

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.40 OF 2025

Reshma Santosh More and Anr.

... Appellant.

Versus

Santosh Bachan Singh and Anr.

... Respondents.

Mr. Amol Gatne for the Appellant.

Mr. Rahul Nerlekar for Respondent No.1.

Ms. Kalpana Trivedi for Respondent No.2.

Coram : Sharmila U. Deshmukh, J.

Date : March 13, 2025

P.C.:

1. First Appeal has been preferred challenging the impugned judgment dated 31st August, 2024 passed by the Additional Commissioner for Employees' Compensation, Mumbai rejecting the claim of the Applicants for compensation in respect of death of the deceased, who had met with an accident on 28th December, 2017 while driving a vehicle on 28th December, 2017 and expired.

2. The Claim Application pleaded that the deceased was working with the Respondent No.1 as "Dental Equipment Service Technician" and on 21st December, 2017, met with an accident while on duty and has died in the course of his employment and claim was made for compensation of Rs.9,05,520/-.

3. The claim came to be resisted by the Respondent No.1-

Employer stating that the deceased was sent to Thane for certain work and on 28th December, 2017 at about 1:30, he was returning after attending the client and informed the Respondent No.1 that he would be going home to proceed for his native place. Thereafter, he once again called the Respondent No.1 and informed that he would be coming to the clinic by 4:00 p.m. to pick up certain medicines which were left behind by him. As the deceased did not reach the office, the Respondent No.1 contacted him on his mobile and was informed by the Police Officer that the deceased had met with an accident and declared dead. It was contended that the death had not occurred in course of his employment as on 28th December, 2017, and he was under the influence of alcohol, and invoked the doctrine of added peril.

4. The parties led evidence and the Additional Commissioner by the impugned judgment answered the issues as far as the employer employee relationship in the affirmative. The Additional Commissioner declined to grant any relief by considering the post mortem report which showed the final cause of death as head injury and consumption of alcohol and the forensic analysis report stating that the deceased was under the influence of alcohol at the time of accident. The Additional Commissioner further considered the evidence of the Investigating Officer, who in his cross

examination has stated that as per the forensic analysis report, the deceased had consumed 71 mg alcohol at the time of accident which is in excess of permissible limit. The Additional Commissioner after considering the provisions of Section 3 of the Employees' Compensation Act, 1923 [for short, "**EC Act**"] noted that doctrine of added peril is applicable in the matter of compensation and on the face of record, it appears that the deceased invited unnecessary risk for his life, as he consumed alcohol and drove the vehicle. With these findings the application came to be dismissed.

5. Learned counsel appearing for the Appellants has taken this Court through the judgment and would submit that there was no denial to the employer employee relationship. He would submit that the only ground on which the claim came to be dismissed was that the deceased was found under the influence of alcohol and considering the provisions of Section 3(a)(b) of the EC Act, which does not exclude the employer from payment of compensation where the death has been caused by an accident which is directly attributable to the employee being under influence of liquor. In support, he relies upon the decision of this Court in the case of ***Amita Prakash Madavi and Ors. vs. New India Assurance Company Limited and Anr. [2016 DGLS (Bom.) 31]*** and in the

decision of Delhi High Court in the case of ***Seema and Ors. vs. HDFC Ergo Gen Ins. Co.Ltd. And Ors. [2023 SCC OnLine Del 19]***.

6. He would further submit that the Additional Commissioner has taken into consideration the decision of the learned Single Judge of Delhi High Court in the case of ***Naeem and Ors. vs. Mohd. Salim and Anr. [2017 SCC OnLine Del 8291]***, which had taken a view that if the deceased was under the influence of alcohol, he is not entitled to compensation. He would further submit that in a recent judgment of the Delhi High Court, the view taken by the Bombay High Court was approved and therefore, considering the same the claim ought to be allowed.

7. *Per contra*, learned counsel appearing for the Respondent No.1 would submit that from the evidence on record, it is evident that the deceased had consumed alcohol while returning back from Thane as the forensic analysis shows presence of alcohol. Drawing support from decision of Apex Court in the case of ***Mackinnon Mackenzie and Co. (P) Ltd. vs. Ibrahim Mahmmmed Issak [(1969) 2 SCC 607]***, he submits that by applying the doctrine of added peril, if the employee takes an added risk, then in such case the employer shall not be liable for the injury caused to the employee. He would submit that the similar view has been taken by the other High Courts and compensation has been declined. By pointing out

the written statement, he submits that a specific stand was taken of the applicability of the doctrine of added peril, which has been accepted by the Trial Court in view of the evidence on record. In support, he relies on the following decisions:

- (i) Mackinnon Mackenzie and Co. (P) Ltd. vs. Ibrahim Mahmmmed Issak [(1969) 2 SCC 607];**
- (ii) Sankar Kal vs. Sunil Kumar Saha and Anr. [(2012) 4 Gauhati Law Reports 584]; and**
- (iii) Naeem and Ors. vs. Mohd. Salim and Anr. [2017 SCC OnLine Del 8291].**

8. In rejoinder, it is submitted that there is no evidence to show as to when the alcohol was consumed and for applicability of the doctrine of added peril, the exact time of consumption of alcohol is required to be proved.

