

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.93 OF 2001

United India Insurance Co.
24, Whites Road, Chennai,
through it's Divisional Manager
& authorised representative and
signatory, Ahmednagar Division,
Kisan Kranti Building,
Ahmednagar, Dist. Ahmednagar

..APPELLANT
(Ori. Opponent No.2)

VERSUS

1. Shri Bhimrao Visahvanath Kanse,
Age – 56 Yrs. Occ : Farming
2. Sau. Gaiyabai Bhimrao Kanse,
Age – 46 Yrs. Occ. Nil
3. Sunil Bhimrao Kanse,
Age : 23 yrs. Occ. Nil,

All R/o Divate, Post : Ladjalgaon,
Tal. Shevgaon, Dist. Ahmednagar

4. Shri Uttamrao Bhaurao Kanse,
Age : 61 Yrs. Occ : Farming,
R/o Divate, Post : Ladjalgaon,
Dist. Ahmednagar

..RESPONDENTS
(No.1 to 3 – Ori. App. 1 to 3
No.4 – Opp. No.1)

Mr A.B. Gatne, Advocate for appellant;
Mr K.S. Shaikh, Advocate holding for Mr D.R. Jaybhar, Advocate for
respondent No.3

WITH

FIRST APPEAL NO.284 OF 2001

Uttamrao s/o Bhaurao Kanse,
Age : 62 years, Occu.Agriculture,
R/o Diwate, Post Lad Jalgaon,
Tal. Shevgaon, Dist. Ahmednagar

..APPELLANT
(Orig. Respondent No.1)

VERSUS

1. Bhimrao s/o Vishwanath Kanse,
Age 56 years, Occu.Agril.,
2. Sow. Gayabai w/o Bhimrao Kanse,
Age 46 years, Occu. Agril.,
3. Sunil Bhimrao Kanse,
Age 24 years, Occu.Agril.,

Respondent No.1 to 3 all
R/o Diwate, Post Lad Jalgaon,
Tal. Shevgaon, Dist. Ahmednagar

4. The Divisional Manager,
United Insurance Company,
Office situated at Station Road,
Ahmednagar

..RESPONDENTS
(No.1 TO 3 – Orig. applnts
No.4 – Orig. respdt. No.2)

Mr U.S. Malte, Advocate for appellant;
Mr L.S. Shaikh, Advocate holding for Mr D.R. Jaybhar, Advocate for
respondent no.3

CORAM : N.W. SAMBRE, J.

**(Date of reserving the
judgment : 23rd July, 2015)**

**Date of pronouncing the
judgment : 27th July, 2015)**

JUDGMENT :

Since both the appeals are arising out of the judgment and award dated 27th November, 2000, rendered by the Judge, 2nd Labour Court, Ahmednagar & *ex officio* Commissioner for Workmen's Compensation, in Application (W.C.) No.23 of 1994, in favour of the respondents-claimants, they are heard together and are being decided by this common judgment. First Appeal No.93 of 2001 is preferred by the United India Insurance company – original respondent No.2, whereas First Appeal No.284 of 2001 is preferred by the vehicle owner.

2. Facts, as are necessary for the decision of these appeals, are stated thus :-

Tractor bearing registration No.MH-16-A-9263 and its trolley bearing registration No.MH-16-B-8120 were owned by Uttamrao Bhaurao Kanse – present respondent No.2. The said vehicle was insured with non applicant no.2 before the Labour Court, namely, United India Insurance company. On 22nd March, 1992, one Ravan, who was working as a labour on the said vehicle and was doing the work of loading and un-loading stones, was attacked by one Vasant, another labour working on the said vehicle. Vasant hit Ravan with a stone, causing injury to his head, resulting into his death on 22nd March, 1992, at 9.45 p.m. in the hospital of Dr. Potnis.

3. Claimants no.1 & 2 mother and father and no.3 real younger brother of deceased Ravan, preferred Application (W.C.) No.23 of 1994 before 2nd Labour Court, Ahmednagar, seeking compensation to the tune of Rs.89,600/- with 50% penalty and interest.

4. The aforesaid Application was resisted by the vehicle owner by filing written statement at Exh.C-6, who categorically denied the liability to pay the compensation as claimed. It was claimed that the death of deceased Ravan had resulted on account of the scuffle between Ravan and Vasant and not out of the accident of the vehicle owned by non applicant no.2. It was further claimed that Vasant was convicted by the Sessions Court for an offence punishable under section 304-A of the Indian Penal Code, for the alleged act.

