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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 9th August , 2017**

\+ FAO 159/2013

UNITED INDIA INSURANCE CO. LTD. ..... Appellant
Through: Mr. L.K. Tyagi, Adv.

versus

KAMLESH & ORS. ..... Respondents
Through: Mr. B.S. Mor and Mr. Rajender Singh, Advs. for R1 to R3.
Mr. Peeyosh Kalra, ASC for GNCTD with Ms. Sona Babbar, Adv. for Commissioner, Employees' Compensation.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

Employee's Compensation Act is a social welfare legislation meant to benefit the workers and their dependants in case of death of workman due to accident caused during and in the course of employment

1. The Employee's Compensation Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act which reads as under:

> *"An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident."*

This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under:

> *"... The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.*
>
> *An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects to such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may be expected."*

2. The appellant has challenged the order dated 21st December, 2012 passed by the Commissioner, Employees' Compensation whereby compensation of Rs.4,48,000/- has been awarded to respondents No.1 to 3.

3. On 09th August, 2003, Manoj Kumar was on duty as driver on Tata Indica Car bearing No. HR-55-A-7-9215 and was handing over the charge of the vehicle to the other driver, Kedar Singh when an altercation took place between them. Kedar Singh attacked and hit Manoj Kumar whereupon Manoj Kumar fell down and became unconscious and was taken to Lady Harding Hospital where he was declared brought dead. The police registered FIR No.313/2003 under

Section 304 IPC at P.S. Paharganj. Manoj Kumar was survived by his parents and brother who filed the application for compensation before the Commissioner, Employees' Compensation claiming that the deceased Manoj Kumar died due to the accident arising out of and in course of his employment with respondent No.4 and the vehicle was validly insured with the appellant.

4. The Commissioner, Employees' Compensation held the deceased to be the employee of respondent No.4; the accident arising out of and during the course of his employment with respondent No.4 and the vehicle was validly insured with the appellant.

5. Learned counsel for the appellant urged at the time of hearing that the deceased Manoj Kumar was in the employment of respondent No.5, who had taken the vehicle on hire from respondent No.4 and the death of the deceased cannot be said have arisen out of the employment of the deceased with respondent no.4. It was further submitted that the deceased died due to the injuries suffered in a quarrel with another driver and the death was not caused by an accident out of the use of the insured vehicle. It was further submitted that the murder cannot be said to be an accident for the purpose of granting compensation under the Employee's Compensation Act. The appellant has relied upon and referred to ***United India Assurance Co. Ltd. v. Sudini Indira***, I (2005) ACC 448.

6. Learned counsel for the respondent urged at the time of the hearing that the death of Manoj Kumar was an accident for the purpose of granting compensation under the Employee's Compensation Act. It was submitted that the deceased found himself

at a spot where he was assaulted only because of his employment with the respondent no.5 as the deceased was on duty.

7. With respect to the first contention, it is noted that respondent No.4 is the registered owner of Tata Indica car bearing No. HR-55-A-7-9215 and respondent No.4 had given the said vehicle on hire to respondent No.5. The deceased, Manoj Kumar was on duty on the insured vehicle at the time of the accident and was handing over the charge of the vehicle to the second driver, Kedar Singh when an altercation took place between the two and Kedar Singh hit Manoj Kumar. The respondent No.1, mother of the deceased appeared in the witness box and deposed that the deceased was under the employment of respondent No.4. Mr. Gurminder Singh, proprietor of respondent No.5 appeared in the witness box and deposed that the deceased was employee of respondent No.4. The appellant relied upon the statement of the Kedar Singh in the criminal case to the effect that the deceased as well as Kedar Singh were the employees of UTS Travels. This Court is of the view that the finding of Commissioner, Employees' Compensation with respect to the relationship of the employment of the deceased with respondent No.4 is based on clear evidence of respondent No.1 as well as respondent No.5. Therefore, the findings of the Commissioner, Employees' Compensation with respect to the deceased being the employee of respondent No.4 is correct and does not warrant any interference.

8. ***Whether the murder of the deceased, Manoj Kumar was an "accident" arising out of and during the course of his employment ?***
The law on this issue is well settled by the Supreme Court in ***Rita***

Devi v. New India Assurance Co. Ltd., 2000 ACJ 801 (SC). The Supreme Court drew distinction between a ***"murder"*** which is not an accident and a ***"murder"*** which is an accident. The Supreme Court laid down the test that if the dominant intention of the felonious act is to kill any particular person, then such killing is not accidental murder but a murder simpliciter. However, if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act, then such murder is an accidental murder. Para 10 of the judgment is relevant and is reproduced hereunder:

> *"10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts.* ***The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."***
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> *(Emphasis supplied)*

9. In ***Rita Devi*** (supra), the deceased was employed to drive an auto rickshaw for ferrying passengers on hire. On the fateful day, the auto rickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for a journey. As to

what happened on that day is not known. It was only on the next day that the police was able to recover the body of the deceased but the auto rickshaw in question was never traced out. The owner of the auto rickshaw claimed compensation from the insurance company for the loss of auto rickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death occurred on account of accident arising out of use of the motor vehicle. The Apex Court held that the murder to be an accidental murder. Para 14 is quoted below:-

> *"14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was duty bound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the autorickshaw."*
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> *(Emphasis supplied)*

10. In ***Rita Devi*** (supra), the Supreme Court relied on ***Challis v. London and South Western Railway Company,*** (1905) 2 KB 154 and ***Nisbet v. Rayne & Burn***, (1910) 1 KB 689 to draw the distinction between the felonious act which accidentally results in death and a murder simpliciter. Paras 11 to 13 of the judgment are

reproduced herein below:

"11. In Challis v. London and South Western Rly. Co. [(1905) 2 KB 154 : 74 LJKB 569 : 93 LT 330 (CA)] the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone wilfully dropped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

> *"The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver, in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously."*

12. In the case of Nisbet v. Rayne & Burn [(1910) 2 KB 689 : 80 LJKB 84 : 103 LT 178 (CA)] where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held:

> *"That the murder was an 'accident' from the standpoint of the person who suffered from it and that it arose 'out of' an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of Challis [(1905) 2 KB 154 : 74 LJKB 569 : 93 LT 330 (CA)] . In the case of Nisbet [(1910) 2 KB 689 : 80 LJKB 84 : 103 LT 178 (CA)] the Court also observed that 'it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an*

intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention'. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet."

13. The judgment of the Court of Appeal in Nisbet case [(1910) 2 KB 689 : 80 LJKB 84 : 103 LT 178 (CA)] was followed by the majority judgment by the House of Lords in the case of Board of Management of Trim Joint District School v. Kelly[1914 AC 667 : 83 LJPC 220 : 111 LT 305 (HL)]."

11. In ***Rita Devi*** (supra), the Supreme Court compared the provisions of the Motor Vehicles Act and the Workmen Compensation Act and held that the object of both the Acts was to provide compensation to the victims of the accidents and the judicial interpretation of the word "*death*" in both the Acts is the same. Para 15 of the judgment is reproduced hereunder:-

"15. Learned counsel for the respondents contended before us that since the Motor Vehicles Act has not defined the word "death" and the legal interpretations relied upon by us are with reference to the definition of the word "death" in the Workmen's Compensation Act the same will not be applicable while interpreting the word "death" in the Motor Vehicles Act because according to her, the objects of the two Acts are entirely different. She also contends that on the facts of this case no proximity could be presumed between the murder of the driver and the stealing of the autorickshaw. We are unable to accept this contention advanced on behalf of the respondents. We do not see how the object of the two Acts, namely, the Motor Vehicles Act and the Workmen's Compensation Act are in any way different. In our opinion, the relevant object of both the Acts is to provide compensation to the victims of accidents. The only difference between the two enactments is that so far as the

Workmen's Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapter X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In this conclusion of ours we are supported by Section 167 of the Motor Vehicles Act as per which provision, it is open to the claimants either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. A perusal of the objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence the judicially accepted interpretation of the word "death" in the Workmen's Compensation Act is, in our opinion, applicable to the interpretation of the word "death" in the Motor Vehicles Act also."

