

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**FIRST APPEAL NO.57 OF 2020**

**Appellants**

(on R.A.)

1. **M/s Uma Enterprises,**  
Through its Proprietor,  
:  
Smt. Uma w/o Sureshchandra Singhal,  
S-40, MIDC, Hingna Road, Nagpur - 16
2. **M/s Umasan Enterprises,**  
Through its Proprietor,  
Shri Sandeep s/o Sureshchandra Singhal,  
S-41/1, MIDC, Hingna Road, Nagpur - 16

– Versus –

**Respondent**

(on R.A.)

- : **Smt. Keya wd/o Amitava Roy,**  
Aged about 58 Yrs.,  
R/o 29, Jaltarang Housing Society,  
Near Hingna T Point, Hingna Road,  
Nagpur – 440 016.

**AND**

**FIRST APPEAL NO.58 OF 2020**

**Appellants**

(on R.A.)

1. **M/s Uma Enterprises,**  
Through its Proprietor,  
:  
Smt. Uma w/o Sureshchandra Singhal,  
S-40, MIDC, Hingna Road, Nagpur - 16
2. **M/s Umasan Enterprises,**  
Through its Proprietor,  
Shri Sandeep s/o Sureshchandra Singhal,  
S-41/1, MIDC, Hingna Road, Nagpur - 16

– Versus –

**Respondents**

(on R.A.)

- : 1. **Smt. Vijaya wd/o Prakash Tajanekar,**  
Aged about 63 Yrs.

2. **Shri Rahul s/o Prakash Tajnekar,**  
Aged about 34 Yrs., Occ. Service.

Both r/o Chitaroli, Tah. & Distt. Nagpur.

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*Mr. S.D. Shukla, Advocate for the Appellants.*  
*Mr. S.S. Ghate, Advocate for the Respondent in FA No.57/2020*  
*Mr. Rohit Masurkar, Advocate for the Respondents in FA No.58/2020*  
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CORAM : NITIN W. SAMBRE, J.  
RESERVED ON : 30<sup>th</sup> AUGUST, 2022.  
PRONOUNCED ON: 8<sup>th</sup> SEPTEMBER, 2022.

**J U D G M E N T :-**

01] By consent of the parties, both these appeals are taken for final disposal.

02] Both these appeals are under Section 30 of the Employees' Compensation Act, 1923 (hereinafter shall be referred to as the "Act" for the sake of brevity). First Appeal No.58/2022 was not on board, however, since mentioned, same is taken on board.

03] Both the appeals are arising out of the same accident, which has occurred on 09/10/2010 in the premises of the appellants/employer, which has resulted into death of two of the employees viz. Mr. Amitava Roy and Mr.

Prakash Tajnekar. The dependents of these deceased employees accordingly invoked remedy under Section 22 of the Act seeking compensation. Both the claim petitions are allowed vide impugned judgment delivered by the Commissioner under the Act on 22/07.2019, as such these appeals.

04] Since both the appeals are arising out of the same accident, the nature of allegations in the appeals are identical, the considerations in the appeals were also similar, as jointly so claimed by the rival parties, are tagged and heard together finally.

05] The appellants herein claimed that they are in the business of conveyor systems, idlers/rollers, fabrication and machining jobs as per drawing in all metals, nylon, teflon and wood. For carrying out their activities, the appellants are using turner machine, lathe machine, shaper machine, welding machine etc.

06] Accordingly, deceased Mr. Amitava Roy alleged to have been employed as Supervisor, whereas Mr. Prakash Tajnekar as Semi Skilled Worker. Both these employees lost their lives in the alleged accident occurred on the work site of the appellants on 09/10/2010. It is claimed that on the said date, the aforesaid employees while discharging their duties, suffered a heavy shock and lost their lives. In this background, the remedy under Section 22 of the

Act was invoked. The aforesaid claim was resisted by the appellants vide their reply claiming that the deceased were under the influence of liquor, which was not the part of their duties. It is further claimed that the accident has occurred because of their own negligence, as they were under the influence of liquor. In the aforesaid background, it is claimed that the Tribunal committed an error in awarding compensation.

