IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2019

BEFORE

THE HON'BLE MR. JUSTICE B.VEERAPPA

MISCELLANEOUS FIRST APPEAL NO.7901/2016 (WC)

United India Insurance Co. Ltd.

v/s.

Sri. B.N. Ashwathappa

J U D G M E N T

The appellant – Insurance Company has filed the present Miscellaneous First Appeal against the Judgment & Award dated 31.05.2016 made in ECA.No.329/2014 on the file of the Commissioner for Employee's Compensation/ Tribunal awarding total compensation of Rs.8,42,000/- with interest at 12% per annum from the date of accident till deposit mainly on the ground that the deceased Shivshankar was not working as driver under Respondent No.1 – owner.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The claimants filed ECA.No.329/2014 claiming compensation on account of death of their son - Shivashankar in an accident arising out of and in the course of his employment under respondent No.1. It is the case of the claimants that the deceased Shivashankar was working as a driver under the employment of respondent No.1 – owner of the goods Truck bearing Registration No.KA-53-7571. That on 21.07.2012, at about 02.00 a.m., the said deceased Shivashankar was driving the said Truck from Belgam to Bengaluru and when he reached near Manasur Bridge on Hubli-Dharwad Bypass road, at that time, the driver of the Lorry bearing registration No.RJ-19-GA-6521 driven the said vehicle in a rash and negligent manner and dashed to the said goods Truck. As a result of the said accident, deceased Shivashankar sustained grievous injuries and died on the spot. Thereafter, the dead body of Shivashankar was shifted to Government Hospital, Dharwad for postmortem. Thereafter, the same was handed over to the claimants. It is further contended that deceased Shivashankar was hale and healthy prior to the accident and at the time of the accident, he was 28 years old and

working as driver in the goods Truck bearing registration No.KA-53-7571 under the employment of respondent No.1. He was earning wages of Rs.6,000/- per month and Rs.100/- as batta per day. Due to the unexpected death of Shivashankar, the parents – claimants are suffering a lot and lost their bread earner. It is further contended that the accident occurred arising out of and during the course of his employment under respondent No.1 and respondent No.2 is the insurer of the alleged goods Truck and the policy was in force as on the date of the accident. Hence, they contended that both respondent No.1 – owner and Respondent No.2 – insurer of the Truck are jointly and severally liable to pay the compensation. Hence, they sought compensation of Rs.9,53,000/- with interest and costs.

4. In response to the notice, respondent No.1 - owner filed objections and contended that the deceased Shivashankar was working as a Truck driver with one Venkatesh, who is the earlier owner of the Truck and after purchasing the said vehicle by respondent No.1, the deceased was unemployed. Further, he contended that the

deceased used to take the Truck from him on rental basis and as such, he is not an employee under him and the claim petition is not maintainable. Further, respondent No.1 – owner of the Truck has admitted the incident and the cause of death of the deceased Shivashankar. He has also contended that immediately after receiving the information of the accident, he has intimated the same to respondent No.2 – insurer. He has admitted that he is the owner of the goods Truck bearing registration Noa.KA-53- 7571 and the said vehicle is insured with respondent No.2 and policy was in force as on the date of the accident. Therefore, he sought to dismiss the claim petition.

5. Respondent No.2 – insurance company filed objections denying the averments made in the claim petition and contended that the accident occurred is due to rash and negligent driving of the Lorry bearing registration No.RJ-19-GA-6521 and as such, the claimants filed the claim petition against the owner and insurer of the said vehicle. It is further contended that the owner of the goods Truck is resident of Chickballapura district and the petitioners are also the residents of Chickballapura district.

Therefore, the Court does not have jurisdiction to try the petition. The insurance policy of the Truck and the liability is however, subject to the terms and conditions mentioned in the policy. The insurer has also denied the age, occupation and income of the deceased and also the relationship of the claimants with the deceased. The insurer has also contended that there is no relationship of employee and employer between the deceased Shivashankar and respondent No.1. Hence, sought for dismissal of the claim petition.

