Karnataka High Court National Insurance Co. Ltd. vs Balawwa on 4 June, 1993 Equivalent citations: 1993 ACJ 815, 1993 (2) KarLJ 406, (1994) ILLJ 433 Kant Author: Venkataraman Bench: M Ramakrishna, S Venkataraman JUDGMENT Venkataraman, J. 1. Both these Appeals arise out of an order dated January 27, 1992 passed by the Commissioner for Workmen's Compensation, Belgaum in CWC. SR. 18/91, awarding a compensation of Rs. 32,615/- as compensation to the widow of one Lagma Yellappa Jathani for the death of her husband Lagma on August 8, 1990 in the course of his employment as a coolie under Respondents 1 and 2 before the Commissioner, who are the owners of a Tractor-trailor bearing No. CRA 5534, 5536 and 5337 and directing the Respondent-3-Insurer to pay the compensation. 2. M.F.A. 1015/92 is filed by the 3rd respondent-Insurance Company questioning the correctness of the order directing them to pay the compensation. M.F.A. 1602/92 is filed by the petitioner before the Commissioner, seeking enhancement of the compensation. 3. For the purpose of convenience the parties will be referred by the rank they held before the Commissioner. 4. The petitioner claimed compensation before the Commissioner on the allegations that her husband was employed as a coolie on the Tractor owned by Respondents 1 and 2, who are brothers; that when he was unloading stones from the tractor on August 8, 1990 at about 11-30 A.M. he went to pass urine nearby; that he suddenly fell and started vomiting; that he was taken to the hospital at Konnur for treatment but he expired there; and that as her husband died during the course of employment she was entitled to compensation. According to her, the deceased was getting daily wages of Rs. 50/- and she was therefore entitled to compensation of Rs. 1,00,000/- apart from 50% by way of penalty and Rs. 5,000/- by way of interest. 5. Respondents 1 and 2 admitted that Lagma was employed by them to work on the tractor and that on August 8, 1990 he died during the course of employment due to heart-attack. The only objection that was taken by them was that as the death was not caused due to accident, they were not liable to pay the compensation. They further pleaded that even if any compensation was payable, the 3rd respondent-Insurer had to pay the same. 6. The 3rd respondent denied all the allegations in the petition, including the fact of the insurance of the vehicle. However, later the 3rd respondent has admitted the fact of insurance by producing the Insurance Policy, which has been marked as Ex.A. (II) (1). 7. The petitioner examined herself in support of her case. Respondent-2 examined himself and one witness on his side. The 3rd respondent examined one of its officers. 8. The Commissioner on the basis of the available evidence has come to the conclusion that the deceased Lagma had been employed by the 2nd respondent, who is the owner of the Tractor and Trailer, as a labourer to work on the vehicle; that on August 8, 1990 the deceased had gone for the work of loading and unloading of stones to and from the Tractor-trailor; and that in the course of such work Lagma died. He has further held that the petitioner was entitled to compensation and that the 3rd respondent, who is the Insurer of the vehicle is liable to pay the same. With regard to the quantum he has disbelieved the claim of the petitioner that the deceased was getting wages of Rs. 50/- per day. Taking the income of the deceased to be Rs. 16/-per day or Rs. 400/- per month, which is the notified

