THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

FIRST APPEAL N0.1059 OF 2025

1. Thakur Electrical & Engineering Pvt. Ltd., Having its Office Address at: Sitarudal Sadan, 125/2, S. Ekate/4/545/6, Uma Nagar, Juni Mill Compound, Murarji Peth, Solapur.	]	
2. Shobha Rudral Thakur Age. Major, Occu: Business, R/o. Sitarudal Sadan, 125/2, S. Ekate/4/545/6, Uma Nagar, Juni Mill Compound, Murarji Peth, Solapur.	]	Org. Respondents Nos.1 and 2 **....Appellants**

<u>Versus</u>

1. Smt. Shantabai Ankush Pawar Age 55 Years, Occu: Household,	]	
2. Shri. Ankush Sambhaji Pawar, Age. 60 Years, Occ. Nil, Both 1 & 2 R/o. Rople, Tq. Madha, Dist: Solapur.	]	
3. Shri Navnath Suresh Survase, Age. Major, Occu. Contractor, R/o. Jeur, Tq.: Karmala, Dist: Solapur.	]	
4. Deputy Engineer, MSEDCL, Karmala Sub – Division, Dist.:Solapur.	]	
5. National Insurance Com. Ltd. Having Office at:Shubhrai Tower, 4th Floor, Near Shalimar Talkies, Solapur.	]	

SHAILAJA SHRIKANT HALKUDE
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6. Executive Engineer,]
Barshi Division, MSEDCL,]
Having Office at: Burud Galli, Barshi,] Orig. Respondent
Tq.: Barshi, Dist.: Solapur.] Nos.3-6)
] **...Respondents**

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Mr. Sumit Kothari (through V.C.) a/w Mrs. Vaishnavi A. Shelar, for Appellants Nos.1 and 2.

Mr. S.M. Bhavar i/b H.B. Kamble, for Respondent Nos.1 and 2.

Dr. Satyajit Lonkar a/w Mr. Shashank Chavan, for Respondent No.5.

Mr. Sandeep Koregave, for Respondent No.6.

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CORAM : M. M. SATHAYE, J.

DATE : 9th April, 2026.

JUDGMENT:

1. This is an appeal under section 30 of the Employees Compensation Act, 1923 ('the said Act' for short) by employers. Admit on following substantial question of law-

> "Whether the policy terms and conditions issued by Respondent Insurance Company can be interpreted to include the deceased as covered ?"

2. Learned counsel for the Respondents waive service. Considering the narrow controversy involved, taken up for final disposal by consent of learned counsel for the parties.

3. The Appeal is filed by the employers (Original Respondent Nos.1 and 2) challenging the Judgment and Order dated 09.11.2023 passed by

Commissioner for Employees Compensation and Judge Labour Court, Solapur in Application (ECA) No.28/2018. By the said impugned order, the Application filed by the present Respondent Nos.1 and 2 (Original Applicants) under section 4 of the said Act is allowed granting compensation of Rs.8,23,800/- alongwith simple interest @ 12% per annum from the date of accident till realization and penalty to the extent of 40% of awarded compensation. By the impugned order, present Respondent No.5 – Insurance Company is exonerated. Hence, the employers (insured) have filed the appeal.

4. Few facts necessary for disposal of the appeal are as under;

4.1. Respondent Nos.1 and 2 filed the said Application contending *inter alia* as under. That deceased Rajendra Ankush Pawar was working with present Appellant No.1 – establishment as contract-employee whose Proprietor was Appellant No.2 and present Respondent No.3 (Navnath Suresh Survase) was the sub-contractor. Respondent Nos.4 and 6 are Electricity Distribution Company who had allotted work-contract to Appellant No.1. Respondent No.5-Insurance Company had insured the employees of Appellant No.1. That on 11.04.2018, when the deceased was doing electrical wire erection work, suddenly current passed through the lines and deceased received heavy electric shock, resulting into electrocution burn injuries, by which the deceased succumbed to death. That the deceased was 31 years old at the time of the accident and was getting salary of Rs.450/- per day. That the death occurred during the course of (arising out of) employment with present Appellants and Respondent Nos.3,4 and 6 and since the risk of employees was covered, Appellants and other Respondents are jointly and severally liable.

4.2. Present Appellants filed written statement contending *inter alia* that the deceased himself was negligent and there is no negligence on the part of the Appellants. That they have obtained insurance policy for their employees and liability if any, must be borne by Respondent No.5–Insurance Company.