5. Non applicant no.2 insurance company – appellant herein, filed written statement at Exh.C-7 and denied the liability to pay compensation, on the ground that the death of the deceased has not arisen out of and in the course of his employment with respondent no.1, but because of the scuffle between him and the other labour. It was further claimed that there was a breach of policy conditions, as respondent no.1 neither intimated the alleged incident to the insurance company nor lodged any first information report against the Driver of the tractor.

6. Having regard to rival claims of the parties, the Judge, Labour Court, framed the issues, as to whether it was proved that Ravan died in an accident arising out of and in the course of his employment with the opponent and also as regards whether the claimants were dependant on the deceased and answered them in favour of the claimants. The Labour Court, then proceeded to award compensation of Rs.1,06,257/- to the claimants, with interest at the rate of 6% per annum, to be paid by the insurance company, w.e.f. 22nd March, 1992 till realization and respondent no.1 – vehicle owner was directed to pay penalty of Rs.53,125/- and costs of Rs.500/-. Thus, the present appeals.

7. Mr Gatne, learned Counsel appearing on behalf of the insurance company, in his usual persuasive manner, has raised following questions of law :-

- a) Whether the murder of Ravan caused by Vasant could be treated as an accident within the meaning of the provisions of the Workmen's Compensation Act, 1923 and whether the appellant – insurance company is liable to pay the compensation as claimed ?
- b) Since the accident has not arisen out of involvement of the vehicle, whether risk is covered under the insurance policy ?

- c) In view of the stand taken by the insurance company in the written statement, whether the breach of policy was appropriately proved, particularly in absence of payment of additional premium ?
- d) The insurance-company straight-away cannot be held responsible for payment of compensation as the contract of insurance is always a contract of indemnity and primarily the insured is required to be held responsible and not the insurance company ?

8. So far as the appeal at the behest of the owner of the vehicle is concerned, learned Counsel Mr Malte has sought to canvass following question of law :-

Whether the Labour Court has committed an error apparent on the face of the record by not issuing notice to the vehicle owner/insurer before imposing the penalty ?

9. With a view to substantiate his contentions, Mr Gatne, learned Counsel appearing on behalf of the appellant insurance-company, has invited my attention to the nature of accident as has been alleged, which has resulted into the death of Ravan at the hands of Vasant. So as to substantiate his contention that the death of Ravan was not out of any

vehicular accident or an accident which could be said to have taken place while he was in the course of employment of non applicant no.1, learned Counsel has taken me through the evidence of claimant no.1 Bhimrao, who was examined at Exh.O-3, evidence of Sampat, who was examined at Exh.O-4 and the evidence of Mahipat, who was examined on behalf of respondent no.1 – vehicle owner at Exh.O-5. He would urge that the conjoint reading of the background of the alleged accident with that of the evidence on record could draw the only inference that the accident in question cannot be treated as the one covered under the policy, but has to be treated as a murder because of the rivalry between the two persons, which was having certain history. He has also placed reliance upon the judgment of the Sessions Court, rendered in Sessions Trial No.193 of 1992 at Exh.C-10, so as to substantiate that for the act of Vasant causing death of Ravan, he was convicted for an offence punishable under section 304 part II of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for two years.

10. In addition to above, Mr Gatne has placed reliance upon the judgment of the Apex Court, in the matter of **Rita Devi (Smt.) & ors. vs. New India Assurance Co. Ltd. & anr.**, reported in **(2000) 5 SCC 113**, so as to canvass that the murder when can be covered and when cannot be covered within the purview of “death due to accident arising out of use of motor vehicle” under section 163 of the Motor Vehicles Act, 1988. He has

also invited my attention to the judgment of the Apex Court, in the matter of **Mamtaj Bi Bapusab Nadaf & ors. vs. United Indian Insurance company & ors.**, reported in **(2010) 10 SCC 536**, so as to draw support to his submission, that the death not arising out of discharge of the duty during the course of employment, cannot be treated as being covered under the insurance policy, as an accident.

