

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 203 OF 1997

1. Surekha @ Vandana w/o Vanraj Mohite,
Age : 24 Years, Occu. : Household,
R/o Beldar Pimpri,
Tq. & Dist. Osmanabad.
2. Pradip S/o Vanraj Mohite,
Age : 2 Years 10 months (Minor)
U/G of his real mother
Surekha Vanraj Mohite appellant No. 1.
3. Govardhan S/o Kondiba Mohite,
Age : 62 Years, Occu. : Nil.,
R/o as above.
4. Sow. Tolanbai W/o Govardhan Mohite,
Age : 50 Years, Occu. : Household,
R/o As above. .. Appellants

**(Appeal abetted against appellant
Nos. 3 and 4 vide order dt. 25.06.2013)**

Versus

Maharashtra State Road Transport
Corporation, through Divisional
Controller, M.S.R.T.C. Osmanabad
Division Osmanabad. .. Respondent

Shri Sudhir K. Chavan, Advocate for Appellants.
Shri A. B. Dhongade, Advocate for the Respondent.

CORAM : S. V. GANGAPURWALA, J.

DATE : 25TH AUGUST, 2015.

ORAL JUDGMENT :-

. The present appellants had filed claim petition for compensation under erstwhile Workmen's Compensation Act (Employees Compensation Act). The said claim was filed on account of death of deceased Vanraj who died according to the claimants during the course of and out of employment. The Commissioner Workmen's Compensation dismissed the said claim petition. Aggrieved thereby present first appeal.

2. Mr. Chavan, the learned counsel for appellants submits that, the deceased Vanraj was a driver with the respondent. He was assigned duty of taking the bus from Osmanabad to Pune and further from Pune to Osmanabad. While the deceased Vanraj was driving the bus from Osmanabad to Pune in the midst of the journey i. e. at Yawat the deceased Vanraj started getting chest pains. The said fact was noticed by the conductor, however, the deceased had to take the bus to Pune. He reached Pune at about 2.10 p.m. Due to strain of work he started receiving pains. He was taken to the hospital and medical treatment was given. According to the learned counsel the S.T. stand Incharge then sent the deceased Vanraj to Osmanabad by another bus on the next day. While returning back to Osmanabad his condition deteriorated and eventually Vanraj died on

04.05.1993 at 5.30 a.m. at Barshi. The learned counsel submits that, it was erroneous on the part of the Commissioner to come to the conclusion that the death was not during the course of employment. According to the learned counsel death of deceased is accelerated because of strain of work. The learned counsel relies on the judgment of the Division Bench of this Court in a case of Zubeda Bano Wd/o Abdul Aziz Qureshi and others Vs. Divisional Controller, M. S. R. T. C., Nagpur and others reported in 1990 (2) *Mh.L.J.* 685, so also judgment of the learned Single Judge of this Court in a case of Subhadrabai W/o Ganpatrao Suryawanshi (died per L.Rs. Aruna D/o Ganpatrao Suryawanshi Vs. M.S.R.T.C. and others reported in 2003 (5) *Mh.L.J.* 666. The learned counsel submits that, the deceased was drawing income of Rs. 2,667.70 per month and in that case multiplier of 207.99 is to be applied.

3. Mr. Dhongade, the learned counsel for the respondent submits that, the Commissioner has rightly considered the fact that, the death is not on account of the employment. In fact he had reached Pune and thereafter started complaining chest pains. He was attended and thereafter the deceased was sent to Osmanabad in different bus and was not asked to drive the vehicle and after two days he died. As such it cannot be said that, the death is on account of employment, nor it can be said to

be during the course of and out of employment. The deceased was on daily wages and was getting Rs. 1,977/- per month i. e. Rs. 66/- per day.

4. I have considered the submissions. The fact of employment of deceased Vanraj with the respondent is not disputed. It is also not disputed that on 01.05.1993 at about 7.15 a.m. deceased was asked to drive the bus from Osmanabad to Pune. It has come in the evidence that in the midst of the said travel, the deceased started receiving chest pains. He was also given medical treatment and the S. T. stand incharge sent the deceased by another bus to Osmanabad. On 02.05.1993 while returning back to Osmanabad his health deteriorated and he was taken to Barshi for treatment and thereafter he died on 04.05.1993 at 5.30 a.m. The Apex court in a case of Messrs. Meckinnon Mackenzie and Co. Pvt. Ltd. vs. Ritta Farnandes reported in **1969 ACJ 419** has held as under :

"It is well established that under this section there must be some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. but if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but the disease coupled with the employment, then it could be

said that the death arose out of the employment and the employer would be liable."

5. In the present case, it is not disputed that, the deceased started feeling uneasy during the course of employment, when he was driving bus of the respondent and immediately had complained of chest pains and subsequently died of the same. It can be said that the employment is contributory cause or has accelerated the death. The Apex Court in the case of **Messrs. Meckinnon Mackenzie and Co. Pvt. Ltd. vs. Ritta Farnandes** referred supra as observed that, if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but the disease coupled with the employment, then it could be said that, the death arose out of the employment and employer would be liable. Considering the above, it is held that, the deceased died during the course of and out of employment and respondent would be liable to pay the compensation amount.

6. The income of deceased will have to be considered as Rs. 1,977/- per month as is admitted by respondent. By applying multiplier as applicable, the compensation amount that would be payable would be Rs. 2,05,588.23. The respondent shall be liable to pay said amount along with interest at the rate of 12% per annum. As far as penalty is concerned, considering the fact that, it was case of bonafide dispute, I am not inclined to award penalty.

7. In the result I pass the following order.
8. The respondent shall pay an amount of Rs. 2,05,583.33 as compensation to appellant Nos. 1 and 2 along with interest at the rate of 12% per annum from the date of petition till its realization. The first appeal is partly allowed, however, with no order as to costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Aug. 15