6. In order to establish the case, the claimant No.1 examined himself as PW.1 and marked documents as Exs.P.1 to P.7. On the other side, respondent No.1 – owner of the Truck examined himself as RW.1 and marked documents as Exs.R.1 to R.8 and one of the official of the insurance company was examined as RW.2 and no documents were marked on its behalf.

7. Based on the pleadings, the Tribunal framed the following issues:

1. ಅರ್ಜಿದಾರರು, ಅರ್ಜಿಯ ಕಂಡಿಕೆ 3 ರಲ್ಲಿ ಕಾಣಿಸಿದಂತೆ,ದಿನಾಂಕ: 21-07-2012ರ ಬೆಳಗಿನ 9 ಗಂಟೆ ವೇಳೆಯಲ್ಲಿ ಶಿವಶಂಕರ್ ಜಿ.ಎ. ಇವರು 1 ನೇ ಎದುರುದಾರರ ಮಾಲೀಕತ್ವದ ಗೂಡ್ಸ್ ಟ್ರಕ್ ನೋಂದಣಿ ಸಂಖ್ಯೆ ಕೆಎ-53-7571 ವಾಹನದಲ್ಲಿ ಚಾಲಕನೆಂದು ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತಾ ಅಪಘಾತಕ್ಕೆ ಒಳಗಾಗಿ ತೀವ್ರ ಸ್ವರೂಪದಲ್ಲಿ ಗಾಯಗೊಂಡು, ಮೃತಪಟ್ಟರೆಂದು ಸಾಬೀತುಪಡಿಸುವರೇ?

2. ಅರ್ಜಿದಾರರು, ತಾವು ಮೃತ ಶಿವಶಂಕರ್ ಜಿ.ಎ. ಇವನ ವಾರಸುದಾರರು ಮತ್ತು ಬಿತರೆ ಂ ದು ಸಾಬೀತುಪಡಿಸುವರೇ?

3. ಅರ್ಜಿದಾರರು, ಅರ್ಜಿಯಲ್ಲಿ ಕೋರಿರುವಂತೆ ಪರಿಹಾರ ಪಡೆಯಲು ಅರ್ಹರೇ ಆಗಿದ್ದಲ್ಲಿ, ಎಷ್ಟು ಮತ್ತು ಯಾರಿಂದ?

4. ಆದೇಶವೇನು?

8. The Tribunal after considering both oral and documentary evidence on record has recorded the finding that the claimants have proved that the decease Shivashankar was working under respondent No.1 as driver in the goods Truck bearing registration No.KA-53-7571 and died in the road traffic accident, arising out of and during the course of employment and the claimants have proved that they are the dependents of the deceased. Accordingly, the tribunal by its impugned judgment and award dated 31.05.2016 awarded total compensation of Rs.8,42,000/- with 12% interest per annum from the date of the accident till deposit. Being aggrieved by the same, the insurance

company has filed the present appeal mainly on the ground that the liability is fastened on the insurance company.

9. The respondents – claimants have not filed any appeal seeking enhancement of compensation.

10. I have heard the learned counsel for the parties to the lis.

11. Sri Krishna Kishore, learned counsel for the appellant – Insurance company vehemently contended that the impugned Judgment & Award passed by the Tribunal awarding compensation of Rs.8,42,000/- with interest at 12% per annum from the date of the accident, is without any basis and liable to be set aside. He further contended that when the claimants have not proved the relationship of employer and employee between the 1st respondent – owner and the deceased, question of granting compensation would not arise. The Tribunal has not considered the said fact in the impugned Judgment. He further contended that the appellant – Insurance company has taken specific defence that as on the date of the accident, the deceased Shivashankar was not working

under the 1st respondent - owner and the accident is not arising out of and in the course of his employment. Therefore, the finding recorded by the Tribunal that the deceased died in the accident arising out of and in the course of his employment, has no basis. He further contended that the owner – RW1 filed objections before the Tribunal and stated that the deceased was not employed under him. Mere one sentence in the cross-examination of RW.1 that as and when required, the deceased used to take vehicle from him, cannot be a ground to award compensation. Therefore, he sought to set aside the impugned Judgment & Award by the Tribunal.