11. Mr Gatne has further invited my attention to the insurance cover note which is placed on record at Exh.10/4, so as to canvass that what was insured was only Driver as per IMT No.17 and deceased Ravan was never covered under the insurance policy. As such, according to him, the aspect of breach of policy conditions should have been taken into account by the learned Labour Court. In support of his contention, he has relied upon the judgment of the Apex Court, in the matter of **Ramshray Singh vs. New India Assurance Co. Ltd. & ors.**, reported in **AIR 2003 SC 2877** and **Oriental Insurance Co. Ltd. vs. Brij Mohan & ors.**, reported in **2007 AIR SCW 3734**.

12. Mr Malte, learned Counsel appearing on behalf of the vehicle owner would urge that the claim before the Labour Court was denied by filing written statement at Exh.C-6. Perusal of the written statement reveals that the respondent – vehicle owner has denied entire claim, including that of relationship of employer-employee, the wages paid and the happening of the incident in question.

13. Mr Malte would further urge that by examining the witness Mahipat at Exh.O-5, the case as regards the employment and that of the payment of wages was properly established by the vehicle owner. He would further urge that before imposing penalty employer was not heard on the said issue.

14. Upon analyzing the above referred submissions, it is required to be adjudicated upon, as to whether the incident in question could be termed as the "motor accident" within the meaning of section 147 read with section 163 of the Motor Vehicles Act, so as to fasten liability on the vehicle owner and the insurance company for payment of compensation under the provisions of the Workmen's Compensation Act. Apart therefrom, it is also required to be found out whether there was breach of policy conditions as regards the payment of premium about extending coverage of insurance to the workers who were working on the tractor.

15. In the light of the submissions, it is required to be noted that the following facts are not in dispute :-

That the deceased Ravan died because of the injury caused by Vasant on his head with a stone on 22nd March, 1992. It is also an admitted fact that Vasant, who attacked Ravan, was working as a labour

on the tractor of non applicant no.1.

16. In the above background, if we go on analyzing connection of Ravan with that of employment with non applicant no.1 – vehicle owner, it is required to be noted that the uncle of Ravan, namely, Sampat was working on the same tractor along with him as a labour and doing the same job of loading and unloading stones. Witness Sampat, who is examined at Exh.O-4, has deposed about happening of the incident, which has caused death of Ravan and also as regards lodging of report by him to the police station.

17. In view of the evidence of witness Sampat, who was an eye-witness to the incident in question, the fact was very much established that deceased Ravan and Vasant were working as daily wagers on the date of the incident, i.e. 22nd March, 1992 on the tractor owned by non applicant no.1 before the Labour Court, which was insured with non applicant no.2 – insurance-company. Further, the relevance of the accident which has culminated into death of Ravan, is required to be tested with the above referred background. It was also established from the evidence of Sampat, who is an eye-witness, that the incident occurred when both of them were working on the tractor and were doing job of loading and unloading stones. Thus, the cause for presence of Vasant and Ravan, at the time of the incident was, their employment with non applicant no.1 - the vehicle

owner, on the tractor. If the said event is viewed in other aspects, it is required to be noted that there was no occasion for Vasant and Ravan to be on the spot of the incident, which has caused death of Ravan, except for their employment with the vehicle owner. The history of the incident of death of Ravan is also connected with performance of work of loading and unloading stones by him in a slow manner, which was objected by Vasant. As such, the incident in question has happened during the course of employment. Now, a moot question required to be answered is whether the said incident could be connected with employment. The Apex Court, in the matter of Rita Devi (Smt.) & ors. vs. New India Assurance Co. Ltd. & anr. (cited supra), while dealing with the issue as to whether the event of murder could be a cause of the accident, has made following observations in paragraph no.10 :-

“The question, therefore is, can a murder be an accident in any given case ? There is no doubt that “murder”, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a “murder” which is not an accident and a “murder” which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony

is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.”

18. The Apex Court, in the matter of Mamtaj Bi Bapusab Nadaf & ors. vs. United India Insurance company & ors. (cited supra), has taken a view that if the vehicle was not directly involved in an accident pursuant to which the claim was made, the insurance-company cannot be held responsible for payment of compensation. Paragraphs 6, 7, 8, 9 and 13 of the said judgment which are relevant, read thus :-

“6. According to the reasoning of the High Court, the vehicle was not involved in the accident and the death of the workmen by no stretch of imagination can be said to have any proximate or direct connection with the vehicle. The High Court also observed that the mere fact that Maize was brought to the spot where the workmen had died in the insured vehicle, would not render the Insurance Company liable in respect of the death, the cause of which was not proximate to the actual user of the vehicle.

