

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 390 OF 2025
ALONGWITH
INTERIM APPLICATION NO. 16198 OF 2024

M/S Arjun Travels

A sole proprietorship concern,
Through Proprietor -
Mr. Harbansingh Arjunsingh Haspal
Adult, Indian Inhabitant,
Having address at 170, LBS Road,
Opp. Bank of Maharashtra,
Kurla West, Mumbai – 400 070.

...Appellant

Vs.

**1. Smt. Jamuna Devi Brijlal
Yadav**

(widow of the deceased)
Adult, Indian inhabitant

2. Miss Rama Brijlal Yadav,
(Daughter of the deceased)
Adult, Indian inhabitant

3. Mr. Rohit Brijlal Yadav,
(son of the deceased)
Adult, Indian inhabitant,
Residing at Bechare Chawl,
Room No. 10, Kajupada pipeline,
Kurla West, Mumbai – 400 070.
and having permanent address at
Harakpur, Raj Bazaar Road,
Harakpur, Jaunpur,
Uttar Pradesh 222 125.

...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 10733 OF 2025
IN
FIRST APPEAL NO. 390 OF 2025**

1. Smt. Jamuna Devi Brijlal

Yadav

Age 51 years, Widow of the deceased

2. Rama Brijlal Yadav,

Age – 23 yrs. Daughter of the deceased

3. Rohit Brijlal Yadav

Age – 20 yrs. Son of the deceased

R/at Bechare Chawl. Room No. 10,

Kajupada, Pipeline, Kurla (W)

Mumbai – 400 070

...Applicant

In the matter between

M/S Arjun Travels Mumbai

Through Proprietor -Mr.

Arjun Singh

Add : 170, L.B.S. Road,

Opposite Bank of Maharashtra,

Kurla (W), Mumbai – 400 070.

...Appellant

Vs.

1. Jamuna Devi Brijlal Yadav

Age 51 yrs. Widow of the deceased

2. Rama Brijlal Yadav,

Age – 23 yrs. Daughter of the deceased

3. Rohit Brijlal Yadav

Age – 20 yrs. Son of the deceased

R/at Bechare Chawl. Room No. 10,
Kajupada, Pipeline, Kurla (W)
Mumbai – 400 070

...Respondents

Mr. J. S. Kini a/w Mr. Aum Kini i/by Miss Sapna Krishnappa	Advocate for the Applicant in IA No. 16198 of 2024 and Appellant in FA No. 390 of 2025
Mr. Vasant N. More	Advocate for the Respondents

CORAM : S. M. MODAK, J.

RESERVED ON : 10th OCTOBER 2025

PRONOUNCED ON : 14th NOVEMBER 2025

JUDGMENT :-

1. While admitting the appeal on 24.02.2025, the following substantial questions of law were framed:-

(i) Whether the death of deceased in the present case arose in the course of employment of deceased with the Appellant?

(ii) Whether the evidence on record show that the deceased was found sleeping in the bus and not driving the bus would lead to an inevitable conclusion that the death had not occurred during the course of

employment?

(iii) Whether the evidence on record produced by the Appellant establishes that the deceased on the said date was not on duty and thus the accident has not occurred in the course of employment?

2. Accordingly, I have heard learned Advocate Shri Kini for the Appellant-Employer and learned Advocate Shri More for the Respondent Nos. 1 to 3/Claimants/legal representatives of the deceased-Brijlal Yadav. He was a driver by profession. In such an appeal as per first proviso to sub-Section (1) to Section 30 of the Employee's Compensation Act, the Appellant is to be heard only when substantial question of law is involved. In nutshell, the appreciation of evidence done on the basis of the facts cannot be looked into. What can be looked into is perversity of the finding, if any. From the three substantial questions of law, the core question is when the deceased-Brijlal died on 16.12.2021 due to coronary artery disease, whether he was in employment with the Appellant? And Whether the injury can be due to accident?

3. Learned Advocate Mr. Keni made two submissions:-

- (i) The deceased was temporary employee. Copy of the muster card produced by claimant themselves show his presence only from 01/12/2021 till 10.12.2021. So admittedly, on 16.12.2021 he has not attended the duty.
- (ii) Secondly, when his supervisor received information at 7.30 a.m. on 16.12.2021 that deceased-Brijlal was found in the bus, he was dead. The supervisor could not understand how Brijlal had entered the bus. Accordingly, supervisor informed the Kurla Police Station and further formalities were performed. According to him, there is lack of evidence to show death was due to injury suffered due to accident.

