



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.2789 OF 2024

The New India Assurance Company Ltd.
Through its Branch Manager, 1st floor,
B. L. Avenue, Basmath Road, Parbhani,
Tq. Parbhani and Dist. Parbhani-431401
(M.S.) through, authorized Signatory of
Divisional office, Adalat road
Aurangabad

..Appellant
(Orig. Respondent No.2.)

Versus

1. Kuntabai w/o Indar Khedekar,
Age 47 years, Occu. Household,
R/o Shirala, Post Gomewakdi, Tq. Selu,
Dist. Parbhani
Mobile No.:9860029014
2. Rukhmin d/o Indar Khedekar,
(w/o Govind Ballal)
Age 29 years, Occu. Household,
R/o Sai Nagar, Partur, Dist. Jalna.
3. Swati d/o Indar Khedekar,
(w/o Vilas Zinzan)
Age 28 years, Occu. Household,
R/o Kristal Heritage CHS, Shop No.1/2,
Plot No.10, Kalamboli Node, Raigad.
4. Umesh s/o Indar Khedekar,
Age 24 years, Occu. Labour,
R/o Tirveni Sangam Society, Near
Gurudwara, Kalamodi, Panvel, Navi
Mumbai.
5. Shital d/o Indarrao Khedekar,
Age 22 years, Occu. Household,
R/o Shirala, Tq. Selu, Dist. Parbhani.
6. Inderjit Singh Baljit Singh Bal,
Age 49 years, Occu. Director,
Bal Road Lines Pvt. Ltd., Plot No.854,
Steal Market Kalambodi,
Navi Mumbai.

..Respondent
(R.Nos.1-5:Org. Clmts
R.No.6:Org.R.No.1)

...
Mr. A. B. Kadethankar, Advocate for Appellant.
Mr. S. T. Shelke, Advocate for Respondent Nos.1 to 5.
Mr. Satyajit Vakil, Advocate for Respondent No.6.
...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON :- 01st APRIL, 2024.

PRONOUNCED ON :- 09th APRIL, 2024.

JUDGMENT:-

1. The appellant/original respondent no.2 impugns judgment and award dated 18.12.2023 passed by Ex-Officio Commissioner for Employee's Compensation and Civil Judge, Senior Division, Parbhani in Workmen's Compensation Form Appeal No.03/2020. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. One Indar Khedekar was employed as Security Guard at establishment of respondent no.1 i.e. Bal Road Lines Private Limited. While he was on duty, an iron rod fell on his body to which he succumbed. His dependents filed proceeding under Employee's Compensation Act seeking compensation against employer, so also added appellant/insurer as party, who had issued employees compensation policy to cover risk of employees on establishment.

3. The appellant/insurer contested claim on the ground that insurance policy issued by them does not cover risk of Security

Guard. The insurance cover is restricted to employees specified under policy.

4. The Commissioner for Employee's Compensation framed issues, recorded evidence and finally allowed claim for compensation directing employer as well as insurer to pay compensation of Rs.6,77,760/- to claimants alongwith interest @ 12% per annum. The appellant/insurer assailed aforesaid judgment and award in this Appeal.

5. On 12.03.2025, Appeal was posted for admission before this Court and after considering submissions advanced, following substantial question of law has been framed.

“Whether in light of terms and conditions of coverage under the Insurance Policy issued by appellant, risk of deceased shall be deemed to be covered, thereby making appellant insurer liable to pay compensation jointly and severally along with employer/owner of vehicle.”

6. The parties were put to the notice that Appeal would be heard finally at the stage of admission. Accordingly, on 26.03.2025 respective parties advanced their submissions. However, matter was further adjourned for citation and reserved for judgment.

7. Mr. Kadethankar, learned Advocate appearing for the appellant invites attention of this Court to insurance policy issued

in the name of establishment and submits that specified classes of employees of establishment are covered under policy. He would further invite attention of this Court to oral evidence of Mr. Shaikh Abdul Latif, employee of Insurance Company, who has explained terms and conditions of insurance contract. According to Mr. Kadethankar, categories and sub-categories of employees, who were given insurance cover did not extend cover to Security Guard.

8. Per contra, Mr. Shelke, learned Advocate appearing for respondents/claimants submits that in first category domestic servants in private residences or in personal service of employer's residence in boarding house, club or hotel are covered. Even in sub-category, attendants are covered and, therefore, Security Guard can definitely be considered within scope of policy. In alternative, he submits that this Court may pass order in the nature of pay and recovery, since entire amount is already deposited with Commissioner. After releasing amount deposited by insurer, they may be given liberty to recover the same from employer.