(Emphasis supplied)

Delhi High Court

12. In ***United India Insurance Company Ltd. v. Kanshi Ram,*** 2006 ACJ 492 (Delhi High Court), a truck going from Delhi to Hyderabad went missing. The police during investigation, located the truck and found that some of the goods being transported in the truck were stolen and the driver was murdered. The legal representatives of the deceased filed an application for compensation before the Commissioner, Workmen's Compensation which was allowed. The insurance company challenged the order in appeal. Following ***Rita Devi*** (supra), Madan B. Lokur, J. as he then was, held the murder to be an accident. The Delhi High Court cited with approval the three English cases, namely, ***Nisbet v. Rayne and Burn*** (supra), ***Board of Management of Trim Joint District School v. Kelly,*** 1914 A.C. 667 and ***Clover, Clayton and Company, Ltd. v. Hughes***, 1910 A.C. 242. The Delhi High Court also cited the judgments of other High Courts,

namely, ***Bhagubai v. Central Railway***, A.I.R. 1955 Bom. 105, ***Satiya v. Sub-Divisional Officer, Public Works Department Narsimhapur*** 1974 (2) L.L.N. 204, ***Varkeyachan v. Thomman*** 1979 (1) L.L.N. 477, ***United India Insurance Company Ltd. v. Philo*** 1996 (3) L.L.N. 116 and ***Parle Products, Ltd. v. Subir Mukherjee*** 2001 (I) L.L.J. 964. The relevant portion of the said judgment is reproduced hereunder:-

> *"3. Sohan Lal was working as a driver with M/s. Manoj Roadlines. As a part of his duties, he was taking a truck from Delhi to Hyderabad alongwith a second driver Jeet Singh. It appears that somewhere in Rajasthan, he was murdered. The truck was missing for a few days and when the police located it during investigation, it was revealed that some of the goods that were being transported in the truck were stolen. Investigations also revealed that Jeet Singh had committed the murder.*
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> *xxx xxx xxx*
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> *7.* ***What is an accident, and when can it be said that a murder is an accident?***
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> *8.* ***Nisbet v. Rayne and Burn*** *[1910 (2) K.B.D. 689], is a leading case on this subject. A cashier was travelling in a train with a large sum of money intended for payment to his employer's workmen. He was robbed and murdered and the Court of appeal held the murder was an accident from the point of view of the cashier and, therefore, it was an accident within the meaning of that term in the Workmen's Compensation Act, 1923.*
>
> *9. Similarly, in* ***Board of Management of Trim Joint District School v. Kelly*** *[1914 A.C. 667], an assistant master at an industrial school was assaulted and killed by two pupils while he was performing his duties. The House of Lords held that for the purpose of the same statute, his death was caused by an accident. Viscount Haldane, L.C. pointed out that the meaning of the term "accident" would vary according as the context varies, and as instances mentioned criminal jurisprudence*

where crime and accident are sharply divided by the presence or absence of mens rea and the law of marine insurance where the maxim: In jure non remota cause sect proximo spectator (in law the proximate, and not the remote, cause is to be regarded) applies.

10. In ***Clover, Clayton and Company, Ltd. v. Hughes*** *[1910 A.C. 242], Lord Loreburn, L.C. said:*

> *"What, then, is an 'accident'? It has been defined in this House as an unlooked for mishap or an untoward event, which is not expected or designed."*

11. Our Supreme Court in ***Rita Devi v. New India Assurance Company, Ltd.****, [(2000) 5 SCC 113], dealt with a case in which the driver of an auto rickshaw was murdered by his fare paying passengers. The passengers intended to steal the auto rickshaw, for which they had to eliminate the driver. On these facts, the Supreme Court held that the death of the driver was caused accidentally in the process of committing theft of the auto rickshaw.*

12. In ***Bhagubai v. Central Railway*** *[A.I.R. 1955 Bom. 105] (Bombay High Court), the deceased was stabbed to death while he was on his way to join duty. It was not disputed that the death was a result of an accident or that it arose in the course of his employment. The dispute was whether it arose out of the employment of the deceased. The Division Bench held at page 404 as follows:*

> *"Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of*

the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident. In this particular case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to join duty, and he had to pass this spot in order to join his duty. Therefore, the connection between the employment and accident is established. There is no evidence in this case that the employee in any way added to the peril. There is no evidence that he was stabbed because the assailant wanted to stab him and not anybody else."

Thereafter, at page 405-406, it was held as under:

"Once the peril is established, it is for the employer then to establish either that the peril was brought about by the employee himself, or that the peril was not a general peril but a peril personal to the employee. It is because of this that the authorities have made it clear that the causal connection between the accident and the employment which the applicant has to establish is not a remote or ultimate connection but a connection which is only proximate. Once that proximate connection is established the applicant has discharged the burden, and in this case the proximate connection between the employment and the injury is the fact that the deceased was at a particular spot in the course of his employment and it was at that spot that he was assaulted and done to death."

13. In ***Smt.Satiya v. Sub-Divisional Officer, Public Works Department 9 Buildings and Road), Narsimhapur*** *[1974 (2) L.L.N. 204], a chowkidar in the Public Works Department was murdered while on duty. One of the questions that arose was whether his murder could be said to be an accident. Relying upon Nisbet, it was held that the murder was an unlooked for mishap or untoward event which was not expected or designed. The learned Judge held that word "accident" excludes the idea of wilful and intentional act but as explained in Nisbet, "the phrase ought to be held to include murder as it was an accidental happening so far as the workman was concerned.*

14. In ***Varkeyachan v. Thomman*** *[1979 (1) L.L.N. 477], was a case in which an employee engaged to do odd jobs dies as a result of stab injuries received while on duty. The Division Bench held the injury to be an accident sustained by the deceased in the course of his employment.*

15. The question that arose for consideration in ***United India Insurance Company Ltd. v. Philo*** *[1996 (3) L.L.N. 116], was whether the killing of a workman while he was in the course of his employment, by an unknown person, can be considered as death caused as a result of an accident arising out of his employment? In this case the deceased was the driver of a taxi. He had taken some tourist out of town. He did not return from the tour and it was reported that he was killed and somebody stole the taxi. The Division Bench answered the question in the affirmative and held in Paras. 7 and 8 of the report:*

> *"7…. But for the engagement as the driver of the taxi, the deceased would not have been in the place and in the situation where he was at the time when he was killed. The casual connection is complete and we have no doubt, in our mind to hold that the accident which has resulted in the death of the workman has arisen out of the employment.*
>
> *8. The contention that the claimants have failed to discharge their burden to prove the causal relationship between the accident and the employment is only to be rejected in the light of the observations contained in Bhagubai v. General Manager, Central*

Railway [A.I.R. 1955 Bom. 105] (vide supra), with which we respectfully agree."

16. ***Parle Products, Ltd. v. Subir Mukherjee*** *[2001 (I) L.L.J. 964], was a case in which an employee was travelling from Calcutta to Puri by train to attend an official conference. On the way, he was assaulted and thrown out of the Railway compartment. He sustained multiple injuries including a head injury and became permanently physically disabled. The Division Bench held that there had been an accident, and that the accident had a causal connection with the employment inasmuch as the workman was travelling in the train to attend a conference organized by the employer in terms of a direction issued in that regard to him. Thus, it was held that the accident occurred in the course of his employment.*

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21. No evidence was led by the appellant to suggest that the dominant purpose of Jeet Singh was to kill Sohan Lal and not to commit theft. Under the circumstances, this argument is not at all available to learned counsel for the appellant.

(Emphasis supplied)"

13. In ***DTC v. Shakeela Parveen,*** 2014 ACJ 688 (Delhi High Court), the driver of a DTC bus was murdered on duty. The application for compensation was allowed by the Claims Tribunal which was challenged by DTC. G.P. Mittal, J., following ***Rita Devi*** (supra) and ***Kanshi Ram*** (supra), held the murder to be an accident and dismissed the appeal. Relevant portion of the said judgment is as under:-

"11. The present case is squarely covered by the report of the Supreme Court in Rita Devi and a judgment of this Court in Kanshi Ram.

12. Turning to the facts of this case, admittedly the robbers wanted to rob the passengers. There was an alarm that pocket of a passenger has been picked. Possibly either there was some resistance or an objection to the act of robbery by the deceased

which led to his stabbing by the robbers. Thus, the act of committing robbery was the felonious act intended by the robbers and the act of stabbing or causing death was originally not intended and the same was caused only in furtherance of the act of robbery. Thus, there is no escape from the conclusion that the death of Zamil in the instant case was accidental arising out of the use of bus No. DL-1P-9753."