12. In support of his contentions, learned counsel for the appellant relied upon the following judgments:

1. *Mackinnon Machenzie and Co., (P) Limited vs. Ibrahim Mahmmed Issak* {(1969)2 SCC 607 (paragraphs 5 and 6) }

2. *Gottumukkala Appala Narasimha Raju and others vs. National Insurance Company Limited and another* {(2007)13 SCC 446 (paragraphs 12,14 and 16)}

13. Per contra, Sri Mahesh Shetty, learned counsel for the present Respondent Nos.1 and 2 – claimants sought to justify the impugned Judgment & Award passed by the Tribunal and contended that the owner of the vehicle viz., RW.1 has admitted in the cross-examination to the effect that he met with an accident in the year 2009 and thereafter he stopped driving the vehicle and he has appointed the driver and that on the date of the alleged accident, the deceased Shivakumar was working as a driver in the truck which belongs to him. In view of the categorical admission made by RW.1 and taking into consideration the provisions of Section 3 of the Act, the Tribunal is justified in awarding the compensation. Therefore, he sought to dismiss the appeal.

14. In support of his contentions, learned counsel for present Respondent Nos.1 and 2 - claimants relied upon the following judgments:

1. *Namdeo v. Bharat and another* {2007 ACJ 316 (para 7)

2. *Divisional Engineer, Telecommunications, Palasa, Srikakulam* {LAWS (APH) (1998)6 6 (para 6)

15. Sri Karthik B.Y, learned counsel for the present 3rd respondent - owner sought to justify the impugned Judgment and Award passed by the Tribunal and contended that the Respondent No.3 - owner has admitted that the deceased Shivashankar was working under him as a driver and met with an accident arising out of and in the course of his employment. Therefore, he sought to dismiss the appeal.

16. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record carefully.

17. It is the specific case of the claimants that the deceased Shivashankar was working as driver in the goods truck bearing Regn. No.KA-53-7571 belonging to the present 3rd respondent and he met with accident arising out of and in the course of his employment. It is further case of the claimants that the present 3rd respondent was

paying monthly wages of Rs.6,000/- and batta of Rs.100/- to the deceased. It is the specific case of present Respondent No.3 - owner of the vehicle that Shivashankar was working as a truck driver with one Venkatesh, who was earlier owner of the truck and after purchase of the said vehicle by him, the said Shivashankar was unemployed. He further admitted the accident and cause of death of the deceased Shivashankar. He has also stated that he has intimated the same to the insurance company. It is the specific case of the Insurance company – present appellant that the accident occurred due to the rash and negligent driving of driver of the lorry bearing No.RJ-19-GA 6521. The appellant also admitted the issuance of insurance policy to the vehicle bearing Regn. No.KA-53-7571 and the liability is subject to the terms and conditions mentioned in the policy. He denied the Employee and Employer relationship between the deceased and the 1st respondent – owner.

18. In order to prove its case, the claimant – B.N. Ashwathappa (father of the deceased) examined himself as PW.1 and produced the material documents Ex.P1 to P7. The respondent N0.1 before the Tribunal (owner of the

vehicle) examined as RW.1 and produced the material documents Ex.R1 to Ex.R8. The Commissioner considering the entire material on record, has recorded a finding that the claimants have proved as stated in paragraph-3 of the claim petition that on 21.7.2012 at about 9 a.m. the deceased Shivashankar was driving the goods truck belonging to the 1st respondent – owner bearing Regn. No.KA-53-7571 and died because of serious injuries sustained. The claimants proved that they are the dependents of the deceased. The accident in question is not in dispute. The only question raised by the Insurance company is that as on the date of the accident, the deceased was not working as driver of the respondent No.1 – owner. The same is negatived by the Commissioner and held in paragraph – 18 as under:

> *18. Thereafter the counsels for the petitioners and the respondent No.2 have cross-examined the RW-1 at length. In the cross-examination, the RW-1 has clearly admitted at Page No.6 to 9 & 15 & 16 that:*

