

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

**CIVIL APPLICATION NO. 5307 OF 2013
IN
FIRST APPEAL NO. 1089 OF 2013**

The New India Assurance Company Ltd. ...Applicant

versus

Sunita w/o Tukaram Farkade
& ors ...Respondents

.....
Mr. A.G. Kanade, Advocate for applicant
Mr. P.V. Barde, Advocate for respondent Nos.1 & 2
.....

CORAM : N.W. SAMBRE, J.

DATE : 28th JULY, 2015

ORAL ORDER :

Mr. Kanade, learned Counsel for the applicant Insurance Company would urge that the issue is no more *res integra* and is covered by the judgment of the Apex Court in the matter of ***Regional Director, Employees State Insurance Corporation vs. Francis De Costa*** reported in **1996(6) SCC 1** so as to canvass that the accident occurred at the time of joining office or work place from the residence when is not covered under the provisions of Workmens Compensation Act. 1923.

2. While countering the above referred submissions Mr. Barde, learned Counsel for the respondents-claimants has invited

attention of this Court to the communication dated 20/09/2007 issued by the employer addressed to the Investigating Officer, appointed by the Factory Inspector, wherein it is mentioned that on the date on which the accident occurred and the deceased has lost his life, it was weekly off of the employee and he was summoned for emergency work on that day.

3. He has also placed reliance upon the judgment of the Apex Court in the matter of ***Manju Sarkar vs. Maish Miah*** reported in **2014 (8) Scale 221** so as to canvass that there is no straight jacket formula to conclude that the claimants are not entitled for the compensation under Workmens Compensation Act as at the time of accident, he was not performing duty still he is entitled for compensation.

4. Having regard to the above rival submissions and in the wake of the fact that on the weekly off day the employer has summoned the deceased employee for emergent work and the said fact is being not disputed, it will be appropriate, in my opinion, to refuse the stay in the matter. As such, interim relief stands refused. The civil application stands disposed of.

[N.W. SAMBRE, J.]