IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.56 OF 2026

Confidence Petroleum India Limited,
Through its Chief General Manager,
Office :- 34A, Confidence Tower,
Central Bazar Road, Ramdaspeth,
Nagpur-440 010 (Present Address) .. Appellant

.. Versus …

1) Bholaji s/o Masuji Khandekar,
Aged about 67 years,
Occupation-Nil.

2) Smt. Lahanshibai w/o Bholaji
Khandekar, Aged about 63 years,
Occupation-Nil.

3) Smt. Nehabai wd/o Rakesh Khandekar,
Aged about 26 years, Occ. Nil.

4) Baby s/o Rakesh Khandekar,
Aged about 04 years, Occ-Nil.

5) Aksh s/o Rakesh Khandekar,
Aged abut 4 months, Occ. Nil.

(Applicant Nos.4 & 5 minors, through
natural guardian/mother applicant no.3)

All R/o. Ghiwari, Tah. & Dist. Gondia,

6) Bhushan s/o Harihar Godhankar,
Proprietor of Arnav Go Gas,
Gondia Gas Point, Manohar Bhai Ward,
Ring Road, Gondia. .. Respondents

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Mr. V.P. Marpakwar, Advocate for Appellant.
Mr. S.W. Sambre, Advocate for Respondent Nos.1 to 5,
Mr. S.R. Burade, Advocate for Respondent No.6.

……..

CORAM : PRAVIN S. PATIL, J.
RESERVED ON : 17.09.2026.
PRONOUNCED ON : 30.10.2026.

JUDGMENT

1. In the present appeal, the appellant-company challenged the impugned judgment and order dated 28.02.2024 passed by the Commissioner under Employees Compensation Act whereby the appellant-company along with the respondent no.6 were jointly and severally held responsible to pay the compensation of an amount of Rs.14,77,950/- as a compensation towards death of deceased workman Rakesh along with 12% interest from the date of accident i.e. 01.09.2020, till its regularization.

2. In the present matter, the facts which are not disputed are as under :

The appellant is a petroleum company engaged in business of supplying LPG gas cylinders. It has gas filling plant in the area of Kalmeshwar, District-Nagpur where empty

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cylinders are filled and distributed to the authorized dealers/agencies, who in turn, supply the same to the registered customers. The respondent no.6 is one of the authorized dealer/agent appointed by the appellant for the area of Gondia and Gadchiroli.

As per the agreement between the appellant and respondent no.6, it is agreed that the respondent no.6 to collect filled gas cylinders from Kalmeshwar Plant by returning empty cylinders, then to distribute the same to the registered customers. It is also agreed between them that the respondent no.6 shall collect the money from customers towards supply of gas cylinders and after deducting his commission, deposit such collection amount in the account of the appellant.

3. The deceased namely, Rakesh Khandekar was one of the driver of the vehicle purchased by respondent no.6 i.e. Bolero pick-up van bearing registration no.MH-33-G-2283 used for the purpose of supplying the gas cylinders to the customers door to door.

4. The claimants have filed the application for compensation before the Commissioner of Employees

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Compensation Act, stating that on 01.09.2020 deceased Rakesh along with Rajkumar Lilhare was going to Gondia after collecting the gas cylinders from Kalmeshwar Plant. At the relevant time, said Rajkumar Lilhare was driving the vehicle and deceased was seating beside him on conductor seat. The said vehicle was met with an accident on National Highway No.6 as unidentified truck gave forceful dash from backside. In the said accident, the deceased sustained fatal injuries and died on the spot. The driver Rajkumar Lilhare, who was also involved in the accident, caused bodily injury. The said Rajkumar Lilhare lodged police complaint against unknown truck at Sakoli Police Station on 01.09.2020. On the basis of said complaint, offence was registered as FIR No.0367/2020 under Sections 279, 337, 304-A of the Indian Penal Code and under Sections 184, 134-A, 134-B and 187 of the Motor Vehicles Act against the driver of unidentified offending truck. Therefore, the applicants/claimants, on the basis of documents collected from the Police Station, filed the application for compensation under Section 3 of the Employees Compensation Act, 1923.

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5. Before the Commissioner of Employees Compensation Act, the present appellant was impleaded as respondent no.1 and the respondent no.6 was impleaded as respondent no.2. The claimants claimed the compensation from both the respondents by stating that the appellant no.1 is a principal employer and respondent no.2 is working as a dealer for distribution and selling the gas cylinders, therefore, both are responsible to pay the compensation jointly and severally to the claimants.

