

FA 162 / 1926

In His Majesty's High Court of Judicature,  
Appellate Side, Bombay.



(CIVIL JURISDICTION.)



*Original*

Appeal No. *162* of 192*6* from Appellate Decree.

*The Ahmedabad Cotton Spinning  
and Manufacturing Company Ltd.*

} Appellant

(Original *App. Party*)

*versus*

*Bai Bhoshian Rajaram, widow of  
deceased workman Kalicharan  
Nanu*

} Respondent

(Original *Applicant*)

Claim Rs.

“ for pleader's fee.

Vakil for Appellant Mr. *H. V. Sivata*

Vakil for Respondent Mr. *B. G. Madak*

In His Majesty's High Court of Judicature,  
Appellate Side, Bombay.

~~Fruit~~ Appeal ~~and~~ No. 162 of 1926.  
~~Civil Revision Application~~

*Ahmedabad* District.

No. of paper.

Particulars.

I. Papers to be preserved.

- ~~1~~ Copy of the Judgment of the lower appellate Court if printed.
- 1 Copy of the Judgment of the original Court ( do. ).
- 2 Interlocutory Judgment of the High Court (if any).
- 4 Findings.
- 2 Judgment (Final) of the High Court.
- 3 Decree of the High Court.
- 7 Judgment in Review Petition.
- 8 Judgment of the High Court in the matter of leave to appeal to the Privy Council.
- 9 Judgment, decree and order of the Privy Council.
- 10 Printed copy of the Privy Council record.
- 11 Memo. of appeals in appeals or applications summarily dismissed.

II. Papers to be destroyed under the Rules.

- 1-2 Memo. of appeal (in admitted cases).
- ~~1~~ Manuscript copy of the Judgment of appellate court.
- ~~2~~ Manuscript copy of the decree of appellate court.
- 2 Manuscript copy of the Judgment of original court.
- ~~5~~ Manuscript copy of the decree of original court.
- 3 Vakalatnama of Mr. *H. V. Sivatis* for the appellant.
- 5 Civil application for delay being excused with affidavit.
- 8 Application for copies.
- 9 Application for search.
- 10 Letter intimating dismissal where the order is of dismissal.
- 4 Notice.
- 5 Letter transmitting notice with District Judge's endorsement thereon, etc.
- 6 R. & P. writ.
- 14 Application No. of 192 for substitution of heirs.
- 15 Fresh Notice (to heir). fresh notice.

No. of paper.

Particulars.

- ~~6~~ Letter transmitting notice with District Judge's endorsement there-  
on, etc.
- 7 Vakalatnama of Mr. B. G. Misra for the respondent.
- 8 Memo. of cross-objections.
- 9 Application for copies.
- 10 Application for search.
- 11 Writ sending down issues when there is a separate Judgment.
- 12 Notice of receipt of findings.
- 13 Objections to findings.
- 14 Writ communicating final decree or order to the lower Court.
- 15 Receipt of R. and P. by the District Judge.
- 16 Review petition.
- 17 Affidavit in support of do. if any.
- 18 Vakalatnama if any.
- 19 Application for leave to appeal to His Majesty's Privy Council.
- 20 Notice in do.
- 21 Writ for R. and P. in do.
- 22 Certificate granting leave to appeal.
- 23 Writ or letter of intimation in cases where rule is discharged.
- 24 Receipt of papers.

*Amrath*

Clerk.

*R. H. Sanyal*  
Assistant Sheristedar.

16/2/07

*Halman*  
Assistant Registrar.

Ex. 1.

In the High Court of Judicature at Bombay.

day the                      day of                      192 .

APPEAL No. 162 OF 1926 FROM ORIGINAL DECREE.  
( Under Act VIII of 1923 ).

The Ahmedabad Cotton Spinning and Manufacturing Comp-  
any, Ltd. ...                      ...                      ... } *Appellant.*  
(Original Opposite Party)

*versus*

Bai Budhian Rajaram, widow of deceased workman Kali-  
charan Nanu. ...                      ...                      ... } *Respondent.*  
(Original Applicant)

Claim—Rs. 2,500.00 —for Pleader's Fees.

