IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1476 OF 2007

1. Smt. Harvinder Kaur Vishakha Singh
   widow aged 30 years
2. Master Charanjit Singh Vishakha Singh
   minor son aged 3 years
3. Kum Luv Prit Kaur Vishakha Singh
   daughter aged 1 month
4. Shri Suman Singh, Father, 70 years
5. Smt. Mahindra Kaur Suman Singh,
   mother aged 65 years
   All residing at : Khindi Pada, Darga road, Mulund Colony, Mulund (W), Mumbai.

...Appellants
(Ori.Applicants)

Versus

1. Shri Tarvinder Singh K. Singh
   Flat No-4, Paradise Co., Hsg. Society, Sector-7, Navi Mumbai, Dist-Thane, Sector-7, Navi Mumbai, Dist. Thane.

Opposite party no.1

2. New India Assurance Co. Ltd.
   Charishma Centre, 19th Road, Chembur, Mumbai – 400 071. At Regd. Off: 87, M. G. Road, Hutatama Chowk, Mumbai 23

opposite party no.2
...Respondents

Mr. Amol Gatane, for the Appellants.
Mr. S. M. Dange, for Respondent no.2.
None for Respondent no.1.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 22nd NOVEMBER, 2021
PRONOUNCED ON: 17th JANUARY, 2022

JUDGMENT:

1. This appeal is directed against the judgment and award dated 14th April, 2007 in Application (WCA) No.17/B-8/2004,

passed by the Commissioner for Workmen's Compensation and Judge, 8th Labour Court at Mumbai, whereby the application preferred by the appellants – applicants for compensation on account of death, of late Vishakha Singh Suman Singh (the deceased), on account of accident arising out of and in the course of his employment, while driving motor vehicle (truck) bearing No.MH-04-F-8979, owned by opponent no.1 employer and insured with opponent no.2 – insurer, on 3rd November, 2003, came to be dismissed.

2. The background facts leading to this appeal can be stated in brief as under:

(a) Late Vishakha Singh, the husband of applicant no.1 - Smt. Harvinder Kaur, father of applicant no.2 - Master Charanjit Singh and applicant no.3 - Kum Luv Prit Kaur and son of applicant no.4 - Mr. Suman Singh and applicant no.5 - Smt. Mahindra Kaur, was employed with opposite party no.1 - Mr. Tarvinder Singh, as a driver on the truck No.MH-04-F-8979. The said vehicle was insured with opposite party no.2. The applicants claim that the deceased was 35 years of age. He was drawing wages of Rs.4,000/- per month.

(b) While the deceased was driving the said truck bearing No.MH-04-F-8979, on his way to Mumbai, in the course

of employment, the deceased died at Chandwad, district Nashik. Inquest was held on the body of the deceased. Postmortem examination was conducted. It was opined that the deceased died on account of coronary artery heart disease. The applicants asserted that the deceased died on account of the stress and strain of employment as the deceased had been driving the said vehicle continuously since 17 to 18 days. On the day of the death, the deceased was on his way to Mumbai from Ranchi, which is at a distance of 1800 kms. from Mumbai. Thus, the applicants claimed compensation of Rs.3,94,120/- along with interest and penalty.

(c) The opposite party no.1 - employer filed the written statement. It was admitted that the deceased was employed with opposite party no.1 as a driver on the above-numbered vehicle and met death on 3rd November, 2003, at Chandwad, Nashik, on his way to Mumbai, in the course of employment. The opposite party no.1 further admitted that he was paying wages of Rs.4,000/- per month and a claim form was submitted to the insurer with the aforesaid particulars.

(d) Opposite party no.2 - insurer resisted the claim principally on the ground that the death, which the deceased met, was natural. The death was not on account of the use of

the motor vehicle. Nor the accident occurred out of the employment. The contingencies as specified in Section (II) of the Contract of Insurance dated 29th September, 2003 and Section 147 of the Motor Vehicles Act, 1988, were not made out, and thus the applicants were not entitled to claim compensation. In substance, there was no nexus between the death, which the deceased met, and the use of the vehicle, which was insured with opposite party no.2 – insurer.

