

1

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

FIRST APPEAL NO.701 OF 2019

Divisional Railway Manager,
Central Railway,
Kings Way, Sitabuldi, Nagpur. **Appellant.**

:: V E R S U S ::

1. Smt.Sheela Arjun Adbadiya,
aged 45 years, occupation housewife,
r/o Borkar Nagar, bara signal,
Nagpur.

2. M/s.Ultra Clean & Care
Services, Rage Picking
Contractor, 106 (Girnar)
Apartments, Napier Town, opposite
Tayyab Ali Petrol Pump Jabalpur
(M.P.).

3. New India Insurance
Company, Wardha Road, Nagpur. **Respondents.**

=====

Mrs.Neerja Chaubey, Counsel for the Appellant/railway
administration.

Shri P.V.Ghare, Counsel for Respondent No.2.

Shri A.W.Paunikar, Counsel for Respondent No.3.

=====

FIRST APPEAL NO.1607 OF 2019

M/s.Ultra Clean & Care Services, Rage
Packing Contractor, 106 Girnal
Apartments, Napier Town, opposite Taib Ali
Petrol Pump, Jabalpur (M.P.). **Appellant.**

:: V E R S U S ::

2

1. Smt.Sheela wd/o Arjun Adbadiya, aged about 45 years, occupation housewife, r/o Borkar Nagar, bara signal, Nagpur.

2. Divisional Manager Railway, Central Railway, Kingsway, Sitabuldi, Nagpur.

3. New India Insurance Company, Wardha Road, Nagpur.

..... **Respondents.**

=====

Shri P.V.Ghare, Counsel for the Appellant.

Mrs.Neerja Chaubey, Counsel for Respondent No.2/railway administration.

Shri A.W.Paunikar, Counsel for Respondent No.3.

=====

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 16/03/2023

PRONOUNCED ON : 05/06/2023

COMMON JUDGMENT

1. The judgment and order dated 20.2.2017 passed by learned Commissioner under the Employees' Compensation Act in ECA Case No.F-09/2008 is under challenge in both these appeals.

First Appeal No.701/2019 is preferred by the original non-applicant No.2 Divisional Railway Manager, Central Railway, Nagpur.

Whereas, First Appeal No.1607/2019 is preferred by the original non-applicant No.1 M/s.Ultra Clean & Care Services.

3

2. The parties hereinafter are referred as per their original nomenclature.

3. Brief facts necessary for disposal of appeals are as under:

Jaikey Arjun Adbadia (the deceased) was appointed by the non-applicant No.1 M/s.Ultra Clean & Care Services as a "safai kamgar" to look after cleaning work of the railway tracks between Sitabuldi Railway Station to Ajni Railway Station. The non-applicant No.1 M/s.Ultra Clean & Care Services was engaged by the non-applicant No.2 the Central Railway for cleaning and maintenance of railway tracks. The deceased was appointed on daily wages of Rs.217.82 per day. The deceased met with an accident on 9.7.2007 as a train run over his body resulting into his instantaneous death. The accident took place while the deceased was performing his duties at Ajni Railway Station. Regarding the said accident, the police registered the accident as accidental death of an unknown person. As identification of the deceased was not

4

revealed after postmortem, last rites were performed on the deceased by the police.

4. At the time of the accident, the deceased was 23 years old and was getting wages of Rs.217.82 per day. The accident took place during and in the course of employment and, therefore, the applicant Nos.1 and 2, who are parents of the deceased, claimed compensation under the provisions of the Employees' Compensation Act, 1923.

5. The non-applicant No.1 M/s.Ultra Clean & Care Services resisted the claim on the ground that it is a contractor and the non-applicant No.2 the Central Railway is principal employer. The deceased was engaged as "safai kamgar" for cleaning the surface of railway tracks of main railway station and was given the length of area for cleaning 500 meters from the end of platform on both sides. The alleged accident took place far away from the working place of the deceased. Thus, there is no nexus between the working place and the alleged spot of the incident.

6. The non-applicant No.2 the Central Railway also resisted the claim on the ground that in view of agreement

5

between the railway and the non-applicant No.1 M/s.Ultra Clean & Care Services, the liability of paying compensation is of non-applicant No.1 M/s.Ultra Clean & Care Services in case of accident or injury to labourers or passengers. In view of the said specific clause, the non-applicant No.2 the Central Railway is not responsible to pay the compensation to the claimants.