6. Before the Commissioner, the respondent no.1 filed his written statement and stated that the present respondent no.6 is an independent and not concerned with the business of the appellant. He has stated that the respondent no.2 is carrying the business of supplying the gas cylinders to the customers as per the agreement with it. The respondent no.1 further stated that he is not aware of appointment of deceased as a driver on Bolero pick-up van for transportation of gas cylinders. According to the appellant, deceased was never employed by him and hence he is having no employer employee relationship with the deceased. Therefore, he has been wrongly impleaded

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as a principal employer of deceased.

7. The present respondent no.6 also filed the reply. He has, however, categorically stated that he is working as a dealer for appellant for distribution and selling of gas cylinders and also admitted his ownership over vehicle in question i.e. Bolero pick-up van bearing No.MH-33-G 2283. He has denied the relations with the deceased as a driver by stating that he has not appointed the deceased on such vehicle. He admitted the fact that the person namely Rajkumar Lilhare was his driver and he has lodged the police complaint to the Police Station in respect of accident dated 01.09.2020. In the background of submission of the parties, the matter was proceeded to decide on its own merit by the learned Commissioner under Workmen's Compensation Act by framing the issues on the basis of rival parties before him.

8. In the light of issues framed by the learned Commissioner, the claimants have entered into the witness box and relied upon the relevant documents to establish the fact that in the accident dated 01.09.2020 the deceased caused death and also relied upon the first information report, wherein

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the informant has himself stated that the deceased was with him in the vehicle as an other driver of Bolero pick-up van.

9. The present appellant did not enter into the witness box nor led any evidence in support of his submission made before the Commissioner of Workmen's Compensation Act. The respondent no.6 examined himself by filing evidence on affidavit.

10. In the light of this submission and the evidence, the learned Commissioner has decided the application filed by the claimants and thereby by the impugned judgment and order directed the appellant-company and respondent no.6 to pay the compensation to the claimants in the matter.

11. The appellant as well as the respondents are heard by this court and after hearing the parties, the following substantial questions of law arise for consideration for the purpose of Section 30 of the Employees Compensation Act, 1923.

> (i) whether the appellant-company falls under the purview of "principal employer" or not;

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(ii) whether in view of Section 12 (4) of the Employees Compensation Act, the appellant is entitled for exoneration from payment of compensation to the claimants.

12. In view of the controversy which is raised by the appellant in the present matter, firstly it would be relevant to record the fact that under Section 3 of the Employees Compensation Act, 1923, it is the employer's liability to pay the compensation and Section 4 of the Act provides how to determine the amount of compensation. As per Section 3, the employee is entitled for a compensation, if injury or death caused to him by an accident arising out of and in the course of his employment. Therefore, in this matter, it will be necessary to first consider the legal position what is mean by "accident arising out of" and "in the course of employment".

13. This court as well as the Hon'ble Supreme Court of India in the catena of judgments has dealt with this issue. However, in my considered opinion, the Hon'ble Supreme Court of India in the case of ***Daya Kishan Joshi and another .vs. Dynemech Systems Private Limited, reported in (2018) 11 SCC 642***, has taken into consideration all earlier judgments and

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clarify the legal position as under :

It is held that for getting entitlement of compensation to the claimants first they have to establish before the authority that there was an accident, the accident had a casual connection with the employer and the accident must have been suffered in course of employment. It is then held that the word arising out of' and in the course of employment are, in fact, two different phrases. The phrase 'in the course of employment' suggests that the injury must be caused 'in the course of employment, whereas the expression 'out of employment', conveys the idea that there must be a casual connection between the employment and the injury caused to the workman as a result of the accident.

14. The Hon'ble Supreme Court of India to justify this proposition has relied upon the judgment of English Courts wherein it has been elaborately in great detail discussed on the subject of 'arising out of employment' while considering the matters arising out of English Workmen Compensation Act, 1897.

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15. In respect of Indian Courts, the Hon'ble Supreme Court has discussed how the phrase of 'arising out of' and 'in the course of employment' is in Paras 15 to 18 as under :.

