



**IN THE HIGH COURT OF KARNATAKA**

**KALABURAGI BENCH**

**DATED THIS THE 23<sup>RD</sup> DAY OF APRIL, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

**AND**

**THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA**

**MISCL. FIRST APPEAL NO.200447 OF 2020 (WC)**

**BETWEEN:**

1. RADHA W/O LATE VENKATACHALA RAJAGOPAL,  
AGED ABOUT 44 YEARS, OCC: HOUSEHOLD,  
R/O NO.1-3-285/27, ASHAPUR ROAD,  
SUKHA SHANTI NAGAR, RAICHUR-584 101.
2. R. DENESH KUMAR  
S/O LATE VENKATACHALA RAJAGOPAL,  
AGED ABOUT 18 YEARS, OCC: STUDENT,  
R/O NO:1-3-285/27, ASHAPUR ROAD,  
SUKHA SHANTI NAGAR, RAICHUR-584 101.
3. R. BHUWANESHWARI  
D/O LATE VENKATACHALA RAJAGOPAL,  
AGED ABOUT 15 YEARS, OCC: STUDENT,  
R/O NO.1-3-285/27, ASHAPUR ROAD,  
SUKHA SHANTI NAGAR, RAICHUR  
BEING MINOR, REPRESENTED BY HIS NATURAL MOTHER  
RADHA W/O LATE VENKATACHALA RAJAGOPAL,  
AGED ABOUT 42 YEARS, OCC: HOUSEHOLD,  
R/O NO:1-3-285/27, ASHAPUR ROAD,  
SUKHA SHANTI NAGAR, RAICHUR-584 101.



...APPELLANTS

(BY SRI. SHIVAKUMAR KALLOOR, ADVOCATE)

**AND:**

1. BBM ISPAT LIMITED,  
BY ITS MANAGING DIRECTOR,



- #114 DANAPUR VILLAGE,  
HOBBLI MARIYAMMANA HALLI, HOSPET,  
DIST: BELLARY-583 101.
2. RANGANATH SWAMY, KALAVIBHAVI,  
HIRIYUR, TQ: BELLARY, KARNATAKA-583 101.
  3. RAMESH PUROHIT, BBM ISPAT LIMITED,  
#114 DANAPUR VILLAGE, HOBBLI,  
MARIYAMMANA HALLI, HOSPET,  
DIST: BELLARY-583 101.
  4. RAO B.V. #114, DANAPUR VILLAGE,  
HOBBLI, MARIYAMMANA HALLI,  
HOSPET, DIST: BELLARY-583 101.
  5. THE NEW INDIA ASSURANCE COMPANY LIMITED,  
REP. BY ITS DIVISIONAL MANAGER,  
NEW INDIA ASSURANCE CO. LIT,  
RAICHUR BRANCH (680601),  
P.B. NO:355, OPP: RDCC BANK, LTD.,  
GUNJ ROAD, RAICHUR-584 101.

...RESPONDENTS

(BY SMT. HEMA L.K., ADVOCATE FOR R1;  
SMT. PREETI PATIL MELKUNDI, ADVOCATE FOR R5;  
R-3, 4 & 5 - SERVED)

THIS MFA IS FILED UNDER SECTION 30(1) OF EMPLOYEES COMPENSATION ACT, PRAYING TO ALLOW THE ABOVE MISCELLANEOUS FIRST APPEAL AND SET ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 30.01.2020 PASSED BY THE II ADDL. SENIOR CIVIL JUDGE AND JMFC AND COMMISSIONER FOR WORKMEN COMPENSATION AT RAICHUR IN E.C.A. NO.4/2017 AND ALLOW E.C.A. NO.4/2017 FILED BY APPELLANTS, IN ENDS OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ  
and  
HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA



**ORAL JUDGMENT**

(PER: HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA)

Heard Sri Shivakumar Kalloor, learned counsel for the appellants, Sri Manjunath Ginni, who represents Smt. Hema L.K., learned counsel on record for respondent No.1 as well as Smt. Preeti Patil Melkundi, learned counsel for respondent No.5.