7. The non-applicant No.3 Insurance Company resisted the claim on the ground of age of the deceased and his income.

8. To substantiate the contentions, the claimant, the mother of the deceased, has adduced evidence and also filed on record the copy of death certificate Exhibit-33, copy of school leaving certificate Exhibit-34, copy of notice to the non-applicant No.1 M/s.Ultra Clean & Care Services Exhibit-38, copy of notice to the the non-applicant No.2 the Central Railway Exhibit-41.

The non-applicant No.1 M/s.Ultra Clean & Care Services has also adduced evidence vide Exhibit-73. The non-applicant No.2 the Central Railway placed reliance on copy of

6

agreement Exhibit-61, copy of circular railway board Exhibits-83 to 85, letter issued by the railway Exhibits-81 and 82.

Learned Member of the tribunal, after appreciation of the evidence, was pleased to allow the application partly and the non-applicant No.1 M/s.Ultra Clean & Care Services; the non-applicant No.2 the Central Railway, and the non-applicant No.3 Insurance Company are jointly and severally held liable to pay the compensation of Rs.4,39,900/- along with interest at the rate of 12% per annum from the date of accident i.e. 9.7.2007, till realization of the amount.

9. Being aggrieved and dissatisfied with the judgment and award, both appeals are preferred on the ground that there was no nexus between the working place and the spot of the incident. The claimant failed to prove the nexus between the two places and, therefore, the claimant is not entitled to receive the compensation. However, learned Member of the tribunal had not considered the same and awarded the compensation which is against the principles of legal provisions. The alleged accident has not taken place in the course and during the course of the employment and,

7

therefore, the claimant is not entitled to receive any compensation. In view of that, the judgment and order passed by learned Member of the tribunal deserves to be set aside.

10. Heard learned counsel Shri P.V.Ghare for the non-applicant No.1 M/s.Ultra Clean & Care Services, learned counsel Mrs.Neerja Chaubey for the non-applicant No.2 the Central Railway, and learned counsel Shri A.W.Paunikar for the non-applicant No.3 the Insurance Company.

11. Learned counsel Shri P.V.Ghare submitted that the alleged accident has not occurred in the course and during the course of the employment. Learned Member of the tribunal has not dealt with the aspect that the alleged accident has not taken place in the course and during the course of the employment. Here, Section 2(d) clause (iii) of the Employees' Compensation Act, 1923 applies. Proof of dependency is not established. Learned Member of the tribunal has not dealt with the said issue. No proof of dependency is furnished. As there was no nexus between the place of the employment and where the alleged accident took place, non-applicant No.1

8

M/s.Ultra Clean & Care Services is not liable to pay any compensation to the claimant. In support of his contentions, he placed reliance on the decision of the Honourable Apex Court in the case of **Regional Director, ESI Corporation and another vs. Francis De Costa and another, reported in (1996)6 SCC.**

12. Whereas, learned counsel Mrs.Neerja Chaubey submitted that in view of the agreement Exhibit-61, the entire responsibility is of non-applicant No.1 M/s.Ultra Clean & Care Services and the non-applicant No.2 the Central Railway is not responsible for the said compensation. The judgment and order passed by learned Member of the tribunal is erroneous and liable to be set aside.

13. Learned counsel Shri A.W.Paunikar submitted that as there was no nexus between the work place and the the alleged spot of the accident, the non-applicant No.3 the Insurance Company is not liable to pay compensation.

14. Having heard both the sides and perused the evidence on record, points arise for my determination, are:

9

(1) Whether the accident of the deceased took place during the course and in the course of the employment?

(2) Whether learned Member of the tribunal is justified in awarding the compensation to the claimant?

15. Undisputedly, the non-applicant No.1 M/s.Ultra Clean & Care Services was engaged by the non-applicant No.2 the Central Railway for cleaning work of railway tracks between the Sitabuldi Main Railway Station to Ajni Railway Station. Thus, the non-applicant No.1 is a contractor and the non-applicant No.2 is the principal employer. There is not dispute that the agreement between the applicant Nos.1 and 2 was executed which is at Exhibit-61. There is also no dispute that the deceased was appointed by the non-applicant No.1 as a "safai kamagar" to look after the cleaning work of the railway tracks. As per the agreement dated 23.9.2007, the non-applicant NO.1 was engaged to do the work of rag picking and disposal of garbage. The contractor has to appoint semi skilled and unskilled labourers for rag packing work. As per the said agreement, payment shall be made on monthly basis. In view of clause 14, the contractor shall all

10

time indemnify the railway administration against all claims which may be made under the labour laws and the said Act. It is specifically agreed that compensation due to loss of life or loss of material shall not be payable by the railway administration and the contractor shall have to pay all the claims due as a compensation in case of accident, injury to the labourers or the passengers for whatsoever reasons. Thus, by this agreement the non-applicant No.1 M/s.Ultra Clean & Care Services accepted the liability to pay the compensation in case of accident or death or injury to labourers in case of untoward incident.