minimum wages and taking the age of the deceased to be 32 years, he has fixed the compensation payable at Rs. 32, 615/-. 9. In this appeal it is not disputed that the deceased Lagma was employed as labourer on the Tractor-trailor for the purpose of loading and unloading and that he died when he had gone for work. The learned Counsel for the Insurer mainly urged 3 points in support of their appeal. He firstly contended that as in this case admittedly Lagma died only due to heart-attack and not on account of any injury sustained by accident. Section 3 read with Section 4 of the Workmen's Compensation Act, 1923, would not come into play at all and that the Commissioner has not considered this aspect. The second point urged by him was that as admittedly Lagma had gone to pass urine when he suddenly fell down and started vomiting which, resulted in his death, the Commissioner was wrong in holding that the death arose out of and in the course of employment. Lastly, he contended that unless there is some nexus between the death of the worker and the use of the motor vehicle, the Insurer cannot be made liable as the policy is issued under the provisions of the Motor Vehicles Act to cover liability incurred by the insurer in respect of death or bodily injury caused by or arising out of the use of the vehicle and not a policy issued for indemnifying an employer against the claims by his workmen. 10. With regard to the first point, it is no doubt true that a claim for compensation for the death of an employee could be made under Section 3 read with Section 4 of the Workmen's Compensation Act only if the death of that employee has occurred due to an injury sustained by accident out of and in the course of his employment. By a series of Judicial pronouncements it is now well settled that the word 'accident' should be taken to mean a mishap or untoward event, not expected or designed; that if a person suffers heart-attack and dies, it necessarily means that there has been an injury to the heart and that, that event being a mishap not expected or designed, is an accident and that, if a workman suffers heart-attack out of and in the course of his employment, then the employer is liable to pay compensation under Section 3 read with Section 4 of the Workmen's Compensation Act. See: (1) Mackinnon Mackenzie & Co. (P)Ltd. v. Rita Fernandiz (1969-II-LLJ-812) (2) Devshi Bhanji Khona v. Mary Burno (1985-II-LLJ-70)(Kerala) (3) United India Insurance Co. Ltd. v. Yasodhara Amma (1990-I-LLJ-387) (Kerala) (4) Zubeda Bano v. Maharashtra State Road Transport Corporation (1991-I-LLJ-66) (Bombay) 11. In the present case, the learned Commissioner has not recorded any clear finding as to the cause of death of Lagma. He has only held that the deceased died in the course of employment. However, as the evidence is available on record, this Court can go into that aspect instead of remitting the matter back to the Commissioner. 12. The learned Counsel for the Insurer pointed out that the petitioner had nowhere pleaded that her husband died as a result of 'heart- attack'. While dealing with the claims for compensation under the Workmen's Compensation Act, we should not apply the principles of pleadings strictly. 13. In the present case, though the petitioner had not specifically alleged that Lagma died of heart-attack she has given the circumstances under which Lagma happened to die on that day. The averments in the petition show that when the deceased was attending to his work he went to answer the call of nature nearby; that he suddenly fell and

started vomiting; that foam was coming from his mouth and that when the deceased was taken to the hospital for treatment he died there. Though the petitioner had not specifically stated that the deceased died of heart-attack, the 2nd respondent in his objections has clearly stated that the deceased died due to heart-attack. The fact that the deceased died due to heart-attack is admitted by the employer himself. 14. Coming to the evidence of the petitioner, though the petitioner has stated in her evidence that the deceased died due to heart attack when he went to pass urine on that day, admittedly she was not present when the deceased died. The evidence of the second respondent the employer and his witness Mahendra Thammanna Guddakayi shows that on that day Lagma had gone along with other coolies to transport stones in the tractor-trailor; that after the stones had been loaded to the tractor and the vehicle was about to start to go to the place where the stones had to be unloaded the deceased got down and went to answer the call of nature at a nearby spot; that he suddenly fell unconscious and died of heart-attack. In the cross-examination of the petitioner it is elicited that Lagma used to be unwell now and then; that he used to take treatment from a private doctor and that she had learnt that he was having chest pain. It is true that no medical evidence is produced to show that the cause of death of the deceased was heart-attack. But, for that reason the other evidence on record cannot be ignored. The evidence shows that previously the deceased used to have chest pain now and then and that on that fateful day he suddenly fell down and died when he was attending to his coolie work. It may be noted that on that very day at about 1-20 P.M. a report has been given to the police by one Kallappa Guddakayi who was also working with the deceased, regarding the incident. That report is marked as Ex.P.2. Ex.P.1 is the First Information Report registered by the police on the basis of that report. In Ex.P.2 it is mentioned that the deceased went and sat near the fence to answer the call of nature and that all of a sudden he fell down and immediately they went and lifted him; that the deceased then started vomiting and was unable to talk; that they took him to hospital where within a short time he died. 'Vomiting' is one of the symptoms of heart-attack. If we lake into consideration the facts that the deceased used to get chest-pain now and then, that on that day he had gone for work and had taken part in loading stones to the tractor and that when he went and sat to answer the call of nature he suddenly fell and started vomiting and within a short time he died, it is reasonable to infer that he must have died as a result of heart-attack, as spoken to by the witness Mahendra Thammanna Guddakayi, which fact is also admitted by the 2nd respondent. 15. Coming to the next point, the evidence shows that the deceased suffered heart-attack when he had gone for the work of loading and unloading of stones; that just prior to the incident, the work of loading had been completed and that when the vehicle was about to start the deceased got down from the vehicle to ease himself and it is at that juncture he has suffered heart-attack. His work had not yet been completed. The death has occurred even before his employment had come to an end on that day and he was still at the work spot. To prove that the accident occurred during the course of the employment, it is not necessary to show that the employee was actually doing the job entrusted to him at the

