is more so for the reason that it is an admitted fact that the O.D. Claim, which was submitted by the owner of the vehicle with the Insurance Company, in which the factum of the deceased driver being his brother stood disclosed, was duly honoured by the Insurance Company. Substantial question of law stands answered accordingly.

28 Paragraph 9 of the Judgement of the Hon'ble Supreme Court in ***T. S. Shylaja (supra)*** is relevant and is set out hereunder:-

> *"9. The Commissioner for Workmen's Compensation had, in the case at hand, appraised the evidence adduced before him and recorded a finding of fact that the deceased was indeed employed as a driver by the owner of the vehicle no matter the owner happened to be his brother. That finding could not be lightly interfered with or reversed by the High Court. The High Court overlooked the fact that respondent-owner of the vehicle had appeared as a witness and clearly stated that the deceased was his younger brother, but was working as a paid driver under him. The Commissioner had, in this regard, observed:*
>
> > *"After examining the judgment of Andhra Pradesh High Court relied upon by the second opponent it is seen that the owner of the vehicle being the sole witness has been unsuccessful in establishing his case but in this proceeding the owner of the vehicle has appeared before this court even though he is a relative of the deceased, and has submitted in his objections, even evidence that even though the deceased was his younger brother he was working as a driver under him, and has admitted that he was paying salary to him. Applicant in support of his case has submitted Hon'ble High Court judgment reported in Divisional Manager, United India Insurance Co. Ltd. v. Yellappa Bheemappa Alagudi, ILR 2006 KAR 518, which I have examined in depth which holds that there is no law that relatives cannot be in employer-employee relationship. Therefore, it is not possible to ignore the oral and documentary evidence in favour of the applicant and such evidence has to be weighed in favour of the applicant. For these reasons, I hold that deceased was working as driver under first opponent and driving Toyota Qualis No. KA 02-C 423, that he died in accident on 3.9.2005, that he is a 'workman' as defined in the Workmen's Compensation Act and it is held that he has caused the accident in the*

course of employment in a negligent fashion which has resulted in his death."

29 Paragraph 11 of the Judgement of the Karnataka High Court in ***Pramilabai & Others (supra)*** is relevant and is set out hereunder:-

> *"11. The very argument now advanced by the learned counsel appearing for the appellant was addressed in the case of G.D.Dengi (supra) placing reliance on the Judgment of Gottukukkala Appala Narasimha Raju(supra). Considering the said judgment, this Court has held:*
>
> > *5. While arguing the case, the learned counsel for appellant relied on the decision of Apex Court in Gottumukkala Appala Narsimha Raju V. National Insurance Co. Ltd., 2007 ACJ 1025 (SC), wherein it was observed that technically, it may be possible that the husband is employed under the wife, but while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.*
> >
> > *8. The learned counsel for respondent No. 2 also contended that the decision relied on by the appellant in Gottumukkala Appala Narsimha Raju's case 2007 ACJ 1025 (SC), is not applicable to the facts involved in this appeal. He has relied on the decision of this Court in Oriental Insurance Co. Ltd. V. Hanumant, 2006 ACJ 251 (Kant), wherein it is held thus:*
> >
> > > *"2) ... It is not uncommon amongst the business family to engage their own kith and kin on employment for doing the business or commercial activity. Merely because in such a situation no wages are paid in cash is also not a ground to infer absence of a legal relationship of employer and employee, since there*

> *would always be consideration in kind computable in terms of money for the services rendered. The parties would not go for documentation of the contract nor create any documentary material to prove payment of wages in view of the peculiar family relationship...*"

30 Further, in the present case, in his Written Statement, the Opposite Party has admitted that the Applicant was his employee.

31 In paragraph 1 of his Affidavit-in-lieu of oral evidence, the Applicant has deposed that he was employed since 2001 in his capacity as a driver of motor vehicle bearing Registration No. MH-02-QA-5370 on monthly wages/ salary of Rs.4,000/- per month from the Opposite Party. In his cross examination, apart from putting a suggestion to the Applicant, the only fact that the Insurer could bring out was that the Applicant had no documentary evidence to show that he was drawing wages of Rs.4,000/- per month. In my view, especially since the Applicant was the son of the Opposite Party, it would be normal in the natural course of events that there would be no documentary evidence showing that the Opposite Party was paying him wages of Rs.4,000/- per month.