" ನನಗೆ 2009 ನೇ ಸಾಲಿನಲ್ಲಿ ಅಪಘಾತವಾಗಿದ್ದು, ಆ ವೇಳೆಯಿಂದ ನಾನು ವಾಹನ ಚಲಾಯಿಸುವುದನ್ನು ನಿಲ್ಲಿಸಿದೆನು.ನೀವು ಹೊಂದಿದ್ದ ಕ್ಯಾಂಟರ್ ವಾಹನವನ್ನು ನೀವು ಚಲಾಯಿಸದೇ, ಚಾಲಕನನ್ನು ನೇಮಿಸಿಕೊಂಡು, ಆತನ ಕಡೆಯಿಂದ ವಾಹನ ಚಲಾಯಿಸುತ್ತಿದ್ದರೇ ಎಂದು ಕೇಳಲಾಗಿ, ಹೌದು ಎಂದು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ. "

" ದಿ:21-07-2012ರಂದು ಶಿವಶಂಕರ್ ಇವರು ನೀವು ಹೊಂದಿದ ಕ್ಯಾಂಟರ್ನಲ್ಲಿ ಚಾಲಕನೆಂದು ಕೆಲಸ ನಿರ್ವಹಿಸುತ್ತಿದ್ದನೆಂದು ಸೂಚಿಸಲಾಗಿ, ಹೌದು, ಆದರೆ ಆತ ಆ ದಿನ ಮಾತ್ರ ಚಾಲಕ ವೃತ್ತಿ ಮಾಡಲು ಬಂದಿದ್ದನೆಂದು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ.ಮೇಲೆ ಹೇಳಿದ ದಿನಾಂಕಕ್ಕೂ ಮೊದಲು ಶಿವಶಂಕರ್ ಇವರು 2 ಬಾರಿ ನನ್ನ ಕ್ಯಾಂಟರ್ನಲ್ಲಿ ಚಾಲಕನೆಂದು ಕೆಲಸ ಮಾಡಲು ಬಂದಿದ್ದರು. "

" ಮೃತ ಶಿವಶಂಕರ್ ಇವರು ನನ್ನ ಲಾರಿಗೆ ಚಾಲಕನೆಂದು ಬರದ ಸಮಯದಲ್ಲಿ, ಆತನು ಬೇರೆ ಲಾರಿಗೆ ಚಾಲಕನೆಂದು ಹೋಗುತ್ತಿದ್ದ ಮತ್ತು ಅದರಿಂದ ಆತನಿಗೆ ಸಂಬಳ ಬರುತ್ತಿತ್ತು ಎಂದರೆ ಸರಿ. "

" ನಾನು ನನ್ನ ತಕರಾರಿನಲ್ಲಿ ನನ್ನ ಮತ್ತು ಮೃತ ಶಿವಶಂಕರ್ ಮಧ್ಯೆ ಮಾಲೀಕ ಮತ್ತು ಕಾರ್ಮಿಕ ಸಂಬಂಧ ಇರದ ಬಗ್ಗೆ ಕಾಣಿಸಿದ್ದು, ಆದರೆ ಇತ್ತೀಚೆಗೆ ಅರ್ಜಿದಾರರೊಂದಿಗೆ ಕೂಡಿ, ವಿಮಾ ಕಂಪನಿಯಿಂದ ಹಣ ಪಡೆಯಬೇಕೆನ್ನುವ ಉದ್ದೇಶದಿಂದ ಕೆಲ ಅಂಶಗಳನ್ನು ಸುಳ್ಳು ಹೇಳುತ್ತಿರುವೆನೆಂದರೆ ಸರಿಯಲ್ಲ.