> *15. English courts have also held that injuries to employees on their way back home fall within those 'arising out of employment.' In Lawrence v. George Matthews Ltd. [(1929) 1 KB 1], the deceased was employed as a commercial traveller by coal merchants, who paid him a commission for all orders obtained for them. While on his way home on his motorcycle after completing a trip, he was struck fatally by a falling tree which was blown down by a gale. In proceedings for compensation, the Court of Appeal held by a majority that the accident arose out of the employment of the deceased on the ground that the deceased's employment brought him to a spot which, owing to the existence of the tree, had a quality that resulted in danger. The fact that the tree fell due to forces of nature was immaterial, as the immediate cause of the accident was the falling of the tree.*
>
> *16. Indian Courts have also expounded upon the phrase 'arising out of and in the course of employment' in great detail.*
>
> *(16.1) In BEST Undertaking vs Agnes(AIR 1964 SC 193), this Court laid down as under:*
>
> *"12. "Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension as both the entry and exit by time and space. The scope of such extension "must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves this tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employer to use only a particular means of transport extends the area, of the field of employment to the course of the said transport.*

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Though at the beginning the word "duty" has been strictly construed, the later decisions have liberalized this concept. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion. But none of the decisions cited at the Bar deals with a transport service operating over a large area like Bombay. They are, therefore, of little assistance, except insofar as they laid down the principles of general application. Indeed, some of the law Lords expressly excluded from the scope of their discussion cases where the exigencies of work compel an employee to traverse public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority."

16.2. Mackinnon Machenzie & Co. (P) Ltd. v. Ibrahim Mahmmed Issak [(1969)2 SCC 607] is also relevant to understand the meaning of 'arising out of employment'. Justice Ramaswami, delivering the judgment for a three Judge Bench of this Court, held:

"...5.. The words 'arising out of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words, there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation, must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act..."

16.3. This Court in ESI Corpn. v. Francis De Costa laid down three principles for the claimants to prove before they can claim compensation under S. 2(8) of the Employees' State Insurance Act, 1948:

"29...(1) there was an accident, (2) the accident had a causal connection with the employment and (3) the accident must

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have been suffered in course of employment."

As Section 2(8) of that Act is in pari materia with Section 3(1) of the Act, these principles are relevant for cases under the latter.

16.4. Again, in the case of Union of India v. Surendra Pandey this Court has explained the principle of notional extension of employment giving examples as under:

"12. It was also pointed out by Lord Denning in the aforesaid case of R. v. National Insurance Commr., ex p Michael that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment, may be extended even to cases while an employee is sent on an errand by the employer outside the factory premises. But in such cases, it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his work place in the usual course of his employment. Latham, C.J. in South Maitland Railways Pty. Ltd. v. James observed that when the workmen on a hot day in course of their employment had to go for short time to get some cool water to drink so as to enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for water." (emphasis supplied)

17. The aforementioned observations are reiterated by this Court in a number of subsequent judgments, including in the case of Manju Sarkar v. Mabish Miah [(2014) 14 SCC 21)].

18. From the aforementioned, it is clear that the presence of the deceased on the road in question was incidental to his employment as a sales engineer. As he had to go to the Hero Honda Factory to conduct a filter test, he was merely doing what was required of him as an employee. Thus, his accidental death on the way back after completing his work falls squarely within Section 3(1) of the Act.

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16. In the present case, as the issue raised by the appellant in respect of consideration of Section 12 (4) of the Employee's Compensation Act, it would be further relevant to refer the judgment of Vijayaraghavan .vs. Velu, reported in MANU/KE/0275/1982 while interpreting Section 12 of the Act, has held that four essential conditions are required to be satisfied that application for Section 12 which reads as under :

> (i) That the person (called the principal) if carrying on a trade or business and, in the course of or for the purpose of that trade or business, engages a contractor to execute the work.
>
> (ii) That work is ordinarily a part of the trade or business of the principal.
>
> (iii) The accident which gives rise to the liability for compensation must have occurred on, in or about the premises on which the principal has undertaken, or usually undertakes to execute the work or which is in his control or management.
>
> (iv) The accident must have occurred while workman was in the course of his employment for executing the work.

17. It is pertinent to note that by applying the principle laid down in the case of Vijayaraghavan (supra), the Hon'ble High Court of Kerala in the case of ***K. Koodalingam .vs. Superintendent Engineer and others, reported in***

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MANU/KE/0179/1994 discussed the object of Section 12 in Para 11 of the judgment which reads as under :

> *11. We do not think that there is any merit in the contention of the learned Government Pleader that in the light of the contract entered into between the two opposite parties regarding the liability to pay compensation under the Act. Section 12 cannot be applied in the case to fasten liability for payment of compensation under the Act on the first opposite party. The avowed object with which Section 12 was enacted as part of the Act as seen from the Report of the Select Committee is to enable the workmen or the dependents of the workmen to proceed against the contractor or against the principal or both and to make the contractor liable to indemnify the principal in all cases in the absence of any agreement to the contrary. The Report of the Select Committee would also show that while finalising the provision the Committee has eliminated the provision which in the Bill as introduced exempted the Government and local authorities from liability imposed by this clause. The Committee has observed that these authorities are liable just in the same manner as private individuals. If these were the avowed objects with which Section 12 of the Act was incorporated in an enactment which itself is a beneficial legislation intended to confer benefits on the workmen, we are of the view that the provisions in Section 12(1) would apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. So long as the Section has not been made specifically subject to any contract to the contrary, the Section would have application in all cases where the conditions specified in the Section are satisfied. The fact that no non obstante provision is used in the Section may not be a sufficient reason to exclude the application of the Section to cases where the conditions are satisfied. At best, agreements or contracts entered into between the principal and contractor can govern only their inter se rights and liabilities and cannot affect the right of the*