14. In ***New India Assurance Co. Ltd. v. Shehzadi Yasmeen,*** 2014 SCC OnLine Del 4244 (Delhi High Court), there was altercation between the drivers of the two buses whereupon the driver of one bus crushed the other driver under his bus. The application for compensation under Section 163A of the Motor Vehicles Act was allowed. Jayant Nath, J., following ***Rita Devi*** (supra), dismissed the appeal. Relevant portion of the said judgment is as under:-

"14. The above facts show that it does not appear to be a case of murder simplicitor. There was some dispute pertaining to the time of running of the other bus. The bus driver of the offending vehicle was often deliberately trying to delay his bus and this resulted in a loss of passengers to the deceased. To sort this out, the deceased confronted the driver of the offending vehicle. He appears to have taken it amiss and appears to have decided to teach the deceased a lesson. It appears that the intention of the driver was only to teach the deceased a lesson. While trying to teach a lesson to the deceased, his act resulted in the death. The act of the driver of the offending vehicle cannot be termed to be a case of murder simiplicitor. It was neither pre-planned nor pre-meditated. The facts and circumstances of the death of the deceased show it is covered under Section 163 A of the M.V. Act."

(Emphasis supplied)

Madhya Pradesh High Court

15. In ***Satiya v. S.D.O. Public Works Department*** 1974 ACJ 431 (M.P. High Court) (DB), the Chowkidar of PWD was murdered by the

miscreants whereupon his legal representatives filed application for compensation under the Workmen Compensation Act. The Labour Court rejected the application holding that the deceased was not a workman. The challenge to the order came up before the Madhya Pradesh High Court. The Division Bench held the deceased to be the workman and the murder to be an accident. The Division Bench rejected the argument that the deceased was not employed for the purpose of employer's trade and business and held that the deceased was "workman" under Section 2(1)(n) of the Workmen's Compensation Act. Relevant portion of the said judgment is as under:-

> *"4. The question that falls to be considered is: Was the deceased a workman? Sub-section (n) of section 2(1) of the Workmen's Compensation Act defines work-man as below:—*
>
> > *""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) ……*
> > *(ii) employed…on monthly wages not exceeding five hundred rupees, 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…; 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.*
> > *(2) 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."

5. The definition has, therefore, to be read along with Schedule II and the relevant items that concerns us is entry No. (viii) of Schedule II which reads as under:—

> *"The following persons are workmen within the meaning of section 2(1)(n) and subject to the provisions of that section, that is to say, any person who is……*
>
> *(viii) employed in the construction, maintenance, repair or demolition of*
>
> *(a) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the appendix of the roof or…*

6. From the above definition it would appear that a workman is one who is employed for the purpose of employer's trade or business. The deceased was undoubtedly employed by the respondents but could it be said that the activities of the Public Works Department was trade or business. It is only if the answer was in the affirmative that the deceased would come within the definition of a "workman". The Public Works Department at Narsimhapur was engaged in such activities as constructing buildings, roads, bridges and other public works and also to maintain and repair them. The work done by the department was such as could normally be entrusted to a private contractor but the department either to maintain the standard of work or the work done departmentally having proved economical to them were maintaining an establishment analogous to a business.

7. Referring to the activities of the Government in the field of productive industry, it was observed by their Lordships of the Supreme Court in The Secretary Madras Gymkhana Club Employees' Union v. The Management, it was observed—

> *"The expansion of the Governmental or Municipal activities in fields of productive industry is a feature of all developing welfare State. This is considered necessary because it leads to welfare without exploitation of workmen and makes the production of material goods and services cheaper by eliminating profits. Government and*

the local authorities act as individuals do and the policy of the Act is to put Government and local authorities on a par with private individuals. But Government cannot be regarded as an employer within the Act if the operations are governmental or administrative in character."

8. The department could not be said to be engaged in operations that were governmental or administrative in character. By section 2(2) of the Act, it is clear that the exercise and performance of the powers of any department acting on behalf of the Government shall, for the purposes of the Act, unless a contrary intention appears, be deemed to be the trade or business of the department. The definition clearly does not exclude workmen employed by the departments of the Government. No contrary intention has been pointed out as would exclude an employee under the Public Works Department from the definition when it satisfied the order conditions of the definition. On the contrary, from the Schedule II it would appear that a person engaged in the construction, maintenance, repair or demolition of any building of a specified height could always be considered a workman. The department was required to keep an office from where amongst other businesses, their activities could be conducted. The deceased was employed as a Chowkidar in this office and he was required to be present there even during the night. This was for the purpose of protecting the property and the office from unwarranted interference from tresspassers, burglars and from other elements. The office kept by the Public Works Department was for the purpose of their trade and business. We hold that the deceased was employed for the purpose of departmental business as envisaged in the definition of "workman" under section 2(1)(n) of the Workmen's Compensation Act.

9. Under item (viii) of schedule II of the Workmen's Compensation Act unless the employment was in the construction, maintenance, repair or demolition of any building as specified in clause (a) beneath it, he would not be a workman. The trial Court considered the case only in so far as the question whether or not the deceased was employed in the

construction, repair or demolition of the building was concerned. It lost sight of the fact that if the employee was engaged for maintenance of the building then too he would be a workman within the meaning of clause (n) of section 2(1) of the Act. The word, "maintain" has been explained in Black's *law Dictionary, Fourth edition, thus:"Maintain, as its structure indicates, signifies literally to hold by the hand. It is variously defined as acts of repairs and other acts to prevent a decline, lapse of cessation from existing state or condition; bear the expense of; carry or commence; continue; furnish means for subsistence or existence of; hold; hold or keep in an existing state or condition; hold; or preserve in any particular state or condition; keep; keep from change; keep from falling; declining, or ceasing; keep in existence or continuance; keep in force keep in good order; keep in proper condition; keep in repair; keep up; preserve; preserve from lapse, decline, failure, or cessation; provide for; rebuild; repair; replace; supply with means of support; supply of what is needed; support; sustain; uphold. Negatively stated, it is defined as not to lose or surrender; not to suffer or fail or decline.*

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To "maintain an airport" is to keep it in state of efficiency for the furnishing of those facilities and the rendition of those services which air transportation and communication demand. Concordia-Arrow Flying Service Corporation v. City of Concordia.

10. The functions of a watchman are such as enjoin him to maintain the building inasmuch as he is required to keep it going and to preserve it against unwarranted interferences from unauthorised persons and from cattle nuisance. He was also required to keep it clean by sweeping the premises and by dusting it. He was thus engaged in the upkeep of the office for the purpose of keeping it in efficient state and his services were indispensable for maintenance of the office. It has been pointed out that even some cash was kept in the office and, therefore, he was there to guard it. All these services would undoubtedly show that he was engaged in the maintenance of the office. <u>He had not been murdered for any private reasons but he suffered</u>

death while trying to maintain the building in the course of his duty. In our opinion, the services rendered by him would be for the maintenance of the office and building and thus construed, he was a "workman" as defined under the Act and we hold so."

(Emphasis supplied)

16. In ***Oriental Insurance Co. Ltd. v. Sheela Bai Jain,*** 2007 ACJ 1126 (M.P. High Court) (DB), the cleaner of a truck was murdered by unknown persons. The application for compensation was allowed by Commissioner, Workmen's Compensation which was challenged by the Insurance Company. The Division Bench headed by Arun Mishra, J., as he then was, following ***Rita Devi*** (supra) dismissed the appeal. Relevant portion of the said judgment is as under:-

"14. Thus, we find that deceased was on the spot as the truck met with an accident. He was performing the duty to look after the goods and the truck, thus accidental murder took place in the course of employment. In ***Rita Devi v. New India Assurance Co. Ltd.****, 2000 ACJ 801 (SC), the Apex Court has held thus...*

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In view of the aforesaid decision, we find that deceased was performing duty. There was close nexus of murder and performance of his duty in course of employment. He died in the course of employment. Thus, we find that order passed by the Commissioner for Workmen's Compensation awarding compensation is proper."

Calcutta High Court

17. In ***Parle Products Limited v. Sri Subir Mukherjee*** (2001) ILLJ 964 Cal., (Calcutta High Court) (DB), an employee travelling in the train to attend a conference, was assaulted and thrown out of the railway compartment which resulted in permanent disability. The

employee filed application for compensation under the Workmen's Compensation Act which was allowed. The employer came in appeal before the High Court. The Division Bench headed by S.B. Sinha, J., as he then was, following ***Rita Devi*** (supra) held the murder to be an accident and the accident had a casual connection with the employment. The relevant portion of the said judgment is as under:-

> *"1.This appeal under section 30 of the Workmen's Compensation Act raises a question as to whether an employee who had suffered injury while travelling in a train at the hands of some hooligans is entitled to compensation from the employer under the Act.*
>
> *2. The claimant-respondent was working as a Territory Supervisor and was looking after the sales of the products of the appellant-company. He was directed to attend a conference at Puri on 27.6.1998. The said conference was organised by the appellant. The claimant-respondent along with his other colleagues left Calcutta by Jagannath Express for Puri in the night of 26.6.1998 to attend the conference but during the journey he was assaulted and thrown out of the Railway compartment as a result whereof he sustained multiple injuries including head injury. The petitioner as a result of such injuries became permanently physically disabled. He was only 23 years old at the relevant time and his monthly salary was Rs. 2337/- at the time of accident.*
>
> *xxx xxx xxx*
>
> *9. <u>One of the tests for determining as to whether an accident could be held to have arisen out of employment is that the workman is in fact employed on or performing the duties of his employment at the time of accident. Another test would be that the accident occurred at or about the place where the performance of his duties required him to be present. It is not a case where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the</u>*

workman, by his own conduct, exposed himself, which peril was not involved in the normal performance of the duties of his employment.

