



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1424 OF 2025

Bajaj Allianz General Insurance
A Limited Company incorporated under
the Indian Companies Act, having their
Head Office at GE Plaza, Airport Road,
Yerwada, Pune - 411 006
Insurer of M/s. Aditri Enterprises,
Policy No. OG-22-3135-2802-00000075.

... Appellant

Versus

1. Phulki Ramesh Dhondiya
Age: 65 years, Widow of the deceased.
Room No. 1, Jivala Devaji Chawal,
Nandlal Kaka Marg, Near Nalanda Society
Amberwadi, Kurar Village, Malad ((East))
Mumbai, Maharashtra 400022

2. M/s Aditri Enterprises
1, Dhinrendra Village, Corner of Road,
No. 3 and 4, Daulat Nagar, S.V. Road,
Borivali (E), Mumbai – 400066

...Respondents

**WITH
INTERIM APPLICATION NO.12872 OF 2025
IN
FIRST APPEAL NO.1424 OF 2025**

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Room No. 1, Jivala Devaji Chawal,
Nandlal Kaka Marg, Near Nalanda Society

Amberwadi, Kurar Village, Malad ((East))
Mumbai, Maharashtra 400022

... Applicant

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...Respondents

*Ms. Harshada Srikhande a/w Mr. Vaibhav i/b Mr. Siddharth Mehta for the
Appellant*

*Mr. Jay D. Gupta for the Respondent No.1 in FA/1424/2025 and for the
Applicant in IA/12872/2025*

CORAM : SHARMILA U. DESHMUKH, J.
RESERVED ON : 16th FEBRUARY 2026
PRONOUNCED ON :25th FEBRUARY 2026

JUDGMENT :

1 Heard learned counsel appearing for the Appellant and learned counsel appearing for the Respondent No.1. The First Appeal was admitted under Section 30 of the Employees Compensation Act, 1923 on the following substantial questions of law:

(i) Whether the Appellant -insurance company, is statutorily or contractually liable under the Employees' Compensation Act, 1923 for payment of compensation under the insurance policy.

(ii) In event, it is held that the Insurance Company is not statutory liable, whether the Commissioner of Employees Compensation can determine the compensation and fix liability on the insurance company.

(iii) Whether the finding of the Trial Court that the insurance policy covered the risk of location at which the accident occurred making the insurance company liable to payment of compensation suffers from perversity.

(iv) Whether the terms of the insurance policy did not cover the employees of sub contractor

(v) Whether the evidence on record established that the deceased was an employee of the sub contractor and not the Respondent No 2.

2 With consent of parties, the First Appeal was taken up forthwith for final hearing.

3 The First Appeal is at the instance of the original opponent No.2 insurance company, in the application filed under Section 22 of the Employees' Compensation Act, 1923 (for short, '**EC Act**'). The application was filed by the widow of the deceased, who had expired in an accident which occurred at a construction site in Goregaon. The application pleaded that the deceased had died in the course of his employment while carrying out his work on second floor of the construction site, Empire Tower, Opposite Bharat Bank, Near Jayprakash Hotel, Goregaon (West), Mumbai-400 063. The deceased was receiving wages of Rs. 16,000/- at the

time of the accident on 4th February 2022, and the age of the deceased was 68 years.

4 The present Appellant, opposed the application broadly on two grounds. Firstly, that the insurance policy does not cover the risk of contractor and subcontractor, and therefore the insurer is not liable to pay compensation; and secondly, on the ground that the accident took place at the construction site at Goregaon (West), whereas the risk of location covered by the insurance policy is Goregaon (East). There was usual denial about the existence of employer-employee relationship between the deceased and Respondent No. 2, as also denial that the death of the deceased had taken place during the course of employment.

5 The Respondent No 2 herein denied the employer employee relationship. It was contended that the Respondent No 2 is the contractor of the construction site and the Respondent No 2 has nothing to do with the accident and the said project was sub contracted to V.N. Enterprises through Dashtrath Patel. The Respondent No 2 contended that the Respondent has taken out insurance policy of its workers through the present Appellant.