(e) In the backdrop of the aforesaid pleadings, the learned Commissioner framed following issues at Exhibit-O-4:

1. Whether the applicants prove that the deceased met with fatal accident in the course of and arising out of use of the vehicle with the opposite party and died?
2. Whether the applicants prove that they are entitled to receive the compensation claimed or such other amount from the opposite parties Nos.1 and 2?
3. Whether the applicants prove that they are entitled to receive the compensation with penalty and interests?

(f) The learned Commissioner recorded the evidence of applicant no.1 Smt. Harvinder Kaur (witness no.1 – for the applicants), Mr. Tarvinder Singh (witness no.1 for opposite party) and Suryakant Kambli (witness no.1 for insurer). After appraisal of the oral evidence and documents tendered for her perusal, the learned Commissioner was persuaded to return the finding that the employer – employee relationship between the deceased and opposite party no.1 was established. However, the

applicants were non-suited on the ground that the death, being natural, cannot be said to have been caused by an accident arising out of and in the course of his employment. The learned Commissioner while answering the issue nos.2 and 3, went on to further record that the question as to whether the deceased was in fact employed with the opposite party no.1 was in the corridor of uncertainty as it was brought out in the cross-examination of Tarvinder Singh - opposite party no.1 that he was dealing in the business of transport under the name and style of Amrit Roadlines, a partnership firm. Thus, the mere fact that on the date of the accident, the deceased was working as a driver on the above-numbered vehicle, owned by opposite party no.1, was not sufficient to award compensation, held the learned Commissioner.

3. Being aggrieved by and dissatisfied with the aforesaid judgment and award, the appellants – applicants are in appeal.

4. I have heard Mr. Gatane, the learned Counsel for the appellants and Mr. Dange, the learned Counsel for respondent no.2 – insurer. With the assistance of the learned Counsel for the parties, I have perused the material on record including the impugned judgment and depositions of the witnesses and

documents tendered for the perusal of the learned Commissioner.

5. At the outset, Mr. Dange, the learned Counsel for respondent no.2 – insurer, assailed the tenability of the appeal as it does not involve any substantial question of law. In view of the proviso to sub-section (1) of Section 30 of the Employees Compensation Act, 1923, the existence of a substantial question of law is a jurisdictional condition for entertaining the appeal, urged Mr. Dange. In the case at hand, while admitting the appeal, no such substantial question of law was framed by this Court and, therefore, at this juncture, the appeal does not deserve to be entertained.

6. Mr. Gatatne, the learned Counsel for the appellants, joined the issue by canvassing a submission that the very fact that the learned Commissioner initially recorded a finding that the employer – employee relationship between the deceased and opposite party no.1 was established and, later on, went on to take a diametrically opposite view itself raises a substantial question of law. Taking the Court through the observations made by the learned Commissioner on the aspect of employer – employee relationship, which are irreconcilable, in the least, Mr. Gatane would urge that the fact that a substantial question of

law was not framed while admitting the appeal cannot be urged to deprive the appellants of the opportunity to assail the legality, propriety and correctness of the impugned judgment and award, lest the appellants would suffer an irretrievable prejudice.

7. I am persuaded to agree with the submission of Mr. Gatane. Indeed, while admitting the appeal, on 3rd July, 2007, this Court did not frame any substantial question of law or gave an indication as to the question of law on which the appeal deserved admission. However, that does not preclude the Court from considering the submissions to ascertain as to whether there is a substantial question of law, which warrants determination in this appeal, even at this stage. It is trite that a substantial question of law can be reformulated. Thus, respondent no.2 cannot draw any mileage from the said fact of admission of the appeal without framing a substantial question of law.

