

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

FIRST APPEAL NO. 1131 OF 2005

The New India Assurance Company Ltd.,
Through its Divisional Manager,
Adalat Road, Aurangabad

... Appellant

Versus

- 1) Shriram s/o Gopalrao Yelgatte
Age 52 years, Occu. Labour,
R/o Ajaniwadi, Tq, Ahmedpur,
District Latur
- 2) Sau. Rasikabai w/o Shriram Yelgatte
Age 47 years, Occu. Household,
R/o. As above
- 3) Dilip s/o Krishnaji Mule
Age major, occu. Business,
R/o. 8/1, Sindhu Nagar,
Pradhikaran, Pune – 44

... Respondents

....

Mr. S. G. Chapalgaonkar, Advocate for appellant
Mr. A. B. Tele, Advocate for respondent Nos. 1 and 2

....

CORAM : R. G. AVACHAT, J.

DATED : 09th DECEMBER, 2021

J U D G M E N T :-

. This is Insurance Company's appeal, taking exception to the judgment and award dated 17.05.2003 passed by the Commissioner under the Workmen's Compensation Act, granting

compensation of Rs.2,28,540/- with interest @ 12% p.a on account of death occurred as a result of injuries suffered in the course of employment.

2. The claim was preferred by the parents of the deceased Hanmant, a 16 years old boy. It was their case that deceased Hanmant was serving as a Cleaner with the truck (MTQ - 1445) belonging to respondent No.3 herein. The truck started from Pune to Bangalore on 01.08.2000. It was carrying newspapers. The deceased was with the truck. He threw up at Bangalore. He developed ill-health. He is said to have died of Jaundice at Bangalore itself. Respondent No.3 brought Hanmant's mortal remains back to the house of the applicants (parents of Hanmant).

3. Hanmant's parents filed the application for compensation contending that Hanmant was being paid Rs.2,000/- as monthly salary. The Tribunal after appreciating the evidence in the case, granted compensation as stated above.

4. Heard.

Learned Advocate for the appellant – Insurance Company would submit that no employer - employee relationship

did exist between the deceased and respondent No.3 herein. The driver of the truck was relative of the deceased Hanmant. Hanmant had been with him to learn driving. Respondent No.3 also denied the deceased to have ever been employed on his truck. Hanmant died due to Jaundice and high fever. The death has no causal connection with the employment of the deceased. On way to Bangalore, the deceased and the driver had taken meals together. The driver did not get infected. The same suggests no causal connection with the employment. The learned Advocate relied on the following authorities.

- (i) Ramashray Singh vs New India Assurance Co. Ltd. and others – (2003) 10 SCC 664;
- (ii) Mamtaj Bi Bapusab Nadaf and others vs United India Insurance Company and others – (2010) 10 SCC 536;
- (iii) British India General Insurance Co. Ltd. vs Sabanna Sabanna and Ors – 1967 AIR (Bombay) 416;
- (iv) The Shipping Corporation of India Ltd. vs Shri Madhavan Raman Arakkan – 2005(4) ALL MR 481;

He, ultimately, urged for setting aside the impugned order.

5. Learned Advocate for the respondents – claimants would, on the other hand, submit that the employer admitted in no uncertain terms to have had engaged the deceased as Cleaner on the

truck. While the truck left Pune, the deceased was keeping well. It is only during the course of duty, he got afflicted with Jaundice and died of it. A driver and a Cleaner being on duty, away from residence, have to take meals in hotel or even from street vendors. As a result thereof, the deceased contracted Jaundice and died thereof. The Commissioner has therefore rightly granted compensation. The learned Advocate therefore urged for non interference with the impugned order.

6. Respondent No.3 – employer owned the truck (MTQ - 1445). The truck left Pune for Bangalore on 01.08.2000. The deceased, 16 years old boy was with the truck. He was said to have been employed as a Cleaner. Respondent No.3 – employer denied to have had engaged the deceased as a Cleaner. In his signed statement before the Investigating Officer, he however admitted the deceased was employed as a Cleaner. His denial of the said fact before the Commissioner might be due to employing minor being against the provisions of the Child Labour (Prohibition and Regulation) Act of 1986. The learned Commissioner, on appreciation of the evidence, has rightly held the employer – employee relationship to have been established. This Court has no reason to take different view.

7. The question is whether the deceased died of injuries caused by accident arising out of and in the course of his employment. According to the learned Advocate for the appellant – Insurance Company, there is no causal connection between the cause of death and the nature of employment. He would further submit that the deceased and the truck driver had taken meals together. The driver did not get infected. The said fact therefore fortifies the claim of the appellant - Insurance Company. It needs no mention that the deceased was keeping good health when he left Pune for Bangalore in the truck. Had he really not been keeping well, he would not have reported on duty. When drivers and cleaners on a transport vehicle happened to be away from their native, they have to take meals from hotel or even from street vendors. The employer/vehicle owner pays them special bhatta for meeting such expenses. It needs no mention that to keep oneself fit to undertake duty and even for survival one has to have everyday meal. The deceased being a 16 years old boy, might not have digestive capacity as good as of the driver. The cause of jaundice is necessarily the quality of food. The Commissioner has held the deceased to have had contracted the jaundice and diarrhea, as he took food and drink as was available on way to Bangalore. It,

therefore, cannot be said, there was no causal connection between cause of death and the nature of employment. The claim was preferred by the parents of 16 years old deceased. Compare to the present day terms, the claim was for paltry amount.

8. The authorities relied on by the learned Advocate for the appellant – Insurance Company are quite distinguishable on facts. Reliance on the judgment in the case of ***Ramashray Singh*** (supra) is of no avail to the appellant – Insurance Company, since neither before the Commissioner nor before this Court a challenge was raised as to non cover of risk of the deceased/Cleaner under the policy of insurance. The policy of insurance was never referred to. It was the only case of the appellant – Insurance Company before both the Courts that there was no employer – employee relationship and the cause of death has no causal connection with the nature of employment.

9. The judgment of the Apex Court in ***Mamtaj Bi's*** case (supra) does indicate that on the facts of the case the view taken by the Karnataka High Court was held to have been justified. It has been specifically observed in para 13 of the judgment as under:-

“13. In our considered opinion, on the facts of this case, the view taken by the learned Single Judge of the Karnataka High Court seems to be justified and correct. Therefore, no interference is called for. This appeal being devoid of any merit is accordingly dismissed. However, in the facts and circumstances of this case, the parties to bear their own costs.”

10. The facts in ***Mamtaj Bi's*** case (supra) were, deceased workmen were engaged in unloading food-grains from tractor trailer. The maize was being unloaded from the tractor to an underground storage bin. Both the labourers climbed the grocery pit in order to clean the same for storing Maize and while cleaning they fell into the grocery pit. They died due to asphyxia.

11. While in the case of ***Shipping Corporation of India Ltd. Vs. Shri Madhavan*** (supra), the workman, working as a Chief Cook, was suffering from diabetics. It was held that the workman failed to establish the said decease was necessarily caused and aggravated by nature of work of the respondent.

12. Same is the case of the judgment in the case of ***British India General Insurance Co. Ltd. Vs. Sabanna*** (supra). An injury was caused as a result of stone flew off from the quarry where the process of blasting was going on.

13. It is reiterated that in the peculiar facts and circumstances of the case, this Court endorses the findings recorded by the Commissioner under the Employees' Compensation Act. The appeal, therefore, fails.

14. The appeal, thus, stands dismissed.

15. The amount of compensation in deposit either with this Court or the Commissioner, be immediately paid to the respondents – claimants along with interest accrued thereon.

[R. G. AVACHAT, J.]

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