2. Challenge in this appeal is the order that is rendered by the Commissioner for Workmen's Compensation, Raichur in ECA No.04/2017 dated 30.01.2020.

3. On hearing learned counsel appearing for the parties, following substantial questions of law are formulated for consideration:

- 1) Whether appellants established jural relationship between respondent No.1 and M/s. Dinesh Contracts and if so whether such relationship binds respondent No.1 to make



good the loss sustained by appellants due to the death of deceased Venkatachala Rajagopal?

- 2) Whether respondent No.5 being the insurer of the risk of workmen who were working under M/s. Dinesh Contracts is liable to compensate the appellants by treating the deceased Venkatachala Rajagopal to be a workman?

4. The matrix of the case as projected by appellants before the Commissioner for Workmen's Compensation is that, the deceased Venkatachala Rajagopal (hereinafter be referred to as 'deceased' for brevity) through the establishment by name M/s. Dinesh Contracts, though a proprietor of the said firm, was working as a worker along with other workmen. The firm was undertaking specialized work of repairing boilers. On 06.06.2016, work was entrusted by respondent No.1-company to carry out the repair of a boiler and to arrest leakage. While the deceased was attending said work, boiler blasted and the deceased was thrown 6 feet away.



Deceased thereby sustained injuries and died due to those injuries.

5. Appellants/claimants claimed compensation of Rs.66,70,000/- in total against respondent Nos.1 to 4. With a plea that respondent No.5, who is the insurer of the risk of the workmen, is the one who is liable to pay compensation, respondent Nos.1 to 4 filed a petition before the Commissioner for impleading respondent No.5 as party to the proceedings. Respondent No.5 thus got impleaded.

6. ANSWERING SUBSTANTIAL QUESTION OF LAW

No.2:

**Whether respondent No.5 being the insurer of the risk of workmen who were working under M/s. Dinesh Contracts is liable to compensate the appellants by treating the deceased Venkatachala Rajagopal to be a workman?**

Respondent No.5 took a plea that respondent Nos.1 to 4 have no *locus standi* to make it as party to the proceedings. It also contended that the deceased was



contractor-cum-proprietor of M/s. Dinesh Contracts. If at all the workmen employed by M/s. Dinesh Contracts, sustained injuries or death was caused during the course of employment, then it is liable to pay compensation. Policy does not cover the risk of Proprietor. Deceased himself took policy for his employees to cover their risk and thus, no liability can be fastened.

7. Arguing the matter, learned counsel for the appellants contended that the deceased was carrying out the work entrusted by respondent No.1 when the incident occurred and there is no dispute about said fact. Death occurred due to the injuries sustained in the course of employment. Therefore, liability vests upon respondent No.1 as well as respondent No.5-Insurance Company to pay compensation.

8. Per contra, learned counsel who represents respondent No.5 submits that Ex.R1-Policy makes it clear that the risk of three labourers or workers or temporary or daily wages labourers is covered. As the deceased himself



took policy and as he is not a workman, his risk is not covered and therefore, the Insurance Company is not liable to pay compensation.

9. A meticulous perusal of the contents of Ex.R1 makes it clear that it is M/s. Dinesh Contracts who took the policy but not the deceased in his individual capacity. There is no denial of the fact that while the deceased was doing work, he sustained injuries and those injuries resulted in his death. Also, there is no denial of the fact that the work was entrusted by respondent No.1 to M/s. Dinesh Contracts and the deceased was attending the entrusted work. Admittedly, Ex.R1-Policy stood in force as on the date of accident and said policy covers the risk of three labourers. In the case on hand, except deceased, none other workers or labourers sustained any loss. Taking extremely technical view, respondent No.5-Insurance Company tries to escape from liability of compensating the loss sustained by the dependents of the deceased who are the appellants herein. Facts of the case



make it clear that the deceased was working in pursuance of the contract entered by respondent No.1 with M/s. Dinesh Contracts. Therefore, Ex.R1-Policy definitely covers the risk of the deceased.