8. The submission on behalf of the appellants that the learned Commissioner committed a patent error in first holding that, in view of the pleadings and material on record, the employee – employer relationship between the respondent no.1 and deceased was established, and later on, dismissing the claim on the ground that the said fact was not adequately

proved, appears well founded. Indisputably, in the written statement, respondent no.1 has admitted the employer – employee relationship and also the essential terms of employment. In paragraph 6, the learned Commissioner recorded a categorical finding that such employer – employee relationship was established. Nonetheless, while considering the entitlement of the applicants for compensation, the learned Commissioner recorded a view that the said fact was not proved. This somersault gives rise to a substantial question of law as to whether the learned Commissioner, once having recorded an affirmative finding on the employer – employee relationship, was justified in dismissing the application for compensation on the count that no such relationship was established. I am thus persuaded to entertain the appeal.

9. Mr. Gatane, the learned Counsel for the appellants, would urge that apart from the aforesaid inconsistent findings as regards the proof of employer – employee relationship, the learned Commissioner committed a manifest error in returning a finding that the deceased did not meet death in the course of and out of the employment. The learned Commissioner, according to Mr. Gatane, was in error in not appreciating the evidence on record, which establishes that the

deceased was on the wheel of the truck for 17 to 18 days and driving for such a prolonged period was impregnated with the stress and strain, which eventually led to cardiac problem. Therefore, it must have been held by the learned Commissioner that the stress and strain of driving for such a long period, accelerated the death of the deceased, submitted Mr. Gatane.

10. In opposition to this, Mr. Dange, the learned Counsel for respondent no.2 – insurer supported the impugned judgment. It was urged that the death, which the deceased met, was undoubtedly natural. There was next to no evidence, according to Mr. Dange, to show that the deceased suffered any stress and strain of the driving. In fact, there was no explanation as to why the cleaner on the said vehicle was not examined. The cleaner was the best person to throw light on the circumstances of transaction leading to the death of the deceased. In the circumstances, the learned Commissioner, according to Mr. Dange, committed no error in dismissing the application.

11. To lend support to the aforesaid submission, Mr. Dange, placed reliance on the judgment of the Supreme Court in the case of ***Shakuntala Chandrakant Shreshti vs. Prabhakar Maruti Garvali and another,***[1] which was referred to and heavily relied

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1 (2007) 11 Supreme Court Cases 668.

upon by the learned Commissioner in support of the said finding.

12. Per contra, Mr. Gatane, the learned Counsel for the appellants, submitted that the learned Commissioner totally misconstrued the ratio in the case of ***Shakuntala Chandrakant Shreshti*** (supra) and completely lost sight of the fact that in the said case compensation was claimed in respect of death of the cleaner, who was not expected to be under the stress and strain, which a driver had to encounter. In contrast, the pronouncement in the case of ***Param Pal Singh through Father vs. National Insurance Company and another,***[2] according to Mr. Gatane, governs the facts of the case at hand with full force.

13. It is imperative to note that there is no dispute over the fact that the deceased died on 3rd November, 2003, while he was on his way back to Mumbai along with the motor vehicle bearing No.MH-04-F-8979. Undoubtedly, the autopsy surgeon opined that the cause of death was coronary artery heart disease and it was natural. In Column nos.19 and 20 of the postmortem report, the autopsy surgeon made following observations:

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2 (2013) 3 Supreme Court Cases 409.

19. Head: (iii) Brain – The appearance of its coverings, size, weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted (Weight M.3 gram F.2.75 grams.)	Meninges - congested Brain matter – Edematous
20. Thorax - (g) Heart with weight (h) Large vessels (i) Additional remarks	Heart enlarged. Aorta showed atheromatous plaque coronarie thickened & calcified coronary ostia narrowed.