6 The Trial Court framed the necessary issues, including the issue as to the entitlement of compensation and the persons from which it can be recovered. It held the Appellant and Respondent No. 2 jointly and severally liable to pay the compensation to the Respondent No. 1. It noted that the cross-examination of the Respondent No. 1 that her husband was in employment of Respondent No. 2 has not been shaken and the contention that sub contract has been given is not found in the written statement. It noted the definition of employer under Section 2(1)(e) and the provision of contracting out under Section 12 to hold that the Respondent No. 2 had received contract from the builder and declined to accept the case of sub contract. It held that the original developer was the principal employer of deceased and Respondent No. 2 was employer of deceased. It further noted that the copy of the contract between the developer and the Respondent No. 2 shows that the contract was received, and therefore the argument that there was a subcontract cannot be accepted.

7 The Trial Court noted that the Respondent No. 2 had taken out an insurance policy which covered the risk location at Goregaon (East), and as per the said policy, 12 employees were covered as per salary of Rs.15,000/- per employee. It noted that the FIR mentions the place of accident as Goregaon (East) and not Goregaon (West). After considering the evidence on record, the Trial Court directed payment of compensation of Rs.7,45,275/- jointly and severally by the Appellant and Respondent No 2.

8 The Respondent No 2 has not challenged the impugned judgment and the present Appeal is by the Insurance Company.

9 Learned counsel appearing for the Appellant would submit that as per the insurance policy, the risk location was described by city survey number located Village Pahadi at Goregaon (East), Mumbai-400063, whereas in the application as well as evidence, the Respondent No 1 has deposed that the place of accident was Goregaon (West), Mumbai-400063, which was not covered by the policy. She has taken this Court through the cross examination of

Respondent No. 1 to point out the admissions about not having produced any document to show employer-employee relationship. She would further submit that there is no evidence produced by the Respondent No. 1 to show with whom the deceased was employed at the time of the accident.

10 She would further submit that the employees of the subcontractor are not covered by the policy and points out the general exceptions, which specifically excludes the persons employed under a contractor or subcontractor unless specifically covered in the Schedule. She submits that the policy specifically carves out an exception as regards the insurer's liability to employees of contractor of the insured, and that this policy was taken out by Respondent No. 2, whereas the deceased was employed with one Dashrath Patel. She submits that the fact that Dashrath Patel has been named in the FIR would show that the deceased was employed with Dashrath Patel. She would further point out to the cross-examination of witness for Respondent No. 2 admitting that the deceased was working on the instructions of the subcontractor. She would further submit that the Respondent

No. 2 has specifically denied that the deceased was working with his company and that there was a contract agreement of November 2021 signed between the Respondent No. 2 and the firm of Dashrath Patel. She would further point out the evidence of Dashrath Patel, who has deposed about being arrayed as an accused in the FIR.

11 She has further taken this Court through the impugned order to contend that there is no finding as to who is the contractor and subcontractor. She submits that the Trial Court has rendered a factually erroneous finding that there is no case in the written statement that the sub-contract was given and points out to the written statement of Respondent No. 2, which specifically speaks of the contract agreement. She submits that the Trial Court has wrongly relied upon the provisions of Section 12, which has no application to the present case. She further submits that the insurance company is not statutorily liable and relies upon the decision in the case of ***New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya & Anr.***¹.

¹ (2006) 5 SCC 192
SQ Pathan

12 Per contra, learned counsel appearing for the Respondent submits that the finding as to the risk location is not a substantial question of law. He would further submit that the insurance policy gives details of employees covered, which includes all employees engaged at the construction site, and as the accident had taken place at the construction site, the deceased was covered. He submits that there is no evidence on record that the deceased was employed with the subcontractor. He would submit that, insofar as the statutory liability of the insurance company is concerned, the Hon'ble Apex Court in the case of **Alok Kumar Ghosh vs. New India Assurance Co. Ltd. & Anr.**² has held that the insurer could be made a party Respondent in the proceedings under the EC Act and compensation can be awarded against it.

