

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

FIRST APPEAL NO. 1433 OF 2019

HDFC ERGO General Insurance Co. Ltd.,
Through its Branch Manager/Authorized Signatory,
Branch Office, Jalgaon.

HDFC ERGO General Insurance Co. Ltd.,
Through its Branch Manager,
Nirala Bazar, 2nd Floor, Aurangabad,
Dist. Aurangabad.

.. Appellant

Versus

1. Pandurang Hiranman Patil
Age : 63 years, Occu. : Nil,
R/o. Londhe, Tal. Chalisgaon,
Dist. Jalgaon.

2. Pundlik Baliram Dhekale,
Age : 40 years, Occu. : Business,
R/o. Saundane, Tal. & Dist. Aurangabad.
Presently R/o. : Manoj Garage,
Opp. Hotel Anand, Chalisgaon Road,
Aurangabad, Dist. Aurangabad.

.. Respondents

Mr. Mohit R. Deshmukh, Advocate for the Appellant.
Mr. A. D. Pawar, Advocate for Respondent No. 1.
Mr. Abhijit Choudhari, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 28th August, 2023.

Date on which order pronounced : 20th October, 2023.

ORDER :-

. This appeal arises out of the judgment and order passed by the

learned Commissioner for Workmen's Compensation Act and Judge, Labour Court, Dhule in WCA No. 6/2018 dated 02.02.2019 partly allowing claim of the respondent. The appellant and respondent No. 2 are jointly and severally directed to deposit an amount of Rs. 3,94,120/- towards compensation within one (01) month from the date of order along with simple interest at the rate of 12% per annum from the date of incident till realization. In addition they are also directed to pay an amount of Rs. 5,000/- towards cost of the application.

2. The Insurance Company – original opponent No. 2 has challenged this judgment and award questioning the liability to pay the compensation. The substantial questions of law raised are as to whether the murder at the place of employment can be termed as accident under the Employees Compensation Act and whether the Insurance Company can be held to be liable for payment of compensation. Second question that arises is as to whether in the facts of this case the death of deceased can be said to be arising out of and during course of employment. Third question is as to whether the insurer of the vehicle can be made liable to pay compensation towards death of workman when death is not attributable to the use of vehicle. The policy is issued in terms of Section 147 of the Motor Vehicles Act, 1988 (for short "M.V. Act"). These questions are posed by the appellant

in view of the facts stated below :

3. The deceased Ajay was employed by respondent No. 2 – original opponent No. 1 as a cleaner on a Truck bearing registration No. MH-18-AA-6299. On 09.11.2017 he went in the said Truck from Dhule to Rajur, District Jalna as a cleaner with a driver named Ramrao Rangrao Nikam. The Truck reached at the Rajur and it was parked near one company namely Abhay Cotex Company, Rajur and halted there for a night. On next day morning the driver found deceased in dead condition in the cabin of the Truck. He reported the incident to the Police. FIR came to be lodged. Subsequently, the driver himself was suspected of committing murder of the cleaner and the criminal prosecution started. The driver came to be acquitted of the criminal trial bearing Sessions Case No. 26/2018 holding that the prosecution failed to prove the circumstances beyond reasonable doubt.

4. Since the death of deceased occurred in the Truck the respondent No. 1 lodged a claim for compensation under the Workmen's Compensation Act. The owner of the Truck in spite of service remained absent. The matter proceeded ex-parte against the owner. It was defence of the Insurance Company that it is not liable to pay the compensation for the death of deceased. There is no document showing possession of valid license of driver and prayed for rejection of

the claim.

5. The learned Commissioner held that, death occurred during the course of employment, further held it to be as accident in the course of employment. It was held that he was drawing salary of Rs. 8,000/- per month. His age was 28 years at the time of incident. On these three issues the claim was granted.

6. The appellant has assailed the order. It is mainly contended that the policy was issued under Section 147 of the M.V. Act. The said incident has not occurred while using the vehicle and thus the Insurance Company would not be liable to pay the compensation. The second submission is that, the murder of the deceased cannot be said to be an accident as he died due to murder committed by someone while sleeping in the cabin of the Truck. The said murder cannot be said to be an accident when post mortem report shows that death occurred due to asphyxia due to throttling.

