

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 618 OF 2017

Mahendra Singh Tulshi Singh & Anr.

....Appellants

V/s.

Gurpreet Singh Gurudev Singh & Anr.

....Respondents

Mr. T.J. Mendon for the appellants.

Mr. S.S. Vidyarthi for the respondent no.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT RESERVED ON : 6th DECEMBER, 2018

JUDGMENT PRONOUNCED ON : 11th DECEMBER, 2018.

JUDGMENT :-

. The appellants have challenged the judgment dated 25/04/2013 passed by the Commissioner for Employees Compensation and Judge, Fourth Labour Court, Mumbai in Application (WCA)173/B-32 of 2009. The brief facts necessary to decide this appeal are as under :-

(i) The appellants are the parents of the deceased Rashpal Singh. Said Rashpal Singh was engaged as a driver of vehicle No.MH-04-F-6468 which was owned by the respondent no.1 and insured with the respondent no.2. On 21/08/2008, the deceased Rashpal Singh was on duty as a driver of the said vehicle. He was proceeding from Mumbai

to Pune. He got down from the vehicle near Khargar Railway Station, Dist. Raigad in order to obtain a PUC certificate. He met with an accident while he was crossing the road and expired as a result of the injuries sustained in the said motor vehicular accident. The appellants filed the application under the provisions of Workmen's Compensation Act, 1923 claiming compensation to the tune of Rs.4,33,820/- with interest @ 12% from the date of accident till the date of realization stating that the death of their son was out of and in the course of his employment.

(ii) The respondent no.1 did not contest the said proceedings despite due service. The respondent no.2 – Oriental Insurance Company contested the claim. The respondent no.2 denied that the deceased was employed as a driver of the vehicle No.MH-04-F-6468 owned by the respondent no.1 and thus disputed the employer-employee relationship between the deceased and the respondent no.1.

2. Based on the rival contentions, the learned Commissioner framed the following issues :-

	ISSUES	FINDINGS
1)	Whether applicants prove that the deceased was in the employment of O.P.No. 1 as a	Yes

	driver and there exists employer-employee relationship in between deceased and O.P. No.1?	
2)	Whether applicants prove that the deceased met with an accident on 21/08/2008 and died during the course of and arising out of his employment?	Yes
3)	Whether applicants prove that the deceased was 25 years of age and was earning salary Rs.4,000/- per day on the date of accident ?	Yes
4)	Whether applicants are entitled for compensation as claimed ?	Yes
5)	Whether applicants are entitled for interest and penalty on compensation amount ?	Yes
6)	What order ?	As per order passed below

3. Upon considering the rival claims and appreciating and analyzing the oral as well as the documentary evidence, the learned Commissioner held that the deceased was in employment of the respondent no.1 as a driver and that there was employer-employee relationship between the deceased and the respondent no.1. The learned Commissioner further held that the deceased had expired as a result of the accident during the course of and arising out of his employment. The learned Commissioner observed that the deceased was 25 years of age and was earning salary of Rs.4,000/- per month and hence, held that the appellants are entitled for compensation of Rs.4,33,820/-. The learned Commissioner held that the vehicle No.MH-04-F-6468 which was insured with the respondent no.2 was not

involved in the accident. The learned Commissioner has further held that the deceased was not holding a driving license and that there was breach of terms and conditions of the policy. Based on the aforesaid findings, the learned Commissioner dismissed the claim of the appellants against the Respondent no.2-Insurance Company and allowed the claim only as against the respondent no.1. Aggrieved by the dismissal of the claim against the respondent no.2-Insurance Company, the appellants have preferred this appeal.

4. Mr. T.J. Mendon, learned counsel for the appellant has submitted that the deceased was holding a valid driving license. He further contends that the respondent no.2 had not adduced any evidence to prove that the respondent no.1 had committed any breach of terms and conditions of the insurance policy and that it was not liable to indemnify the respondent no.1. He, therefore, contends that the learned Commissioner was not justified in dismissing the application as against the respondent no.2.

5. The learned counsel for the respondent no.2 contends that Rashpal Singh had not died in an accident arising out of and in the course of his employment. In support of this contention, he has relied

upon the decision of the Apex Court in *Employees' State Insurance Corporation v/s. Francis De Costa ACJ 1281*.

6. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

7. Section 3 of Workmen's Compensation Act makes it obligatory on the part of the employer to pay compensation to his employee when the employee receives personal injury by accident arisen out of and in course of his employment. In *Manju Sarkar and ors v/s. Mabish Miah & ors. 2014 ACJ 1927*, the Apex Court has reiterated the principles in *General Manager, B.E.S.T. Undertaking, Bombay v/s. Agnes 1958-65 ACJ 473 (SC)*, wherein it has been held as under :-

“Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the “down tool” signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the

circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and, egress to and from the place of employment. ”

8. In the instant case, the evidence adduced by the appellants-claimants indicates that the deceased was a driver of the vehicle owned by the respondent no., insured by the respondent no.2. On the day of the accident, he was on duty as a driver and he was proceeding from Mumbai to Pune. He parked his vehicle near Khargar Railway Station and proceeded to obtain a PUC certificate. He met with an accident while crossing the road and expired as a result of the injuries sustained in the said accident.

9. From the evidence on record, it emerges that at the relevant time, the deceased was present on the spot of the incident in the course of any by reason of his employment. On the basis of this evidence, the learned Commissioner has recorded a specific finding that the death of the deceased was as a result of the accident which had arisen out of and in the course of his employment. These findings have not been challenged and as such, it is not open for the insurance company now to canvas that there was no causal connection between the accident and the employment.

10. In *Francis De Costa (supra)*, the employee had sustained injury while he was on his way to the factory where he was employed. The accident had taken place 1km away from the place of employment. Under these circumstances, it was held that a mere road accident while an employee is on the way to his place of employment cannot be said to have its origin in his employment in the factory. In the instant case, the driver Rashpal Singh had expired as a result of the injuries sustained in an accident arising out of and in connection with employment. Hence, the aforesaid decision is distinguishable and is not applicable to the facts of the present case.

11. It is to be noted that the learned Commissioner has absolved the respondent no.2 – Insurance Company from its liability of indemnifying the insured on the ground that the vehicle was not involved in the accident and secondly, on the ground of breach of terms and conditions of the policy. Suffice it to say that the liability of the insurer to indemnify the insured is subject to the terms and conditions of the insurance policy. In the instant case, the insurance company had not disputed its liability to indemnify the respondent no.1 – insured either on the ground of breach of terms and conditions of policy or on the

ground that the vehicle was not involved in the accident. The respondent no.2 – Insurance Company had also not adduced any evidence either documentary or oral so as to establish that the policy did not cover the risk of employee and or the claim in question. In the absence of such plea and proof, the learned Commissioner was not justified in absolving the respondent no.2- Insurance Company from its liability to indemnify the insurer.

12. In *Rita Devi and Ors. Vs. New India Assurance Co. Ltd. And Anr.* 2000 ACJ 801 (SC), the deceased was employed as a driver of an Auto Rikshaw for ferrying passengers on hire. Some unknown passengers had hired the Auto Rikshaw. On the next day the police recovered the body of the deceased. However, the Auto Rikshaw was not traced. What had happened on the fateful day was not known. The owner of the Rikshaw had claimed compensation from the Insurance Company for loss of Auto Rikshaw and the heirs of the deceased had claimed compensation for the death of the driver on the ground that the death had occurred on account of the accident arising out of use of the motor vehicle. While considering the question whether murder could be accidental in any given cases the Apex Court has reiterated the principles laid down in the case of *Shivaji Dayanu*

Patil and Anr. vs. Vatschala Uttam More (1991 (3) SCC 530) and

observed as under:-

“16. In the case of Shivaji Dayanu Patil and Anr. vs. Vatschala Uttam More this Court while pronouncing on the interpretation of Section 92-A of the Motor Vehicles Act, 1939 held as follows:-

“....Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose”

17. In that case in regard to the contention of proximity between the accident and the explosion that took place this Court held :

“36. This would show that as compared to the expression caused by, the expression arising out of has a wider connotation. The expression caused by was used in Section 95(1) (b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression arising out of which indicates that for the purpose of awarding compensation under Section 92-A, the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This

construction of the expression arising out of the use of a motor vehicle in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.”

13. In the instant case, as stated earlier the death of the deceased Rashpal Singh was due to an accident out of the use of the motor vehicle. Hence, the learned Labour Commissioner was wrong in holding that the death was not caused by the accident involving the use of the motor vehicle. Consequently, the learned Labour Commissioner has erred in absolving the liability of the insurance company in indemnifying the insured.

14. In the result, the appeal is allowed. The order of the learned Commissioner for Employees' Compensation and Judge Fourth Labour Court, Mumbai, dated 25th April, 2012 holding that the Respondent No.2-Insurance Company is not liable to pay compensation to the Appellant is set aside. Consequently, the claim of the Appellants as against the Respondent No. 2 is allowed. The Respondent Nos.1 and 2 are jointly and severally directed to pay compensation of Rs.4,33,820/- to the Appellants/Applicants with an interest @ 12% per annum from 21.8.2008 till realization of the amount.

(SMT. ANUJA PRABHUDESSAI, J.)