9. I have carefully perused contents of insurance policy placed at Exhibit-31. The details of employees with monthly wages are specified in policy. The trade description of establishment is stated as "Transporter". The policy schedule for employees compensation insurance depicts that insurance coverages are given in particular

category, which are further sub-categorized. As per first column, 23 cleaners having monthly wages of Rs.8000/- are covered. In second column, 23 cleaners having monthly wages of Rs.20,000/- each are covered and in third column, four supervisor having monthly wages of Rs.15,000/- each are covered. The premium is accordingly charged.

10. The pleadings in the claim petition, particularly paragraph no.2 shows that respondent had employed deceased as Security Guard since many years in Bal Road Lines Private Limited. Even in paragraph no.2 of evidence affidavit filed by claimant no.1 it is specifically stated that deceased was working as Security Guard. Looking to aforesaid pleadings and contents of insurance policy, it can be observed that risk of Security Guard was not covered under insurance policy.

11. The establishment i.e. Bal Road Lines Private Limited is in trade of transportation. The insurance policy was intended to cover risk of cleaners employed by them on the vehicles and another category is supervisors, who were looking after business. Unfortunately, insurance policy nowhere depicts either respondent no.1 was intending to obtain insurance covering risk of Security Guard nor same was extended under insurance contract. The insurance contract being private contract between insurer and employer establishment, terms of contract will have to be strictly

construed. Therefore, there is no scope to adopt a broad interpretation of the insurance policy to include a Security Guard within its coverage restricted for cleaners or supervisors. Such interpretation would be absurd. In light of aforesaid findings, the question of law needs to be answered in negative.

12. Second limb of submissions made on behalf of respondents/claimants is that order in the nature of pay and recovery may be passed. Mr. Shelke, learned Advocate relied upon judgment of Punjab and Haryana High Court in case of ***New India Assurance Company Limited Vs. Anita Sharma and Another (FAO No.458 of 2014 dated 24.09.2014)***, wherein relying upon law laid down in case of ***M/s National Insurance Company Limited Vs. Baljit Kaur and Others¹***, concept of pay and recovery was made applicable even in proceeding under Employee's Compensation Act. Similarly, reliance is placed on Single Bench judgment of Telangana High Court in ***C.M.A. Nos.1161 and 1162 of 2005***.

13. Per contra, Mr. Kadethankar, learned Advocate appearing for appellant/insurer submits that concept of pay and recovery may be applicable in proceeding under Motor Vehicle Act and same may not be employed in proceeding under Employee's Compensation Act.

¹ AIR 2004 SC 1340.

14. Careful analysis of judgment of Punjab and Haryana High Court in case of **Anita Sharma and Another** (supra) would show that principle of pay and recovery has been borrowed from observations of Supreme Court in case of **Baljit Kaur and Others** (supra). However, such observations are made in the context of scheme under Motor Vehicle Act, which provides for statutory insurance cover to employee of owner of vehicle to the extent of liability under Employee's Compensation Act. Therefore, when statutory protective umbrella is made available to employees of owner of insured vehicle, the principle of pay and recovery, which is espoused to the benefit of third parties specified under Section 147 of the Motor Vehicle Act is made applicable even to the claims under Employee's Compensation Act at behest of employees brought within sweep of statutory cover under same provision. However, in present case, insurance policy is not statutory policy, but it is a independent contract between insurer and employer, the terms and conditions of which are based on proposal and acceptance. In present case, employer was not under statutory obligation to insure risk of his employees under insurance policy. It is absolute prerogative of employer to obtain policy and secure coverage of employees for his own indemnification. In such circumstances, principle of pay and recovery cannot enure to the

benefit of claimants. In result, appeal succeeds. Hence, following order:

ORDER

- a. First Appeal is partly allowed.
- b. The judgment and award dated 18.12.2023 passed by Ex-Officio Commissioner for Employee's Compensation and Civil Judge, Senior Division, Parbhani in Workmen's Compensation Form Appeal No.03/2020 is modified as under:-

(i) The respondent no.6, namely, Inderjit Singh s/o Baljit Singh Bal shall pay compensation amount of Rs.6,77,760/- (Six Lakhs Seventy Seven Thousand Seven Hundred and Sixty Rupees only), together with the interest @ 12% per annum from the date of accident till its realization, within two months from today to respondent no.1, namely, Kuntabai w/o Indar Khedekar.

(ii) The respondent no.6, namely, Inderjit Singh s/o Baljit Singh Bal shall be liable to pay the penalty of Rs.3,38,880/- (Three Lakhs Thirty Eight Thousand Eight Hundred and Eighty Rupees only) together with interest @ 12% per annum from the date of accident till the realization of entire amount.

c. The claim as against respondent no.2 namely New India Assurance Company Limited through its Branch Manager stands dismissed.

d. The amount deposited by appellant (original respondent no.2) New India Assurance Company Limited be refunded after eight weeks.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025