14. Laying emphasis on the aforesaid observations in the postmortem report and the contents of the inquest, wherein the public witnesses opined that the deceased might have met death, while he was in the cabin of the truck, Mr. Gatane would urge that the mere fact that the deceased met a natural death is not decisive. The question as to whether the death, which the deceased met, was on account of accident arising out of and in the cause of employment cannot be determined *de hors* the attendant circumstances. The learned Commissioner, according to Mr. Gatane, misdirected herself in taking a hyper-technical view of the matter and lost sight of the beneficial object of the Employees' Compensation Act, 1923.

15. The learned Commissioner was persuaded to negative the claim of the applicants for the reason that both Ms. Harvinder Kaur - applicant no.1 and Mr. Tarvinder Singh – opposite party no.1 conceded in the cross-examination that they were unaware

as to whether at the time of his death, the deceased was driving the vehicle or it was in a stationary state. Secondly, the non-examination of the cleaner, according to the learned Commissioner, was inexplicable. It was only the cleaner, who could have thrown light on the circumstances in which the deceased met death.

16. Indeed, the cleaner could have thrown light over the situation, and transactions leading to the death of the deceased. However, the omission to examine the cleaner could not have been exalted to such a pedestal as to jettison away the applicants claim overboard. At the most, it would imply that the applicants have not led evidence to sustain a finding that the deceased died while he was on the wheel of the motor vehicle. Nonetheless, the uncontroverted facts indicated that the deceased had left Mumbai for Ranchi and, on the day of death, the deceased was on his way back to Mumbai from Ranchi, and 17 to 18 days period had lapsed since the deceased had left Mumbai. This factor was not properly appreciated by the learned Commissioner. Instead, the learned Commissioner proceeded to draw support from the judgment of the Supreme Court in the case of ***Shakuntala Shreshti*** (supra).

17. In the case of ***Shakuntala Shreshti*** (supra), Prakash, the deceased therein, was working as a cleaner in the vehicle. He suddenly developed chest pain. Upon being admitted to Government Hospital, Mangaon, he was declared dead. Evidently, the deceased died due to heart attack. The Supreme Court noted that, Mr. Parasharam, the driver of the said vehicle, who was the brother of the deceased, was not examined to throw light upon the circumstances under which the death took place. The Supreme Court thus held that the proximate nexus between the cause of death and employment was not established.

18. In paragraph 26 in the case of ***Shakuntala Shreshti*** (supra), the Supreme Court expounded factors which are required to be established in a case of the present nature. The observations in paragraphs 26 to 29 are instructive and hence extracted below:

> "**26**. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are :
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> (1) stress and strain arising during the course of employment,
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> (2) nature of employment,
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> (3) injury aggravated due to stress and strain.
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> **27**. The deceased was traveling in a vehicle. The same by itself can not give rise to an inference that the job was strenuous.

> **28.** Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf.
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> **29.** Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefor can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefor."

19. After analysing the facts in the said case, the Supreme Court, *inter alia,* observed as under:

> "**36.** Only because the cause of death was due to heart attack, the same by itself may not be a ground to arrive at a conclusion that an accident had occurred resulting in injury.
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> **37.** The nature of duty of the deceased was that of a helper. *Per se* that the duties would not be such which could cause stress or strain. If an additional duty were required to be performed by him, the same was required to be clearly stated.
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> **38.** Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. It is now well-settled that for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the fact of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question."
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> (emphasis supplied)

20. Banking upon the aforesaid observations especially, "unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages", the learned Commissioner held that, in the absence of evidence of cleaner, in the case at hand, it cannot be said that the deceased died on account of stress and strain caused by the employment.

21. I am afraid to subscribe to the view of the learned Commissioner. If the aforesaid pronouncement is construed properly, in the backdrop of the fact situation therein, the crucial distinguishing factor appears to be the nature of the employment of the deceased. In the said case, the deceased was stated to be working as a cleaner. The nature of the said employment, which was essentially of a helper to the driver, was held to be not *per se* such onerous as to cause stress or strain. This distinguishing feature, in my considered view, was lost sight of by the learned Commissioner.