The petitioner prayed for an order against the opposite party to deposit Rs. 2,500 for compensation to be distributed among the dependants of one Kalicharan Nanu who was employed as a jobber with the opposite party and who died on 30th November 1925 as a result of an accident while in their employment.

The Application No. 22/B. 5 of 1926 was decided by the Commissioner for Workmen's compensation, Bombay who ordered the opposite party to deposit forthwith Rs. 2,500 for compensation and to pay Rs. 55 for costs.

An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Honourable Mr. Justice Percival on the 14th day of June 1926.

The grounds of objection to the decision appealed against are :—

1. The lower Court erred in holding that the accident arose out of and in the course of the employment of the deceased workman, Kalicharan.
2. The employment of the deceased workman being as a Jobber and the nature of the work which he attempted to do viz. the unlying of the hessian cloth being entirely different from the duties connectsd with his employment and it being the work to be done by the engineering department of the Mill, it ought to have been held that the accident did not arise out of the employment of the deceased.
3. The lower Court has erred in giving an un-warrantedly wide interpretation to the words "arising out of and the course of employment."
4. The lower Court ought to have held that the accident was directly attributable to the willful disobedience of order by the deceased workman.
5. The lower Court has misunderstood the duties of a jobber.
6. The amount of compensation awarded is in any case excessive.
7. The order of the lower Court is contrary to law, justice and equity.

~~State of Gujarat~~ 19-1-26

APPEAL NO. 162 OF 1926 FROM ORIGINAL DECREE.

10 In the Court of the Commissioner for Workmen's  
Compensation, Bombay.

Exhibit No. 11.

APPLICATION No. 22 OF 1926 FOR ORDER TO DEPOSIT COMPEN-  
B. 5 SATION.

20 (Under Section 22 of Act VIII of 1923).

Bai Budhian Rajaram widow of the deceased workman Kali- } Applicant.  
charan Nanu. ... .. }

Pleader—Mr. Desai for applicant.

*against*

The Ahmedabad Cotton Spg: and Mfg: Co: Ltd., Ahmedabad. Opposite.  
party.

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Pleader—Mr. G. V. Mavlankar.

Claim—Rs. 2,500.

The petitioner prays for an order against the opposite party to deposit Rs. 2,500 for compensation to be distributed amongst the dependants of one Kalicharan Nanu who was employed as a jobber with the opposite party and who died on the 30th November 1925 as a result of an accident while in their employment.

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The opposite party has put in a written statement. Their defence is that the accident did not arise out of and in the course of the employment of the workman, and that it was due to wilful disobedience by the workman of an express injunction given to him by his superior.

The issues to be decided in this case are two.

1st. Whether the accident arose out of and in the course of the employment of the workman Kalicharan.

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2nd. Whether the accident was directly attributable to the wilful disobedience by the workman of an order expressly given for the purpose of securing his safety.

My finding on the 1st:—Issue is in the affirmative.

My finding on the 2nd:—Issue is in the negative.

Reasons.

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The facts of the case are shortly these. About three weeks before the date of the accident, the mill authorities had commenced the work of

replacing the corrugated iron sheets on the roof in the Weaving Department by wooden planks. It was being actually done by Contractors Messrs. Gannon Dunkerley and Co. Ltd. In order to protect the cloth that was being manufactured, from dust that would fall from the roof, a temporary hessian cover used to be put over that portion of the Weaving Shed when the work of replacing was actually being done. Generally about 16 looms would thus be under the covering. On the morning of the day of accident which was Monday the 20th of November 1925, the deceased who was a jobber having 46 looms in his charge noticed that the hessian cover interfered with light and that for the satisfactory working of the looms the cover or at least a portion of it had to be removed. The work of replacing over that portion had been completed and yet the covering remained there. The Mill commenced work at 7 a. m. and about 9 a. m. this accident took place. It seems that the jobber tried to remove by cutting a portion of the cover, to let sufficient light in and that while he was either actually cutting it or immediately afterwards, he got entangled with the shafting and was instantaneously killed.