4. Whereas according to learned Advocate Mr. More, every workman is entitled to receive compensation, whether he is permanent, temporary or casual. Signing the muster is not the pre-requisite for showing his presence. Admittedly, the deceased has not signed the muster on 16.12.2021, but it is a fact, which is duly proved, that the Brijlal was found in the bus owned by the Appellant on the date of the incident.

Relevant provision

5. **Section 3** of the Employee's Compensation Act casts an obligation on the employer to pay for compensation. The following are the pre-requisites.

- (i) If personal injury is caused to an employee,
- (ii) by an accident,
- (iii) It has arisen out of employment and during the course of the employment.

There are two exceptions as per proviso. Both are not applicable in this case because there is death of the employee. They are :-

- (a) If injury is for maximum period of three days, the employee is not liable.
- (b) If the employee is drunk or has willfully disobeyed or willfully not used the safety devices, then the employer is not liable.

However, death is an exception to these contingencies. Still the Claimant has to prove that personal injury is caused due to accident and it was during the course of and arising out of employment. This phrases "*arising out of*" and "*in the course of employment*" have got different meaning.

6. The Hon'ble Supreme Court in case of *Mackinnon Mackenzie and Co. Pvt. Ltd. Vs. Ibrahim Mahommed Issak*¹ has interpreted the phrase “*in the course of employment*” as :-

“in the course of work which the workman is employed to do and which is incidental to it”.

Whereas the words “*arising out of the 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.”

7. In nutshell, the injury should be caused “*while performing his duties assigned to him or injuries caused while doing certain acts which are incidental to the main acts, injuries are caused from some risk incidental to the duties of the service*”. The scope of the employment is not strictly restricted “*to the duties assigned to him*” but “*injury caused while doing certain acts which are incidental or which are connected to*

1 (1969) 2 SCC 607

the prescribed duties”, then also it is covered. Now in this case the deceased Brijlal was found in the bus as dead. He has not performed any duty as a driver on 15.12.2021. He has not died while he was driving the vehicle. The evidence adduced by both the parties needs to be considered.

Evidence adduced

8. Admittedly, his **wife-Jamuna Devi** has not accompanied deceased on the date of the accident. She got information subsequently. Thereafter, she has deposed. It is on the basis of the information she collected either from the Police or from other sources. Even the **employer-Arjun Singh** also deposed on the basis of the information he gathered from his sources.

9. There is a reason to believe that he was found dead in the bus owned by the Appellant. The Appellant is partner of the firm which plies bus at BKC, Kurla. The bus in question is MH-48-K-659. The Claimant has tendered the following documents which are undisputed.

They are :-

- (i) Copy of cause of the death certificate.
- (ii) Letter by health department

(iii) Letter giving NOC for disposal of the dead body.

10. There cannot be any dispute that the casual connection in between the death, the accident and the employment need to be proved.

11. The judgments cited by both the parties needs to be referred. On behalf of the Appellant, the following judgments are relied upon :-

(i) *Regional Director Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*²

(ii) *Maruti Udyog Ltd. Vs. Ram Lal and Others*³

(iii) *Dy. Chief Engineer (C) Ajni, Central Railway, Nagpur and Anr. Vs. Laxmi (Smt.) wd/o Rajanna Kotpalliwar, Nagpur*⁴

12. On behalf of the Respondents, the following judgments are relied upon :-

(i) *Manju Sarkar and Others Vs. Mabish Miah and Others*⁵

(ii) *General Manager, B.E.S.T. Undertaking Bombay Vs. Agnes*⁶

(iii) *Fulmati Dhramdev Yadav and Anr. Vs. New India*

2 (1985) 1 SCC 218

3 (2005) 2 SCC 638

4 (2023) III CLR 723

5 (2014) ACJ 1927

6 (1963) (0) AIJEL – SC 9409

*Assurance Co. Ltd. and Anr.*⁷

(iv) *New India Assurance Co. Ltd. Vs. Mohan Kumar*

*Sahoo*⁸

(v) *Leela Bai and Anr. Vs. Seema Chouhan and Anr.* passed

by Supreme Court in Civil Appeal No. 931 of 2019.

(vi) *Associated Cargo Movers and Packers Pvt. Ltd. Vs.*

*Hanumant and Another*⁹

(vii) *United India Insurance Company Ltd. Bangalore Vs.*

*Susheela (Smt.) and Ors.*¹⁰

(viii) *Jyothi Ademma Vs. Plan Engineer, Nellore and Anr.*¹¹

13. The outcome of any case depends on facts of that case and provisions of law interpreted. “*The employee is doing the specific work assigned to him and it is only then, it can be said he is an employee*”. It is not proper interpretation. Because for doing the specific duty assigned to an employee by employer, there are various incidental acts required to be done earlier to fulfilling the primary duty and even otherwise. The former and later act can be brought within the scope of

⁷ (2023) (4) T.A.C. 1 (S.C.)