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This aspect of the matter has also been considered recently by Gauhati High Court in National Insurance Co. Ltd. v. Sabita Gope, reported in 2000 Lab. I.C. 669.

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In this case, the following factors are admitted:
(1) that there had been an accident,
(2) the accident had a casual connection with the case of the employer inasmuch as the respondent was travelling in the train to attend a conference organised by the appellant in terms of a direction issued in that regard to him."

Kerala High Court

18. In ***Varkeyachan v. Thomman***, 1979 ACJ 319, (Kerala High Court) (DB), a workman died of stab injuries suffered at the gate of the appellant's sawmill where he was employed to do odd jobs. The application for compensation under the Workmen's Compensation Act was allowed. The Division Bench of the Kerala High Court upheld the award and held that the employer was liable to pay compensation. Relevant portion of the said judgment is as under:-

"1. Respondent 1's son Varkey was a workman under the appellant. On 3 May 1971, he died of stab injuries he received at the gate of the appellant's sawmill where he was employed to do odd jobs. That day there was some labour unrest in the mill. Some of Varkey's workfellows refusing to work had assembled at the gate from the morning. They were shouting slogans and the situation was tense. Varkey was sent out to a nearby tea shop in the first instance to fetch two glasses of tea for Anto and Vakkachan, the son and the nephew of the appellant, who were inside the mill and a second time to return the tea glasses. While he was coming back from the tea

shop after returning the glasses Anto was on his way towards the road on a motor cycle. The motor cycle dashed against one of the workmen assembled at the gate, one Pappan. He fell down. Varkey was at the gate when Pappan fell down and was helping Pappan to rise up when Vakkachan's stab fell on Varkey. Vakkachan had by this time come to the gate whereupon a scuffle ensued between him on the one side and the striking workmen on the other.

2. ... It is by now well-settled that the term "accident" for the purpose of the law relating to compensation for personal injuries sustained by workman and the employer's liability in that behalf, includes any injury which is not designed by the workman himself, and it is of no consequence that the injury was designed and intended by the person inflicting the same. In Nisbet v. Rayne and Burn [(1910) 2 K.B. 689], where a cashier travelling in a train with a large sum of money intended for payment to his employer's workmen was robbed and murdered, the Court of Appeal held the murder was an accident from the point of cashier and, therefore, it was an accident within the meaning of that term in the Workmen's Compensation Act, 1906. Similarly in Trim Joint District School Board v. Kelly [1914 A.C. 667], where an assistant master at an industrial school was assaulted and killed by two of the pupils while the assistant master was performing his duties, the House of Lords held that his death was caused by an accident for the purpose of the same statute. Viscount Haldane, L.C., pointed out that the meaning of the term "accident" would vary according as the context varies, and as instances mentioned criminal jurisprudence where crime and accident are sharply divided by the presence or absence of mens rea and the law of marine insurance where the maxim: In jure non remota causa sed proxima spectatur (In law he proximate, and not the remote, cause is to be regarded) applies. The learned Lord Chancellor said:

> *"My Lords, if we had to consider the principle of the Workmen's Compensation Act as res integra, I should be of opinion that the principle was one more akin to insurance at the expense of the employer of the workman*

against accidents arising out of and in the course of his employment than to the imposition on the employer of liability for anything for which he might reasonably be made answerable on the ground that he ought to have foreseen and prevented it. I think that the fundamental conception is that of insurance in the true sense. And if so it appears to me to follow that in giving a meaning to 'accident,' in its context in such a scheme one would look naturally to the proxima causa, of which Lord Herschell and Lord Barnwell spoke in connexion with marine insurance, the kind of event which is unlooked for and sudden, and causes personal injury, and is limited only by this, that it must arise out of and in the course of the employment. Behind this event it appears to us that the purpose of the statute renders it irrelevant to search for explanations or remoter causes, provided the circumstances bring it within the definition. No doubt the analogy of the insurance cases must not, as Lord Lindley points out in his judgment in Fenton v. Thorley [1903 A.C. 443], be applied so as to exclude from the cause of injury the accident that really caused it, merely because an intermediate condition of the injury — in that case a rupture arising from an effort voluntarily made to move defective machine — has intervened. If, so far as the workman is concerned, unexpected misfortune happens and injury is caused which the statute seems to me to impose in the interest of the employer, who cannot escape from being a statutory insurer, is that the risk should have arisen out of and in the course of the employment."

3. The findings of facts entered leave no room for doubt that Varkey sustained the stab injury while he was returning to the mill from the tea shop after executing his second errand of giving back the glasses at the tea shop. The accident arose in the course of Varkey's employment.

4. The further question is whether the accident arose out of his employment. The Supreme Court in Mackinnon Mackenzie v. I.M. Issak [(1969) 2 SCC 607: A.I.R. 1970 S.C. 1906], approvingly referred to the test laid down by Lord

Summer in Lancashire and Yorkshire v. Highley [1917 A.C. 352], as the proper test for determining the question whether an accident arose out of the employment. That test is as follows:

> *"There is, however, in my opinion one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment. If nay, it did not, because, what was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. To ask if the cause of this was within the sphere of the employment or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was acting, or should have been in the position in which he was whereby in the course of that employment he sustained injury."*

5. Apply the above test. The querulous workmen were at the gate from the morning. It was hazardous for anyone to be there where a tense situation prevailed. Yet his employment obliged Varkey to pass and repass that area. The accident arose out of his employment.

6. It is argued that Varkey exposed himself to an added peril by an imprudent act, namely, by helping Pappan to rise up from the ground. Varkey was at the place of occurrence properly in the course of his employment. To help a person to get up from the ground where he had fallen cannot be said to be an unreasonable act on the part of the person so rendering help. That is, perhaps what is expected of any fellowmen in the ordinary course of affairs, and it is not possible to dichotomize one's behaviour into workman's behaviour and fellowman's behaviour in such situations. There is nothing to suggest that Varkey participated in the melee. On the other hand the facts

found by the Commissioner and narrated in the beginning of this judgment indicate that he was a loyal workman who was working on the fateful day. There is no merit in the argument that he did an imprudent act nor is there any material on which it could be found that he added to his peril by helping Pappan to get up."

(Emphasis supplied)

19. In ***United India Insurance Company Ltd. v. Philo,*** 1996 ACJ 849 (Kerala High Court) (DB), a taxi was stolen and the taxi driver was killed. The application for compensation under the Workmen's Compensation Act was allowed. The Division Bench of Kerala High Court held the murder to be an accident which arose out of the employment of the employee. The relevant portion of the said judgment is as under:-

"1.The short question arising for consideration in this appeal filed under S.30 of the Workmen's Compensation Act (for short the Act) is whether the killing of a workman while he was in the course of his employment, by an unknown person, can be considered as death caused as a result of an accident arising out of his employment?

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3. In the appeal, the learned counsel for the appellant has not pursued the contentions taken up the appellant as second opposite party before the Commissioner to the effect that the incident in question is not an accident and even if it is an accident it is not one which arose in the course of the employment. We think that the learned counsel for the appellant was justified in not pursuing them in the light of the decision of this Court in ***Varkeyachan v. Thomman*** *[1979 (1) L.L.N. 477], where a Division Bench of this Court has held that*

"the term accident for the purpose of the law relating to compensation for personal injuries sustained by workmen and the employer's liability in that behalf, includes any

injury which is not designed by the workman himself and it is of no consequence that the injury was designed and intended by the person inflicting the same".

In the light of the admitted fact that the deceased was engaged as a driver by the first opposite party and that he was killed while he was in the course of performing his duties as a driver, there may not be any justification in law to contend that the accident has not occurred in the course of his employment.