" ಮೃತ ಶಿವಶಂಕರ್ ಇವರು ಯಾವ ದಿನವು ನಿಮ್ಮ ಬಳಿ ಚಾಲಕ ವೃತ್ತಿಯನ್ನು ಮಾಡಿಲ್ಲ ಮತ್ತು ಅವರಿಗೆ ನೀವು ಯಾವ ದಿನವು ವೃತ್ತಿಯ ಬಗ್ಗೆ ಕೂಲಿಯನ್ನು ಪಾವತಿಸದೇ ಇದ್ದರೂ ೧ ಕೂಡ ಮತ್ತು ನಿಮ್ಮ ಮತ್ತು ಶಿವಶಂಕರ್ ಇವರ ಮಧ್ಯೆ ಮಾಲೀಕ ಮತ್ತು ಕಾರ್ಮಿಕ ಸಂಬಂಧ ಉಂಟಾಗಿಲ್ಲವೆಂದು ಸೂಚಿಸಲಾಗಿ, ಅಪಘಾತವಾದ ದಿನದಂದು ಮಾತ್ರ ಆತನು ನನ್ನ ಲಾರಿಯಲ್ಲಿ ಚಾಲಕ ವೃತ್ತಿ ಮಾಡಲು ಬಂದಿದ್ದನೆಂದು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ. "

> *On perusal of the above evidence, it appears that, at one stage, the respondent No.1 has denied the relationship of employer and employee between him and deceased Shivashankar. On the other hand, he himself has admitted in his evidence that, on the date of alleged accident, the deceased Shivashankar was working as a driver in the truck which belongs to the respondent No.1. Considering the above facts, I am of the opinion that, the contention of the respondent No.1 is not consistent one.*

19. It is also not in dispute that as per Ex.P1, the Dharwad Police have registered a case against the driver of

the lorry bearing No.RJ-19-GA 6521. The main contention of the learned counsel for the appellant is that the deceased was not working with the present 3rd respondent – owner as on the date of the accident and no material documents are produced before the Court. Therefore, question of paying compensation by the Insurance Company does not arise. It is the case of the claimants as well as the present 3rd respondent – owner that the deceased was working under the present 3rd respondent as a driver and the owner used to pay monthly wages of Rs.6,000/- and *batta* of Rs.100/-. In the cross-examination, the owner of the vehicle in categorical terms admitted that the deceased was working under him and the deceased met with an accident arising out of and in the course of his employment. In view of the categorical admission made by the owner of the vehicle, the Insurance Company cannot contend that there is no relationship of employer and employee. It is also not in dispute that as on the date of the accident occurred, the vehicle which was driven by the deceased bearing Regn. No.KA 53 7171 was insured by the present 3rd respondent with the appellant and the policy was in force.

20. A careful reading of the object of the Employee's Compensation Act clearly depicts that the said Act is a piece of social security and welfare legislation. Its dominant purpose is to protect the workman and, therefore, the provisions of the Act should not be interpreted too narrowly so as to debar the workman from compensation which the Parliament thought they ought to have. The intention of the Legislature was to make the employer and insurer of the workman responsible against the loss caused by the injuries or death, which ought to have happened, while the workman was engaged in his work.

21. The provisions of Section 3 of the Act read 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) in respect of any injury which does not result in the total or partial disablement of the [employee] for a period exceeding three days;*
>
> *(b) in respect of any injury, not resulting in*

death or permanent total disablement caused by an accident which is directly attributable to—

(i) the [employee] having been at the time thereof under the influence of drink or drugs, or

(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) the wilful removal or disregard by the [employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of [employee],

****

(2) If [an employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if [an employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if [an employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an

occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,--

(a) that [an employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that [an employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this subsection for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of

the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If [an employee] employed in any employment specified in Part C of Schedule III

contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A)] and (3) no compensation shall be payable to [an employee] in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on [an employee] in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by [an employee] in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the [employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

22. A careful perusal of the said provision makes it clear that if a 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 Chapter-III of the Act.

Admittedly, the owner of the vehicle has stated on oath before the Court that the deceased was working under him as a driver as on the date of the accident and he died in the accident arising out of and in the course of his employment. Therefore, the contention that the deceased was not working with the present 3rd respondent cannot be accepted.

