



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

**FIRST APPEAL NO. 1123 OF 2017
WITH CIVIL APPLICATION NO. 12064 OF 2017 IN FA/1123/2017
WITH CIVIL APPLICATION NO. 5754 OF 2024 IN FA/1123/2017**

. National Insurance Company Ltd.
Through its Authorized Official,
Hazari Chamber, Station Road,
Aurangabad.Appellant

Versus

1. Roshanbee w/o Mainoddin Mulani
Age : 58 years, Occu.: Household,
R/o.Sangvi (Kati), Tq.Tuljapur,
Dist.Osmanabad.
2. Subhash Deshmukh & Company
Pro. Subhash Deshmukh
Age : Major, Occu. : Contractor,
R/o. Dnyaneshwar Mandir,
Swapnaraj Building, Osmanabad.
(Owner of Tanker No.MH-25-B-9242).Respondents
(Res.no.1 orig. applicant & Res.no.2 is Orig.Res.no.1)

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Advocate for Appellant : Mr. Aniruddha S. Usmanpurkar
Advocate for Respondent no.1 : Mr.T.C. Shinde h/f. Mr.C.K.Shinde
Advocate for Respondent no.2 : Mr.VP.Golewar h/f. Mr.A.R.Joshi

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**WITH FIRST APPEAL NO. 4003 OF 2016
WITH CIVIL APPLICATION NO. 14578 OF 2016 IN FA/4003/2016**

. Subhash Deshmukh & Company
Prop. Shri. Subhash Deshmukh
Age : Major, Occu. : Contractor,
R/o. Dnyaneshwar Mandir,
'Swapnaraj Building', Osmanabad.
.....Appellant
(Ori. Res. No.1)

Versus

- 1) Roshanbee w/o. Mainoddin Mulani
Age : 61 years, Occu.: Household,

R/o. : Sangvi (Kati), Tq.Tuljapur,
Dist.Osmanabad.

- 2) Divisional Manager,
National Insurance Company,
Divisional Office, Shubrai Towers,
Datta Chowk, Solapur.

.....Respondents
(R.No.1 is Ori.Claimant)

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Advocate for Appellant : Mr.V.P. Golewar h/f. Mr.A.R.Joshi
Advocate for Respondent no.1 : Mr.T.C. Shinde h/f. Mr.C.K.Shinde
Advocate for Respondent no.2 : Mr.Aniruddha S. Usmanpurkar

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19 SEPTEMBER, 2025
PRONOUNCED ON : 09 OCTOBER, 2025

JUDGMENT :-

1. Appellant in First Appeal No.1123 of 2017 i.e. Insurance Company takes exception to judgment and order dated 18-07-2016, passed by learned Commissioner for Employee's Compensation and C.J.S.D., Osmanabad in W.C.A. No.36 of 2013, by which provisions under Section 10 of the Employee's Compensation Act, 1923, were invoked by the legal heir of deceased Allanoor, on account of death of Allanoor in the course of alleged employment as a Cleaner.

Appellant in First Appeal No.4003 of 2016 i.e. owner of the Tanker, challenges the aforesaid judgment and order dated 18-07-2016 to the extent of imposing penalty and interest on him.

FOUNDATIONAL FACTS GIVING RISE TO THE PROCEEDINGS

2. Original Petitioner Roshanbee Mainoddin Mulani instituted above proceedings for compensation on the ground that her son Allanoor was engaged as a Cleaner over Tanker bearing no.MH-25 B-9242. The said Tanker was proceeding towards Hyderabad. When it reached Katraj Square in Pune, her son made complaint of giddiness and was taken to the hospital and treated at Bharti Hospital, Pune. On examination, he was declared dead. MLC proceedings no.117 of 2011 were registered under Section 174 of the Code of Criminal Procedure at Katraj Police Chauki, Pune.

3. Further case put forth is that deceased, who was 22 years of age, earned salary of Rs.6,000/- p.m. alongwith Daily Bhatta of Rs.50/-. The father of the deceased had already expired. Therefore, petitioner mother, being solely dependent on sole income of her son, has been deprived of the same as death of her son had occurred during the course of employment and therefore, it is her case that the owner of the Tanker and its insurer are both liable to pay the compensation with interest.