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> *workmen or their dependents to get compensation either from the principal or from the contractor at their option. Right to get indemnified from the contractor specifically conferred on the principal under Section 12(2) of the Act sufficiently safeguards the interest of the principal who has entrusted the work to the contractor stipulating the liability under the Act. Accordingly, we would reject the contention of the learned Government Pleader. "*

18. The Hon'ble Kerala Bench has held that committee has observed that these authorities are liable just to pay the compensation in the same manner as private individuals by taking into consideration that enactment a phrase of beneficial legislation intended to confer benefits on the workmen and, therefore, principal employer is responsible to pay the compensation.

19. It would be further relevant to note that the coordinate bench of this court at ***Aurangabad, while deciding First Appeal No.3253/2009 on 05.02.2010 in the case of Shri Halasidhanath Sahakari Sakhar Karkhana Limited .vs. Sunanda w/o Sanjivan @ Sunil Aghav and others,*** has considered scope of Section 12(4) of Act. This court has specifically observed the term, "premises' or "trade" or "business" may not have same meaning which would for the instant case available in interpreting the

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other statute. Basically the word “trade”, “business” or “premises” used in Workmens Compensation Act have to be understood in the context in which they are referred and the very purpose of the Act. The act contemplates a beneficial legislation to the workers suffering during the course of employment and, therefore, same has to give broader effect. The relevant observation recorded by the coordinate bench in Para 7 to 9 reads as under :

> *7. Then comes the position of effect of Section 12(4). The terminology used therein in Section 12(4) is - Section 12(4):- "This section shall not apply in any case where the accident occurred elsewhere that on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management."*
>
> *Mr. Patil the learned counsel repeats that neither the carrying of sugar cane was within nearby premises or it can not be said the road where accident has taken place was otherwise under the control of appellant Karkhana.*
>
> *8.Though these arguments are cozy in its nature, it naturally will have to be treated to be wanting for the merits. The term "premises" or "trade" or "business" may not have same meaning which would for the instant case available in interpreting the other statute. Basically the word "trade", "business" or "premises" used in Work mens Compensation Act have to be understood in the context in which they are referred and the very purpose of the Act. The act contemplate a beneficial legislation to the workers suffering during the course of employment. The term during the course of employment will include*

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> *transportation of the material required for the Karkhana having carried by the deployed workers in the bullock cart. In this case, the accident has taken place when the deceased Sanjivan alias Sunil Aghav was carrying sugar cane from Akol in the cart and faced toll of his precious life.*
>
> *9.The terminology "premises" referred in Section 12(2), 12(4) which are otherwise under his control or management, will have to be given broader effect. The activities of carrying transportation of the raw material by the employee, the deceased will not obliterate provisions of Section 12(4) to be taken benefit of by the Karkhana."*

20. In the light of above discussion, the legal position emerged is that, while deciding the application before the Workmen Compensation Act, the claimant has to prove that there was an accident 'arising out of' and 'in the course of employment'. The accident has casual connection with the employment and further there has to be a relevant and reasonable casual connection, whatsoever remote between the accident resulting in such disability/death to employee. If it is revealed that the death is a result to an act which was having a notional and proximate cause of death related to the employment, then employer is liable to pay compensation.

21. In the light of this above legal position and the questions of law which are framed in the present matter, I have

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perused the factual aspect involved in the present matter.

22. It would be relevant to note that though the respondents have categorically denied the relations of employer and employee with the deceased in the matter, but from the evidence which is available on record, particularly in the form of deposition which was recorded of claimant and respondent no.6, it is clear that the deceased was working with the respondent no.6 as a driver. The co-employee, who has lodged the police complaint, has categorically stated in his report that the deceased was working as a driver of vehicle and as his rotation was completed as per turn, he was driving the vehicle.

