

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

**FIRST APPEAL NO.225 OF 2005
AND
CIVIL APPLICATION NO.3612 OF 2005**

United India Insurance Co. Ltd.,
through it's Divisional Manager
and authorised representative,
signatory, Nanded Divisional Office,
Guru Complex, G.G.Road, Nanded

..Appellant

Vs.

1. Smt. Nanda w/o. Ramu Vaval,
Age : 28 years, Occ. Household,
r/o. of Datada, Tq. Sengaon,
Dist. Hingoli
2. Bhagyashri d/o. Ramu Vaval,
age : 10 years,
3. Vitthal s/o. Ramu Vaval,
age : 07 years
4. Dnyaneshwar s/o. Ramu Vaval,
age : 06 years

Respondents Nos.2 to 4 are
minor U/guardianship of real mother
Smt. Nanda Ramu Vaval

5. Narayan s/o. Kanoji Vaval,
Age : 58 years, Occ. Labour,
r/o. As above
6. Saraswatibai w/o. Narayan Vaval,
Age : 53 years, r/o. As above
7. Sanjeev s/o. Radhakishan Gaikwad,
Age : 38 years, Occ. Agri. and
car owner, r/o. Ekta Nagar, Risod,
Dist. Washim

..Respondents

Mr.A.B.Gatne, Advocate for appellant
Mr.Sachin Deshmukh, Advocate for respondent nos.1 to 6

CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 07, 2021

JUDGMENT :-

The appellant – United India Insurance Co. Ltd. is in appeal under Section 30 of the Employees’ Compensation Act, 1923 (“E.C. Act”, for short), challenging the order dated 07.01.2005 passed by learned Commissioner under E.C. Act, Hingoli, in F.A. No.1 of 2002, directing the appellant – insurance company and respondent no.7 herein, owner of the vehicle, to pay the applicants/claimants i.e. respondent nos.1 to 6 herein, a sum of Rs.2,07,980/- as compensation, along interest at the rate of 12% per annum from the date of accident to the date of realisation of the said amount and further pay a sum of Rs.1,03,990/- towards penalty.

2. Respondent no.7 herein owned a motor car bearing registration no.MH-30-F-9944. The car had insurance cover granted by the appellant – insurance company. The deceased – Ramu was employed as driver for the said car. The deceased was on duty as

driver on 02.04.2001. As per the directions of respondent (employer), he had gone to a field (gut no.276) belonging to one Pushkarsing Pawar. He had parked the car in the field. He was present in the field away from the car. There was a godown in the field. It contained explosives. All of a sudden, the explosives went off. As a result thereof, Ramu died. The car was damaged. Respondent nos.1 to 6, legal representatives of the deceased, therefore, issued notice to the employer, respondent no.7, calling upon him to pay them compensation. Since respondent no.7 did not pay the compensation, the respondents/claimants filed an application for compensation against the employer and the appellant-insurance company.

3. Learned Commissioner, on appreciating evidence in the case, awarded compensation, as stated above, taking into consideration monthly pay of the deceased at Rs.2,000/-.

4. Heard learned counsel appearing for the parties.

5. Mr.A.B.Gatne, learned counsel for the appellant – insurance company, first took me through the evidence of widow of the deceased, to submit that she did not witness the accident. Whatever she has deposed to, was hearsay. Learned counsel then

took me through the cross-examination of the employer, to submit that he admitted to have had not directed the deceased to go to the said field in the car. According to learned counsel, for being entitled to the claim of compensation under the E.C. Act, it has to be proved that the deceased or injured was in the employment and the accident occurred arising out of and in the course of employment. In support of his submissions, learned counsel has relied on the following authorities :-

(i) P.N.Narayan Vs. Union of India and ors., 2004 ACJ 452;

(ii) M/s.United India Insurance Co. Ltd. Vs. Bhagirathibai w/o. Maroti Pitale and ors., 2003(3) All MR. 636;

(iii) News India Assurance Co. Ltd. Vs. Mohammad Yusuf Inamuddin Pirjade and ors., 2004(4)All MR 312;

(iv) Ved Prakash Garg Vs. Premi Devi and ors., AIR 1997 SC 3854;

(v) Daya Kishan Joshi and anr. Vs. Dynemech Systems Pvt. Ltd., (2018)11 SCC 642;

(vi) Malikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Company Limited and anr., (2009)13 SCC 405;

(v) Mackinnon Machenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, 1969(2) SCC 607;

(vi) General manager, South Eastern Railway and ors. Vs. Abdul Wahid, 2002(2)T.A.C. 402 (Jhar.)