4.3. Respondent No.3 – Sub-contractor remained absent though served and matter proceeded *ex-parte* against him.

4.4. Respondent Nos. 4 & 6 - Electricity Distribution Company filed written statement contending *inter alia* that there is no cause of action against them. That they have given necessary work on contract basis to the Appellants who have engaged their employees. That the deceased was regular employee of the Appellants who have taken insurance policy. Therefore there is no liability upon the Electricity Distribution Company.

4.5. Respondent No.5-Insurance Company filed written statement contending *inter alia* that compensation is to be paid by primary employer and claim is not maintainable directly against Insurance Company. That the policy is admitted, however, the risk of the Appellants' employees is covered with certain terms and conditions. It is contended that deceased was an employee of a sub-contractor, who is not covered and hence Insurance Company is not liable.

4.6. The learned Commissioner framed issues and it is held that Respondent Nos.1 and 2 have proved employer-employee relationship. Vide Issue No.5, it is held that the Appellants had valid insurance policy, however, the deceased is not covered under the same and accordingly the impugned order is passed fixing compensation, but exonerating the Insurance Company.

5. Learned counsel Mr. Kothari appearing for the Appellants-employers submitted as under. That the learned Commissioner has perversely held that in Appellants' written statement they have not admitted employment of deceased. He invited the Court's attention to paragraph 8 of the Appellants' written statement. He further contended that issuance of policy is not disputed and the date of accident was duly covered in the period of insurance. That Appellant No.2 has entered witness box and has clearly stated that Respondent No.3 was only a *mukadam* to look after the work and deceased was working with the Appellants as a labour who was being paid salary of Rs.250/- per day. He invited the Court's attention to the concerned policy- Exh.CD-11 and contended that the Electricity and Power Supply Industry was duly covered and the policy covered 'all types of electric work anywhere in India' and 10 employees were covered and the alleged exclusion of employee of sub-contractor will not apply in the facts of the present case. He relied on the judgments of **National Insurance Co. Ltd versus Shaikh Hasina Sharfuddin and others 2021 (5) Mh. L.J. 590** and **Bajaj Allianz General Insurance versus Phulki Ramesh Dhondiya and another 2026 SCC OnLine Bom 1560** in support of his case. That Insurance Company has not led positive evidence about deceased being employed with sub-contractor.

6. On the other hand, learned counsel Mr. Lonkar appearing for Respondent No.5–Insurance Company submitted that the Insurance Company has taken a clear stand that the risk of the employees working with the sub-contractor is not covered under the policy. Relying on affidavit of it's witness Mr. Gajanan D. Bedarkar, it is submitted that the policy is duly proved which is subject to terms, conditions and limitations mentioned in the policy document and the risk of the employee working with sub-contractor other than insurer is not covered under the policy. He further submitted that under

the exclusion clause No.(f), the policy does not cover liability of the insurer for persons/employees under a contractor or sub-contractor of the insured unless specifically covered in the schedule. He submitted that the term ‘employee’ or ‘employees’ is defined in the policy to mean person in direct employment of the insured and it does not include any person employed under a contractor or sub-contractor of the insured unless specifically shown as covered.

7. I have considered rival submissions and perused the record.

8. At the outset, it is necessary to note that except for the issue as to whether the deceased was covered under policy, no other factual aspect is disputed. No arguments are advanced about amount of compensation. The accident and death of the deceased is admitted. It is also admitted that Respondent No.5 – Insurance company had issued the concerned policy and the accident has taken place during the policy period.

9. Perusal of the Appellants’ written statement Exh. CA-5 shows that after general denials, in paragraph 8 thereof, the Appellants have clearly stated that they have obtained insurance coverage for their employees and since there is legal and valid insurance cover, if at all any liability arises on the part of the Appellants to pay compensation to the Claimants, the said amount of compensation is required to be paid by the Insurance Company. Overall reading of the written statement does not indicate that Appellants have not admitted employment of deceased, as held by the learned Commissioner.