⁸ (2004) II CLR 118

⁹ 2020 ACJ 2100

¹⁰ (2004) I CLR 1025

¹¹ 2006 III CLR 438 (S.C.)

the employment, if they are connected to the principal act.

14. In case of *Dy. Chief Engineer (C) Ajni, Central Railway, Nagpur and Anr. (Supra)* the deceased was an employee in Central Railway. He was helper. He had gone for some official work to Mumbai and on his way back to Nagpur, he died due to heart attack in a railway. There was no evidence as to how the heart attack is aggravated by nature of duty. (para nos. 16 and 17). The learned Judge emphasized on lacunae in the evidence of the wife of the deceased in pointing out what type of work allotted to the deceased and stress was part of his duty. The learned Judge also emphasized on absence of medical evidence. The order granting compensation by Commissioner was recalled. Learned Counsel Mr. Keni also emphasized on too liberal interpretation of social welfare legislation is not permissible.

15. In case of *Regional Director Employees' State Insurance Corporation, Trichur* (supra) deceased was partner in a firm and he was paid wages. It is permissible as per the provisions of Indian Partnership Act. The deceased was also an employee insured with Employee State Insurance Corporation. The meaning of word '*employee*' under Section 2(9) of the Employees' State Insurance Act

was considered (para no. 3). Whereas the provisions of the Partnership Act was also considered in para no. 4. Finally, it is held a partner who gets the wages does not fall within the meaning of ‘employee’. While giving this finding, it was observed : -

“We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme” (Para no. 10).

It is held “partner who is paid remuneration does not involve change of his status and bring him even within the definition of the employee”.

16. The Hon’ble Supreme Court in case of Maruti Udyog Ltd. (supra) while dealing with the provisions of the Industrial Disputes Act also observes:-

“A beneficial statute, as is well known, may receive liberal construction but the same cannot be extended beyond the

statutory scheme” (Para no. 39).

It is further observed :-

“‘Sympathy’ has no role to play, thus the Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.”

17. The Court has twin responsibilities, one - to consider the object of the Act and second to interpret the law so as to achieve object of the Act, at the same time the Claimants need to satisfy the requirement of the relevant Acts. The submission of learned Advocate Mr. Keni is *“simply because deceased has slept in the bus and died due to heart attack, it is not sufficient to saddle his client with the responsibility of the compensation.”*

18. In case of **Leela Bai and Anr.** (supra) the deceased was driver of the public transport bus and who was supposed to remain in the bus for 24 hours. The efficiency is affected, if he will go home every day, after parking the bus. He died due to injuries sustained, when he was in the bus depo after finishing the work. The doctrine of notional extension was invoked and compensation was awarded.

19. Whereas in case of *Associated Cargo Movers and Packers Pvt. Ltd.* (*supra*), it was case of daily wage earner. The relationship was disputed on the basis of the evidence. The claim was allowed. A daily wage earner was not expected to possess documentary evidence regarding his employment and earnings (para no. 10). Learned Advocate Mr. More laid emphasis on these observations.

20. In case of *United India Insurance Company Ltd. Bangalore Vs. Susheela (Smt.) and Ors.*, the watchman was on night duty and he suffered heart attack and died. Considering the evidence, it was held that heart attack has aggravated due to night work. *No evidence was produced to substantiate on behalf of the employer that cardiac arrest was not the result of stress and strain. (Para no. 11).* Learned Advocate Mr. More laid emphasis on these observations.

21. Whereas in case of *Jyothi Ademma* (*supra*), the employer is a contributory cause or accelerated the death, it is presumed that the death arose out of employment.

22. Whereas in case of *General Manager, B.E.S.T. Undertaking Bombay Vs. Agnes* (*Supra*), the BEST driver after finishing his duty, he was left for home and he died. The majority view by the Hon'ble

Supreme Court was in favour of the deceased employee. It was case wherein the employer has offered free travel to the employees while attending the duty and while returning home. It was condition of the service for the purpose of attaining the punctuality and efficiency.

23. Whereas in case of **Manju Sarkar and Others** (supra) the driver has reached the destination and he was required to return back with the truck. There was some interval in between loading goods and acts of loading fresh goods. During that time he met with the road accident and died. The doctrine of notional extension was invoked.

24. Whether the employee plays the particular act during the course of employment or not, depends upon the facts of the particular case. A vehicle driver may be required to go home after finishing his job or he may be required to stay at the premises of employer only. Some time after reaching to the destination, he is required to wait till goods are again loaded. His responsibilities continue till he hands over the custody of the vehicle to the employer.

