

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL ST.NO.4635 OF 2017

01 Bajaj Allianz General Insurance Company
Limited, through its Authorized
Signatory/Branch Manager, Office at:
Kothari Complex, Shivaji Nagar,
District Nanded.

02 Bajaj Allianz General Insurance Company
Limited, through its Authorized
Signatory/Branch Manager, Office at:
Laaxmi Complex, 1st Floor,
Near Big Bazar, Chinchwad,
Pune-411 019.

Rajendra Bhavan, 1st floor, Near LIC
Office, Adalat Road,
Aurangabad-431 001.

Appellants

Versus

01 Bashabee Abdul Shaikh,
age: 51 years, Occ: Household,

02 Abdul Imam Sab Shaikh,
age: 56 years, Occ: Nil,

Both R/o Pimpalgaon, Tq.Loha,
District Nanded.

03 Allied Resources Management
Services India Pvt.Ltd.,
through its Authorized Signatory,
Regd. Office at: 27, 36,
Sai Venkatesh Trade Center,
2nd Floor, Pune-Nashik Highway,
Bhosari, Pune-411 039.

04 Shahrenaz Sattar Shaikh,
age: 20 years, Occ: Household,
for herself and for respondent no.5,
R/o Phool Kalas, Tq. Purna,

District Parbhani.

05 Sahil Sattar Shaikh,
minor, U/g of real mother
respondent no.4, R/o Phool Kalas,
Tq. Purna, District Parbhani. Respondents

Mr.S.G.Chapalgaonkar, advocate for the appellant
Mr.M.S.Adate, advocate holding for Mr.N.L.Jadhav, advocate for
Respondents No.4 and 5.
Mr.S.S.Rathi, advocate holding for Mr.Girish Rane, advocate for
Respondent No.3.

CORAM : M.S.SONAK, J.
DATE : 31st January, 2018.

ORAL JUDGMENT :

1 Heard Mr.Chapalgaonkar, learned Counsel for the appellant. He submits that in this case, the workman has admittedly died of a heart attack which he suffered at his place of employment. He submits that, however, there is absolutely no evidence on record to suggest that there was any connection with discharge of duties by the workman and the eventual death. He submits that merely because the death by heart attack had taken place at the place of employment, that, by itself, does not mean that the death is out of any accident arising out of and in the course of employment. He submits that in this case, there was absolutely no medical evidence to suggest that the employment of the workman had any connection with the workman suffering heart attack. He submits that this raises a substantial question of law as to whether the death, in the present case, can be said to have taken place out of any accident arising out of and in the course of employment of the workman.

2 From perusal of the impugned judgment and order, it is seen that the workman concerned died at the work site on account of massive heart attack which he had suffered. The workman was discharging the duties as a Fork Lift driver/operator. He was functioning on a holiday. From the evidence on record, it is disclosed that there was burden of work and, therefore, the employees were requested to work on holiday. The Commissioner has considered not only the evidence of the claimants but also considered police papers and medical opinion produced on record by the claimants. The Commissioner has applied the principles laid down by the Hon'ble Supreme Court in the case of **Regional Director, ESI Corporation Vs. Francis D. Costa**, 1996 (6) SCC 1. In this case, the Supreme Court has held that there must be a casual connection between the injury and the accident and the accident and the work done in the course of employment. The Supreme Court has also held that such matters are to be considered on the basis of preponderance of probabilities.

3 In the facts of the present case, as have been discussed by the Commissioner, it cannot be said that the finding recorded by the Commissioner is vitiated by perversity or even there was any error of law. In an appeal of this nature, it is not appropriate to re-evaluate or re-assess the evidence because, the Legislature has made it clear that the appeals under this enactment are to be entertained only if there is substantial question of law. The contentions raised are to have a re-look at the evidence or to re-assess the evidence with a view to arrive at some different finding. As noted earlier, this is not a case of 'no evidence'. The circumstances surrounding the unfortunate demise

of the employee have been assessed by the Commissioner. The principles of law laid down by the Hon'ble Supreme Court in **Francis D. Costa** (*supra*) have been adhered to. Accordingly, the present appeal does not raise any substantial question of law.

4 The appeal is, therefore, dismissed. There shall be no order as to costs. Pending C.A. No.3770/2017 does not survive and stands disposed of. In view of dismissal of the appeal, Civil Application No.1299/2018 taken out by the claimants for withdrawal of compensation amount, is hereby allowed.

5 At this stage, learned Counsel for the appellants seeks for a stay of execution of the judgment and order made by the Commissioner, since, the appellants will take recourse to further remedies available in law. Accordingly, Commissioner's order is stayed for a period of six weeks from today.

(M.S.SONAK)
JUDGE

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.3769 OF 2017 IN
FIRST APPEAL ST.NO.4635 OF 2017

Bajaj Allianz General Insurance Company
Limited

Applicant

Versus

Bashabee Abdul Shaikh & others

Respondents

Mr.S.G.Chapalgaonkar, advocate for the applicant

Mr.M.S.Adate, advocate holding for Mr.N.L.Jadhav, advocate for
Respondents No.4 and 5.

Mr.S.S.Rathi, advocate holding for Mr.Girish Rane, advocate for
Respondent No.3.

CORAM : M.S.SONAK, J.

DATE : 31st January, 2018.

P.C. :

For the reasons set out in the application, delay of 10
days in instituting the appeal is condoned.

Civil Application is disposed of.

(M.S.SONAK)
JUDGE

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