07] Mr. Shukla, learned Counsel appearing for the appellants would invite my attention to the reply to the claim petitions. He would urge that the police report was made of the incident. During investigation appointment of Electrical Inspector to carry out inspection was made. During the inspection, it was noticed that there was no electric short circuit. It is claimed by Mr. Shukla that since the deceased were under the influence of liquor, they did not follow the standard safety protocol. As such they sustained the injuries, which has resulted into death. According to Mr. Shukla, even if the nature of legislation is social beneficial, it is for the claimants to discharge their initial burden so as to make them entitled for the relief under the Act, which they had failed too. He would urge that no pleadings are noticed in the application about occurrence of accident. He would further urge that since the injuries suffered by the deceased were not sustained while in discharging their duties, the award of compensation is illegal.

08] His further contentions are, one Narayansingh, was charged with an offence punishable under Section 302 of Indian Penal Code by the police authorities, for murdering the deceased employees. According to him, the death was caused because of the assault by Narayansingh. He would further urge that Narayansingh was in inimical terms with deceased as claimed by the prosecution before the Sessions Court. Narayansingh, accordingly attacked the deceased persons, which has resulted into their death. In this background, it is claimed that it cannot be said that the appellants are liable to pay the compensation for the death of employees, which has not occurred during discharge of their duties. So as to substantiate his claim, he has invited my attention to the judgment dated 31/05/2013 delivered by the Additional Sessions Judge, Nagpur in Sessions Trial No.498/2012.

09] He would further urge that while discharging initial burden, it was expected of the respondents to demonstrate about occurrence of the accident in the premises of the appellants. Mr. Shukla would rely on the judgment delivered in the case of Malikarjuna G. Hiremath vs. Branch Manager, Oriental Insurance Co. Ltd. & Anr. - 2009 AIR (SC) 2019, so as to substantiate his claim that the occurrence of accident, which has led to the death of the deceased employees, must be proved. According to him, just because the death of employees had taken place in the course of the employment, will not amount

to an accident.

10] While countering the aforesaid submissions, Mr. Ghate, learned Counsel appearing for the respondent in First Appeal No.57/2020 would support the order of award of compensation. According to Mr. Ghate, the employee-employer relation between the deceased and the appellant is not in dispute. He would further urge that it was duly proved from the record that the accident had occurred in the premises of the appellants, where the deceased employees were working. He would urge that as death of he employees has occurred in the factory premises of Appellant which fact is not in dispute the burden to prove that accident has occurred at different place is on Appellant. He would further urge that accident has to be termed as the one arising out of the employment. He would further urge that once the initial burden referred above was discharged, it was for the employer to establish that the deceased suffered death or accident because of their own intentional negligence or fault. Mr. Ghate would draw support from the judgment of this Court in the matter of Salamabegum w/o Shaikh Abdulla and others vs. District Branch Manager, Maharashtra State Co-operative Land Development Bank, Beed and another – 1989 Mh.L.J. 785. Mr. Ghate would also draw support from the proposition of law that there is a connection between the accident and the employment, as the deceased were discharging their duties

in the work station, where the appellants have failed to discharge their obligations of providing security, which has led to the accident. As such Mr. Ghate would claim that the appeal is liable to be dismissed.

11] I have appreciated the aforesaid submissions. From the written statement of the appellants, it is admitted that deceased were working as semi-skilled labour, supervisor. It is also a fact that the untoward incident occurred on 09/10/2010. Merely because empty liquor bottles were found on the spot or 100 cc of grayish colour fluid having of odour of alcohol was noticed during postmortem by itself will not discharge the appellants of their liabilities under the Act of payment of compensation, particularly when the appellants have failed to discharge their burden of establishing cause of occurrence of accident, was because of deceased were under the influence of liquor. From the pleadings and evidence it is an admitted position, about existence of employee-employer relationship of the deceased with the appellants, the occurrence of the accident/event of 09/10/2010 and loss of lives of the employees.