Mr. Mawlankar for the opposite party contends that it was not the work of the jobber to cut or remove the covering and if he did it the accident did not arise out of the employment of the jobber. He further contends that the said jobber was expressly told by the Head Jobber not to do it and if he did it in spite of it, the accident was directly attributable to wilful disobedience by the jobber of an express order.

As to his first contention, the evidence consists of the Head Jobber, a Weaver, the Engineer and the Weaving Master. The Head Jobber says that at 8 a. m. when he went to the spot where the jobber in question was working the latter complained to him of want of light on account of the covering and that he wanted to cut it, but the former told him not to do it himself but wait till it was removed by the persons concerned who according to him and the Engineer were the carpenters under the Engineer. The Head Jobber there is merely surmising when he says that he got impatient and tried to remove it and that the cover got entangled and with it the jobber also in the the shafting. He was not present there. According to this witness he continued his round in the Weaving, and Warping Departments and then went to the Sizing Department to inform the Weaving Master about the removal of the cover. The Weaving Master told him that the Engineer would be told about it when they met him in the Calendering Department where they would find him as he was then going to perform some ceremonies in connection with a new machine that was to be started that day. By the time they reached the Calendering Department it was 9 a. m. and soon after before the Engineer could be told about it a weaver came running to inform them about the accident. (This weaver is not forthcoming as a witness as he is no longer in the employ of the mill). The engine was immediately stopped but it was too late as the man was already dead when the Head Jobber went to the scene of the accident as he found him hanging on the shafting with a portion of his body covered by the hessian cover.

The next witness is the weaver who was working on the looms immediately next to those where the accident took place. According to him while the jobber (the deceased) was putting the belt on the pulley a piece of the hessian cover got entangled in the belt and in trying to remove that piece the deceased himself got entangled. One thing to be remembered in connection with this witness is that he was the only person from amongst the witnesses examined who was actually present immediately near the scene of the accident. He further says that he does not remember if the Head Jobber had come there before the accident on that day nor can he say if there was any talk between the Head Jobber and the deceased that morning.

The next witness is the Engineer who merely says that he had ordered carpenters and coolies under him to do the work of putting on and removing the hessian cover as required; and that this used to be done when the mill was not working. Sunday before the day of accident (i. e. Monday) was not a working day and that the roofing work over that portion had been finished if not on Saturday certainly on Sunday. He further says that this work was so simple that he did not entrust the said work to a particular carpenter so that he could be held responsible for it. The last witness examined was the Weaving Master. He says that no jobber ever did the work of removing the cover. He however had not issued any orders. On behalf of the opposite party is put in an entry in the visitor's Remarks Book. It is a note by the Inspector of Factories. But it merely reiterates what was mentioned to the Inspector by the Mill Officers. Nothing in that note is from personal knowledge of the Inspector.

I have summarised the whole of the relevant evidence. I want to specially make one observation with reference to it that barring the weaver who was called at my instance (I had gone to the scene of the accident and found that this weaver was working on the looms next to the scene of accident on the 30th November) all the other witnesses did not at all impress me as witnesses of truth, while giving their evidence, I observed that every one was anxious to impress on me one fact that the removal of the cover was not the work of the jobber in question. With regard to the Head Jobber's evidence it is further to be remembered that if he really had told the deceased not to cut or remove the cover but that he would get it done by the Engineer's man, nothing was easier and more natural for him than to have immediately gone to the Engineer and insisted on the latter's attending to the removal or at least of complaining about its not being removed before hand. No-doubt it is alleged that the removal was done only when the mill was not working. If it was really so why was it not done the previous day. One has to remember that weavers and jobbers in the Weaving Department (this is the evidence) are paid by the piece work. What really appears to have happened is this. The Head Jobber never went in the Weaving Shed in question till after the accident i. e. after 9 a. m. The jobber in question having discovered want of light tried to remove it or cut it so as to let light in. This work was really simple not involving any danger. Unfortunately however a portion of the cover got entangled in the belt (as the weaver says) and in trying to remove it the poor man was killed. A jobber in the Weaving Department is there to supervise the weavers and to help them in carrying on their work and to remove impediments in their way. I do not at all see how it could be said that if he tried to get more light for the weavers by cutting or removing the cover he was doing something which he was not employed to do. I therefore find on the first issue in the affirmative.