7. It is submitted that there is no other evidence except deposition of employer at Exh. U-22. Thus, it is submitted by the appellant that the impugned judgment and order deserves to be quashed and set aside.

8. Learned advocate Mr. Pawar for respondent No. 1 – claimant submits that the murder in such case is an accident arising out of the employment. The claimant was perfectly justified in filing the claim as per Section 167 of the M.V. Act. It is his case that the relationship of the employer and workman is not disputed by any of the parties. The offence is registered against the driver of vehicle. This shows that deceased was murdered by the co-employee and therefore, a case is squarely covered under the Workmen's Compensation Act.

9. In rebuttal, learned advocate Mr. Deshmukh for the appellant submits that, the policy in this case is necessarily a policy under the M.V. Act and not a policy under the Workmen's Compensation Act. The Insurance Company would be liable only when the accident takes place while using the vehicle or in a vehicular accident. When the Truck was stationed at one place when incident takes place it cannot be said to be incident out of use of motor vehicle. There is no causal connection and therefore, company is not liable for insurance. The dominant purpose of driver was to kill the deceased. It is clearly a case of murder.

10. Learned advocate Mr. Deshmukh for the appellant relied upon the following judgments.

(i) **Santokh Singh and another Vs. Acchru Ram and another** reported **in (2019) 5 Mah. L. J. 330.**

(ii) National Insurance Co. Ltd. Vs. Adari Karmakar and others reported in 2019 SCC Online Cal 3476.

(iii) The New India Assurance Company Limited VS. Smt. Noorjahan Begum and others reported in 2011 SCC Online AP 180.

(iv) Malikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Company Limited and another reported in (2009) 13 SCC 405.

11. Learned advocate for respondent relied upon the following judgments.

(i) Mst. Param Pal Singh Through Father Vs. National Insurance Co. & Anr. reported in 2013 AIR (SCW) 283.

(ii) Palwinder Kaur and ors. Vs. Oriental Insurance Co. Limited and Ors. reported in 2015 CJ (SC) 1452.

(iii) United India Insurance Co. and another Vs. Bhimrao Visahvanath Kanse and others reported in 2016 (4) T.A.C. 232 (Bom.).

(iv) The Conservator of Forests and another Vs. Kusumtai Ganpatrao Dhote in First Appeal No. 279/2001 dated 13.06.2013 in the High Court of Bombay, Bench at Nagpur.

(v) United India Insurance Co. Ltd. Vs. Kanshi Ram reported in 2004 (2) T.A.C. 875 (Del.).

12. About the facts of the case there is no dispute. The questions arises in this background are, as to whether the murder at the place of employment can be termed as an accident under the Employees

Compensation Act and whether the employer can be held to be liable for payment of compensation. Second question that arises is as to whether in the facts of this case the death of deceased can be said to be arising out of and during course of employment. Third question is as to whether the insurer of the vehicle can be made liable to pay compensation towards death of workman when death is not attributable to the use of vehicle. To answer the questions in the facts this Court needs to consider the judgments relied upon by the parties.

13. In the case of **Santokh Singh and another** (supra), the question was as to whether the murder of deceased in that case amounted to accident during the course of employment. In the said case, the deceased was serving as cleaner on the Truck. The driver committed murder of deceased in the Truck and thrown the body on the side of the road and then fled away. In view of those facts the learned Commissioner in that case dismissed the claim petition holding that though the relationship is proved, however, it was a case of a murder and case cannot be considered as death during the course of employment.

14. In the case of **National Insurance Co. Ltd.** (supra), similar facts were there where the driver was found dead in the cabin of the Truck. The death was found to be a murder when the Truck was parked at a

petrol pump. There the Insurance Company took a stand that death was not caused due to accident arising out of the use of motor vehicle and thereafter the Insurance Company cannot be fastened with liability. It was held that though the accident is mishap or untoward happening it is not inherent in the normal course of events. In that case, the award passed by the Tribunal was set aside and the claim was dismissed.

15. In the case of **New India Assurance Company Limited** (supra), it was argued that there was no nexus between death and the accident. In that case also the claim of the claimant was dismissed.