13 He would further submit that in the case of **National Insurance Co. Ltd. vs. Shaikh Hasina Sharfuddin**³, an identical issue was raised as to whether the insurance company had insured only the labourers of the contractor or the labourers working at the site of construction. He points out the findings of the Court on the insurance policy, that work of all kinds in the PMC were

² 2025 SCC OnLine SC 2249

³ (2021) 5 Mh.LJ 590

insured by the insurance company and that the insurance company is liable to pay compensation as the deceased was covered. He would further point out that the SLP against the said order has been dismissed by the Hon'ble Apex Court.

QUESTION NO (i) and (ii):

14 Both the questions raise the issue of liability of the insurance company and are interlinked. The Appellant Insurance Company was impleaded as party Respondent to the original application and the impugned order holds the Appellant and Respondent No.2 jointly and severally liable for payment of compensation. The provisions of E.C Act does not make the insurance company statutorily liable as in the case of Section 147 of Motor Vehicles Act. The liability of the insurance company is contractual which arises by reason of the insurance policy and is governed by the terms of the insurance policy. The absence of statutory liability cannot result in extinguishing the contractual liability, if proved. By reason of the contractual liability, the insurance company can be impleaded as party to the original application and compensation be determined and ordered against the insurance company.

15 In the case of ***Alok Kumar Ghosh vs. New India Assurance Co. Ltd. & Anr. (supra)***, the question which arose before the Hon'ble Apex Court was whether, in a proceeding initiated under the EC Act for compensation payable under the said Act, the insurer could be made a party Respondent and whether compensation can be awarded against it, if otherwise admissible under the contract of insurance. The Hon'ble Apex Court considered the provisions of Section 19 of the EC Act to hold that there does not exist any bar under the EC Act, and Section 19 of the EC Act specifically provides for the determination of the liability of the person who is required to indemnify the employer in the proceeding under the Act and not by way of a separate suit. It held that Section 19 of EC Act enables the Commissioner to determine the liability of the insurer.

16 It is therefore settled that even if the insurance company is not statutorily liable, in contra-distinction to the liability under Section 147 of the Motor Vehicles Act, the liability would arise under the contract of insurance which has been entered into between the insured and the insurance company and the insurer

could be made a party Respondent and the liability be fixed.

Question No (i) and (ii) are answered accordingly.

QUESTION NO (iii):

17 The insurance policy refers to the risk location address as per the city survey numbers located at Goregaon (East), Mumbai 400 063. Reliance is placed by the learned counsel for appellant on the on the application and the evidence of the Respondent No 1 who has deposed that the place of the accident as the construction site near Jayprakash Hotel, Goregaon (West), Mumbai-400063. The Respondent No 2 is the wife of the deceased and would be unaware of the exact postal address of the site at which the deceased was employed.

18 On record is the FIR lodged in respect of the death of the deceased, which refers to the place of accident as Goregaon (East), Mumbai-400063. There is no evidence adduced by the Appellant to establish its case of the accident site being different from the risk location site. Pertinently, it needs to be noted that the pin code of the risk location site, as mentioned in the insurance policy as well

as in the evidence of the Respondent No.1, is the same, i.e., Mumbai-400063. Greater weightage will have to be given to the FIR and not on the oral evidence of the Respondent No 1, who is the dependent of the deceased, and may not be well informed or literate considering that the deceased was a labourer working on a construction site. In the cross-examination, the witness for the insurance company has admitted that there is a possibility that the place of accident and the address mentioned in the insurance policy may be the same. He has also admitted that on basis of the city survey number place of accident can be traced. The Trial Court has rightly appreciated the evidence on record to arrive at a finding that the insurance policy covered the location at which the accident occurred. There is no perversity in the finding of the Trial Court. Question No (iii) is answered accordingly.

QUESTION NO (iv) and (v):

19 The Respondent No. 1 examined herself and deposed as to the contents of the application. She filed the certified copy of the FIR, which came to be marked as Exhibit B-8, and the insurance policy, which came to be marked as Exhibit B-9. The other

documents such as copy of spot panchnama, inquest panchnama, death certificate and photographs were marked as Articles.