4. As regards the question to be considered in the appeal it was contended that the accident cannot be considered as one which arose out of the employment and as such neither the first opposite party nor the appellant can be legally made liable to pay compensation to the applicants under the Act It is in evidence that the deceased had accepted the offer of the tourists to occupy the room hired by them to spend the night. It was while the deceased was in the room occupied by the tourists that he was killed It was a case of cold blooded murder committed with the motive of stealing the car. In a case like the one on hand, the claimants must show that the injury caused was due to the fact that the workman was specially exposed to such peril because of his employment or that the injury was due to some special risk that the workman had to undergo. There was no such evidence in the case. The burden of proof primarily rests on the workman or the claimants to prove that the accident arise out of the employment. In the absence of any evidence to show that the injury caused was due to the fact that the workman was specially exposed to the peril because of his employment or that the injury was due to some special risk that the workman had to undergo, the Commissioner ought to have rejected the claim. The words "arising out of employment" should be 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." It was submitted that there was no causal relationship between the accident and the employment. The immediate cause which put the deceased to the peril in this case was the acceptance of the offer by the

deceased to share the room occupied by the tourists and as such the deceased should be held to be responsible for placing himself in this situation in which he has suffered the fatal injuries. On that ground also the claim is liable to be rejected.

5. In the decision reported in ***Varkeyachan v. Thomman*** *[1979 (1) L.L.N. 477] (vide supra), referred to already by us, this Court has accepted the test laid down by Lord Summer in* ***Lancanshire and Yorkshire Railway v. Highly*** *[1917 A.C. 352] and approved by the Supreme Court in the* ***M. Mackenzie v. I.M. Issak*** *[(1969) 2 SCC 607 : A.I.R. 1970 S.C. 1906], in the case of a claim by the legal representatives of a deceased workman which we may quote here usefully:*

> *"There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment. If any, it did not, because, what it was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. To ask if the cause of this was within the sphere of the employment or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was acting, or should have been in the position in which he was, whereby in the course of that employment he sustained injury."*

6. Dealing with identically similar contentions raised in a case where compensation was claimed by the legal representatives of a deceased workman, Chagla, C.J., speaking for a Bench of the Bombay High Court has laid down the law pithily in the following terms:

> *"Now it is clear that there must be a casual connection between the accident and the employment in order that*

the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the prominent cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of, his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a casual connection is established between the incident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be, something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a casual connection is established between the employment and the accident." (***Bhagubia v. General Manager, Central Railway*** *[A.I.R. 1955 Bom. 105].*

As regards the burden of proof lying on the applicant, the learned Judge has observed thus in the same decision:

"……. Once the peril is established, it is for the employer then to establish either that the peril was brought about by the employee himself, that he added or extended the peril, or that the peril was not a general peril but a peril personal to the employee……."

Similar views have been expressed by the Madhya Pradesh and Calcutta High Courts in ***Public Works Department Bhopal v. Kausa*** *[A.I.R. 1966 M.P. 297] and* ***Kartick Chandra v. State*** *[A.I.R. 1968 Cal. 127].*

7. Applying the principles laid down in the above decisions with which we respectfully agree, to the facts of this case, we are convinced that the view taken by the Commissioner in this case is fully justifiable. But for the engagement as the driver of

the taxi, the deceased would not have been in the place and in the situation where he was at the time when he was killed. The casual connection is complete and we have no doubt in our mind to hold that the accident which has resulted in the death of the workman has arisen out of the employment.

8. The contention that the claimants have failed to discharge their burden to prove the causal relationship between the accident and the employment is only to be rejected in the light of the observations contained in Bhagubai v. General Manager, Central Railway [A.I.R. 1955 Bom. 105] (vide supra), with which we respectfully agree."

20. In ***United India Insurance Co. Ltd. v. Thankamma***, (2011) 3 KLT 466 (Kerala High Court) (DB), the driver of a jeep was attacked by a passenger which resulted in the fatal injuries. The claim for compensation under Section 163A of the Motor Vehicles Act was allowed by the Claims Tribunal. The Division Bench of Kerala High Court, following ***Rita Devi*** (supra) upheld the award of the Claims Tribunal holding that the murder to be an accidental murder arising out of the use of the vehicle. The relevant portion of the said judgment is as under:

"1. Short question which arises for consideration in this appeal under Section 173 of the Motor Vehicles Act is whether a murder committed in a motor vehicle can be termed as "an accident arising out of the use of the motor vehicle", as contemplated under Section 163A of the Motor Vehicles Act."

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9. ...The Apex Court held therein that it was an accidental murder arising out of the use of the vehicle and that the claimants were entitled to compensation from the owner and insurer of the offending auto-rickshaw. Applying the principles laid down in the above decision, in the facts of the present case it has to be held that the murder was not a pre-planned murder and that the same was only an accidental murder. Deceased

Vasudevan was the driver of the vehicle in question. He stopped the vehicle due to mechanical defect and an altercation ensued between the deceased and Sunny and Sunny suddenly stabbed deceased Vasudevan. Thus it can be seen that Sunny had no intention to cause the death of Vasudevan. That being so, it has to be taken that it is an accidental murder and not an intentional one. It follows that the murder of the deceased Vasudevan was due to an accident arising out of the use of the vehicle. That being so, the Tribunal is rightly came to the conclusion that the claimants are entitled to compensation as claimed by them."

(Emphasis supplied)

Bombay High Court

21. In ***Bhagubai v. General Manager, Central Railway***, ILR 1954 Bom 1051, (Bombay High Court) (Division Bench) the deceased workman employed in the Central Railway left his quarters before midnight to join his duty and was stabbed by some unknown persons. An application filed by the widow of the deceased claiming compensation under the Workmen's Compensation Act, 1923 was dismissed. The Division Bench of Bombay High Court allowed the appeal and held that the deceased died of injury by accident arising out of employment. Relevant portion of the said judgment is as under:-

"This is a rather unusual case arising under the Workmen's Compensation Act. The facts briefly are that the deceased was a Mukadam employed in the Central Railway at Kurla Station and he lived in the railway quarters adjoining the Kurla Railway Station. It was found as a fact that the only access for the deceased from his quarters to the Kurla Railway Station was through the compound of the railway quarters. On December 20, 1952, the deceased left his quarters a few minutes before midnight in order to join duty and immediately thereafter he was stabbed by some unknown person. It is not disputed by the Railway Company that the deceased died as a

result of an accident, nor is it disputed that the accident arose in the course of his employment. But what is disputed is that the accident did arise out of the employment of the deceased. The learned Commissioner for Workmen's Compensation held that the accident did not arise out of the employment and therefore dismissed the claim made by the applicant who is the widow of the deceased. She has now come in appeal.

Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril a causal connection is established between the employment and the accident. In this particular case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to join duty, and he had to pass this spot in order to join his duty. Therefore the connection between the employment and the accident is established. There is no evidence in this case that the employee in any way added to the peril. There is no evidence that he was stabbed because the assailant wanted to

stab him and not anybody else.

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Both these decisions are really based upon the leading English case reported in Thom or Simpson v. Sinclair[1917] A.C. 127.] . In that case a woman employed by a fish-curer, while working in a shed belonging to her employer, was injured by the fall of a wall which was being built on the property of an adjoining proprietor, with the result that the roof of the shed collapsed and the woman was buried under the wreckage, and the House of Lords held that the accident arose out of her employment, and the principle is well stated by Lord Shaw at page 142:

> *"In short, my view of the statute is that the expression 'arising out of the employment' is not confined to the mere nature of the employment. The expression, in my opinion, applies to the employment as such—to its nature, its conditions its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed, it appears to me that the broad words of the statute 'arising out of the employment' apply. If the peril which he encountered was not an added peril produced by the workman himself, as in the cases of Plumb and Barnes in this House, then a case for compensation under the statute appears to arise."*
>
> *Viscount Haldane also puts the case very simply at page 136:*
>
> *"If, therefore, the language in question were to be construed upon principle and apart from authorities I should be prepared to hold that it was satisfied where, as here, it has been established as a fact that it was as arising out of her employment that the appellant was under the roof by the falling of which she was injured."*

To apply that test to the facts of this case, it arose out of the employment of the deceased that he found himself at a spot where he was assaulted and murdered.