25. In this case it has come on record that he was a temporary driver. He was called on duty as and when regular driver is not available. Admittedly, he has signed the muster up to 15.12.2021 only.

Admittedly, he was not called for driving on 16.12.2021. It is not clear when he entered bus, he was found dead in the morning of 16.12.2021. The wife can only say that husband has gone for duty. She may be not aware whether her husband was entrusted with the duty of driving or not. In fact, it was the responsibilities of the Appellant-Employer only to explain how he entered the bus, when and under what circumstances. I reject the contention of learned Advocate Mr. Kini that in given set of facts, the deceased was not the employee. According to him, casual employee is not covered. There is definition of an Employee given in Section 2 (1)(dd). This was incorporated by way of amendment Act No. 45 of 2009. By the same amendment, clause number (n) is deleted. It contained definition of Workman. As per said definition, casual worker was not covered within the meaning of Workman. However, as per the same amendment, when clause (dd) was incorporated phrase “casual worker” is deleted. Meaning thereby casual worker can also claim compensation if he fulfills other requirements. This is discussed in case of *Marlo or Fab Gold Vs. Arvind* in First Appeal No. 440 of 2018, decided on 07.10.2022 by the Delhi High Court.

Meaning of accident

26. Though the word '*accident*' is used in Section 3 of the said Act, it is not defined anywhere. Its ordinary meaning has to be understood. '*Accident*' means something unexpected or unanticipated mishap. If there is personal injury caused due to accident, it is covered. In this case, death has resulted. As per evidence, cause of death was coronary artery disease. It can be said to be an accident because death was not anticipated.

27. Now the issue is whether learned Commissioner was justified in holding that the death has arisen out an accident during the course of an employment. It is a settled law that there should be casual connection in between accident and personal injury and there should be casual connection in between person injury accident and employment. Just because death is caused during the course of employment, it does not mean that the nature of work is the sole cause for the death. Either it should be the sole or contributory cause for the death. There has to be relationship in between the death and employment. The death may be due to natural cause also. It is not sufficient. The nature of duty should be of such kind which has

accelerated the possibility of death. It may happen that the employee may be under stress or pressure due to nature of duty.

28. In this case the deceased was not driving but he was sleeping in the bus. There is no evidence that he actually drove the bus. There is absolutely no evidence to infer that driving has accelerated the death.

29. Learned Commissioner has only observed “in present peculiar case the Applicant died in the bus due to heart attack but he was on duty inside.” This observation is incorrect and it does not meet the ingredients of Section 3 of the Employees’ Compensation Act. From the judgments quoted above, it can only be said that the facts are different. I am not agreeable to the observations in the case of **United India Insurance Company Ltd. Bangalore** (Supra). The burden was cast upon the employer to prove that cardiac arrest was not the result of stress and strain. This burden cannot be put on the employer.

30. The observations are made without evidence and by wrongly interpreting the provisions of Section 3 of the EC Act. That is why, there is perversity. That is why, I hold that there is an accident in the course of the employment but the connection in between injury, accident and employment is not proved. Hence, the findings need to

be set aside. This is not the case of application doctrine of notional extension. I have already hold that the deceased was very much on duty but there is no evidence of connecting death to employment. I answer the susbtantial questions of law accordingly. If it is so the claim has to be dismissed. The money privately paid is voluntary. There is no question of its refund. At this stage, I inquired with learned Advocate Shri Kini, whether any possibility of settlement is there, on humanitarian ground. On the basis of the instructions, he submitted that from the amount deposited before the Commissioner, his client will consent for withdrawal of Rs. 5 Lakhs by way of lumpsum amount and remaining amount be returned to his client. It is true the appeal is dismissed on merits, but in view of such submission, I am inclined to allow it. This is consented by learned Advocate Shri More after taking instructions.

31. Hence the following order is passed :-

ORDER

- (i) The Appeal is allowed.
- (ii) The judgment dated 06.08.2024 passed by the learned Commissioner for Employees' Compensation and Judge,

First Labour Court, Mumbai is set aside.

- (iii) The Claim application is dismissed.
- (iv) Pending Interim Application, if any, also stands disposed of.
- (v) The Respondents are permitted to withdraw Rs. 5 Lakh (Rupees Five Lakhs) from the Court of Commissioner, Greater Mumbai as per the Rules.
- (vi) The Respondent Nos. 1 to 3 may decide in whose name the payment should be made and there should be consensus amongst themselves to be reflected by some writing.
- (vii) The remaining amount alongwith accrued interest be returned to the Appellant as per the Rules.

[S. M. MODAK, J.]