16. The entire issue revolves around whether the death of the deceased is caused in the course and during the course of the employment. Section 3(1) of the said Act states that the injury must be caused to the workman by an accident arising out of and in the course of employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. Admittedly, the employment does not necessarily cease when the 'down tool' signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension

11

as both the entry and exit by time and space. The scope of such extension "must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves this tools but also when he used the means of access and egress to and from the place of employment. Thus, during the course and in the course of employment includes the time when employees leaves his house to attend the work and leaves his work to reach at house.

17. The Honourable Apex Court in the case of **Saurashtra Salt Manufacturing Company vs. Bai Valu Raja and others, reported in AIR 1958 SC 881** laid down following proposition as regards in the course of employment, they are:

"(1) 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;

(2) As a rule the journey to and from the place of employment is not included within the expression in the course of employment;

(3) The aforesaid two propositions are subject to the theory of notional extension of the employer's premises so also including the age which the workman passes and re-passes in going to and in leaving the actual place of work;

12

(4) 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, and

(5) 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."

18. In the light of the above well settled legal position, the evidence in the present case is required to be considered.

19. The claimant has adduced her evidence. Her evidence shows that the deceased was engaged by the non-applicant No.1 M/s.Ultra Clean & Care Services for cleaning and maintenance of the railway tracks. The deceased met with an accident on 9.7.2007 while performing duties near Ajni Railway Station. The death of the deceased is caused as the train ran over his body. Thus, the accident of the deceased took place during the course and in the course of the employment. The claimant has issued the legal notice on 15.1.2008 calling the non-applicants to pay the compensation. The evidence of PW2 is also on the same point. The non-

13

applicant No.1 M/s.Ultra Clean & Care Services has adduced the evidence and deposed that the place of the accident is far away from the working place that is from the Sitabuldi Railway Station to Ajni Railway Station which is approximately three kilometers away from the Sitabuldi Railway Station. The place of the accident was not the working place of the deceased. The accident has not taken place during the course of employment and, therefore, the The non-applicant No.1 M/s.Ultra Clean & Care Services is not responsible to pay the compensation for the said accident.

20. Besides the oral evidence, the merg report, the spot panchanama, and the inquest panchanama show that the alleged spot of the incident was Ajni Railway station Ajni, kilometer No.832/33. Admittedly, the non-applicant No.1 M/s.Ultra Clean & Care Services is a contractor and the agreement was executed between the non-applicant No.1 and the non-applicant No.2 the Central Railway for carrying the work of rag picking and disposal of garbage. As per the said agreement, the contractor undertook the work of rag picking activities at Nagpur Railway station premises as per the list within the sub systems of the railway stations.

14

21. Admittedly the list the railway station was not produced along with the agreement. Exhibit-83, is the guidelines for sanitation and cleanliness of the railway station. As per the said guidelines, the zonal railways should go for mechanized cleaning at all A and B category station. As per the sanitation policy dated 5.11.2002, adequate powers are delegated to the DRMs to purchase all tools and plants required for various sanitations related activities, power for giving paste control contracts, power for granting specialized contracts, power for contracting one time cleaning of any area. Exhibit-85 is also a communication regarding the guidelines which shows that the letter was issued by the Director, Traffic Commissioner of Railway Board communicating that rag picking should be done through a period of contract that is weekly ten days etc. depending on the local conditions and not on daily basis. The office note dated 25.1.2007 is in respect of contract for rag picking which shows that the railway has issued the guidelines for sanitation cleanliness of railway stations vide which rag picking contract should be available at all A1, B and C category stations for areas around the stations. They further

15

instructed that these contracts always current and renewal takes place timely. As instructed by the ADRM, it is proposed to invite sealed quotation from interested parties/reputed firms and societies engaged in similar type or work of rag picking of Nagpur and Ballarshah stations. The scope of work given in the schedule for Nagpur Railway station is rag picking from tracks starting from either side of the platforms and ends upto 500 meters, approaches a station line including good shed and 100 meters on either side of the bins at CHI Office.