16. In the case of **Malikarjuna G. Hiremath** (supra), the driver after reaching to the destination went to the pond for taking bath. While taking bath he slipped and fell down and died by drowning. The Commissioner allowed the petition under the Workmen's Compensation Act. The High Court set aside the award holding that there was no causal connection between the accident causing death and the vehicle. It is held that, the insurer would not be liable to pay the compensation. The High Court held that owner of the vehicle liable to pay compensation and allowed the appeal. The said order was challenged in the Hon'ble Apex Court. The Hon'ble Apex Court set aside the order passed by the High Court and allowed the appeal of the owner. It is

held that in such cases death cannot be turned to be an accident.

17. Coming to the judgment relied upon by the respondent in the case of **Mst. Param Pal Singh Through Father** (supra), a case was that the driver died unexpectedly due to heart failure while driving the vehicle from Delhi to Nimiaghat. It was held that, since the vehicle was heavy vehicle and distance was a long distance, constant driving of a heavy vehicle was taken as material contributory factor if not the sole cause. It is held by the Hon'ble Apex Court that, such untoward mishap can be reasonably described as an accident. In that case, the award passed by the Commissioner was challenged before the High Court. The High Court set aside the award passed by the Commissioner and therefore, the claimant had approached the Hon'ble Apex Court. The Hon'ble Apex Court in view of those facts had held that the claim was maintainable and the insurer was liable to pay the compensation.

18. In the case of **Palwinder Kaur and Ors.** (supra), the award was passed by the Commissioner. The deceased was driving the vehicle. While driving the said vehicle he sustained grievous injuries at the hands of unknown persons and he died due to those injuries. The said murder by unknown persons was considered as an accident arising out of employment and the claim was allowed. In that case, the High Court had quashed and set aside the award passed by the

Commissioner.

19. In the case of **United India Insurance Co. and another** (supra), a case was that the labour of employer on the vehicle was doing the work of loading and unloading of stones. While doing the said work he was attacked by another labour working on the said vehicle with stones. Due to injuries the deceased succumbed to the death. In that case, this Court held that the death was arising out of the employment. The award was passed. The owner had approached this Court and his appeal was dismissed.

20. In the case of **Conservator of Forests** (supra) in First Appeal No. 279/2001, the conservator of forests had challenged the judgment and award passed by the Commissioner. In that case, the deceased was in the employment in the Forest Department for a period of twenty (20) years and he was posted on duty of preserving forest and was attacked and murdered by unidentified persons. In that case, it is held that death has occurred during the course of employment.

21. Considering all the above cases and the judgments this Court finds that, the present case is squarely covered by the judgments in the cases of **Santokh Singh and another** (supra), **National Insurance Co. Ltd.** (supra) and **Malikarjuna G. Hiremath** (supra). The necessary

conclusion that can be drawn from all the above judgments is that, there has to be causal connection between the fact of death and employment. In the present case, it is clear that, the death is not caused in the course of use of vehicle. Considering that the policy was necessarily under the M.V. Act it was necessary for the claimants to show that the death is caused due to vehicular use. In other case it was necessary for them to prove that the death is caused out of and during the course of employment.

22. Looking to the facts, it is clear that, the death in this case cannot be said to be accidental death out of use of vehicle. When the murder took place the vehicle was stationed at one place and it was not used. The claimants have utterly failed to prove that. The facts clearly shows that the death cannot be said to be out of accident and cannot be said to be accident. In view of the judgments in the cases of Santokh Singh and another (supra), National Insurance Co. Ltd. (supra) and Malikarjuna G. Hiremath (supra) this Court finds that, the appellant has clearly made out a case that the company is not liable to pay the compensation to the claimants. The questions are answered accordingly. In this view of the matter this Court finds that, the appeal deserves to be allowed. Hence, the following order is passed.

23. The appeal is allowed.

24. The impugned judgment and award dated 02.02.2019 passed by the learned Commissioner for Workmen's Compensation Act and Judge, Labour Court, Dhule in WCA No. 6/2018 is quashed and set aside to the extent of appellant. No order as to costs.

(KISHORE C. SANT, J.)

P.S.B.