22. The pronouncement of Supreme Court in the case of ***Param Pal Singh*** (supra) arose out of a case, where the deceased was working as a driver and suffered death while on the wheel of the truck. In the facts of the said case, the deceased therein

felt uncomfortable and, therefore, parked the vehicle on the roadside of a nearby hotel. Immediately after parking the vehicle he fainted and the nearby persons took him to the hospital, where the deceased was declared brought dead.

23. After adverting to the previous pronouncements of the Supreme Court, including in the case of ***Shakuntala Shreshti*** (supra), ***Malikarjuna G. Hiremath vs. Oriental Insurance Co. Ltd.***[3], ***Mackinnon Mackenzie & Co. (P) Ltd. vs. Ibrahim Mahmmed Issak***[4], the Supreme Court held that there was causal connection to the death of the deceased with that of his employement as a truck driver.

24. The observations in paragraphs 29 and 30 delineate the approach to be adopted while ascertaining the causal connection. They read as under:

> "29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume

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3 (2009) 13 SCC 405.

4 (1969) 2 SCC 607.

> that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can therefore be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.
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> **30**. Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that the deceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle on the side of the road near a hotel soon whereafter he breathed his last. In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside.
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> (emphasis supplied)

25. A useful reference can also made to the judgment in the case of ***Subhadrabai w/o Ganpatrao Suryawanshi (died) per LRs Aruna d/o Ganpatrao Suryawanshi vs. Maharashtra State Road Transport Corporation and others***[5], wherein it was held that death by heart attack is an accident is well recognized. It was *inter alia* observed as under:

> "**21**. Thus, death by heart attack is an accident is now well established by series of judicial pronouncements made from time-to-time. If the workman died of heart attack, there was a pre-existing heart condition which was aggravated by the strain of work of the deceased while performing his duties which resulted in his death and as such there is a causal connection between the injury and the accident which has been construed in wider sense as a mishap external or internal not expected or designed by the victim. The accident

5 2003(11) LJSOFT 83.

> in the instant case was 'failure of heart'. Considering the evidence on record it is obvious that the accident was in the course of the employment and, therefore, it can be said that it arose during the course of the employment within the meaning of Section 3(1) of the Act."

26. On the aforesaid touchstone, reverting to the facts of the case, there is evidence to indicate that the vehicle in question had left Mumbai for Ranchi 17 to 18 days prior to the date of the death of the deceased. On the day of occurrence, the deceased was on his way back to Mumbai from Ranchi. The deceased had started eight days prior to the day of occurrence from Ranchi. The distance to be covered was around 1800 kms. There was no second or spare driver on the said truck. These circumstances deserve adequate consideration.

27. An effort was made during the course of the cross-examination of Mr. Tarvinder Singh – opposite party no.1 that his drivers do not get exerted. They do not drive continuously but take breaks. The deceased was healthy. There was no complaint about his health. Tarvinder Singh, not unexpectedly, asserted that the deceased do not die due to the work pressure.

28. The aforesaid admissions, even if they can be called so, and even construed at par, do not erode the enormity of the situation, which a driver faces, on account of long and arduous journey, for almost 18 days, uninterrupted. The long distance

driving for about 3600 kms. can be expected to generate stress and strain, even subconsciously. I am, therefore, persuaded to hold that in the facts of the instant case, the death of the deceased can be said to have been accelerated on account of the stress and strain associated with the long distance driving for almost 18 days in trying circumstances. Any other view of the matter would defeat the beneficial object of the provisions contained in Section 3 of the Employees Compensation Act,1923.

29. On the aspect of the employer – employee relationship, as observed above, the learned Commissioner recorded inconsistent findings. Whether such approach of the learned Commissioner is justifiable? To start with, it is imperative to note that in the written statement by opposite party no.1, the relationship between the opposite party no.1 and deceased was admitted in no uncertain terms. Even the essential terms of employment were indicated therein. To add to this, in the written statement filed on behalf of opposite party no.2 – insurer, the absence of employer – employee relationship between opposite party no.1 and the deceased was not specifically pleaded.

