



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

FIRST APPEAL NO. 1451 OF 2019

The New India Assurance Company Ltd.
Nagpur, through its Divisional Manager,
Nagpur, through its Regional Manager,
Regional Office, 4th Floor, Dr. Ambedkar
Bhavan, M.E.C.L. Premises, Seminary
Hills, Highland Drive, Nagpur.
(Original Non-applicant No. 1)

.... **APPELLANT**

VERSUS

1) Ganesh s/o Tukaram Kumeriye,
Aged about 52 years, Occ. - Nil,
(Original Applicant No. 1).

2) Smt. Sunita w/o Ganesh Kumeriye,
Aged about 49 years, Occ. - Nil,
(Original Applicant No. 2)

Both R/o Maywadi, Tahsil – Narkhed,
District – Nagpur.

3) M/s. Avinash Electricals,
through its Proprietor/Partner,
R/o Bharsinghi, Tahsil – Narkhed,
District – Nagpur – 441 502.
(Original Non-applicant No. 2.)

.... **RESPONDENTS**

Mr. M.B. Joshi, Advocate for the appellant,
Mr. S.W. Sambre, Advocate for respondent Nos. 1 and 2,
Mr. S.B. Dhande, Advocate for respondent No. 3.

CORAM : ABHAY J. MANTRI, J.

DATE : 22-08-2025

ORAL JUDGMENT :

Original non-applicant No. 1-New India Assurance Company
Limited has challenged the judgment and order dated 22-04-2019 passed by

the learned Commissioner under the Employees Compensation Act and Labour Court No. 3, Nagpur (hereinafter to be referred to as “**the Labour Court**”) in W.C.A. Case No (B)-52/2017, whereby the application was allowed. The non-applicants, i.e., the Insurance Company and the employer, were directed to pay compensation of Rs. 8,57,434/-, along with accrued interest at 12% per annum from the date of the accident until the realisation of the entire amount.

2. Respondent No. 3/original non-applicant No. 2 is the registered contractor of MSEDCL and, pursuant to the Tender order dated 19-07-2017, had taken a contract for quarterly photo meter reading of AG Pump consumers and monthly meter reading through mobile app and data entry and bills distributions for the LT billing system with DTC Photo Reading under Jalalkheda sub-division in Katol Division. The deceased Shubham Kumeriye was working with non-applicant No. 2-Company as an employee.

3. On 22-07-2017, deceased Shubham, along with one Pravin, went to the field of Mr. Bhusaram Saduji Mondariya for taking the meter reading. However, while he was opening the door of the meter box to take a snap of the meter reading, he sustained a sudden electric shock and was thrown to the ground. He became unconscious. He was taken to the hospital, where the doctor declared him as brought dead.

4. It is claimed that the accident took place during the course of employment and out of employment as the deceased was performing his

duty of taking meter readings as a Meter Reader. Non-applicant No. 2 was his employer. Non-applicant No. 2-employer had insured all the employees with non-applicant No. 1-Insurance Company under the insurance policy, which was valid on the date of the accident. The risk of the employees was covered under the insurance policy.

5. The deceased was appointed by respondent No. 2 as an Electric Meter Reader, and he was getting Rs. 350/- per day and an average monthly salary of Rs. 7,700/- per month. At the time of the accident, he was 21 years old. The applicants were dependent on him. Due to his untimely death, they have suffered a loss and, being the legal heirs as well as dependents, have filed an application under Section 22 of the Workmen's Compensation Act, 1923 (for short, "**the Act of 1923**") for getting compensation.

6. Non-applicant No. 1 - Insurance Company filed a written statement and thereby denied the contents of the application in toto. It resisted the application, contending that the police papers, as well as the material on record, indicate that the deceased was negligent at the time of the incident, as he opened the electric meter cabin without wearing the safety measures. He had not used the rubber gloves while touching the electric meter and box; therefore, the incident cannot be termed as an '*accident*' as required in the definition provided under the Act of 1923 and accordingly prayed for dismissal of the application.