20 In cross-examination by the insurance company, Respondent No 1 has admitted that she has not filed any document, such as salary certificate, muster roll, attendance register to show that the deceased was working with the Respondent No. 2 as Centri Fitter and that he was getting monthly wages of Rs. 16,000/-. She has admitted that she has received Rs.1,00,000/- from one Shri Dashrath Patel and that the FIR has also been filed against Dashrath Patel.

21 In cross examination, there is no admission elicited by the Appellant that the deceased was working with the sub contractor Dashrath Patel and not with Respondent No 2. There is not even a suggestion to the Respondent No 1 that the deceased was the employee of Dashrath Patel, who is the subcontractor of Respondent No 2 and therefore not covered by the insurance policy. The suggestion given is that Respondent No 2 is contractor and Dashrath Patel is sub contractor. The suggestion does not proceed further to the positive case of the insurance company that

the deceased was employed with sub contractor. The evidence of the Respondent No 1 about the employment of the deceased with the Respondent No 2 has not been shaken in the cross examination.

22 On behalf of the present Appellant, its Legal Officer was examined, who deposed that the place of the accident is not covered by the insurance policy and that the insurance policy does not cover the employees' risk of contractor and subcontractor. He deposed that there was no employer-employee relationship between the deceased and the Respondent No. 2 and that the deceased was not covered within the purview of the insurance policy. He has further deposed that the death of the deceased has not occurred out of and during the course of employment.

23 Pertinently, the witness has not deposed that the deceased was the employee of the subcontractor and was not covered by the insurance policy.

24 The Respondent No. 2 examined its Managing Partner, who deposed that the deceased was never an employee of the company. He has further deposed that his company is the

contractor of the construction site and that they had given the project to a subcontractor company named V.N. Enterprises through Dashrath Patel. He produced the copy of the contract agreement dated 16th November 2021 executed between the Respondent No 2 and V.N. Enterprises and copy of chargesheet. He has deposed that in the charge-sheet, the prime accused is Dashrath Patel. As the original contract and certified copy of charge sheet were not produced, the copy of the contract came to be marked as Article A and copy of the chargesheet came to be marked as Article B. As such the contract cannot be read in evidence.

25 In the cross-examination by the insurance company, the Respondent No 2's witness has admitted that the deceased was not working with the Respondent No. 2 and that his firm was not making any payment to the deceased. He has further admitted that the employees of the subcontractor are not covered under the policy taken out by the company. He has admitted that the deceased was working at the instructions of the subcontractor. He has further deposed that no information was given to the

insurance company about the accident, as the deceased was not the employee of the Respondent No. 2.

26 The Respondent No. 2 examined Dashrath Patel, who deposed that his company is the subcontractor at the construction site. He has further deposed that the deceased was not the employee of either Respondent No. 2 or his company, M/s V N Enterprises, and that there is no employer-employee relationship between the deceased and his company. He has further denied that any amount was paid by him to the Respondent No 1 as compensation.

27 In cross-examination on behalf of the insurance company, the suggestion given was that the deceased was not working in the firm of Dashrath Patel. The witness has admitted that his firm was providing labourers to Respondent No. 2. He has further stated that he is not aware where the deceased was working and that the deceased was not working with Respondent No 2 or in their firm.

28 The cross-examination of Dashrath Patel would show that it

was the insurance company's own case that the deceased was not working with the subcontractor.

29 The evidence of Respondent No 2 and Dashrath Patel is that the deceased was neither working with Respondent No 2 nor Dashrath Patel, which evidence cannot be believed. The FIR shows that the accident had taken place at the construction site in which the deceased expired. The Respondent No 2 was the contractor of the construction site and it is Respondent No 2's case that sub contract was given to Dashrath Patel. As the evidence shows that the deceased had died at the construction site and there is no explanation to justify his presence at the site, the only conclusion is that the deceased was working at the site and as the evidence does not prove that deceased was working with Dashrath Patel, the evidence of Respondent No 2 that deceased was not his employee, cannot be accepted.