10. It is not the deceased who obtained Ex.R1-Policy as contended by respondent No.5 in the written statement filed. Policy was obtained by M/s. Dinesh Contracts to cover the risk of three labourers or workers or temporary or daily wages labourer. Deceased was working for M/s. Dinesh Contracts at the relevant time. Therefore, for the loss he suffered, Insurance Company is liable to compensate his dependents, as Ex.R1 clearly covers such risk.

**Substantial question of law taken up for consideration is accordingly answered.**



11. ANSWERING SUBSTANTIAL QUESTION OF LAW

No.1:

**Whether appellants established jural relationship between respondent No.1 and M/s. Dinesh Contracts and if so whether such relationship binds respondent No.1 to make good the loss sustained by appellants due to the death of deceased Venkatachala Rajagopal?**

It is respondent No.1 who issued the work order and respondent No.1 does not deny said fact. Tribunal placing much reliance upon clause(e) of sub-section (1) of Section 2 of the Workmen's Compensation Act, 1923, which defines the word "employer" and clause (n) of sub-section (1) of Section 2, which defines the term "workman", came to a conclusion that deceased was not an employee of respondent No.1-company. However, Section 12 of Employee's Compensation Act, 1923 reads as under:

**"12. Contracting.-**(1) *Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person*



*(hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.*

*(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity*



*shall, in default of agreement, be settled by the Commissioner.*

*(3) Nothing in this section shall be construed as preventing an employee from recovering compensation from the contractor instead of the principal.*

*(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management."*

12. Aforementioned Section makes it clear that, where a person in the course of his trade or business contracts with any other person for the execution of any work which is ordinarily part of his trade or business, the said person i.e., principal shall be liable to pay to the workman employed for the execution of the work any compensation which he would have been liable to pay, if that workman has been immediately employed by him. In the case on hand, respondent No.1 employed M/s. Dinesh Contracts to carry out the entrusted work. The deceased



working under M/s. Dinesh Contract was carrying out the entrusted work and during that course he sustained injuries and succumbed to those injuries. Therefore, it has to be held that respondent No.1 is liable to pay compensation to the dependents of the deceased, as he engaged the services of M/s. Dinesh Contracts and while M/s. Dinesh Contracts was carrying out the work through the deceased, the deceased succumbed to injuries during the course of performing such work. Thus, it is clear that respondent No.1 as well as respondent N.5 are liable to compensate the appellants for the loss they sustained due to the death of the deceased. Appellants are entitled to claim compensation from both of them even as per Section 12(3) of the Workmen's Compensation Act, 1923, which makes it clear that the workman cannot be prevented from recovering the compensation from the contractor instead of the principal.



**Law governing the field and established legal principles:**

1. *The Employees Compensation Act, 1923 (herein after referred to as the 'Act' for brevity) is a piece of social security and welfare legislation.*
2. *The object of the Act is to facilitate payment of compensation by the Employer for the injury or death by accident caused to the Employees arising out of and in the course of employment.*
3. *Section 3 imposes liability upon employer to pay compensation to a workman, who receives a personal injury in an accident arising out of in the course of his employment in accordance with Chapter II of the Act*
4. *However employer shall not be liable to pay compensation, if the case falls within the exceptions mentioned under the proviso to Section 3 of the Act.*
5. *Section 3(5) of the Act imposes a bar from instituting a suit in a Civil Court for damages, if a claim in respect of an injury has been filed before the Commissioner or if an agreement has been entered into between the parties for payment of compensation in respect of the said injury in accordance with the provisions of the Act.*



6. *Section 4 of the Act lays down the manner in which compensation payable to the injured workman or to the dependents of a deceased workman is required to be determined.*
7. *Section 4-A mandates payment of compensation by employer as soon as it falls due. It provides for a penalty for default in such payment.*
8. *Section 5 of the Act provides the method of calculating wages in order to decide the quantum.*
9. *Sub-section (1) of Section 12 nails with liability on principal to pay compensation to effected workman employed in the execution of the work undertaken by a contractor under the principal.*
10. *Sub-section (2) of Section 12 provides for indemnity. The principal is required to be indemnified by the contractor in respect of the compensation payable by him to the injured workman or the dependants of a deceased workman. Commissioner, shall, in default of agreement, resolve the right to as well as the amount of such indemnity.*
11. *Sub-section (3) of Section 12 makes it clear that the workman may proceed to recover compensation from the contractor who is his immediate employer instead of the principal.*