7. Non-applicant No. 2 employer filed a written statement and contended that after the occurrence of the incident, he immediately submitted the claim form along with the documents to the office of the insurance company. He had made every possible effort and settled the death claim of the deceased. However, non-applicant No. 1 was not ready to settle the said claim, nor was the amount of compensation deposited in the office of the Commissioner. However, non-applicant No. 1 has paid an amount of Rs. 50,000/- to the family of the deceased on humanitarian grounds. As such, it was contended that non-applicant No. 2 has done all necessary formalities to get the compensation to the legal heirs of the deceased and, therefore, non-applicant No. 2 is not liable to pay the compensation, and hence urged for dismissal of the application against him.

8. After considering the rival pleadings of the parties, the learned Labour Court framed the issues. Pursuant to the issues, the applicants have examined applicant No.1 – Ganesh, father of the deceased, and produced and proved the documents. On the other hand, non-applicant No. 1 examined the employer of the deceased, i.e. non-applicant No. 2 and closed its evidence. After considering the material on record, the learned Labour Court held that the applicants proved that the deceased Shubham died in the accident dated 22-07-2017 while working as an Electrician-cum-Meter Reader for non-applicant No. 2 and the said accident occurred out of and in the course of the employment and, therefore, the applicants are entitled to get the compensation and accordingly, allowed the application.

Being aggrieved by the same, the non-applicant No. 1 – Insurance Company has preferred this appeal.

9. Having heard Mr. M.B. Joshi, learned Advocate for the appellant, Mr. S.W. Sambre, learned Advocate for respondent Nos. 1 and 2 and Mr. S.B. Dhande, learned Advocate for respondent No. 3, having gone through the impugned judgment and record and proceedings, the following points arise for determination.

- (i) ***Whether the deceased was negligent or not in taking proper safety measures while performing his duties?***
- (ii) ***Whether any interference is required in the impugned judgment and order?***

Points No. 1 and 2 :-

10. It is pertinent to note that during the argument, learned Advocate for the appellant i.e. Insurance Company fairly submitted that he is not disputing that the deceased was employee of non-applicant No. 2. He further neither disputing the 'employer-employee' relationship nor disputing that the employer had taken the insurance policy from non-applicant No. 1 insurance Company and the said policy was in existence at the time of the incident. However, the entire thrust of his argument is that the deceased was negligent as he had not worn the rubber gloves to take the meter reading while on duty. He had not taken care to use safety measures, and, therefore, the said act on the part of the deceased comes within the purview of *'wilful disobedience of the order of the employer'*, and in such circumstances, the applicants are not entitled to get the compensation.

During the argument, he has taken me through the provisions of Section 3(b) (ii) of the Act of 1923 and submitted that the employer shall not be liable to pay the compensation as the deceased committed wilful disobedience to an order expressly given by the employer to him for the purpose of securing the safety measures. However, the learned Labour Court has not considered the said fact and erred in holding as above. As such, he urges allowing the appeal by setting aside the judgment and order impugned.

11. As *against*, Mr. S.W. Sambre, learned Advocate vehemently contended that the appellant-Insurance Company failed to adduce any cogent and reliable evidence to show that the employer had passed any order to show that while taking the meter reading, the employees had to wear rubber hand gloves. He further submitted that in the work order, nothing has been mentioned by the MSEDCL about following the security measures. Similarly, the employer failed to produce the said work order on record. Therefore, he submitted that in the absence of any order framed by the employer in writing, it cannot be said that the deceased employee has committed any wilful disobedience of the order. He has also relied on the provisions of Section 3(b)(ii) of the Act of 1923 and submitted that the non-applicants failed to show that an order was expressly passed in writing in respect of wearing the hand gloves by the employees while taking the meter reading. Therefore, according to him, it cannot be said that the employee had committed the wilful disobedience as contemplated under Section 3(b) (ii) of the Act of 1923. As such, he urges dismissing the appeal.

12. Apart from this, the learned Advocate for the respondent has taken me through the evidence of non-applicant No. 2, i.e. employer and canvassed that the employer admitted that the only work assigned to the deceased Shubham was to open the door of the meter box and take the meter reading by taking a snap of the meter. Further, she admitted that there was no fault or negligence on the part of the deceased and, therefore, he propounded that the non-applicants failed to adduce any cogent and reliable evidence to show that the deceased was negligent while performing his duty or committed wilful disobedience of the order passed by non-applicant No. 2-employer. Hence, he submitted that the judgment and order passed by the learned Labour Court are just and proper and no interference is required in the appellate jurisdiction.