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...In our opinion, once the applicant has established that the

deceased was at a particular place and he was there because he had to be there by reason of his employment, and he further establishes that because he was there he met with an accident, he has discharged the burden which the law places upon him. The law does not place an additional burden upon the applicant to prove that the peril which the employee faced and the accident which arose because of that peril was not personal to him but was shared by all the employees or the members of the public. Mr. Desai would have an applicant prove not only that the employee was murdered, but that in murdering him the murderer had no personal motive against the murdered man but he would have murdered any other employee of the Railway Company as well. We refuse to hold that the law casts any such intolerable burden upon the applicant. Once the peril is established it is for the employer then to establish either that the peril was brought about by the employee himself, that he added or extended the peril, or that the peril was not a general peril but a peril personal to the employee. It is because of this that the authorities have made it clear that the causal connection between the accident and the employment which the applicant has to establish is not a remote or ultimate connection, but a connection which is only proximate. Once that proximate connection is established the applicant has discharged the burden, and in this case the proximate connection between the employment and the injury is the fact that the deceased was at a particular spot in the course of his employment and it was at that spot that he was assaulted and done to death."

22. In ***State of Maharashtra v. Arti,*** 2008 ACJ, 1406 (Bombay High Court)**,** an employee killed his superior during an altercation in the office. The application for compensation under the Workmen's Compensation Act was allowed. The Bombay High Court dismissed the appeal. Relevant portion of the said judgment is as under:-

"17. ***Whether murder tantamounts to an accident:***
The term "accident" is not defined in the Workmen's

Compensation Act. It is also not defined in the General Clauses Act. The learned Judge has therefore, rightly considered the definition of an accident taking into account a dictionary meaning of the term. Black's Law Dictionary defines "accident" under Workmen's Compensation Act as an unforeseen untoward incident which was not reasonably anticipated. The deceased workman could not and did not contemplate his murder. It was an unforeseen and untoward happening.

18. The incident ended in a criminal prosecution. The assaulter was convicted of murder. He has been sentenced to life imprisonment by the Court of Sessions at Solapur could neither be contemplated nor avoided by the victim. The workmen's Compensation Act is a social legislation. It was enacted to give succour to workmen against injuries caused by accident. The object of the Act does not specify the applicability of the Act only in case of accidents by machines. The injury in this case was caused by the act by another human being. It proved fatal. Hence, it tantamount to murder qua the assailant. The injury qua the workman is by an accidental act to which he succumbed. Consequently a murder committed upon a workman has to be taken as an accident.

19. The Judgment and order of the Court of Sessions, Solapur is the pan of record. It has been produced in evidence before the Commissioner and Judge in the claim of respondent No. 1. It has therefore, to be read in evidence. Paragraph 14 of the Judgment shows that on 30th March, 1985 the assailant (accused) applied for optional holiday. 31st March, 1985 was the holiday. He wanted to enjoy it in continuation. His request was refused by his Superior. Nevertheless he remained absent on 30th March, 1985. The deceased made a report to the Sub-Divisional Engineer in the Head Office. The application of the accused was produced at trial and so was the order passed by his Superior. We are not concerned with whether or not that amounted to sufficient motive to commit murder. The part of the judgment shows how the murder was committed. It resulted in the death of the workman at his work premises.

20. It arose out of a feud directly relating to the work of the

workman. He fell victim to the accident by murder only because he performed his duties in the normal course. Hence, the fatal injury was caused to him by such accident arising out of and in the course of his employment. The observation of the learned Commissioner and Judge, to that extent cannot be faulted."

(Emphasis supplied)

Madras High Court

23. In ***G. Amsaveni v. V. Komala***, 2013 SCC OnLine Mad 3555 (Madras High Court), a watchman in the appellant's brick's chamber was murdered on duty and a claim for compensation under the Employee's Compensation Act was allowed. S. Vimala, J. upheld the award holding the murder to be an accidental murder arising out of and during the course of the employment. Relevant portion of the judgment is as under:-

"1. ***Murder, whether tantamount to accident, is the issue raised in this Appeal? If so, whether the accident (of murder) arose out of and in the course of employment, is yet another issue raised.***

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4.2 It is not in dispute that the deceased died on account of murder. Whether the murder would amount to accident is the issue to be considered?

The term 'accident' is neither defined under Employees Compensation Act nor under the General Clauses Act. Therefore, the dictionary meaning alone has to be taken into account. According to the Black's Law Dictionary, the term 'accident' means, unforeseen untoward incident, which was not reasonably anticipated. The deceased workman could not and did not reasonably could have anticipated that the unforeseen incident (murder) would happen to him and therefore, it is an accident, as per the definition.

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When the incident of murder had taken place, in the work

place, then the presumption would be that the murder would have been on account of the employment, in the absence of any other evidence pointing out that it could not have been on account of employment. Considering the fact that there is no evidence to show that the murder was out of private dispute between the deceased and somebody else or out of some other motive like murder for gain or sex or property dispute and considering the fact that the incident had taken place in the workplace and the persons, who could have deposed about the incident remaining mute, then the inference is that the murder should have been out of and in the course of employment. Under such circumstances, this Court concur with the findings of the Tribunal that the murder is an accident and that, it took place out of and in the course of employment."

(Emphasis supplied)

24. In ***Branch Manager, National Insurance Company Ltd. v. Rahmath***, 2012 (3) L.W. 371, a taxi hired by the persons were found missing. The dead body of the driver was found later on a barren land. However, the taxi remained untraced. S. Vimala, J. upheld the award of the Commissioner under the Employees Compensation Act holding the murder to be an accidental murder arising out of and during the course of the employment of the driver. Relevant portion of the said judgement is as under:-

"1. ***Whether death of the deceased Mohammed Sultan was due to murder simpliciter or accidental murder is the intricate question raised in this appeal.***

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9.2 The basic parameter/principle to be considered in order to decide whether it is a case of murder simpliciter or accidental murder has been given in the following decisions.

i) 2000 SAR Civil 573 SC (Smt. Rita Devi & Ors. v. New India Assurance Company Limited & Another)

ii) 2009 (2) TN MAC Page 399 (Gujarat High Court at Ahmedabad) (National Insurance Company Ltd. v. Gitaben

Saitansinh Rajput & Ors. Page 405)

According to the decisions, if the dominant intention of the crime is to kill the deceased, then the killing is a murder simpliciter, but if the murder was not originally intended but, if the murder had been caused in furtherance of any other crime or if the murder is consequential to some other crime, then it can be considered to be an accidental murder.

9.3 In this case the facts reveal that the vehicle involved in the accident is the taxi and from the taxi stand two of them have taken the taxi and the deceased had gone with the taxi along with those two persons and thereafter, the deceased had been found dead, but the car remain untraceable. No previous enmity has been made out between the deceased and the persons, who abducted the deceased. Therefore, the implication is that the main object could have been to commit theft of the vehicle and in that attempt consequentially the deceased had been murdered.

9.4 The probability is more in favour of, the prime intention of the crime, could have been the theft of the vehicle and the consequential incident ought to have been the murder.

xxx xxx xxx

15. Already the claimants are suffering due to the accidental murder of the deceased. Whether their hopes, their expectations and their future should also be murdered is the issue. Law is meant only for the protection of the Public. This special legislation like Social Welfare and Social Security Legislation are meant only to do meaningful effective and quick justice to the suffering mass. Taking invalid, incorrect, insensitive defences irrespective of the nature of t he sufferings certainly causes indelible impression in the mind of the victims that those public sector undertakings are not meant for public cause or public good. The insurance company do not stand to gain by taking this incorrect defence. This Court expects that at least in future the insurance company will take a responsible defence."

(Emphasis supplied)

Gauhati High Court

25. In ***National Insurance Co. Ltd. v. Sabita Gope***, 2000 (2) LLN

655, (Gauhati High Court) (Division Bench) a truck driver was sent on duty from Khowai to Gauhati and while returning due to strike was found dead in the cabin of the truck. The application for compensation was allowed. The Division Bench of Gauhati High Court upheld the award holding the death of the deceased workman to be an accident in course of employment. Relevant portion of the said judgment is as under:-

> *"5. .....Accident is not defined in the Act. Therefore, the meaning of accident must be given as understood by the ordinary people in general. As per SHORTER OXFORD ENGLISH DICTIONARY, Third Edition, revised with addenda (Volume I) the word "accident" means I. anything that happens an event; especially an unforeseen contingency; a disaster. Similarly, the BLACK'S LAW DICTIONARY, 6th Edition defines the word "accident" as follows:-*
>
> > *"In an etymological sense anything that happens may be said to be an accident and in this sense, the word has been defined as befalling a change; a happening; an incident; an occurrence or event. In its most commonly accepted meaning, or in its ordinary or popular sense the word may be defined as meaning; a fortuitous circumstances, event, or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlocked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; chance or contingency; fortune; mishap; some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progresses or develops; something happening by chance; something unforeseen, unexpected, unusual, extraordinary or phenomenal, taking place not*

according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence."