4. Learned counsel for original respondent no.1/owner of the Tanker resisted claim vide his written statement at exhibit 9 by taking

a stand that death of deceased was not related to employment, rather it was due to health issues of deceased. That, there was no nexus between employment and death.

5. Above claim was resisted by original respondent no.2/ Insurance Company. Specific defence of Insurance Company /appellant herein vide its written statement at exh.22 was that, there was no accidental death to attract coverage under Insurance Policy. That, death was due to some illness and not attributable to course of employment. Apart from raising statutory defences, claim was resisted.

After hearing both the sides, and on going through the papers as well as considering the law, learned Commissioner for Employee's Compensation and C.J.S.D. Osmanabad, was pleased to partly allow petition directing respondent nos.1 and 2 to pay the compensation with proportionate costs.

SUBMISSIONS

On behalf of appellant Insurance Company in FA/1123/2017:

6. Main contesting appellant here is Insurance Company. Learned counsel for Insurance Company questioned the impugned judgment by submitting that, here, there was no casual connection between alleged death and employment. He would stress that deceased died

due to his own health issues. That, medical papers of hospital, where deceased was said to be taken, could not record exact cause of death. According to him, findings in post mortem suggest death due to *peritonitis*. The said ailment had no connection with the course of employment.

Learned counsel sought reliance on the Judgments of Hon'ble Apex Court in the cases of *Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Anr.*, AIR 2007 SC 248; *Mallikarjuna G. Hiremath v. Branch Manager, Oriental Insurance Co. Ltd., and Anr.* AIR 2009, SC 2019 and *Rashida Harron Kupurade v. Div. Manager, Oriental Ins. Co. Ltd. and Ors.*, AIR 2010 SC 1006 as well as decision of High Court of Karnataka in the case of *New India Assurance Co. Ltd. v. Shama Vittu Kolekar*, LAWS(KAR)-2021-6-137.

On behalf of Respondent no.1 - claimant :

7. In answer to above, learned counsel for respondent no.1/original claimant would submit that there is no error on the part of learned trial Court in partly allowing the petition. According to him, there is no dispute that deceased was employed as a Cleaner, however, due to continuous duty of undertaking long journey and inter-state travels, there was both stress as well as strain and at times deceased was required to skip meals. That, such nature of work

contributed to ill health. That, there is no dispute that while in journey, death has occurred. Thus, he would submit that there is indeed connection between death and nature of work. He too seeks reliance on the judgment of Hon'ble Apex Court in the case of *Mallikarjuna G. Hiremath* (supra).

On behalf of Respondent no.2 (owner of vehicle) in FA/1123/2017 / appellant in FA/4003/2016 :

8. Learned counsel for respondent no.2/owner of vehicle in FA/1123/2017 and appellant in FA/4003/2016 questioned the impugned judgment on the same ground raised in the trial Court that death of deceased was neither accidental nor there was any link between death and employment so as to compensate. He further submits that liability saddled over Tanker owner is unjustified. In support of his submissions, he relied on decision of the High Court of Patna in the case of *Superintendent of Mines v. Lalo Devi*, LAWS(PAT-1985-3-23 and decision of this Court in First Appeal No.3463 of 2015 dated 13-04-2016.

ANALYSIS

9. Undisputed facts are that, deceased was employed as a Cleaner on a Tanker and was moreover, undertaking a journey in the same.

According to petitioner, while the Tanker was in the vicinity of Pune, deceased suffered giddiness and was taken to hospital and on examination, declared dead. There is no further dispute that medical papers like post mortem report and inquest panchanama do not suggest exact cause of death. Specific case of petitioner is that only due to long journies, at times requiring going without food, leading to stressful and strenuous conditions, directly had adverse impact on the health of deceased.