relevant time. If during the period during which he is attending to the work, he goes to answer the calls of nature, it cannot be said that during that short period he was out of employment. He must be deemed to be on employment even during that short period, 16. It is well recognised that Workmen's Compensation Act is a beneficial social legislation, the object of which is to provide security to certain class of workmen and that the provisions of the Act should be construed in a broad and liberal manner so as to advance the object of the enactment and not in a way which would defeat it. [See: Devish Bhanji Khona 's case (supra) & Subeda Bano's case (supra)]. 17. In an unreported decision this High Court in United India Insurance Company Limited v. Smt. Susheela and Ors. MFA No. 2362 of 1991 Dt November 15, 1991 upheld the conclusion of the Commissioner that the mere fact that the driver had got down from the lorry at the time he suffered heart-attack and died, it cannot be said that he did not die in the course of his employment and that even if the driver had a quarrel with the tea-shop owner, as alleged by the Insurer, it cannot be said that the death of the driver should be regarded as having occurred beyond his employment. In that case this High Court has held that the death of the driver should be regarded as one which had occurred in the course of his employment. 18. In the present case also on the material on record, the finding of the Commissioner that the death of the petitioner's husband has taken place during the course of his employment is justified and does not call for interference. 19. It was contended by the learned Counsel for the Insurance Company that there was nothing to show that the injury was caused on account of employment. It is not necessary that there should be direct evidence in this regard. It is a matter of inference. In Mackinnon Mackenzie case (supra) the employee who was a heart-patient was admitted to hospital while on duty and died 7 days thereafter. He was a general servant who had to perform his duties standing-up. Dealing with the question as to whether the death could be said to arise out of employment, the Supreme Court has held as hereunder (1969-II-LLJ-812 at 814): "It is well-established that under Section 3 of the Workmen's Compensation Act there must be casual 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." 20. In Devshi Bhanji Khona's case (supra), the employee was a head-load worker and he was already suffering from heart disease. In the course of his employment the deceased died on account of heart- attack. Holding that there is a casual connection between the employment and the death in the unexpected way, the Court held that was a case of accident arising out of and in the course of employment. 21. In the present case, the deceased who was having some heart problem, was engaged in the strenuous job of loading and unloading stones. This work must necessarily have adversely affected his heart condition resulting in heart-attack. This is a

reasonable inference that could be drawn from the circumstances under which the deceased suffered heart-attack. There is a nexus between his employment and the cause of his death. As such it is to be held that the death has occurred on account of his employment. Coming to the last contention of the learned Counsel for the insurer that even if Lagma died on account of and in the course of his employment, to fasten the liability on the Insurer, it must be made out that the death was caused by or on account of the use of the motor vehicle, it would be better to refer to the relevant provisions of the Motor Vehicles Act and the terms and conditions of the Policy. 22. Section 146(1) of the Motor Vehicles Act stipulates that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be a policy of insurance complying with the requirements of that Chapter. 23. Section 147 lays down the requirements of policies and limits of liability. Sub-section (1) which is relevant reads as hereunder: 147. Requirement of Policies and limits of liability.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which- (a) xxxx xxx xxx

(b) xxx xxx xxx

(c) against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

(ii)…..

Provided that a policy shall not be required

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle or
(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
(c) if it is a good carriage, being carried in the vehicle, or

(ii) to cover any contractual liability".

24. Ex. A. II (1) is the motor vehicles comprehensive Policy issued by the Insurer. Under the heading 'Limitations as to use', it is provided that

the policy does not cover use for carrying passengers in the vehicle except employees (other than the driver) not exceeding six in number coming under the purview of the W.C. Act, 1923. In Section II-Liability To Third Parties, Sub-section (i) reads as under:

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading of the motor-vehicle). (ii).... Provided always that:

(a) The Company shall not be liable in respect of death, injury or damage caused or arising beyond the limits of any carriage way or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or taking away of the load from the Motor Vehicle after unloading therefrom.
(b) Except so far as is necessary to meet the requirements of Section 92A and Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable in respect of death or bodily injury to any person in the employment of the insured arising out of and in the course of such employment.
(c) Except so far as is necessary to meet the requirements of Section 92A and Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the Company shall not be liable in respect of death of or bodily injury to any person other than a passenger carried by reason of or in pursuance of a contract of employment being carried in or upon entering or mounting or alighting from the Motor Vehicle at the time of occurrence of the event through which any claim arises.
(d) to (q) xxx xxx xxxx"