As to the second issue I do not believe there was any conversation between the Head Jobber and the jobber and therefore there was no order of which there was any disobedience. Further assuming there was such an order it certainly was not given for securing his safety. As I have said above the work was very simple not involving any risk normally and the order could not be said to have been expressly given for securing the safety of the workman. Further in trying to remove the covering the workman was only trying to honestly help the work being done more efficiently and to the benefit of all concerned and if it was not fraught with danger no question of wilfulness would arise. This is not a case where being conscious of the risk involved the workman deliberately disobeyed an order with reference to it. On the second issue I therefore find that there was no order for securing the safety of the workman which was wilfully disobeyed.

The result is that the opposite party should deposit Rs. 2,500 for compensation as there is no dispute as to the wages.



I order that the opposite party do deposit forthwith Rs. 2,500 for compensation.

As to costs I think the attitude of opposite party justifies my ordering the maximum i. e. Rs. 50+5 for Court-fees.

Dated 9th February 1926.

(Signed) N. M. PATVARDHAN,

Commissioner for Workmen's.

Compensation, Bombay.

(True Copy)

N. M. PATVARDHAN,

Commissioner for Workmen's,

Compensation, Bombay.

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(Civ. 66.)

APPEAL No. 162 OF 1926 FROM Original Appellate DECREE.

*For Approval and Signature.*

The Hon'ble *Mr.* Justice *Patkar* 88

~~The Hon'ble Mr. Justice~~

~~Whether Reporters of Local Papers may be allowed to see the Judgment?~~

~~To be referred to the Reporter or not?~~

20/1/27

14/1/27

Ex-2.

APPEAL No. 162 OF 1926 FROM ORIGINAL DECREE.

The Ahmedabad Cotton Spinning and Manufacturing Com- }  
pany Ltd. (Original Opposite party) ... } Appellant.

versus

Bai Budhian Rajaram widow of deceased workman Kalicharan }  
Nanu (Original Applicant). ... } Respondent.

Appeal against the order of N. M. Patvardhan, Esquire, Commissioner of Workmen's Compensation, Bombay, in an Application No. 24/B-5 of 1926.

Mr. H. V. Divatia for the appellant.

Counsel Mr. Ambedkar with Mr. B. G. Modak for the respondent.

17th December 1926.

(Coram:—Patkar and Baker JJ.)

*Judgment (per Patkar J.)* :—In this case one Kalicharan Nanu was employed as a jobber in the Ahmedabad Cotton Spinning and Manufacturing Company Limited, and died on the 30th November 1925 as a result of an accident while employed in the Weaving Department.

Some time before the date of the accident the Mill authorities had commenced the work of replacing the corrugated iron sheets on the roof of the Weaving Department by wooden planks, and in order to protect the cloth that was being manufactured from the dust that would fall from the roof, a temporary hessian cover was put over that portion of the weaving shed when the work of replacing was actually being done. Two theories were advanced before the lower Court as how the accident happened. One was that while the jobber was putting the belt on the pulley, a piece of the hessian cloth got entangled in the belt and in trying to remove that piece the deceased himself got entangled. And the other theory was that he went to cut a portion of the hessian cover in order to admit more light and the accident happened. The Commissioner has accepted the latter theory, and in his judgment he says :—

“The jobber in question having discovered want of light tried to remove it or cut it so as to let light in. This work was really simple not involving any danger. Unfortunately however a portion of the cover got entangled in the belt (as the weaver says) and in trying to remove it the poor man was killed. A jobber in the weaving department is there to supervise the weavers and to help them in carrying on their work and to remove impediments in their way. I do not at all see how it could be said that if he tried to get more light for the weavers by cutting or removing the cover he was doing something which he was not employed to do.”

Under proviso to section 30 of the Workmen's Compensation Act VIII of 1923, we have to take the finding of the lower Court as correct, and to see whether there is any substantial question of law involved in the case.

