

**(2008) 04 MP CK 0082**  
**In the Madhya Pradesh High Court**

National Insurance Company Ltd.

APPELLANT

Vs

Jagdish Malviya and Another

RESPONDENT

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**Date of Decision :** 09-04-2008

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2008) 118 FLR 866

**Hon'ble Judges :** N.K. Mody, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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**Judgement**

N.K. Mody, J.—Being aggrieved by the order dated 13.1.2005 passed by Commissioner for Workmen's Compensation, Labour Court Indore in case No. 103/99 WCNF, whereby the claim petition filed by respondent No. 1 for compensation on account of injuries sustained by respondent No. 1 was allowed and a sum of Rs. 33,621/- was awarded, the present appeal has been filed.

2. The appeal is admitted on the following substantial questions of law:

(i) Whether the finding recorded by the Commissioner that the claimant was employed with M/s. Indore Goods Transport Company, Indore as driver without any evidence is justified ?

(ii) Whether the Commissioner is justified in holding that the claimant was involved in an accident and sustained injuries resulting in 31% permanent disability without there being any evidence. Further whether the Commissioner is justified in assessing 31% loss of earning capacity without any medical evidence in that respect ?

3. Short facts of the case are that respondent No. 1 filed a claim petition alleging that respondent No. 1 was in the employment of respondent No. 2 as driver of the truck on monthly salary @ Rs. 1000/- per month. It was alleged that respondent No. 2 was owner of the truck bearing No. MP09 D 2713 which was

insured with appellant. It was alleged that on 9.3.1991 when the respondent No. 1 was going from Bombay to Sendhwa on the offending truck at that time the said truck met with an accident with tanker, with the result respondent No. 1 sustained head injuries and also fracture in his right leg. Respondent No. 1 was hospitalized at Narmada Hospital, Dhule from where respondent No. 1 was brought to Indore Cloth Market Hospital. It was alleged that respondent No. 1 was operated and plate was inserted. It was alleged that age of respondent No. 1 was 25 years at the time of accident. It was also alleged that because of the accident, respondent No. 1 sustained permanent disability and was not fit for driving the truck. The claim petition was initially filed on 24.12.1992 before the Commissioner for Workmen's Compensation, Dhule in the State of Maharashtra which remained pending till 21.10.1999. On the request of respondent No. 1, the case was transferred from Dhule to Indore. The case proceeded ex-parte against respondent No. 2, however the case was contested by the appellant. In the written statement filed by the appellant all the facts relating to accident were denied.

4. After framing of issues and recording of evidence, learned Court below allowed the claim petition and awarded a sum of Rs. 33,621/-, against which the present appeal has been filed.

5. Mr. R.S. Sirolia, learned Counsel for appellant submits that learned Court below committed error in allowing the claim petition filed by respondent No. 1. It is submitted that except the sole statement of respondent No. 1, there was no evidence on record to show that respondent No. 1 was in employment of respondent No. 2. It is submitted that without proving the employment, learned Court below committed error in awarding the compensation. For this contention, reliance was placed on a decision of Apex Court in the matter of Gottumukkala Appala Narasimha Raju v. National Insurance Company (sic), wherein in case of death of driver of tractor in accident and claimants claimed compensation from owner and insurance company, and owner of the tractor who is widow of the deceased stated that she was living separately from her husband before his death and deceased was impleaded as driver and was a workman for which neither any documentary proof was submitted to establish contract of employment nor any independent witness was examined, it was held that owner of tractor joined hands with claimant for allowing the claim against injuries and claim petition was dismissed."

6. Further reliance was placed on a decision in the matter of Kadeer Khan v. Smt. Sarika in M.A. No. 3398/2006 decided on 22.2.2008 wherein a Division Bench of this Court held that - "we do not find any good ground to reverse the findings of tribunal as in our view, the findings of dismissal of claim petition is just and proper. It is based on proper appreciation of evidence. In order to claim compensation u/s 166 ibid it is necessary to plead and prove with cogent evidence that accident occurred with motor vehicle and it was due to negligence of driver of such vehicle. It is only then a claimant become entitled to claim

compensation provided the nature of injury and extent of damage is proved.

7. From perusal of record it appears that respondent No. 1 sustained injuries in a motor accident which took place on 9.3.1991. The claim petition was filed at Dhule in Maharashtra State and since respondent No. 1 was resident of village Badwani, therefore on the request of respondent No. 1 the claim case was transferred from Dhule to Indore in M.P.. Notice Ex. P/4 dated 2.9.1992 is on record which was sent to respondent No. 2 vide registered post Ex. P/5 wherein it was alleged "that respondent No. 1 was in employment of respondent No. 2 on salary of Rs. 1000/- per month and the respondent No. 1 has sustained injuries in accident which took place by the truck owned by respondent No. 2. The case proceeded ex parte against respondent No. 2. Respondent No. 1 has examined himself and has stated on oath that respondent No. 1 was in employment of respondent No. 2.

8. After due appreciation of evidence on record, learned Court below has found that respondent No. 1 was in the employment of respondent No. 2. So far as the decision of Hon. Apex Court in the matter of Gottumkkala Appala (supra) is concerned, is not at all applicable in the present case. In that case, deceased was husband of the owner of the offending tractor and it was alleged that deceased was employed as driver and deceased was living separately with the (sic). In that state, Hon. Apex Court has held that without any documentary proof of contract of employment and also without examining independent witness it cannot be held that deceased was in employment of the wife-owner of the truck. So far as other case law which has been cited by the learned Counsel for appellant is concerned, it was a claim petition filed u/s 166 of the M.V. Act wherein the claim petition was dismissed by the learned Court below and Division Bench of this Court has affirmed the findings of learned Tribunal. In the present case, not only the respondent No. 2 remained ex-parte but also no evidence was adduced by the respondent No. 2 to disprove that respondent No. 1 was not in employment of respondent No. 2. In the facts and circumstances of the case, this Court is of the view that learned Tribunal has rightly held that respondent No. 1 was in employment of respondent No. 2 and was entitled for compensation for the injuries sustained by respondent No. 1 in the motor accident which took place on 9.3.1991.

9. In view of this, the appeal stands dismissed. No order as to costs.