

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

FIRST APPEAL NO. 1205 OF 2013

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

... Appellant
[Org. Respondent No.2]

VERSUS

- 1] Shaikh Farzana W/o Shaikh Minhaj
Age: 38 years, Occu: Household,
- 2] Farheen Begum D/o Shaikh Minhaj
- 3] Shaikh Amer S/o Shaikh Minhaj
- 4] Shahed Afridi S/o Shaikh inhaj,

No. 2 to 4 are Minor U/g of Real Mother
Shaikh Farzana i.e. Resp. No.1

- 5] Shaikh Muzafar S/o Shaikh Hussain
Age: 66 years, Occu. Nil
- 6] Shaikh Mustarbi W/o Shaikh Muzafar,
Age: 61 years, Occu. Nil

All above R/o. Kadrabad Plot,
Opp. Latur Steel, Parbhani,
Tq. & Dist. Parbhani

- 7] Veerbhadra S/o Sitaramappa Eklore,
Age: Major, Occu. Business,
R/o. New Mondha, Parbhani

... Respondents
[Respdt Nos. 1 to 6 – Org. Claimants
Respdt. No.7 – Org. Respdt No.1]

....

Mr. S. G. Chapalgaonkar, Advocate for appellant
Smt. A. N. Ansari, Advocate for respondent Nos. 1 to 6

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 01st DECEMBER, 2021

PRONOUNCED ON : 22nd FEBRUARY, 2022

J U D G M E N T :-

. The challenge in this appeal, under Section 30 of the Employees' Compensation Act, 1923 (for short, 'the Act of 1923') is to the judgment and order dated 16.05.2012, passed by the Commissioner for Employees' Compensation granting compensation on account of death as a result of injuries caused to an employee by accident arising out of and in the course of his employment. Vide impugned judgment and order, the respondent No.7 (employer) and the appellant - Insurance Company, have been directed to pay compensation of Rs.5,82,015/- to respondent Nos. 1 to 5, legal representatives of the deceased Minhaj. The employer has further been directed to pay interest @ 12% p.a. on the amount of compensation, besides a sum of Rs.2,91,007/- as penalty. The employer is not in appeal.

2. The substantial questions of law that arose for consideration in this appeal are:

- (i) Whether death of Minhaj occurred on 16.12.2010, was due to accident arising out of and in the course of employment?
- (ii) Whether the liability of the insurer can be extended to the accident caused without involvement of the vehicle insured?

3. The facts giving rise to the present appeal are as follows:

Deceased Minhaj was in employment as Driver on the truck, MH-22-N-108, belonging to the employer. The deceased had reported on duty on 16.12.2010. He had been to village Sonpeth to transport cotton seeds. He returned to Parbhani with the truck by 11.00 p.m. After having parked the truck at his employer's place, namely Shri Mahalaxmi Agro Industrial Oil Mill, M.I.D.C., Parbhani, he was on his way home on his foot. A motorbike came from behind and knocked him down. He suffered multiple injuries and succumbed thereto. His legal representatives (Respondent Nos. 1 to 6), therefore, filed petition for compensation under Section 4 of the Act of 1923 against the employer and the insurer of the truck. It was the case of the legal representatives that the deceased died as a result injuries suffered during his employment. It was also the case

that the deceased was serving at a monthly pay of Rs.7,000/-, besides per day Bhatta of Rs.150/-.The learned Commissioner, on appreciation of the evidence, accepted the case of the legal representatives and granted compensation as stated above.

4. Heard.

Learned Advocate for the appellant would submit that the truck had in no way been involved in the accident. The deceased was not in the truck when he met with the accident. The accident should have its origin in the employment. The deceased was on his way home after his duty hours were over. Principle of notional extension of employment could not be invoked in the facts and circumstances of the case. The deceased was neither provided by his employment transportation facility to reach home after the duty hours are over, nor was provided with a residence to stay in. Learned Advocate had placed reliance on the following authorities to ultimately urge for allowing the appeal.

- (i) M/s. British India General Insurance Co., Ltd. vs. Sabanna Sabanna - 1966 SCC OnLine Bom 51;
- (ii) Regional Director, E.S.I. Corporation and another vs. Francis De Costa and another - (1996) 6 SCC 1;
- (iii) Malikarjuna G. Hiremath vs. Branch Manager, Oriental Insurance Company Limited and another - (2009) 13 SCC 405;

- (iv) Mamtaj Bi Bapusab Nadaf and others vs. United India Insurance Company and others - (2010) 10 SCC 536;

5. The learned Advocate for the legal representatives of the deceased would, on the other hand, submit that the learned Commissioner, on appreciation of the evidence, has rightly granted the application for compensation. According to her, employment of a workman does commence when he sets out from his residence to report on duty and reaches back home after work hours are over. The principle of notional extension of employers premises does get invoked. After having returned from Parbhani, the deceased parked the truck at the employers office and was on his way home. It was late in the evening, a motorbike knocked him down while he was on his way home. In support of her contentions, the learned Advocate has relied on the following authorities.

- (i) National Insurance Co. Ltd. vs. Sugia Devi – LAWS(JHAR)-2010-9-8;
- (ii) Shri-Man Branch Manager, The Oriental Insurance Company Ltd. vs. Visheshwar Mishra - LAWS (CHH)-2012-2-71;
- (iii) Conservator of Forest, Nagpur and another vs. Kusumtai wd/o Ganpatrao Dhote and others - 2013(5) Mh.L.J.;
- (iv) The Branch Manager, United India Insurance Company Ltd., vs. Hanumanthraya s/o Yeshwanath Jamedar & Ors - 2017(6) ALL MR (JOURNAL)6;

- (v) Leela Bai and another vs. Seema Chouhan and another - 2019(5) Mh.L.J.;
- (vi) Poonam Devi and others vs Oriental Insurance Company Limited - (2020) 4 SCC 55.