However, it must be remembered that the dictionary assists in appreciating and comprehending the general sense of the words. However, the words of a dictionary will not control the scheme of the statute. The Supreme Court in Deputy Chief Controller of Imports and Exports, New Delhi, v. K.T. Kosalram and Ors., observed :

"What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject-matter, the purpose or the intention of the authority and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context, in which a word conveying different shades of meanings is used, is of importance in determining the precise sense which fits in with the context as intended to be conveyed by the author."

6. The meaning of the word 'accident' is to be gathered from the context, the subject-matter, the intention of the Legislature, effect of the meaning given and the object of the enactment. While dealing with the meaning of the word 'accident' in the expression 'accident arising out of and in the course of employment' in the (English) Workmen's Compensation Act, 1906 in Board of Management of Trim Joint District School v. Kelly 1914 AC 667 (HL), VISCOUNT HALDANE L.C. observed as follows:-

"It seems to me important to bear in mind that 'accident' is a word the meaning of which may vary according as the context varies. In criminal jurisprudence crime and accident are sharply divided by the presence or absence of mens rea. But in contracts such as those of marine

insurance and of carriage by sea this is not so. In such cases the Maxim 'in jure non remota causa sed proxima spectatur' is applied. I need only refer your Lordships to what was laid down by LORD HERSCHELL and LORD BARMWELL when overruling the notion that a peril or an accident in such cases is what must happen without the fault of anybody in Wilson v. Owners of the Cargo per the Xantho 1888 57 LT 701.

It is therefore necessary, in endeavouring to arrive at what is meant by accident to consider the context in which the word is introduced. The scope and purpose of that context may make the whole difference."

"..... What was held in Fenton v. Thorely 1903 AC 443 was the injury and accident were not to be separated and that 'injury by accident' meant nothing more than accidental injury or accident as the word is popularly used," In the same case EARL LOREBURN observed as follows:-

"A good deal was said about the word 'accident'. Etymologically, the word means something which happens - a rendering which is not very helpful. We are to construe it in the popular sense, as plain people would understand but we are also to construe it in its setting, in the context and in the, light of the purpose which appears from the Act itself. Now, there is no single rigid meaning in the common use of the word. Mankind have taken the liberty of using it, as they use to many other words, not in any exact sense but in a somewhat confused, or rather in a variety of ways."

"..... In short, the common meaning of this word is ruled neither by logic nor by etymology, but by custom, and no formula will precisely express its usage for all cases."

The House of Lords in the aforesaid case held that the injuries caused by deliberate violence which arose out of and during the course of employment also, amounted to 'accident'. The word 'accident' is construed in a wide canvass depending on the context keeping in mind the ordinary and popular sense in which it is used and understood by the persons concerned. The English Courts have also taken the view that man slaughter

arising from negligent driving on the road is covered by the contract of indemnity in respect of accidental injury; (1921) 3 KB 327 and (1927) 2 KB 311, - referred and relied in ***Marles v. Philip Trant and Sons Ltd.*** *1954 1 QB 29 (CA) by DENNING L.J. in this context it would be appropriate to refer to a decision of the Bombay High Court rendered in* ***Bhagubai, v. General Manager, Central Railway, V. T. Bombay****, reported in 1954 II LLJ 403. In the above case, the deceased was employed in Central Railway at a station and he lived in the railway quarters adjoining the railway station. It was found that the only access for the deceased from his quarters to the railway station was through the compound of the railway quarters. One night the deceased left his quarters a few minutes before midnight, in order to join duty and immediately thereafter he was stabbed by some unknown person. There was no evidence that the employee was done to death because someone was interested in murdering him. Nor was there any evidence that the employee was bound to be murdered whether he was on the spot in the course of his employment or any where else. The Bombay High Court in that case held that the accident arose out of the employment. While deciding the case CHAGLA, C.J who delivered the judgment in the aforesaid case made the following observation:-*

> *"There must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. The cause contemplated is the proximate cause and not any remote cause. If the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face then a causal connection is established between the accident and the employment. The fact that the employee shares that peril with other members of the public is an irrelevant consideration. The peril which he faces must not be something personal to him; the peril must be incidental to his employment. He must not by his*

own act add to the peril or extend the peril. Once the peril is established it is for the employer then to establish either that the peril was brought about by the employee himself, that he added or extended the peril, or that the peril was not a general peril but a peril personal to the employee."

7. From the evidence on record it thus emerges that the deceased reached Patharkandi and was compelled to halt there due to bandh. The deceased had to be in the particular spot at that particular moment in course of his employment and by reason of his employment, he met with untoward event or mishap or occurrence took place because he was there in course of his employment. The claimants established their burden. No other duties or burden is imposed on the claimants to prove and establish any further requirement. The claimants established the proximate cause of death of the deceased and also established the proximate connection between the employment and his injury which is the accident caused to the deceased at that particular spot in course of his employment thus resulting in his death. In our opinion the learned Commissioner rightly reached his conclusion and imposed liability on the employer under Section 3 of the Act."

Karnataka High Court

26. In ***M A Kareem Sab v. Palaniyamma***, 2013 SCC OnLine Kar 4514, a vehicle was stolen and the taxi driver was killed by the passengers. The Karnataka High Court following ***Rita Devi*** (supra), upheld the award for compensation under section 163-A of Motor Vehicle Act.

Whether the death of Manoj Kumar arisen out of the use of the motor vehicle?

27. In ***Shivaji Dayanu Patil v. Vatschala Uttam More,*** 1991 ACJ 777, the Supreme Court held the word *"**use**"* in the context of a motor vehicle, has to be construed in a wider sense to include the period when the vehicle was not moving and was stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. The expression ***"use of a motor vehicle"*** in Section 92-A of the Motor Vehicles Act, 1939 covers accidents which occur both when the vehicle is in motion and when it is stationary. The interpretation for the words *'arising out of use of motor vehicle'* by Supreme Court in ***Shivaji Dayanu Patil*** (supra) is applicable to cases under Employees' Compensation Act. In ***Rita Devi*** (supra), the Supreme Court compared the provisions of the Motor Vehicles Act and the Workmen Compensation Act and held that the object of both the Acts was to provide compensation to the victims of the accidents.

28. In ***Shivaji Dayanu Patil*** (supra), there was a collision between a petrol tanker and a truck due to which the petrol tanker went off the road and fell at a distance of about 20 feet from the highway leading to leakage of petrol which collected nearby. Later an explosion took place in the petrol tanker resulting in fire. Number of persons who assembled near the petrol tanker sustained burn injuries and few of them succumbed to the injuries. The victims filed the claim petitions which were dismissed by the Claims Tribunal on the ground that the explosion and the fire had no connection with the accident, and was altogether an independent accident. The appeal was allowed by the learned Single Judge of the High Court holding that the explosion was

a direct consequence of the accident. The Division Bench of the High Court affirmed the findings of the learned Single Judge against which the matter came up before the Supreme Court. The Supreme Court dismissed the Special Leave Petition holding that the explosion and fire resulting in injuries and death was due to the accident arising out of the use of the motor vehicle. The relevant portion of the judgment is reproduced hereunder:

> *"25. These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break-down or mechanical defect. Relying on the abovementioned decisions, the Appellate Bench of the High Court had held that the expression "use of a motor vehicle" in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, 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 not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck."*
>
> *xxx xxx xxx*
>
> *"35. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A,*

Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the causal 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 connected 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 a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

36. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle' In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that 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 grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and 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 causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker No. MKL 7461."

(Emphasis supplied)

29. In ***Rita Devi*** (supra), the Supreme Court compared the provisions of Motor Vehicles Act and Workmen's Compensation Act as under:-

> *"15. Learned counsel for the respondents contended before us that since the Motor Vehicles Act has not defined the word "death" and the legal interpretations relied upon by us are with reference to the definition of the word "death" in the Workmen's Compensation Act the same will not be applicable while interpreting the word "death" in the Motor Vehicles Act because according to her, the objects of the two Acts are entirely different. She also contends that on the facts of this case no proximity could be presumed between the murder of the driver and the stealing of the autorickshaw. We are unable to accept this contention advanced on behalf of the respondents. We do not see how the object of the two Acts, namely, the Motor Vehicles Act and the Workmen's Compensation Act are in any way different. In our opinion, the relevant object of both the Acts is to provide compensation to the victims of accidents. The only difference between the two enactments is that so far as the Workmen's Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapter X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In this conclusion of ours we are supported by Section 167 of the Motor Vehicles Act as per which provision, it is open to the claimants either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. A perusal of the objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence the judicially accepted interpretation of the word "death" in the Workmen's Compensation Act is, in our opinion, applicable to the interpretation of the word "death" in the Motor Vehicles Act also.*
>
> *16. In the case of Shivaji Dayanu Patil v. Vatschala Uttam More this Court while pronouncing on the interpretation of Section 92-A of the Motor Vehicles Act, 1939 held as follows:*

> *"... Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no-fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose."*
>
> *17. In that case in regard to the contention of proximity between the accident and the explosion that took place this Court held:*
>
> > *"36. This would show that as compared to the expression 'caused by', the expression 'arising out of' has a wider connotation. The expression 'caused by' was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression 'arising out of' which indicates that for the purpose of awarding compensation under Section 92-A, the causal 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 connected 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 a motor vehicle' in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."*
>
> *(Emphasis supplied)*

30. In ***Samir Chanda v. Managing Director, Assam State Trans, Corporation,*** 1998 ACJ 1351 (SC), the Supreme Court upheld the claim for compensation in respect of injuries suffered by the claimant due to bomb blast inside the vehicle relying on ***Shivaji Dayanu Patil's case*** (supra).