32 Further, as rightly held by the Commissioner, the Applicant had stated on oath that he was drawing wages of Rs.4,000/- per month.

The Opposite Party, who was his employer, admitted the said fact in his Written Statement. The Opposite Party had also produced the Wage Certificate which evidenced the payment of wages to the Applicant. The Opposite Party has stated in the said Certificate that he used to pay wages of Rs.4,000/- per month to the Applicant. Thus the fact of payment of wages and quantum of wages is admitted between the employer and the employee.

33 On the other hand, the Insurer has not led any evidence to disprove this fact.

34 In these circumstances, in my view, the Commissioner was right in holding the following:-

> *"9. According to the applicant opp. Party is a owner of the vehicle MH-02-QA-5370. Further according to him, opp.party engaged him as driver on the said vehicle. The insurance company has denied the said fact categorically. However Opp. Party who is owner of vehicle admitted the said fact clearly in the written statement filed at Ex.C-3. Opposite Party stated in the written statement that he had employed the applicant as a driver on his vehicle MH-02-QA-5370. Thus employer himself admitted the existence of employer-employee relationship in between the parties. Thereafter refer though Insurance Company denied that said fact it will not make much difference.*
>
> *10. Applicant stated on oath that he was drawing the wages of Rs.4000/- per month. Opp. Party who is employer admitted the said fact in the written statement. The opp. Party has also issued wage certificate it is at sr. no.9 of the list at Exh.U-4. Employer stated in his certificate that he sued to pay*

> *wages at Rs.4000/- per month to the applicant. Thus fact of payment of wages and quantum of wages is admitted in between the employee-employer. Therefore though Insurance Company has disputed it will not make much difference."*

35 This leads me to deal with the Judgement of the Hon'ble Supreme Court in ***Manjusha & Others (supra)*** which has been referred to by Mr. Dange. Paragraph 13 of the said Judgement reads as under:-

> *"13. In this context, we cannot but notice Ramkhiladi (AIR 2020 SC 527), in which there was a contention taken by the claimant that the deceased was employed by the owner of the vehicle, the motor bike. It was held in paragraph 9.3 that no evidence was led by the claimants to prove that the deceased driver was an employee of the owner. Pleadings and proof of such pleadings; by valid evidence led, is the crux and core of any adjudicatory process. Trite is the principle that there can be no proof offered without specific pleadings. The limited liability was not pleaded, by the insurance company, either before the Tribunal, as we see from the award made, nor in the appeal filed before the High Court as we see from the memorandum of appeal filed before the High Court."*

36 In the said Judgement, the Hon'ble Supreme Court has held that in the case of ***Ramkhiladi v/s. The United India Insurance Company AIR (2020) SCC 527,*** there was a contention taken by the Claimant that the deceased was employed by the owner of the vehicle. It was held in paragraph 9.3 that no evidence was led by the Claimant to prove that the deceased driver was an employee of the owner. Pleadings, and proof of such pleadings by valid evidence led, is the crux and core of any adjudicatory process. Trite is the principle that there can be no proof

offered without specific pleadings.

37 In my view, what is held in ***Manjusha & Others (supra)***, does not take the case of the Insurer any further. In the present case, not only did the Applicant depose that he was an employee of the Opposite Party but the Opposite Party also admitted the said fact in his Written Statement. The Opposite Party also produced a Wage Certificate showing that the Applicant was his employee. Therefore, the fact that there was an employer-employee relationship between the Opposite Party and the Applicant has not only been pleaded but has been proved.

38 On the other hand, the Insurer has not led any evidence.

39 In the light of the aforesaid, the questions of law, on which the present First Appeal was admitted, are decided in favour of the Applicant.

40 In my view, the Commissioner has correctly passed the Judgement and Order dated 28th February, 2007. I see no reason to interfere with the said Judgement and Order dated 28th February, 2007.

ORDER:-

41 In the light of the aforesaid discussion, and for the aforesaid

reasons, the following orders are passed:-

(a) The First Appeal is dismissed;

(b) In the facts and circumstances of the case, there will be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)