6. Considered the submissions advanced. Perused the evidence relied on. Gone through the citations.

Section 3 of the Act of 1923 speaks of employer's liability for compensation. If personal injuries 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 Chapter II of the Act.

7. It has not been denied before this Court that the deceased was serving as a driver on the truck, MH-22-N-108, belonging to the employer. The deceased had been on duty on the given day. He had returned from Sonpeth to Parbhani, carrying cotton seeds in the truck. After having parked the truck at the employer's place by 11.00 in the evening, he was on way home walking. A motorbike knocked him down. He succumbed to the injuries. The employer filed the written statement admitting the averments in the application for compensation.

In the case of ***Saurashtra Salt Manufacturing Company Vs. Bai Valu Raja and others - 1956 AIR (SC) 881***, the Apex Court in para 7 has observed thus:

"(7). As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension."

8. In view of theory of notional extension of employer's premises, there might have been involvement of the vehicle in the accident. There has to be causal connection between death of the workman and his employment. In case of ***Regional Director, E.S.I. Corporation and another (supra)***, it has been observed that the accident should have its origin in the employment. Injury caused by accident while the employee was going to his place of employment on his bicycle, is not covered. The mere fact that he was to report for duty within a short time or that his place of employment was only at

a short distance is inconsequential. In para 13 of its judgment, it has further been observed thus:

"It is well settled that when a workman is on a public road or a public place or on a 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. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him."

9. In view of this Court, the deceased on return from Sonpeth to Parbhani and parked the truck at his employer's place, his duty hours came to an end. Thereafter, he started for his home by walk. On way, he met with the accident and died. This accident has no causal connection with his duty or even nature of employment. Neither the employer had provided him the transport facility to reach his home nor the residence was provided to stay in. Therefore, once the deceased stepped down from the truck for the day, his further activities could not be in the course of his employment. The learned Advocate would, in no way, be benefited by relying on the authorities referred to herein above. The judgment in case of *National Insurance Co. Ltd. vs. Sugia Devi (supra)*, indicates that the

workman who was an employee of another employer, was requisitioned for election duty by the Government. During the period of his deployment on election duty, the workman went for a bath in a nearby pond and drowned. The appellant – Insurance Company therein had insured all workmen deployed by the Government for election duty. There was a clause in the policy that the workmen deployed for election duty will be covered against personal accident during the period of such deployment.

This makes all the difference.

10. The judgment in *Visheshwar Mishra's case* (supra) would suggest that the deceased therein was provided with a scooter as a transport facility to and fro his residence and the workplace. He had also been provided with an official residence. The deceased while returning home on the scooter, had met with the accident and died. In these peculiar facts and circumstances of the case, it was held to be an accident taken place during the course of employment.

11. The facts of *Kusumtai's* case (supra) would indicate that there was no involvement of vehicle, there was therefore no question of insurance cover. The deceased was a Forest Guard, while patrolling in jungle, he died homicidal death. Since he was on duty, it was held

that had he not gone to attend his duty in the forest, the incident would not have occurred. The incident therefore is said to have been arisen out of and in the course of employment.

12. The facts in *Hanumanthraya's* case (supra) would indicate that the deceased was employed as a Cleaner for a lorry. The lorry was used for carrying stones on the relevant day. When the work of loading the stones was underway, the deceased who was working in the said lorry as a Cleaner was standing next to the mound of mud which fell down on him due to heavy rain, resulting in his death.

13. No doubt, that the Employees' Compensation Act is welfare legislation. The provisions thereof have to be interpreted liberally. The facts in *Leela Bai's* case however indicates the driver of public transport bus died due to fall while he was coming down from roof of the bus. He had to remain at bus terminal and with the bus not by choice but by compulsion. There was clear nexus between accident and employment of the victim/deceased. Doctrine of notional extension of employment was therefore invoked.

14. While the facts in *Poonam Devi's* case (supra), would indicate that the deceased driver had driven the truck for about 200

kms route, on a hot summer day stopped by a canal to fetch water and also to have a bath, unfortunately, slipped into canal and died. Taking judicial notice of extreme hot weather and non availability of air conditioning in truck cabin and compulsion for deceased to stay fresh and alert not only to protect truck from damage but also to ensure smooth journey and protect his own life, possible need for a bath or water to cool down engine could be considered as incidental to employment.

15. It is reiterated that by the aforesaid cases relied by learned Advocate for the legal representatives of the deceased are quite distinguishable on facts. Admittedly, the deceased was on his way home after duty hours. He met with the accident. The truck on which he was employed as a driver, was not involved any way in the accident. As such, the accident and the resultant death of the deceased had no nexus with his employment. It, therefore, could not be said that the deceased died of injuries suffered in the course of his employment. In such factual backdrop, the learned Commissioner ought not to have allowed the application for compensation. Interference is therefore warranted with the order impugned herein.

16. In the result, the appeal succeeds. The same is therefore, allowed.

17. The order dated 16.05.2012, passed by the Commissioner for Employees' Compensation, Parbhani, in Application W.C.F.A.No.11/2011, is hereby set aside.

18. The amount in deposit be returned to the appellant - Insurance Company with interest accrued thereon.

[R. G. AVACHAT, J.]

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