9. I have considered the submissions and perused the record.

10. In the present case, the Trial Court has declined to grant any relief by applying the doctrine of added peril. The Trial Court has noted in paragraph No.28 of the decision, as under:

"According to the Doctrine of Added Peril, if the Employee takes an added risk or deliberately subjects himself to an additional peril, which the employer has not authorized, then the employer shall not be liable for the injury caused to the employee. However, the word or "willful" signifies that the misconduct was deliberate and not merely thoughtless act on the spur of the moment. CR.B. Moondra and Co. V. Mst. Bhanwari, AIR 1970 Raj 11).

The burden of proving the added peril is on the employer. In order to escape his liability, the employer has to

show that there was willful disobedience and disregard to the safety rules on the part of the employee. The willful disregard may be done on the part on employee to achieve some sort of convenience or to follow an easier way of completing the task. (Tiku Kahar v. Equitable Coal Co. Ltd. AIR 1930 Cal 58).

If the accident had occurred on account of risk which is incident of employment, the claim for compensation must succeed, unless of course, the workman has exposed himself to an added peril by his own imprudence. (M. Mackenzie. I.M. Issak, A.I.R. 1970 S.C. 1906.)."

11. The Hon'ble Apex Court in the case of **Mackinnon Mackenzie and Co. (P) Ltd. vs. Ibrahim Mahmmmed Issak** (supra) was considering whether the accident, in facts of that case, arose out of and in course of employment, making the employer liable to pay compensation. In the facts of that case, the deceased was missing seaman who was presumed to have fallen down accidentally. The Additional Commissioner in that case negated the contention that the death, if any, was caused by the seaman's voluntary act and the question thus arose before the Hon'ble Apex Court in context of Section 3 of the Workmen's Compensation Act. Although the provisions of Section 3 of the EC Act came to be amended subsequently, perusal of Section 3 of the EC Act in the decision of the Apex Court would indicate that even the unamended provisions provided for the exclusion of employer's liability to be non applicable where the death has caused by reason of the injury. The Hon'ble Apex Court held in paragraph 5 of the decision as under:

"5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it". The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered.".....To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act...." (Emphasis supplied).

12. The Hon'ble Apex Court considered various English decision on the subject which had determined whether the accident arose out of and in course of employment by applying doctrine of added peril.

13. In other words, the principle to be applied in such cases is whether accident is shown to have been the result of risk which is ordinarily inherent in discharge of such duty and is not the result of an added risk by the employee, then the accident can be said to have arisen out of the employment.

14. In light of the enunciation of law by the Hon'ble Apex Court, if the facts of the present case are seen, the post mortem report shows that the death has occurred due to head injury and consumption of alcohol. The hospital papers disclose that as per the forensic analysis report, the deceased was under the influence

of alcohol at the time of accident and the evidence of the Investigating Officer was that the deceased was under the influence of alcohol and had consumed 71 mg alcohol which is an excess of the permissible limit.

15. The deceased had expired in a vehicular accident while driving under the influence of alcohol and had therefore voluntarily exposed himself to the risk of accident which is unconnected with the employment and therefore the accident has not taken place in course of and arising out of employment. The evidence on record is more than sufficient to invoke the doctrine of added peril. Though it is sought to be contended by the learned counsel for the Appellants that there is no evidence to show when the alcohol was consumed the fact that the forensic analysis report showed the presence of the alcohol in the blood which was double then the permissible limit would make it more than evident that the employee had deliberately subjected himself to an additional risk, in which case, the employer is not liable for the injuries caused to the employee.

16. As far as the decision of the Coordinate Bench of this Court in the case of ***Amita Prakash Madavi*** (supra) is concerned, perusal of the decision would indicate that, in that case there was no argument advanced as regards the applicability of doctrine of

added peril and therefore, the Court had considered the provisions of Section 3 (1)(b) of the EC Act and has held that the same would exclude where the death has been caused by reason of the accident though the employee was under the influence of alcohol. In that case, the Co-ordinate Bench was not addressed on the issue whether by reason of applicability of doctrine of added peril, the accident can be said to have arisen out of and in course of employment and neither the judgment of Hon'ble Apex Court was brought to the notice of the Co-ordinate Bench.

17. In light of the above discussion, no substantial question of law arises. Resultantly, the First Appeal fails and stands dismissed.

18. In view of dismissal of Appeal, Civil/Interim Application, if any, does not survive for consideration and the same is dismissed.

[Sharmila U. Deshmukh, J.]