It is argued on behalf of the appellant that the injury which was caused to the workman in this case did not arise out of and in the course of his employment within the meaning of section 3 of the Workmen's Compensation Act. It is urged that the work of removing the hessian cloth belonged to the Engineering Department and not to the Weaving Department, and if the workman meddled with the work which was entrusted to the Engineering Department, the injury which was caused to the workman while removing the hessian cloth did not arise out of and in the course of his employment. If the words were strictly construed, it might be said that the removal of the hessian cloth did not arise out of and in the course of his employment, for that was the work entrusted to the Engineering Department. But if the Act was liberally construed, the injury caused to the workman can be said to have arisen out of and in the course of his employment.

In Willis's Workmen's Compensation, page 40, it is stated :—

“An act, though strictly not one which the workman is required by his employment to perform, may still be regarded as within the sphere of his employment if it is a reasonable or necessary thing to do under all the circumstances, unless it has been expressly or impliedly excluded from his employment, or is such as to constitute an added peril.”

According to the evidence the removal of the hessian cloth was not attended by any peril. Erackshaw Kaikuboo Dastur says in his evidence :—

“Beyond telling the carpenters under me that to protect the cloth which was being manufactured on the looms from the dust falling, they should put hessian covers, I did not give any orders. No necessity of detailed orders was seen by me as that work of putting and removing the covers was done at a time when the Mill was not working. The work was so simple that I did not think it necessary to entrust it to a particular man so that he may be held responsible for it.”

In Ruegg's Workmen's Compensation, page 115, it is said :—

“If a workman is injured whilst doing his work which although not strictly the work required of him by the terms of his contract, is yet such as a reasonable employer had he been present would reasonably be expected to acquiesce in the workman performing in the special circumstances (although strictly not an emergency) and if such work is for the employer's benefit, and such as the workman is competent to perform, then the workman in such a case is not outside the scope or sphere of his employment, and is within the protection of the Act.”

In this case we have to consider whether the action of the workman was reasonable, necessary and incidental to the work which was entrusted to him. Some liberty must be left to the workman in order to perform his work efficiently. He was a jobber and was paid by piece work, and it was both his interest and duty to see that the work was done efficiently, and if want of light interfered with the efficiency of the work and the production of the cloth, it was his duty, if there was any impediment in the way, to remove it. If he thought that the existence of the hessian cloth interfered with the necessary light, it follows that the removal of the cloth was reasonable, necessary and incidental to the work entrusted to him. And the learned Commissioner has found that the jobber in the Weaving Department had to supervise the weavers and to help them in carrying on their work and to remove the impediments in their way. We think that the act of the workman in removing the hessian cloth in order to admit more light was incidental to his work and was done in the performance of his duty, and arose out of and in the course of his employment.

In Butterworths' Workmen's Compensation Cases, Vol. VIII, page 56, the Court accepted the view of the County Court Judge who said :—

“I find it was done in order to get over a difficulty which he encountered in carrying out the work which he was employed to do, viz, the driving of the motor-van, and that what he did was required to be done, and was honestly done in furtherance of the object which he was instructed to effect, and I hold that, in doing it, he was not acting outside the sphere of his employment.”

We think that in this case the act of the workman in removing the hessian cloth was done for the purpose of removing the impediment in the way of the work with which he was entrusted, and that the injury which was caused to the workman arose out of and in the course of his employment.

We, therefore, confirm the decree of the lower Court and dismiss this appeal with costs.

By the order of the Court,

(Signed)

A. S. R. MACKLIN.

*A. S. R. Macklin*  
Registrar.

Exd-639.  
Read-Amc.

In the High Court of Judicature at Bombay.

Fri-day the 17th day of December 1926.

APPEAL No. 162 OF 1926 FROM ORIGINAL DECREE.

(Under Act VIII of 1923).

The Ahmedabad Cotton Spinning and Manufacturing Comp-  
any, Ltd. ... } Appellant.  
(Original Opposite Party)

versus

Bai Budhian Rajaram, widow of deceased workman Kali-  
charan Nanu. ... } Respondent.  
(Original Applicant)

Claim—Rs. 2,500-0-0 —for Pleader's Fees.

The petitioner prayed for an order against the opposite party to deposit Rs. 2,500 for compensation to be distributed among the dependants of one Kalicharan Nanu who was employed as a jobber with the opposite party and who died on 30th November 1925 as a result of an accident while in their employment.