31. In ***Kaushnuma Begum v. New India Assurance Co. Ltd.,*** 2001 ACJ 428**,** the Supreme Court held that the principle of strict liability propounded in ***Rylands v. Fletcher***, (186-73) AII ER Rep 1, was applicable in claims for compensation made in respect of motor accidents. The relevant findings of the Supreme Court are reproduced hereunder:-

> *"12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident' This question depends upon how far the Rule in Rylands v. Fletcher (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus:*
>
> > *"The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."*
>
> *"19. Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands v. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.*
>
> *20. "No Fault Liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former*

the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under 'no fault liability' can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

32. In ***National Insurance Co. Ltd. v. Shiv Dutt Sharma,*** 2004 ACJ 2049, two sets of claims were made in this case; one relating to the accident in a bus and the other relating to an accident where bullets of terrorists killed the passengers of a bus. The Jammu and Kashmir High Court held as under:-

"43. On the basis of the judicial pronouncements and the material which has come on the record, it is concluded:

(i) That a passenger travelling in a bus when he suffers from an injury on account of bomb explosion or on account of any other activity including terrorist activity, he would be well within his rights to claim compensation. This view is spelt out from the decision given by the Supreme Court of India in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC) and the latter decisions noticed above;

(ii) <u>That even if a person is not actually in the vehicle and is standing outside and suffers an injury, even in that case Supreme Court of India has allowed compensation in Shivaji</u>

Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC). Therefore, merely because some of the victims were taken out of the bus and thereafter shot dead, would not make any difference;

(iii) That the material which has come on the record justified the grant of the compensation and the quantum thereof is accordingly sustained."

(Emphasis supplied)

33. In ***DTC v. Meena Kumari,*** III (2010) ACC 72, a bomb blast in a DTC bus resulted in the death of the deceased. This Court discussed the law with respect to the liability of DTC to pay compensation to the legal representatives of the deceased and held that the accident arose out of the use of motor vehicle and, therefore, the claimants were entitled to compensation under Section 163-A of the Motor Vehicles Act, 1988.

34. In ***United India Insurance Co. Ltd. v. Mosina***, MAC.APP.No.73/2006 decided on 25th November, 2011, this Court held that this issue was no more *res integra* in view of the judgment of the Supreme Court in ***Rita Devi*** (supra). The findings of this Court are as under:-

"19. That apart even legally also this contention is untenable and issue is no more res integra. Way back in the year 2000, the Apex Court had occasioned to discuss the identical issue in ***Rita Devi v. New India Assurance Co. Ltd.*** *2000 ACJ 810 (SC). In that case the deceased was employed to drive an auto rickshaw for ferrying passengers on hire. On the fateful day, the auto rickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for journey. As to what happened on that day is not known. It was only on the next day that the police was able to recover the*

body of the deceased but the auto rickshaw in question was never traced out. The owner of the auto rickshaw claimed compensation for the Insurance company for the loss of auto rickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death of the driver on the ground that the death occurred on account of accident arising out of use of the motor vehicle. The Apex Court held that the heirs of the deceased would be entitled to compensation.

20. The Court interpreted the expression "arising out of the use of the motor vehicle" in the context of death or permanent disablement suffered due to the accident arising out of the use of the motor vehicle and gave it a very wide interpretation even to include the situation where a "murder" can be treated as accident in a given case. Following discussion on this aspect from the aforesaid judgment is worthy of a quote.

> *"A conjoint reading of the above two Sub-clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words 'death due to accident arising out of the use of motor vehicle'.*
>
> *The question, therefore, is can a murder be an accident in any given case ? There is no doubt that 'murder', as it is*

understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But. there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominent intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

Applying the principles laid down in the above cases to the facts of he case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw."

While taking this view, the Court again emphasized that having regard to the fact that it was a beneficial legislation enacted with a view to confer a benefit of expeditious payment of a limited amount, same has to be given particular interpretation.

> *21. The plain language of Section 163A of the Act disclosed that the liability can be of the owner of the motor vehicle or the authorised insurer. Thus, the insurer is also made liable if the insurance policy is taken. In the present case not only the vehicle in question was insured the insurance cover/policy placed on record further reveals that the premium was also paid for driver and helper. In these circumstances, the Insurance Company, cannot shy away from its liability when owner of the vehicle had taken insurance in respect of driver and helper by paying premium on that account as well. It is also to be noted that such a plea was not even taken before the ld. MACT and is raised for the first time in this Court."*
>
> *(Emphasis supplied)*

35. In ***National Insurance Co. Ltd. v. Munesh Devi***, 2013 ACJ 919, the driver of the tanker climbed over the Tanker Lorry to check inside condition of Tanker and came into contact with electric wire which resulted in his death. It was held that the accident arose out of use of motor vehicle.

Findings

36. Applying the principles laid down in the above mentioned judgments, the death of Manoj Kumar is held to be an accidental death. No evidence was led by the appellant to suggest that the dominant purpose of the assailant was to kill the deceased. There is no evidence that the deceased in any way added to the peril. The deceased could not and did not contemplate his death. It was an unforeseen and untoward happening and therefore, an accidental death. This case is squarely covered by the principles laid down by the Supreme Court in ***Rita Devi*** (supra) and this Court in ***Kanshi Ram*** (supra), ***Shakeela Parveen*** (supra) and ***Shehzadi Yasmeen*** (supra);

Madhya Pradesh High Court in ***Satiya*** (supra), and ***Sheela Bai Jain*** (supra); Calcutta High Court in ***Subir Mukherjee*** (supra); Kerala High Court in ***Thomman*** (supra), ***Philo*** (supra) and ***Thankamma*** (supra); Bombay High Court in ***Bhagubai*** (supra) and ***Arti*** (supra); Madras High Court in ***V. Komala*** (supra) and ***Rahmath*** (supra); Gauhati High Court in ***Sabita Gope*** (supra); Karnataka High Court in ***Palaniyamma*** (supra).

37. The accidental death of the deceased is held to be in the course of his employment with the respondent no.4 who had validly insured the vehicle with the appellant. There is a casual connection between the employment and the accidental death as the deceased was on duty at the time of the accident and was handing over the charge of the insured vehicle to Kedar Singh when sudden altercation/quarrel took place and Kedar Singh hit the deceased which resulted in his death. But for his employment, the deceased would not have been at the place of accident.

38. The accident is held to have arisen out of use of insured vehicle in terms of principles laid down in ***Shivaji Dayanu Patil*** *(supra),* ***Rita Devi*** ***(****supra),* ***Samir Chanda*** *(supra),* ***Kaushnuma Begum*** *(supra),* ***Shiv Dutt Sharma*** *(supra),* ***Meena Kumari*** *(supra),* ***Mosina*** *(supra),* ***Munesh Devi*** *(supra).*

39. The order of the Commissioner, Employees' Compensation holding the appellant liable to pay compensation to respondent no. 1 and 2 is upheld. The appeal is therefore, dismissed.

40. The appellant has deposited Rs.9,58,352/- with Commissioner, Employees' Compensation on 25th March, 2013.

41. List for disbursement of the amount on 4th September, 2017.

42. The claimants shall remain present in Court on the next date of hearing along with the pass books of their savings bank accounts near the place of their residence and PAN cards/Aadhar cards.

43. Copy of this judgment be given *dasti* to counsels for the parties.

44. Copy of this judgment be sent to Mr. Sanjoy Ghose, Additional Standing Counsel for GNCTD who circulate this judgement to all the Commissioners, Employee's Compensation.

AUGUST 9, 2017 **J.R. MIDHA, J.**
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