12] It is also established that the offence being Crime No.172/2010, punishable under Section 302 of the Indian Penal Code, was registered. As such the claim put forth by Mr. Shukla that the respondents have failed to discharge initial burden is liable to be rejected, even though he has by drawn support from the judgment of the Apex Court in the case of Malikarjuna. Rather the appellants

themselves have admitted about the occurrence of the incident in their written statement and the relationship of employee and employer.

13] In such an eventuality, claim put forth by Mr. Shukla, learned Counsel appearing for the appellants that there is failure to discharge initial burden about occurrence of the accident, absence of pleadings of accident and proving the case of causing injury in such accident in discharge of the duty, cannot be accepted. Rather, from the available material on record, it is proved that the deceased employees died in an accident occurred on the working place of the appellants during the course of employment.

14] Mr. Ghate counsel for Respondent is justified in drawing my attention to the judgment of this Court in the matter of *Salamabegum* (cited supra). Even if, it is presumed that the deceased have died of violent attack made by Narayansingh, Court is required to be sensitive to the fact about occurrence of such event on the workplace of the appellants. It was for the appellants to provide proper security to its workers. Merely because some empty liquor bottles were found at the spot that by itself will not prevail for drawing presumption that the deceased were under the influence of liquor at the work place. Apart from the above, even the appellants are unable to demonstrate that the accident had occurred because of the deceased were under the influence of liquor. As such, it has to be held that there was a connection between the accident and the

employment of the deceased. As such, it was *prima facie* established by the respondents that the accident was arising out of the employment. Paragraphs 9 and 10 of the judgment in the matter of Salamabegum are worth referring to :

*"9. A few cases on this point need be perused. In AIR 1966 Madhya Pradesh 297, Public Works Department through Chief Engineer, P.W.D. Bhopal v. Smt. Kausa, a workman/gang-jamadar from P.W.D. had started from his place of work for collecting salaries of labourers from his office and was while on his way murdered by some unknown persons. The question arose as to whether the death of Gokul, the workman can be said to be the result of accident 'arising out of and in the course of his employment'. Relying on AIR 1959 MP 281, it was observed that the word 'accident' in Section 3(1) of the Workmen's Compensation Act, has been used in the popular and ordinary sense; and all that it means is 'mishap' or 'untoward event not expected or designed'. It was further observed that if the injury or death from the point of view of the workman, who dies or suffers the injury, is unexpected or without design, on his part, then the death or injury would be by accident although it was brought about by other causes. The death of Gokul is the aforesaid case was certainly neither expected nor designed by him. It would, therefore, amount to an 'accident' within the meaning of Section 3(1) of the Workmen's Compensation Act. The facts in the instant case are also similar as in the above mentioned case. In this case also a workman died while he was on duty at the hands of some other persons. The cause of assault and death is not known and it does not show that the workman Sk. Abdulla had expected or designed or invited the assault on him. The death of Sk. Abdulla was, therefore, certainly due to accident during the course of his employment. Whether the death arose out of his employment, is a question, which can be answered by a reference to the decision of Division Bench of this Court, reported in AIR 1952 Bombay 382. This Court has held that, the words, 'arising out of his employment' are wide enough so as to cover a case, where there may not necessarily be a direct connection between the injury caused as a result of an accident and the employment of the workman. There was a bomb explosion, as a result of which workman received injuries and died. It was not known as to who had placed the bomb. The workman was certainly not responsible. The bomb was exploded in the workshop. It was held that there was a circumstance attending to his employment because at the time and place at which he was employed, an explosion occurred. As such, it was an*

*accident arising out of and during the course of his employment. Speaking for the Division Bench of Dixit and Bavdekar, JJ., Dixit, J. observed that:*

*“The expression "arising out of his employment" suggests both the time as well as the place of employment. The expression "out of" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of the accident. That is the literal and strict construction of the section. But, the words "arising out of his employment" are wide enough so as to cover a case, where there may not necessarily be a direct connection between the injury caused as a result of an accident and the employment of the workman. And there may be circumstances at the end of the employment, which would go to show that the workman received personal injury as a result of the accident arising out of his employment.” (Emphasis supplied)*