12. *Applicability of Sub-sections (1) (2) and (3) of Section 12 is exempted by Sub-section (4) of Section 12. It says that those provisions will not be attracted where the accident occurs elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes to execute the work or which are otherwise under his control or management.*
13. *Section 12 of the Act is enacted for a solemn object to secure compensation to the employees who have been engaged through the Contractor by the Principal employer for business, which, in the ordinary course, the principal employer is supposed to carry out by the employees employed by him directly.*
14. *Claimants will always have option to claim compensation either from the Principal or from the Employer.*
15. *It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature.*
16. *Principal Employer is a person with whom the Employee is working, though not employed directly by such a person. Employee is entitled to claim*



*compensation from the person with whom he is working i.e. the Principal although not directly employed by the said Principal.*

17. *Principal is required to be indemnified by the Contractor in respect of the compensation payable by him to the injured or the dependants of the deceased.*

18. *Employee may proceed to recover compensation from the Contractor who is his immediate employer instead of the Principal.*

19. *By applying too technical approach, Insurance Companies, Principal Employers and Employers should not add insult to the injury of Workmen/Dependents.*

**Thus the substantial question of law is answered holding that appellants established jural relationship between respondent No.1 and M/s. Dinesh Contracts and that relationship binds respondent No.1 to make good the loss sustained by appellants due to the death of deceased Venkatachala Rajagopal.**



When the legal position is understood thus and having regard to the findings given on substantial questions of law, it is ultimately held that Respondent No.1 as well as Respondent No.5 are liable to pay the compensation due under the Act to the Appellants/Claimants.

13. Now coming to the sum which the appellants are entitled to receive as compensation, the version of the appellants is that, the deceased was aged around 45 years as on the date of accident. Said fact is not in dispute. The income of the deceased is required to be taken as Rs.8,000/- per month. Also, 50% is liable to be deducted. Having taken the age of the deceased as 45 years, the applicable factor is 169.44 as per Schedule-IV to the Employee's Compensation Act, 1923. Thus, the appellants are entitled to a sum of Rs.6,77,760/- (Rs.8,000 – 50% x 169.44) towards loss of dependency.



14. Also, appellants are entitled to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

15. Thereby, the total sum which appellants are entitled to receive as compensation is Rs.7,07,760/- (Rs.6,77,760 + Rs.15,000 + Rs.15,000). Thus, the following:

**ORDER**

- i. Appeal is *allowed in part*.
- ii. The order that is rendered by the Commissioner for Workmen's Compensation, Raichur in ECA No.04/2017 dated 30.01.2020 is set aside.
- iii. Respondent Nos.1 and 5 are jointly and severally held liable to pay compensation to the appellants.
- iv. Appellants/claimants are entitled to a sum of Rs.7,07,760/- together with interest at the rate of 12% p.a. from the date of accident till the date of deposit.



- v. On payment, liberty is granted to Respondent No.1 to recover the amount paid to appellants from respondent No.5.
- vi. Out of the compensation granted, appellant No.1 is entitled to 50% and appellant Nos.2 and 3 to 25% each.
- vii. On deposit, appellant No.1 is permitted to withdraw her entire share.
- viii. The amount that falls to the share of appellant Nos.2 and 3 shall be disbursed only on producing sufficient proof that they attained the age of majority.