8. Learned counsel appearing on behalf of the appellants placed reliance on the decision of this Court in [Shivaji Dayanu Patil v. Vatschala Uttam More](#), (1991) 3 SCC 530. Brief facts of that case are that a collision between a petrol tanker and a

truck took place on a National Highway at about 3.00 a.m. as a result of which the tanker went off the road and fell on its left side at a distance of about 20 feet from the Highway. Due to overturning of the tanker, the petrol contained in it leaked out and collected nearby. At about 7.15 a.m. an explosion took place in the tanker causing burn injuries to those assembled near it including the respondent's son who later succumbed to the injuries. The facts of this case are entirely different and are not applicable to the present case. In this case, the petrol tanker was directly involved in the accident and that all the workmen were directly connected with the accident. This case does not help the appellants in any manner.

9. The learned counsel for the appellants has also placed reliance on a Division Bench judgment of the Karnataka High Court delivered on 24th February, 2006 in M.F.A. No.1870/2005 (WC). In that case, the workman who was working as a loader, went in the lorry and loaded the lorry with stones and thereafter he was required to unload the same close to the Crusher near the quarry along with other loaders. At about 2.30 p.m. in the afternoon, the deceased workman got down from the lorry in order to unload the stones along with other loaders and when they opened the lock at the hind portion of the lorry, the entire load of stones in the lorry fell on him, as a result of which he sustained injuries and succumbed to the injuries on the spot. In this case, the vehicle was directly involved in the unfortunate accident.

13. In our considered opinion, on the facts of this case, the view taken by the learned Single Judge of the Karnataka High

Court seems to be justified and correct. Therefore, no interference is called for. This appeal being devoid of any merit is accordingly dismissed. However, in the facts and circumstances of this case, the parties to bear their own costs.”

19. While evaluating as to whether the incident in question could be connected with employment, in the present case, as observed herein above, the occasion for the deceased Ravan and also for Vasant who is an accused, to be at the spot of the incident, was that they were in the employment of non applicant no.1 – owner of the vehicle. The death of Ravan, if could be ascertained from the angle of inter felonious act which has caused the death, it is required to be noted that in the Sessions Case, the accused Vasant was not convicted for murder but was convicted for culpable homicide not amounting to murder under section 304 part II of the Indian Penal Code. Apart from above, the fact remains that the cause for differences between Vasant and Ravan, which has resulted into the death of Ravan is also directly related with the employment as the cause of incident with which the work of loading of stones in the trolley was executed. In the present case, in view of above referred factual matrix, it could be easily inferred that the event of death of Ravan was not out of the *mens rea* of Vasant but, purely an accidental act, which took place at the spur of that moment. It was not the intention of Vasant to kill Ravan. Thus, it could, in other words, be termed as an accidental incident during the employment, for which cause was also about the nature of performing

duty during such employment.

20. In view of above, in my opinion, the contention sought to be raised by Mr Gatne, that the death of Ravan by virtue of felonious act of Vasant, cannot be treated as the “accident” to be covered under the insurance, is liable to be rejected and as such, is rightly done so by the learned Labour Court.

21. So far as the next contention of Mr Gatne, that the vehicle in question was not insured to cover the risk of labours who were working on the tractor is concerned, upon perusal of the insurance certificate, it is required to be noted that an amount of Rs.15/- was paid as per IMT No.17, which was in relation to the persons employed in connection with the operation and/or loading/unloading from a motor vehicle. Though the said amount of Rs.15/- as is sought to be canvassed by Mr Gatne covers only Driver, yet once the certificate of insurance is admitted, the burden is on the insurance-company to prove that the risk of the deceased Ravan, a labour, was not covered under the policy.

22. Admittedly, in the present case, the insurance company has not brought on record either any documentary or oral evidence so as to establish the fact that the policy does not cover the risk of labour, particularly when it is an admitted fact that an additional premium of Rs.15/- was accepted under IMT 17. In view of above, in my opinion, the contention of Mr Gatne that the policy does not cover the claim in question

and support sought from the judgment of the Apex Court in the matter of Ramashray Singh vs. New India Assurance Co. Ltd. & ors. and Oriental Insurance Co. Ltd. vs. Brij Mohan & ors. (cited supra), will hardly be of any assistance to him.