6. Learned counsel read out certain paragraphs in the judgments he has relied on. According to him, the deceased had no reason to go to the field where the accident took place. There is no iota of evidence to suggest the accident to have occurred in the course and arising out of the employment. He would further submit that liability to pay the penalty in case of failure to pay the amount of compensation when it fell due, lies on the employer alone. It has to be shown that the very nature of the employment made it necessary for the deceased to be at the place of accident. The same has not been proved. Learned counsel, therefore, urged for allowing the appeal in toto.

7. Mr.Sachin Deshmukh, learned counsel for respondent nos.1 to 6, would, on the other hand, submit that no substantial question of law has been involved in the present appeal. According to him, in view of the principle of extension of notional employment theory, no interference with the impugned award is called for.

8. In the case of **Daya Kishan Joshi** (supra), it has been observed :-

Tort Law-Employees' Compensation Act, 1923-Ss.3(1) & 4-Employer's liability to pay compensation for accident "arising out of" and "in course of employment"-Presence on public road as part of field work-Held, words "arising out of" denote accident which has occurred on account of risk which is incident of employment and such claim should succeed unless workman had exposed himself to added peril by his own imprudent act-On other hand, phrase "in course of employment" suggests that injury must be caused during course of employment, whereas expression "out of employment" means there must be some casual connection between employment and injury caused to workman as result of accident - Further held, when a workman is on public road/place/transport he is there as any other member of public and not in course of employment unless very nature of his employment makes it necessary for him to be there-Furthermore, expression "out of employment" is not confined to mere nature of employment but applies to employment as such, to its nature, conditions, obligations and incidents.

In has further been observed in paragraphs 6, 8 and 9 as under:-

6. Undisputedly, the employer's liability for compensation to the employee arises only if the employee has suffered in the accident which arose out of and in the course of employment. [Section 3\(1\)](#) of the Act deals with the employer's liability for compensation to the employee in case of accident arising out of and in the course of employment. [Section 3\(1\)](#) reads thus:

3. Employer's liability for compensation.-

(1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter:"

7.

8. *The words 'arising out of' and 'in the course of employment' are in fact two different phrases and have been understood as such. If the accident had occurred on account of a risk which is an incident of employment, the claim shall succeed unless, of course, the workman had exposed himself to an added peril by his own imprudent act. The phrase 'in the course of employment' suggests that the injury must be caused during the course of employment, whereas the expression 'out of employment' conveys the idea that there must be a causal connection between the employment and the injury caused to the workman as a result of the accident. Prima facie, while deciding the issue on hand, there is no material on record to show that the deceased workman had exposed himself to added peril by his own imprudent act.*

9. *When a workman is on the public road or public place or on public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. In other words, there must be a causal relationship between the accident and the employment. The expression 'out of employment' is not confined to the mere nature of the employment: the expression applies to employment as such, to its nature, its conditions, its obligations and its*

incidents. The words "arising out of employment" are understood to mean that during the course of employment, the injury has resulted from some risk incidental to the duties. Unless engaged in the duty owed to the employer, it is reasonable to believe that the workman would not otherwise have suffered."

It has further been observed in paragraph 16.2 thus:-

"16.2. The case of [Mackinnon Machenzie & Co. \(P\) Ltd. v. Ibrahim Mahmmed Issak](#) is also relevant to understand the meaning of "arising out of employment". Ramaswami, J. delivering the judgment for a three-Judge Bench of this Court held:(SCC p.611, para 5)

"5.....The words 'arising out of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words, there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To

put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation, must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act..."

In the case of **Mallikarjun** (supra), Hon'ble Supreme Court held thus :-

"Labour Law-Workmen's Compensation Act, 1923-S.3(1)-Applicability-Death of workman-Need for casual connection between death of workman and his employment - Driver of owner's vehicle instructed to take passengers to a temple-On reaching destination driver whilst at a pond slipped and drowned; resulting in his death-Entitlement to-compensation-High Court held insurer of vehicle not liable; allowing compensation awarded recoverable from vehicle owner Validity-Held, deceased had gone to a temple and while sitting on steps of pond in temple slipped and fell into the water and died due to drowning-Not sufficient to fasten liability on either insurer or insured-Motor Vehicles Act, 1988-S.147(1)(b)(i)-Words and Phrases-"Arising out of and in the course of employment".