23. In so far as the judgment relied upon by the learned counsel for the appellant – Insurance company in the case of *M.M. and Co., (P) Ltd., v. Ibrahim M. Issak* reported in (1969)2 SCC 607, it was a case of missing of son of the claimant and the claimant filed an application under Section 3 of the Act claiming compensation for the death of his son, who was missing. Admittedly in the said matter, the case of the claimant was that his son was missing from December-1951 and the application filed in February-1962 and it was not his case that his son died in the accident or personal injury arising out of and in the course of his employment. In those circumstances, the Hon'ble Supreme Court held that in case of death caused by accident, the burden to prove that the accident arising out

of and in the course of his employment vests on the workman and since and there is no direct evidence in the case, the claimant was not entitled to compensation. Admittedly in the present case, it is not the case of the appellant – Insurance Company that the deceased Shivashankar was not at all driving the vehicle. The only contention raised by the appellant - Insurance Company is that the deceased was not working under the present 3rd respondent – owner. The owner of the vehicle contended that the deceased was working under him and died in the road accident arising out of and in the course of his employment. Admittedly, the Insurance policy was in force as on the date of the accident. Therefore, the said judgment has no application to the facts and circumstances of the case.

24. In so far as the judgment relied upon by the learned counsel for the appellant in the case of *Gottumukkala Appala Narasimha Raju and others vs. National Insurance Company Limited and another* {(2007)13 SCC 446}, it was a case where the defence taken by the insurer that the deceased and the owner of tractor being husband and wife, relationship of employer

and employee between them did not arise and hence the deceased was not a workman within the meaning of the provisions of Section 2(1)(n) of the Employee's Compensation Act. In those circumstances, the Hon'ble Supreme Court rejected the claim of the claimant. The said case has no application to the facts and circumstances of the present case.

25. The learned Single of High Court of judicature at Bombay, Aurangabad Bench in the case of *Namdeo v. Bharat and another* {2007 ACJ 316} while considering the provisions of Section 2(1)(n), 3(1) and 30(1) of the Employee's Compensation Act, has held at paragraphs 17 and 18 as under:

> *17. Mr. Dengale, the learned counsel, submits that there is no evidence regarding the previous employment of the applicant with the Opponent No. 1. Section 3 of the Act of 1923 contemplates the personal injury to a workman, by accident, arising out of and in the course of his employment. The period of employment of the workman concerned with his employer is immaterial. On the date of accident, the relationship between the person filing an application seeking compensation under section 3 of the Act of 1923 with the employer is material provided the person concerned was workman within*

the meaning of section 2(1)(n) of the Act of 1923. It is apposite to refer to the judgment of this Court in the matter of Shivaji Krishna Gaikwad v. Telecom District Engineer, Sangli, 1997 ACJ 246 (Bombay). In the matter of Shivaji (supra) the learned Single Judge of this Court held that the compensation provided under the Workmen's Compensation Act is not a charity to the workman but it is a legal right and security against any accidental events, arising out of and in the course of employment. The minimum amount of compensation under section 4-A is Rs. 20,000/-. The injured workman may be a casual labourer or a regular employee, even if a workman has worked for a day and he met with an accident, the length of his service is irrelevant for the purpose of awarding compensation under the Act. I am in respectful agreement with the view taken by the learned Single Judge of this High Court in Shivaji's case (supra).

18. From the pleading and evidence, it is proved that the applicant was in employment of the Opponent No. 1 at the time of accident. It is useful to refer to a Division Bench judgment of this Court in the matter of Zubeda Bano v. The Divisional Controller, Maharashtra State Road Transport Corporation, 1990 ACJ 923 (Bombay). The facts in the matter of Zubeda Bano (supra) were that one Abdul Aziz, aged 51 years, was a bus driver in the service of the Maharashtra State Road Transport Corporation on 7th November, 1983. In the regular course of his employment, he drove a passenger bus from Umred