13. To deal with the controversy in the matter, in my view, it would be appropriate to reproduce the provisions of Section 3(b)(ii), which reads thus as under :

“3. Employer’s liability for compensation

(1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

Provided that the employer shall not be so liable -

(a) ----

(b) in respect of any [injury, not resulting in death [or permanent total disablement] caused by] an accident which is directly attributable to -

(i) ----

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) ----”

14. A bare perusal of the aforesaid provision, it is apparent that the employer has to pass an order expressly in writing or to frame an express rule for the purpose of securing the safety of the employees. If the employer has passed the order or framed the specific rules, and the employee failed to obey the same, then it can only be said that the employee has committed the wilful disobedience of the order, or he has not followed the rules or order about safety measures as directed by the employer. However, in the case at hand, the employer or insurance company failed to produce any such order or rules on record to demonstrate that the deceased employee had committed wilful disobedience of the order or had not followed the safety measures as contemplated in the said provision. In such an eventuality, I do not find substance in the argument of the learned Advocate for the appellant in that regard. On the contrary, I found substance in the contention of the learned Advocate for the respondent that no rules were produced on record to show that the rules were expressly framed for the purpose of securing the safety measures of the employees. In such circumstances, it cannot be said that the deceased employee has committed wilful disobedience or failed to follow the safety measures while taking the meter reading. However, it appears that the deceased was an employee of non-applicant No. 2, and while performing his duty, he died due to the live electric current.

15. *Besides*, I would like to mention that non-applicant No. 1, i.e. the appellant, was not knowing of the 'employer–employee' relationship or what order had been passed by the employer while performing the duties by its employee. That being so, it was incumbent on the part of the employer to

prove the said fact. However, the employer has not adduced any evidence in that regard. But the appellant has examined the employer as its witness. It is pertinent to note that the employer has not produced any document on record to demonstrate that any order had been passed by it for taking the safety measures by the employees while performing their duty, or the employer had directed the employees to wear the rubber gloves while taking the meter reading. Thus, it appears that the employer is silent on the said point and thereby failed to adduce any evidence in support of its defence.

16. Though non-applicant No. 1 - Insurance Company had examined the employer in support of its defence, however, during cross-examination, she did not support the insurance company; on the contrary, her evidence supports the case of the applicants. I would like to reproduce the cross-examination of the employer as under :

“It is true to say that we maintain a muster-roll of all the employees. Muster-roll (Exh 39) is now shown to me. The name of the deceased, Shubham Ganesh Kumeriye, is appearing in a muster-roll (Exh 39). For the work of taking meter readings, special skills are not required. The only work assigned to the deceased Shubham Ganesh Kumeriye was to open the door of the meter box and take a meter reading by taking a snap of the meter. It is true to say that live current was on, over the meter-box, and therefore, the deceased sustained an electric shock. It is true to say that there was no fault or negligence on the part of the deceased.”

17. Upon perusal of the said cross-examination indicates that she admitted that the deceased was an employee and the work assigned to the deceased was to open the meter box and take the reading by taking a snap of the meter. She also admitted that current was flowing from the said meter box; therefore, the deceased had sustained the electric shock. She further

categorically admitted that “*the deceased was not at fault or negligent while performing his duty*”. The said evidence itself denotes that the deceased was neither negligent nor direction was given to employee or any order was passed to wear the rubber gloves while performing the duty of the meter reader as alleged by non-applicant No. 1. Thus, it is evident that the appellant failed to show that the deceased was negligent as he did not wear the rubber gloves while performing his duties and, therefore, he was liable to wilful disobedience of the order. As such, ***I answer point No.1 in the negative.***

18. Perused the impugned judgment and order. It is evident that the learned Judge has rightly considered the evidence on record and held that non-applicant Nos. 1 and 2 have failed to show that the deceased Shubham had committed wilful disobedience of the order or not followed the safety measures as directed by the employer. That being so, the applicants are not entitled to claim the compensation. The findings recorded by the learned Labour Court are just and proper. As such, no interference is required in the findings recorded by it in that regard. Hence, ***I answer point No.2 in the negative.***

19. As a result, the appeal being bereft of merits, stands dismissed. No order as to costs. As a sequel, respondents Nos. 1 and 2 are entitled to withdraw the entire amount of compensation along with accrued interest thereon lying in the Labour Court.

(ABHAY J. MANTRI, J.)