10. Present appellant in First Appeal No.1123 of 2017 i.e. Insurance Company's main contention is that death was in natural course due to health issues and there was no direct nexus or casual connection between employment and death. Both sides have sought reliance on the case of Hon'ble Apex Court in the case of *Mallikarjun G. Hiremath* (supra).

The claimant has sought reliance on judgment of *National Insurance Company Ltd. v. P.V. Sheeja*, MFA No.59 of 2007(A), Kerla High Court. Relevant extracts of this ruling are also finding place in the very impugned judgment and therefore, there is no need to reproduce the same. However, the principles, which are settled in cases of such nature are that, **firstly**, there must be casual connection between “**injury**” and “**accident**” and the accident must took place “**in**

the course of employment”. **Secondly**, the onus is on the applicant to show that it was work and the resulting strain, which contributed to or aggravated the injury. **Thirdly**, if the evidence brought on record establishes greater possibility, which satisfy a reasonable man that, the work contributed to the causing of personal injury, it would be enough for the workman to succeed, but the same would depend upon facts of each case.

11. As to what amounts to “accident” and “injury” is elaborated in the *Fenton v Thorley & Co. Ltd. (1903) AC, 448*. The observations in the case of *Trim Joint District, School Board of Management v. Kelly (1914) AC 676* (which is also reproduced by learned trial Court in its impugned judgment in para 13) are relevant. The contents in paragraph 16 of the impugned judgment are borrowed and quoted as under :

“16. In a case of this nature, to prove that accident has taken place, facts which would have to be established, *inter alia*, are :

- (1) Stress and strain arising during the course of employment,
- (2) Nature of employment,
- (3) Injury aggravated due to stress and strain.”

12. Keeping above parameters into mind and applying the same to the facts in case in hand, here also deceased was employed as Cleaner over a Tanker, which undisputedly under-took inter-State

journies. There is nothing to indicate that deceased had any health issue prior to complaint of giddiness. He has experienced the same while in the course of journey, which was a part of employment. Therefore, complaint of health was definitely in the course of employment. Though medical experts could not pin point exact cause of death, undisputedly said abdominal pain has occurred while on duty and in the course of employment. It is common knowledge that persons employed in transport and logistics definitely work in stressful conditions due to heavy traffic loads, traffic jams etc. Most of the times, drivers, cleaners do face problems of getting timely food which is necessary for the work. Keeping such bare necessities in mind, there is no reason to hold that there is no casual connection at all between employment and death. It is clear that Accidental Death case is registered and inquest is drawn. Death has taken place not at very old age, rather deceased seems to be in his early twenties. For above reasons, this Court is also of considered opinion that original petitioner/present respondent no.1 indeed entitled for compensation under the Employee's Compensation Act, having made out a case to that extent.

13. In First Appeal No.4003 of 2016, learned counsel for employer questions the findings of joint liability and penalty imposed on him,

however, in the considered opinion of this Court, he cannot escape from liability once he admitted engagement of deceased as Cleaner and once he admitted that deceased died while in the course of his employment. Therefore, there no merits in his appeal.

14. Perused the judgment under challenge. This Court does not find any patent perversity or illegality so as to interfere. Accordingly, I proceed to pass following order :

ORDER

(i) First Appeal No.1123 of 2017, filed by the Insurance Company, is dismissed.

(ii) First Appeal No.4003 of 2016, filed by the owner of Tanker, is also dismissed.

(iii) Civil Application No.14578 of 2016 seeking stay to the impugned judgment and award, does not survive and the same is disposed of.

(iv) Original claimant is permitted to withdraw the amount deposited by original respondents, along with interest accrued thereon.

(v) Civil Application Nos.12064 of 2017 and 5754 of 2024 are disposed of in above terms.

(**ABHAY S. WAGHWASE**)
JUDGE

15. On pronouncement of this Judgment and order, learned Counsel for the appellants urge to stay the effect and operation of this Judgment and order for a period of four weeks as they intend to approach the Hon'ble Apex Court.

16. In view of above submission, there shall be stay to the effect, operation and implementation of this Judgment and order for a period of four weeks from today.

(ABHAY S. WAGHWASE)
JUDGE

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