to Nagpur. The bus reached Nagpur about two hours late at about 08.30 p.m. The second part of the journey was to commence for destination Girad at 09.30 p.m. The bus was stationed at the bus stand platform, all passengers got down and the conductor Iqbal Shaikh proceeded to issue tickets. When the first two passengers to Girad - Ramchandra and Mohd. Hussain - entered the bus, they found Abdul Aziz lying unconscious on the bonnet and the steering wheel. They reported the matter to the conductor who along with mechanic Mohd. Akaram entered the bus, lifted the body of Abdul Aziz, put it in the lying condition and thereafter straightway took the bus to the Government Medical College Hospital, where Abdul Aziz was declared dead by the attending doctor at about 09.00 p.m. The death was attributed to heart failure due to sudden heart-attack. In the background of these facts the Division Bench of this Court, in the matter of Zubeda Bano (supra) {sic Mackinnon Mackenzie & Co., Pvt. Ltd., v. Ritta Farnandes, 1969 ACJ 419 (SC)} held that:

> *"It is well established that under this section, there must be some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the*

employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but the disease coupled with the employment then it could be said that the death arose out of the employment and the employer would be liable."

In the case on hand, evidence on record is sufficient to show that the applicant has sustained injury in the course and out of the employment on 20th February, 1992. In my opinion, therefore, the learned Commissioner for Workmen's Compensation was justified in recording a finding on this point, in favour of the applicant.

26. The learned single Judge of High Court of Andhra Pradesh High Court in the case of Divisional Engineer, Telecommunications, Palasa, Srikakulam vs. I. Sankara Rao reported in LAWS (APH) 1998 6 6 while considering the provisions of Section 2(2)(n) and 13 of the Act held at paragraph-6 as under:

6. The point raised in the appeal is that respondent No. 1 is only a casual worker and was therefore not workman within the meaning of Section 2(1)(n) of the Act. The definition of workman reads as follows : " 'workman' means

any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is -

(i) a railway servant as defined in (Clause 34 of Section 2 of the Railway Act, 1989 (24 of 1989)) not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or ((ia) (a) a master, seaman or other member of the crew of a ship, (b) a captain or other member of the crew of an aircraft, (c) a person recruited as driver, helper mechanic, cleaner or in any other capacity in connection with a motor vehicle, (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or); (ii) employed (x x x) (x x x) in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of (the Armed Forces of the Union) (x x x); and any reference to a workman who has been injured shall, where the workman is dead,

include a reference to his dependants or any of them." It will be seen that any person who is employed for the purposes of the employer's trade or business is a workman. Section 2 (2) of the Act makes it clear that the exercise and

performance of the powers and duties of a local authority or of any department (acting on behalf of the Government) shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department. Thus is would be seen that if respondent No.l's services were utilised for the purpose of trade or business of the appellant department, then he will fall within the term workman as defined under the Act. The admitted evidence in the case is that respondent No.l's services were being utilised whenever there was need of drivers in the department. His services were utilised for the work of the department. His services have been utilised on various dates. In the circumstances, having regard to Section 2(2) of the Act read with Section 2(1)(n) of the Act it follows that the services of respondent No.1 were utilised for the trade or business of the appellant department. That being so, the respondent No. 1 was a workman within the meaning of Section 2(1)(n) of the Act. This was the only substantial question of law. In view of the fact that a true reading of

Section 2(1)(n) of the Act clearly shows that respondent No. 1 was a workman, the amount awarded in his favour cannot be disputed or challenged in the appeal and no other question of law much less substantial one is involved in the appeal.

27. In view of the aforesaid reasons, the substantial question of law raised in the present appeal is answered in the affirmative holding that the Tribunal was justified in awarding compensation of Rs.8,42,000/- with interest at 12% per annum from the date of the accident till the date of realization, based on the oral and documentary evidence adduced. The same is in accordance with law. The appellant has not made out any ground to interfere with the impugned Judgment & Award passed by the Commissioner/Tribunal, exercising the powers under the provisions of the Section 30(1) of the Employee's Compensation Act.

Accordingly, the appeal is dismissed.

The amount in deposit, if any before this Court by the Insurance Company shall be transmitted to the concerned Tribunal forthwith.

Ordered accordingly.