In the case of **General Manager, South East Railway** (supra), it has been observed in paragraph 7 as under :-

"7. Requirement of the Act in respect of claim of compensation depends on an accident which

had its origin in the employment. When a workman is on a public road or a public place or a public transport, he is there in the capacity of public and is not there in course of his employment unless the very nature of his employment makes it necessary for him to be there."

9. There can be no two views over what has been submitted by learned counsel for the appellant – insurance company, relying on the aforesaid authorities. After all, it is a question of fact, whether the death has occurred in the course of and arising out the employment.

10. The appellant – insurance company had no personal knowledge as to whether there did exist employer – employee relationship between respondent no.7 and the deceased. Respondent no.7 had specifically admitted in his written statement to have had employed the deceased as driver on its car at monthly salary of Rs.3,000/-. When the deceased breathed his last, the car was with him. It has been specifically averred in the application as under:-

"2. That, on 2/4/01 the deceased Ramu was on duty as a driver on Maroti Car (Van) No.MH-30-F-9944 and as per direction and permission

of respondent no.1 deceased Ramu went towards field and parked the same car, suddenly a bomb exploded in the said field as a result of which the driver i.e. Ramu suffered serious injuries due to bomb explosion and died on the spot. The said accidental death was caused in due course of his employment."

Respondent no.7 – employer responded to the aforesaid contention in written statement in the following words:-

"2. That, in reply to the contents of Para No.2 of the claim petition, it is submitted that, replying respondent no.1 is owner and possessor of car bearing No.MH-33-F-9944 and deceased Rama was employee as a driver on the said Car and he went towards field of Pushkarsingh Ramsingh Pawar. When deceased went in the field of Pushkarsingh and he parked said car, suddenly there was bomb explosion and he suffered serious injuries due to bomb explosion died on the spot. But actually said accidental death was caused due to negligent act of said Pushkarsingh."

11. As such, the pleadings indicate that the employer has admitted in no uncertain terms, the averments in paragraph 2 of the application. Rest of the paragraphs of written statement of the employer did not dispute the case of respondent nos.1 to 6 that the deceased had been to the field in the car on the directions of the employer. Learned counsel for the appellant – insurance company

would, therefore, not be benefited by a stray sentence appearing in the cross-examination that the employer had not directed the deceased to go to the field whereat the accident took place. In fact, in view of the Rule of pleadings, said contention of the employer in his cross-examination deserves to be ignored. The same could be stated to be an afterthought and self-serving as well.

12. True, it is only the deceased and at the most, the employer, knew the reason for which the deceased had been to the field in the car. On appreciating evidence in the case, the Tribunal has come to a finding of fact. The same does not deserve to be interfered with. True, the cause of death is accident of all of sudden bursting of explosives. Admittedly, the deceased was in the employment as driver. He had been to the field in the car on which he was employed. It is not known as to why he had been there. It is reiterated that it is the case of the claimants that the deceased had been there on the instructions of his employer. The same has been specifically admitted in the written statement and as such, this Court has no reason to interfere with the finding recorded by learned Commissioner that the deceased died in the accident arising out and in the course of the employment.

PENALTY :-

13. Section Section 4A of the E.C. Act, reads thus:-

4A. Compensation to be paid when due and penalty for default-

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for delay, direct that the

employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

14. In the case of **Ved Prakash Garg** (supra), Hon'ble Supreme Court held-

"Motor Vehicles Act (59 of 1988), S.147(1)(b), Proviso-Workmen's Compensation Act (8 of 1923), S.4A(3)(b)-Liability of Insurance Company-To make good liability arising under Workmen's Compensation Act-Extends to payment of principal amount of compensation computed by Commissioner and interest levied under S.4-A(3)(a)-But not to penalty levied under S.4-A(3)(b)."

15. In view of the same, learned Commissioner ought not to have directed the appellant-insurance company to pay the sum of Rs.1,03,990/- towards penalty. To this extent, the impugned award is liable to be set aside.

16. In the result, the appeal is partly allowed in terms of the following order:-

- (i) Clause (iii) in the impugned award directing the appellant-insurance company to pay the respondents herein/claimants a sum of Rs.1,03,990/- as penalty, is hereby set aside.
- (ii) Rest of the terms of the impugned award to stand unaltered.
- (iii) The amount of compensation deposited either with this Court or learned Commissioner, be paid to the claimants, immediately, with interest accrued thereon. Balance amount, if any, be paid back to the appellant-insurance company.
- (iv) Pending Civil Application stands disposed of.

[R.G. AVACHAT, J.]

KBP