10. Appellant No.2 - Shobha R. Thakur in her affidavit of examination-in-chief has clearly stated that Respondent No.3 was appointed as *Mukadam* to

look after the work and 'deceased' was working with the Appellants as labour and he was being paid salary of Rs.250/- per day. It is also clearly stated by this witness (in the cross-examination by Claimants) that the Appellants are not responsible for payment of penalty as the risk is covered by the insurance company. The said witness has admitted that accident took place during subsistence of contract and the only suggestion given is about payment of Rs.450/- per day, which is denied. Apparently, in the cross-examination conducted on behalf of Respondent No.5 – Insurance Company, a suggestion was put to this witness that deceased was employee of Respondent No.3 – sub contractor; however, this suggestion is clearly denied. The suggestion that since Respondent No.3 was sub-contractor, Insurance Company is not liable to pay compensation, is also denied.

11. It is important to note that the witness for the Appellants entered witness box and specifically deposed that the deceased was working with them as labour on payment of Rs.250/- per day, thereby accepting the deceased as direct employee and the witness was cross-examined. Deposition of this witness is concluded on 18.07.2023. Thereafter, the witness of Insurance Company has filed affidavit of examination in chief on 05.08.2023. Therefore, the Insurance company was well aware of the case of the Appellants that the deceased is admitted by the Appellants' witness to be their direct employee. Despite such situation, the Respondent–Insurance Company did not lead any positive evidence indicating that the deceased was employee of the sub-contractor. The witness of Insurance Company has only stated that the policy is subject to terms and conditions and Insurance Company is not liable to pay because the risk of the employee working with the sub-contractor is not covered.

12. The witness of the Insurance Company has been cross-examined on behalf of the Appellants where the said witness has admitted that the policy has been issued regarding workers doing all types of electric work in India as per contract through the Appellants. He has further admitted that deceased died in the accident while doing electrical work. He has further admitted that the Appellants have intimated to the Insurance Company regarding the accident. He also admitted that the workers doing work for the Appellants are covered against accidental death during their employment. The witness of the Insurance Company has also admitted that the Electricity Company has allotted electrical work to the Appellants and by verifying the work order, the Insurance Company has issued policy. He has further admitted that he has no knowledge whether electric company has not given any work order to Respondent No.3 (sub-contractor).

13. Perused the policy document Ex. CD-11. The relevant terms and conditions are same as that considered by the judgments relied upon by the Appellants.

14. In **National Insurance Vs. Shaikh Hasina (supra),** learned Single Judge of this court, in paragraph 13 was considering the same policy and same argument that the employees of the sub-contractor were not covered. It is held that policy does not say that only workers/labours working on the pay roll of the contractor were insured. This Court has taken cognizance of the description of the work in the policy i.e ‘all types of civil work’ were covered. The learned single Judge in such circumstances has held the Insurance Company liable. This judgment directly supports the Appellants.

15. In **Bajaj Allianz Vs. Phulki Ramesh (supra),** in similar situation, considering similar argument, the learned single Judge of this Court has held in paragraph 35 that if the case of the Insurance Company was that the deceased was an employee of the sub-contractor, it was necessary for Insurance-Company to bring positive evidence on record by calling for muster roll/attendance register of the sub-contractor to demonstrate that the deceased was employee of the sub-contractor. It was further held that there was no material on record to prove that the deceased was employee of the sub-contractor. This judgment is directly applicable to the facts of the present case.

16. In the present case also, after the Appellants' witness entered witness box and clearly stated that the deceased was their employee, it was for the Insurance Company to prove that the deceased was employed by the sub-contractor – Respondent No.3 – Mr. Surwase. Despite filing affidavit of examination-in-chief after the evidence of the Appellants, no such evidence was led by the Insurance Company. Therefore, the Insurance Company has failed to prove that deceased was employee of the sub-contractor.

17. In the aforesaid facts and circumstances, the interpretation of policy terms as done by the learned Commissioner is perverse. The deceased should have been held as covered under the policy terms. Therefore the Respondent No. 6 Insurance Company is held liable to pay. The substantial question of law, as framed, is answered as 'Yes'.

18. In the result, the appeal succeeds and it is partly allowed. Clause (iii) of the operative part of impugned Judgment and Award dated 09/11/2023 is modified as under -

"(iii) All Respondents are hereby directed to deposit jointly and severally an amount of Rs.08,23,800/- *(Rupees. Eight Lakh Twenty Three Thousand Eight Hundred Only)* alongwith simple interest at the rate of 12% per annum from the date of accident till its realization".

19. Rest of the operative part of the impugned Judgment and Award remains same.

20. The first appeal is disposed of in above terms. No order as to costs.

[M. M. SATHAYE, J.]