

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**FIRST APPEAL NO. 1195 OF 2012
WITH CA/4028/2012 IN FA/1195/2012**

**THE NEW INDIA ASSURANCE CO. LTD.
VERSUS
KAMALABAI GOPAL JADHAV AND ORS**

...
Advocate for Appellant : Mr. Kulkarni Mukul S. And Mr. Shriram P Kulkarni
Advocate for Respondents 1 to 6 : Mr. R. P. Adgaonkar

...
CORAM : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. The present respondents had filed an application for compensation under the provisions of Workmen's Compensation Act on account of the death of one Gopal.
2. It is the case of the claimants that the deceased Gopal was employed by the present respondent No.6 on his truck as Badli driver and was asked to take the truck to Kolhapur. He had reached Kolhapur in the night. In the morning, when he was untying the rope of the truck, he fell down and subsequently was brought to Latur, where he died. The Commissioner for Workmen's Compensation allowed the application. Aggrieved thereby, the insurance company has filed the present appeal.
3. Mr. Kulkarni, the learned counsel for the appellant submits that the deceased was employed as a driver. It was not his job to untie the rope of the truck. Even the same was before the office hours of the shop where the goods were to be unloaded. The deceased fell down from the truck on account of

consumption of alcohol. The learned counsel submits that even in the postmortem report, while taking down the history, it is reported by the relatives that there is an history of consumption of alcohol. The learned counsel submits that untying the rope is not the job of a driver, as such it cannot be said that the accident occurred out of employment. The learned counsel relies on the judgments of the Apex Court in the case of **Regional Director, ESI Corporation & another Vs. Francis De Costa and another, reported in (1996) 6 Supreme Court Cases 1** and in the case of **Malikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Co. Ltd. and another, reported in (2009) 13 Supreme Court Cases 405**. Learned counsel further submits that interest is awarded @ 12% per annum.

4. I have also heard Mr. Adgaonkar, the learned counsel for the respondents.

5. This being an appeal under the provisions of Workmen's Compensation Act, can only be entertained on substantial question of law. The postmortem report states that cause of death is due to head injury. The fact that the deceased was employed by respondent no.6 as driver is not disputed by any of the parties, not even by the present appellant. The said fact is also proved by evidence on record. The deceased had a fall from the truck is also a proved fact. The case of the appellant is that because of consumption of alcohol, the deceased fell down from the truck. There is absolutely no evidence on record to suggest the said fact. It is a fact that the deceased was admitted at Kolhapur also. No evidence in the nature of case papers are brought on record in that regard. There is also no oral evidence supporting the same. The panchanama is

also on record, which also shows that the person had seen the said deceased sitting there with head injury and then he was taken to the hospital. Considering the said evidence on record, it cannot be said that the deceased had consumed alcohol. The evidence has been properly appreciated by the Commissioner for Workmen's Compensation. The deceased who was a driver, was supposed to be working on the truck. The deceased, while untying the rope fell down. The same can be attributed to the employment only. It is not that he was doing some act alien to his employment. Considering the aforesaid aspects of the matter, no substantial question of law arises.

6. In a case of **Malikarjuna** referred supra, the driver had gone to a pond and there he slipped and drowned. The Apex Court held that the death is not on account of employment. In case of **Regional Director** referred supra, the deceased was going on a bicycle to the place of his employment and in the midst, because of accident he died. It is in that case, the Apex Court held that the death cannot be said in the course of and out of employment. In the present case, the facts are different. Here the deceased was a driver employed on the said truck and while untying the rope of the said truck, he fell down.

7. Considering the above, no substantial question of law arises. As such appeal is dismissed. No costs. Civil application also stands disposed of.

(**S. V. GANGAPURWALA, J.)**

JPC