30. The aforesaid factor assumes importance for the reason that opposite party no.2 – insurer sought to draw support from a report of the Suryakant Kambli, (witness no.1 for opposite party no.2) an insurance investigator that the opposite party no.1 gave a certificate to the effect that the deceased was employed with Amrit Roadlines and was paid salary of Rs.2,000/- per month. No effort appears to have been made by opposite party no.2 to either controvert the assertion of opposite party no.1 that the deceased was his employee or to contend that the deceased was the employee of Amrit Roadlines, on the basis of the said report of the insurance investigator. In the absence of such pleadings, the applicants were not equipped to meet a challenge to the employer – employee relationship, when the said fact was, on the one hand, unequivocally admitted by opposite party no.1 and, on the other hand, not specifically denied by opposite party no.2 – insurer.

31. Emphasis was laid on behalf of respondent no.2 on the manner in which Tarvinder Singh fared in the cross-examination. Opposite party no.1 - Tarvinder Singh conceded in the cross-examination that he deals in the transport business under the name and style of Amrit Roadlines, which is a partnership firm. There were 20 drivers and 20 cleaners apart

from two office staff and two loaders. All the vehicles were run in the name of Amrit Roadlines, a partnerhsip firm. Mr. Tarvinder Singh, however, asserted that the vehicle in question was in his personal name and it did not belong to Amrit Roadlines and the deceased was not concerned with Amrit Roadlines.

32. The aforesaid evidence does not lead to the only conclusion that the vehicle in question belonged to Amrit Roadlines. Tarvinder Singh – opposite party no.2 might have been a partner of Amrit Roadlines. However, indisputably, opposite party no.1 was the registered owner of the said vehicle and the contract of insurance was between opposite party no.1 and the insurer. The fact that opposite party no.1 was a partner in Amrit Roadlines, thus, does not detract materially from the existence of employer – employee relationship between opposite party no.1 and the deceased.

33. In the aforesaid view of the matter, the fact that the insurance investigator Mr. Suryakant Kambli (witness no.1 for opposite party no.2), had obtained a certificate from opposite party no.1 that the deceased was working with his organization (Amrit Roadlines) since last two years and was driving tankers and was earning Rs.2,000/- per month, as salary, could not

have been so construed as to conclusively establish that the deceased was not working with opposite party no.1. It is more so for the reason that the identity of the registered owner of the vehicle in question, the fact that the deceased was driving the said vehicle at the time of the occurrence and it was insured with opposite party no.2, were not in contest. In the absence of a specific defence having been set up in the written statement, in my considered view, a document of aforesaid nature, which might have been obtained by insurance investigator in an unguarded moment, cannot command primacy to the prejudice of the dependents of the deceased employee.

34. For the same reasons, I am persuaded to believe the testimony of opposite party no.1 that the deceased was paid wages of Rs.4,000/- per month, which finds support in the report of accident to workman. The learned Commissioner was, however, justified in holding that the age of the deceased was 54 years as was evident from the driving license and applying the factor of 139.13 relevant to the said age. The compensation would thus be (2000X139.13) Rs.2,78,260/-.

35. For the foregoing reasons, the appeal deserves to be allowed. Hence, the following order:

: O r d e r :

(i) The appeal stands allowed with costs.

(ii) Opposite party nos.1 and 2 do jointly and severally deposit the compensation of Rs.2,78,260/- along with interest at the rate of 12% p.a. from 3rd December, 2003 till realization.

(iii) Upon realization, the amount of compensation be disbursed to the appellants – applicants, in equal proportion.

(iv) Opposite party no.1 shall also pay a sum of Rs.25,000/- by way of penalty.

(v) Award be drawn accordingly.

[N. J. JAMADAR, J.]