23. So far as the last submission of Mr Gatne as regards the liability of the insurance company to pay the compensation straight way holding it to be responsible is concerned, it is required to be noted that the contract of insurance is always a contract of indemnity. The order of the Labour Court appears to have held responsible both, i.e. the vehicle owner and the insurance company responsible for payment of the amount of compensation. Though the learned Labour Court might have committed mistake to the extent directing the appellant – insurance-company to pay compensation, yet in the peculiar fact situation obtaining in the present matter, for the said mistake, it will be improper for this Court to send back the matter after lapse of period of fifteen years, for correcting the said mistake, as this Court while exercising jurisdiction of first appellate Court can correct the same. In view of above, paragraph (1) of the operative part of the impugned judgment dated 27th November, 2000, is required to be read as “respondents no.1 and 2 jointly and severally”, instead of the word only “respondent no.2”. As such, the corrected clause (1) of the operative part of the impugned judgment will read as under :-

“(1) Respondents no.1 and 2 jointly and severally do pay Rs.1,06,257/- to the applicants with 6% p.a. Interest from the date of incident i.e. 22.3.1992 till the payment to the applicants. “

24. In the light of the above observations, in my opinion, there is no substance in First Appeal No.93 of 2001 preferred by the insurance-company and, therefore, the same stands dismissed.

25. So far as the contention raised on behalf of the vehicle owner *qua* his liability to pay the penalty is concerned, though Mr Malte was right in pointing out the judgment of this Court in the matter of **Udhav Rangnathrao Pawar vs. Sheshrao Ramji Jogdand & anr.**, reported in **2009 (5) Bom. C.R. 523**, which is based on the judgment of the Apex Court, in the matter of Ved Prakash Garg vs. Premi Devi, reported in AIR 1997 S.C. 3854, wherein the principle of issuance of notice before passing the order of awarding penalty under the Workmen's Compensation Act is required to be issued has been laid down, it is required to be appreciated that in the present case, the owner of the vehicle has neither questioned the liability of the insurance company nor has he sought any intervention in the said matter. Rather, through written statement, he has come out with a case of total denial of the incident, employer – employee

relationship and liability to pay compensation. It is by way of independent evidence of witness Sampat, the employment and happening of the incident in question was established.

26. The award along with penalty has been rendered by the learned Labour Court on 27th November, 2000, which is *sub judice* before this Court, at the behest of the vehicle owner. It is required to be noted that if it is proposed that this Court should remand the matter back to the Labour Court for issuance of a show cause notice, calling upon the appellant to explain as to why order of penalty should not be passed, same will amount to adding miseries to the plight of the claimants, who are required to fight for the cause of their claim since the date of the incident, i.e. 22nd March, 1992. In view of above, this Court has called upon Mr Malte to accept the show cause notice from this Court as to why the order of penalty be not saddled on the vehicle owner. While responding to the same, Mr Malte would urge that, in that case, the vehicle owner will be required to lead evidence so as to establish his *bona fides*. I am afraid, the said contention of Mr Malte is required to be rejected as for deciding the issue of penalty under the Workmen's Compensation Act, 1923, fresh opportunity of leading evidence could be given to the party to whom a show cause notice for imposition of penalty is issued. Here, the conduct/quick action of the party immediately after the accident, that is to say, reporting the matter to the competent authority, insurance-company

and honouring the claim, is required to be appreciated. Apart therefrom, the conduct of the vehicle owner, with whom the concerned person was working, who has suffered an accident, in attending the cause of the accident is also required to be appreciated. In the present case, while dealing with the aspect of penalty, learned Labour Court has taken into account the conduct of the vehicle owner of denying the entire incident, the liability to pay compensation and rather, not taking any steps so as to support the claim under the Workmen's Compensation Act, particularly when the vehicle, in fact, was already insured.

27. The learned Labour Court was alive to the scheme of sections 3 and 4 of the Workmen's Compensation Act and as such, has proceeded to record appropriate reasons for awarding the penalty. Apart therefrom, it is required to be noted that when this Court has given an opportunity to the appellant – vehicle owner to submit his explanation as to why the order of penalty be not passed against him, neither the *bona fides* as demonstrated nor a proper explanation is tendered, which could absolve him from payment of the penalty.

28. In that view of the matter, First Appeal No.284 of 2001, at the behest of vehicle owner, also fails and stands dismissed.

29. In the facts and circumstances, there shall be no order as to costs.

30. In view of dismissal of the appeals, pending Civil Application/s stand disposed of.

(N.W. SAMBRE, J.)

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