*The implications of the expression "out of and in the course of their employment" have also been extended to a case by Madras High Court in a case reported in AIR 1943 Madras 353, K Ramabrahmam v. Traffic Manager, Vizagapatnam Port. A workman was employed by the contractor of the Port Authorities for loading manganese ore into ships at a dump within the harbour premises. While returning, he had to cross the railway lines. There was a notice prohibiting the persons from crossing the railway line, but it was usual practice for the workmen to cross the railway line in spite of the prohibition. The two workmen in that case while crossing the railway line were crushed by an engine. It was held that despite the prohibition and despite the fact that there was no necessary connection between the workmen and the crossing of the railway line, the accident had arisen out of and in the course of employment. The risk was incidental to that employment as distinguished from a risk to which all members of the public were alike exposed. Similarly, in the instant case, the risk incurred by Sk. Abdulla for going to the bazar after resting his jeep, was incidental to his employment of taking the jeep to Renapur as against the risk which all members of the public may have been exposed on account of the unruly mob in the market.*

*10. In yet another case, in which a workman's hand was fractured on account of an assault initiated by one of the employees of a Mill and assaulted by three outsiders, was granted compensation by this Court in a case reported in AIR 1960 Bom. 387, Mohanlal Prabhuram vs.*

*Fine Knitting Mills Co. Ltd., Ahmedabad. It was observed in this case that:*

*“If the evidence of Deoshankar is accepted, then, it is clear that the petitioner did not contribute by his own action or conduct to the peril. It is equally clear that the petitioner was a helpless victim of the assault which was initiated by one of the employees of the Mill, who was assisted by three outsiders. It is also clear that the attack took place upon the petitioner while he was engaged in carrying out his day to day duties. That being the case, it must be held that the injuries suffered by the petitioner were incidental to his employment. There was also a causal connection between the accident and the employment, and, therefore, accident must be taken to have arisen out of employment of the petitioner.”*

*The facts of the instant case are also the same and it shows that the accident having been taken place without the fault of workman and while he was on duty at Renapur must be taken to be during the course of his employment and also arising out of the employment on account of risk which was incidental to his duty of taking the Bank officials to Renapur. The observations made by Justice Chagla, C.J. in this connection, relied upon in Bhagubai vs. General Manager, Central Railway, V.T., Bombay are pertinent, which are as follows:*

*“If the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a casual connection is established between the accident and the employment. The fact that the employee shares that peril with other members of the public is an irrelevant consideration. The peril which he faces must not be something personal to him; the peril must be incidental to his employment. He must not by his own act add to the peril or extend the peril. Once the peril is established, it is for the employer then to establish either that the peril was brought about by the employee himself, that he added or extended the peril, or that the peril was not a general peril but a peril personal to the employee.”*

*In the instant case, the respondents have not adduced any evidence to show that the peril of death in which Sk. Abdulla succumbed was brought about either by Sk. Abdulla or that he added or extended the peril. But*

*for Sk. Abdulla going to Renapur by driving a jeep, on ,a weekly bazar day, as a part of his duty, he would not have been exposed to the peril of facing a deadly assault. The respondents having despite notice and having been given an opportunity, have not shown that the peril was brought about by Sk. Abdulla himself or that he added or extended the peril. In view of this factual situation, it must be said that the death caused to Sk. Abdulla was a result of an accident out of and during the course of his employment, and as such, the respondents were liable to pay the compensation to the appellants i.e. wife and her minor children of Sk. Abdulla, in accordance with the provisions of the Workmen's Compensation Act, 1923.”*

15] As such the contentions raised by Mr. Shukla, in my opinion, are liable to be rejected.

16] In this view of the matter, in my opinion, no question of law is involved, which warrants interference in the appellate jurisdiction. Both the appeals as such fail and stand dismissed with no order as to costs.

(NITIN W. SAMBRE, J.)

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