30 The evidence of Respondent No 2 shows complete denial to the employer-employee relationship, which apparently is in order to avoid any criminal implications, as the FIR had already been

lodged. The witness for Respondent No. 2 has not deposed that the deceased was the employee of the subcontractor and has merely stated that the deceased was not the employee of the Respondent No 2. The other witness- Dashrath Patel has also denied that the deceased was the employee of his firm. As the Respondent No 2 has failed to prove the contract executed by it with Dashrath Patel, which was marked as Article, it cannot be accepted that Dashrath Patel was sub contractor of Respondent No. 2.

31 The insurance policy insuring the workers of the Respondent No 2 has been admitted by the parties and marked as Exhibit. Perusal of the insurance policy would indicate that the employees which are covered, as mentioned in Clause 8, include all employees engaged in the construction of the building, and the description of the employees is civil construction workers. The terms and conditions of the insurance policy define the "employee" to mean such person or persons in direct employment under the insured in the business, but shall not include any person employed under a contractor or subcontractor of the insured unless specifically

shown as covered in the Schedule and by an endorsement. There are general exclusions excluding a person employed in the business under a contractor or a subcontractor. Clause 8 of the insurance policy, which has been referred to above, uses the expression “employee”, which definition has been found in the policy terms and conditions. The said expression came up for consideration before a Coordinate Bench in the case of ***National Insurance Co. Ltd. vs. Shaikh Hasina Sharfuddin (supra)***, and the specific question which was answered by the Coordinate Bench was whether the insurance company had insured only the labourers of the Respondent No. 3/contractor or had insured all labourers working at the site of construction. The Coordinate Bench considered the insurance policy, which showed that all types of civil work in the PMC area were covered by the policy and that the policy does not say that only the labourers working on the payroll of the contractor were insured by the insurance company. In that case, the definition of “employee” was pressed into service to seek exclusion of a person employed under a contractor or a subcontractor, which did not find favour with the Court.

32 Similarly, in the present case, the insurance policy covers all

employees engaged in construction/demolition of the building, and the description of the employees is that of a civil construction workers. The decision covers an identical situation and, as the policy covers all civil construction workers engaged in the construction/demolition of the building, the argument of exclusion has no substance.

33 Even accepting that the insurance policy did not cover employees of sub contractor, the evidence on record fails to establish that the deceased was the employee of the sub contractor. The Respondent No 1 has come with the positive case that the deceased was employed with Respondent No 2. Even if there is no document produced on record, such as salary certificate, muster roll, or attendance register, to show that the deceased was working with the Respondent No. 2, the presence of the deceased at the construction site on the date of accident is not disputed. There is no explanation tendered for the deceased's presence at the site if he was not the employee of Respondent No 2. Dashrath Patel has denied that the deceased was the employee of his firm.

34 In the cross-examination, the witness for Respondent No. 2 has admitted that the deceased was working at the instructions of the subcontractor. The admission has come in the cross-examination by the advocate for the insurance company and proves that the deceased was employed at the construction site. The suggestion that the deceased was working under the instructions of the subcontractor is not the same as saying that the deceased was an employee of the subcontractor.

35 As the case of the insurance company is that the deceased was an employee of the subcontractor, it was necessary for the insurance company to bring positive evidence on record by calling for the muster roll, attendance register etc of the sub contractor Dashrath Patel, to demonstrate that the deceased was the employee of the subcontractor. On the contrary, the suggestion given by the insurance company is that the deceased was not working with the subcontractor which demolishes the insurance company's own case of the deceased being employee of sub contractor. There is no material on record to prove that the

deceased was employee of Dashrath Patel and the case of Respondent No 1 that deceased was employed by Respondent No.2, deserves to be accepted on pre-ponderance of probability. Question No (iv) and (v) are answered accordingly.

36 In light of the above discussion, the First Appeal fails and stands dismissed. In view of the dismissal of the First Appeal, pending Civil/Interim Application, if any, does not survive for consideration and stand dismissed.

SHARMILA U. DESHMUKH, J.