23. The respondent no.6 in his deposition stated that he is running the Go Gas Agency produced by appellant no.1. He further admitted that cylinders and gas filled at the appellant company and belongs to Appellant. His company is a distributor served the Gas Cylinders to customers and gets commission per cylinder. For carrying out this work, he is required to arrange vehicle and labours. He further stated that, as per agreement empty cylinders are handed over to the manufacturing plant of appellant and get filled up cylinders therefrom. Therefore, for

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carrying out the work as a distributor, deceased was employed as a driver on a Bolero pick-up van which was used to pick up the filled cylinders from the plant of appellant and distribution work was done on behalf of the respondent no.6 in the matter. Hence, it is clear that there was a casual connection between all theses persons namely, the appellant and the deceased in the present matter.

24. It is undisputed fact in the present matter that on 1.9.2020 the deceased along with Rajkumar Lilhare has collected the gas cylinders from the plant run by the appellant at Kalmeshwar, District-Nagpur and after collecting filled up cylinders for the purpose of distribution, they were on their way to Gondia. However, when the vehicle was on National Highway No.6 the accident occurred. Hence, it can be said that the death was caused out of employment. Hence, the claimants are entitled for the compensation in the matter.

25. It is further established from evidence available on record that as there was a casual connection and proximate cause of death of the deceased, the appellant company has to held as Principal Employer of the deceased and accordingly the

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question no.1 is hereby answered in affirmative.

26. The appellant has relied upon sub-clause (4) of Section 12 stating that the provisions cannot be made applicable where the accident occurred elsewhere i.e. on in or about the premises on which the principal has undertaken or usually undertakes his work or which are otherwise under his control or management.

27. In this regard, it would be relevant to consider the object behind incorporating Section 12 in the enactment of Employees Compensation Act. The coordinate bench in the case of Halasidhanath Sakhar (supra) wherein this court by taking into consideration the object of the act, has held that the terminology “premises” shall have to give border effect. The said effect, in my opinion, is necessary for an enactment like Employees Compensation Act as same is beneficial legislation and as per the law laid down by the Hon’ble Supreme Court of India, the provisions of such Act are required purposive interpretation.

28. It would be relevant to refer the judgment of Hon’ble Supreme Court of India in the case of ***Vivek Narayan Sharma***

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and others (Demonetisation Case-5) .vs.. Union of India and others, reported in 2023 (3) SCC 1, wherein Hon'ble Supreme Court of India has held that the court must refrain from declaring a statute to be unworkable. The rules of interpretation requires that construction which carries forward the objective of the statute, protects interest of parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. Hon'ble Supreme Court further held that the court must take a pragmatic view and must keep in mind the purpose for which the statue was enacted. A statute must be construed in such a manner so as to ensure that act itself does not became a dead letter and obvious intention of legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and to suppress' subtle inventions and evasions for continuance of mischief. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be

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justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. It is held that ascertainment of legislative intent is the basic rule of statutory construction.

29. In view of this settled principles of law as laid down by the Hon'ble Supreme Court of India and the view expressed by the coordinate bench in the case of ***Halasidhanath*** (supra) is in consonance of the object of the act. The Employees Compensation Act was enacted to impose a statutory obligation on employers to provide financial compensation to employees and their dependents in cases of work related accidents, death 'arising out of' and 'in course of employment'. In my considered opinion, the appellant, who is held to be a principal employer, cannot be exonerated from payment of compensation to the claimants in the present matter.

30. The appellant, in support of his submission, has heavily relied upon the judgment of this court in the case of ***Nitin and Ramesh and others, reported in 2015 (146) FLR 519*** to state that if the employee was hired for wages by third person for executing the work, then the principal employer is not

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responsible to pay the compensation. In this regard, I have perused the judgment which is relied upon by the appellant. The perusal of same, it is clear that Division Bench has observed that the principal employer was not responsible to pay the compensation, if the accident occurred, was not in the course of or for the purpose of employer, trade or business. In the said case, the accident had occurred while constructing a route of godown and the same work was given to contractor and the contractor therein has engaged the deceased for that purpose. Hence, according to the coordinate bench of this court, as the incident which was occurred while undertaking the work of construction of installation of tin shed and not occurred during trade or business of the principal employer, the liability cannot be fastened upon the principal employer.

31. In the present case, it is not the case that the deceased was employed for other work and the same was not a part of business between appellant and respondent no.6. Therefore, in my considered opinion, the judgment relied upon by the appellant is not applicable in the facts and circumstances of the case.

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32. The question no.2 framed is answered accordingly in negative in the present appeal. In view of above, I find no merit in the present appeal and accordingly the present appeal stands **dismissed** in the facts and circumstances of the case.

(Pravin S. Patil, J.)

Gulande

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