22. Exhibit-81 is the communication which shows that the area of rag picking is extended upto 500 meters at Nagpur Railway station and the said work was allotted to the non-applicant No.1 M/s.Ultra Clean & Care Services.

23. The Honourable Apex Court has explained the term "the course of employment, and observed that the course of employment begins the workman enters the employment and ceases when he leaves employment after his duties. The Honourable Apex Court referred to Lord Porter in the case of **Alderman vs. Great Western Railway Company**, reported in **1937 AC 454** wherein observed that, "it is in the

16

course of employment, and, if the phrase B used, it is part of his duty, both to go to and proceed from the work upon, which he is engaged, and, so long as he is in a place in which persons other than those so engaged would have no right to be, and indeed, in which he himself would have no right to be but for the work on which he is employed, he would, I think, normally still be in the course of his employment.

24. In the present case, there is nothing to induce to hold that the deceased was not allowed to work at Ajni Railway Station. The agreement shows that the non-applicant No.1 M/s.Ultra Clean & Care Services was engaged by the non-applicant No.2 the Central Railway for the cleaning work to all sub stations of Nagpur Railway Station. Admittedly, the dead body of the deceased was found at the Ajni Railway Station. The area of operation would thus be extensive even if the deceased has left the place that is Sitabuldi Railway Station. It cannot be said that such employee has not met with an accident during the course of employment. It is a matter of record that the deceased was engaged for cleaning the work. The agreement shows that the contractor shall do the work of rag picking and disposal of garbage as per

17

description given in the list. The said list was not produced. The communication dated 25.1.2007, which is a office note, is not proved. Thus, nothing is on record to show that the duty was not allotted to the deceased to work at the Ajni Railway Station. Exhibit-81 is only the quotation.

25. The facts and circumstances in the present case show that the alleged accident took place when the deceased was working at the Ajni Railway Station. When the dead body was found, the deceased was wearing the uniform provided by the non-applicant No.1 M/s.Ultra Clean & Care Services. There is no evidence on record to show that written direction was issued to the employees to collect rags within 500 meters. Admittedly, the alleged incident occurred when the deceased had attended the work. On examination of the facts and circumstances, it reveals that the accident arose within and in the course of the employment of the workman by keeping in view the theory of notional extension. The claimant has proved that on the day of the incident, the deceased had joined the work at his work place. While working, he met with an accident and in the said accident, the death of the deceased is caused. The deceased reached at the place of

18

work or a point or an area which comes within the theory of notional extension and, therefore, the non-applicant No.1 M/s.Ultra Clean & Care Services is liable to pay compensation.

26. Insofar as the contention of the non-applicant No.2 the Central Railway is concerned, admittedly in view of the agreement, the non-applicant No.1 M/s.Ultra Clean & Care Services has accepted the liability to pay compensation under the said Act and, therefore, the railway administration is not liable to pay the compensation in view of the terms and conditions of the said agreement. As already observed, the deceased had attended the work and was working at the point at the Ajni Railway Station which comes within the theory of notional extension and, therefore, the non-applicant No.1 M/s.Ultra Clean & Care Services is liable to pay compensation which is rightly directed by learned Member of the tribunal. However, the non-applicant No.2 the Central Railway is not liable to pay the compensation in view of specific terms and conditions of the agreement.

27. In the light of the above discussion, First Appeal No.701/2019 filed by the Central Railway deserves to be

19

allowed as the railway administration is not liable to pay the compensation and the appeal is allowed. Whereas, First Appeal No.1607/2019 is devoid of merits and liable to be dismissed and the appeal is dismissed. I answer the points accordingly.

With this, the first appeals are disposed of.

(URMILA JOSHI-PHALKE, J.)

1. Learned counsel Shri P.V.Ghare appearing for the appellant - M/s.Ultra Clean & Care Services in First Appeal No.1607/2019 prays that the effect and operation of this judgment be stayed for a period of six weeks from today since M/s.Ultra Clean & Care Services desires to prefer an appeal before the Honourable Supreme Court. During the pendency of the said appeal, the stay was in operation.

Judgment

38 fa701 & 1607.19

20

2. The effect and operation of this judgment is stayed for a period of six weeks from today and the same shall cease to operate automatically thereafter.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

...../-