The Application No. 22/B. 5 of 1926 was decided by the Commissioner for Workmen's compensation, Bombay who ordered the opposite party to deposit forthwith Rs. 2,500 for compensation and to pay Rs. 55 for costs.

An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Honourable Mr. Justice Percival on the 14th day of June 1926.

The grounds of objection to the decision appealed against are:—

1. The lower Court erred in holding that the accident arose out of and in the course of the employment of the deceased workman, Kalicharan.

2. The employment of the deceased workman being as a Jobber and the nature of the work which he attempted to do viz, the unlying of the hessian cloth being entirely different from the duties connectsd with his employment and it being the work to be done by the engineering department of the Mill, it ought to have been held that the accident did not arise out of the employment of the deceased.

3. The lower Court has erred in giving an un-warrantedly wide interpretation to the words "arising out of and the course of employment."

4. The lower Court ought to have held that the accident was directly attributable to the willful disobedience of order by the deceased workman.

5. The lower Court has misunderstood the duties of a jobber.

6. The amount of compensation awarded is in any case excessive.

7. The order of the lower Court is contrary to law, justice and equity.

( Coram:- Patkar and Baker JJ.)

For the reasons stated in the accompanying Judgment, the Court confirms the decree of the lower Court and dismisses the appeal with costs.  
17th December 1926.

*Aschmann*

Registrar.

*WM*

APPEAL No. *162* OF 192 *6* FROM ORIGINAL ~~APPELLATE~~ DECREE.

BILL OF COSTS IN THE HIGH COURT.

By the Appellant—

	Rs.	a.	p.
Stamp for memorandum of <i>first</i> Appeal .. ..	2	0	0 ✓
Stamps for copies of <del>Decrees and</del> Judgments .. ..	0	4	0 ✓
Stamp for <i>a</i> Vakalatnama .. ..	2	0	0 ✓
Stamp for application to enter the name of the heir of the deceased ..			
Stamp for application for calling for additional papers .. ..			
Bhatta for Process .. ..	3	0	0 ✓
Sectioner's Fee .. ..	3	0	6 ✓
Vakil's Fee .. ..	115	0	0 ✓
Printing Charges .. ..	5	0	0 ✓
Stamp for affidavit .. ..			
Search Fee .. ..			
Costs at the trial of issue sent down .. ..			
Translation Fee .. ..			
Copying Fee under Rule 52 or 20 of the High Court Rules ..			

Total ..Rs. 130 - 4 - 6

By the Respondent—

Stamp for <i>a</i> Vakalatnama .. ..	2	0	0 ✓
Vakil's Fee .. ..	115	0	0 ✓
Stamp for affidavit .. ..			
Search Fee .. ..			
Costs at the trial of issue sent down .. ..			
Translation Fee .. ..			
Copying Fee under Rule 52 or 20 of the High Court Rules ..			

Total ..Rs. 117 - 0 - 0

*Talwar*  
Taxing Officer

*[Signature]*

Deputy Registrar.

*[Signature]*  
Sealer.

The *17<sup>th</sup>* day of *December* 1926.



*Rmshah.*  
*21/12/26*

*RRS*  
*21/12/26*



(Civ. 9.)

CIVIL DEPARTMENT.

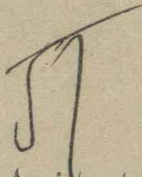
INWARD No. 466 OF 1927.

The District Judge of *Commissioner for Workmen's compensation Bombay.*

No. 1330 dated 8-2- 1927.

Certifies full execution of the High Court's  
Writ No. 228 dated 25-1-  
1927, forwarding copy of the decree in  
Appeal No. 162 of 1926 from Appellate  
Original  
Decree.

Record.



Assistant Registrar.

Received on the 9-2-27

Sent to the Record Keeper with all papers  
complete on the

*RAS Langford*  
Assistant Sheristedar.

16/2/27

Received and entered in Catalogue of  
Appeals.

Placed on the Shelf,

*R. S. Langford*  
Record-Keeper.

17/2/27