25. It is undisputed that the policy covers liability of the insured under the Workmen's Compensation Act in respect of death of an employee carried in the vehicle arising on account of and in the course of his employment. The main objection is that it must be shown that the death arose out of the use of the motor vehicle.
26. In Shivaji Dayanu Patil and Anr. v. Smt. Vatschala Uttam More the Supreme Court has considered the meaning to be attached to the expression 'use of a motor vehicle' and has held as hereunder: "The expression"use of a motor vehicle" in Section 92A covers accidents which occur both when the vehicle is in motion and when it is stationary. Petrol tanker in question while proceeding along National Highway (i.e., while in use) after colliding with a motor lorry was lying on the side and it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. The word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does note case on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident. In

the circumstances, it cannot be said that petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck." With regard to the meaning to be attached to the expression "arising out of" the Supreme Court has held as hereunder: As compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Section 95(1) 9b(i) and (ii) and Section 96(2)(b)(ii) of the Act. In Section 92A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92A, the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connection with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of motor vehicle" in Section 92A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. In the instant case the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was great risk of explosion and fire from the petrol coming out of the tanker. In these circumstances it could be said that the collision between the tanker and the other vehicle which had occurred earlier to the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no casual relation between explosion and fire. Therefore, the explosion and fire resulting in the injuries which led to the death of the deceased was due to an accident arising out of the use of the motor vehicle viz., the petrol tanker".

27. In view of the above decision, it is clear that in order to prove that the death or injury was caused by the use of the motor vehicle it is not necessary to prove that the use of the vehicle was the direct or proximate cause for the death or injury. Even a causal connection is sufficient.

28. It may be noted that the proviso to Sub-section (1) of Section 147 provides for compulsory insurance in favour of only three classes of employees, namely, an employee engaged in driving the vehicle; an employee engaged as a conductor or in examining the tickets in a public service vehicle and an employee carried in a goods carriage, who sustain injury or die out of and in the course of their employment. The work of the three classes of employees is connected with the use of motor vehicle. As such when once it is found that such an employee died on account of and in the course of his employment, it must necessarily follow that there is nexus between the death and the use of the motor vehicle. It is for that reason that insurance in respect of only those classes of employees in so far as the liability under

the Workmen's Compensation Act is connected, is made compulsory. In respect of such employees if it is found that they died or sustained injury in an accident on account of and in the course of their employment, the insurer becomes liable under the Workmen's Compensation Act, without further proof of rash or negligent use of the vehicle. But without proof of rash or negligent or wrongful use of the vehicle, the said employee cannot seek compensation before the Motor Accidents Claims Tribunal, as that Tribunal has jurisdiction to award compensation only if rash or negligent or wrongful use of the vehicle is established, unless the claim is under Section 140 of the Motor Vehicles Act.

29. In the present case, it is admitted by the insured that the deceased had been employed by him to work on the tractor and that his work was to go in the tractor for purposes of loading and unloading. Even on the day he had gone on the tractor for that work. Even the terms of the policy clearly shows that loading and unloading would amount to use of the vehicle. The deceased would come under the category of "employees carried on the goods vehicle". It is found that the deceased has suffered heart attack on account of loading stones to the truck. As loading the vehicle is one of the uses of the vehicle, it follows that the death has been caused by the user of the vehicle. There is a casual connection between the death of the employee and the use of the vehicle. Hence the Insurance Company is liable to pay the compensation payable under the Workmen's Compensation Act. Hence there are no good grounds to interfere with the order of the Commissioner directing the insurer to pay the compensation.
30. Coming to the claim of the petitioner for enhancement of compensation, it is seen that in the petition the petitioner alleged that the deceased was getting wages of Rs. 50/- per day. The 2nd respondent in his objections admitted that allegation. However, in the evidence the petitioner has stated that the deceased was getting Rs. 40/- per day. The 2nd respondent in his evidence has alleged that he was paying Rs. 30/- per day. Thus it is seen that both the petitioner and the 2nd respondent have given inconsistent and contradictory versions regarding the wages. The Commissioner has rightly declined to place reliance on the oral assertion of the petitioner and the 2nd respondent and has fixed the notified minimum wages as the income of the deceased. There is, therefore, no merit in the petitioner's appeal also.
31. For the above reasons both these appeals are dismissed.