**Sd/-  
(SURAJ GOVINDARAJ)  
JUDGE**

**Sd/-  
(DR.CHILLAKUR SUMALATHA)  
JUDGE**

LG  
List No.: 2 Sl No.: 27  
CT:SI



***Per Suraj Govindaraj J.***

1. I have gone through the erudite judgment of my learned sister in the above matter. I would like to supplement the said order by the following analysis and reasons, the operative portion of the order remaining the same.
2. The appellants are before this Court seeking for the following relief:

*Please to allow the above miscellaneous first appeal and set aside the impugned judgment and order dated 30.01.2020 passed by II Addl. Senior Civil Judge and JMFC and Commissssioner for Workmen Compensation at Raichur in E.C.A.No.4/2017 and allow E.C.A.No 4/2017 filed by appellants, in ends of justice and equity.*

3. As noticed in the opinion authored by my learned sister, the appellants instituted proceedings in ECA No.4/2017 before the II Additional Senior Civil Judge and JMFC-cum-Commissioner for Employees' Compensation, Raichur, seeking compensation on account of the death of the husband of appellant No.1 and the father of appellants Nos.2 and 3.
4. The claim arose out of an accident that occurred within the premises of respondent No.1. The



deceased was engaged in carrying out repair work to a boiler pursuant to leakage detected therein. During the course of the repair work, the boiler allegedly burst, throwing the deceased to a distance of about six feet from the place where he was working. The deceased sustained grievous injuries in the said incident and subsequently succumbed to them.

5. The appellants contend that respondent No.1 had entrusted the repair work to M/s. Dinesh Contracts, of which the deceased was the proprietor. Proceeding on that basis, it is asserted that respondent No.1, being the principal employer, is liable to pay compensation under Section 3 of the Employees' Compensation Act, 1923 (formerly the Workmen's Compensation Act, 1923).
6. It is further contended that respondent Nos.2 to 4 are officers of respondent No.1 and that respondent No.5 is the insurer which had issued an insurance policy in favour of M/s. Dinesh Contracts. On the strength of these assertions, the appellants seek to fasten joint and several liability upon respondent Nos.1 to 5 for payment of compensation.
7. The claim petition, however, came to be dismissed by the Commissioner for Employees' Compensation by



the impugned judgment dated 30.01.2020. The Commissioner held that respondent No.1 could not be regarded as the employer of the deceased in terms of Clause (e) of Section 2 and was therefore not entitled to compensation thereunder.

8. Clause (e) of Section 2 of the Act is reproduced hereunder for easy reference:

*e) "**employer**" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship means such other person while the workman is working for him;*

9. The Commissioner also held that the deceased was not a workman within the definition of clause (n) of Section 2 of the Act. The said clause (n) of Section 2 is reproduced hereunder for easy reference:

**2. Definitions: xxx**

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

*(i) a railway servant as defined in 3[clause (34) of Section 2 of the Railways Act, 1989 (24 of 1989)], not permanently employed in any administrative, district or subdivisional office of*



- a railway and not employed in any such capacity as is specified in Schedule II, or*
- [(i-a) (a) a master, seaman or other member of the crew of a ship,*
- (b) a captain or other member of the crew of an aircraft,*
- (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,*
- (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or]*
- (ii) employed 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 1[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.*

*(3) The Central Government or the State Government, by notification in the the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is*



*a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons: Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.*

10. The Commissioner, upon consideration of the material placed on record, came to the conclusion that the deceased was functioning as an independent contractor and not as a workman/employee within the meaning of the Act. The Commissioner accordingly held that no jural relationship of employer and employee existed between the deceased and respondent No.1-company. It was further held that the work being carried out by the deceased was not in the capacity of a workman or employee of respondent No.1-company. On these findings, the Commissioner concluded that respondent No.1 could not be fastened with any liability to pay compensation for the death of the deceased. Aggrieved by the said findings and the consequent dismissal of the claim petition, the appellants have preferred the present appeal.



11. Shri Shivakumar Kalloor, learned counsel for the appellants submitted that,

11.1. The Commissioner has proceeded on an erroneous understanding of the statutory scheme of the Employees' Compensation Act. According to the learned counsel, the Commissioner misdirected himself by examining the claim solely through the prism of the definition of "workman/employee" contained in Section 2 of the Act.

11.2. The appellants do not assert that the deceased was directly employed by respondent No.1. Their case, on the contrary, is that respondent No.1 had entrusted the repair work to M/s. Dinesh Contracts and that the deceased was engaged in the execution of such work. It is therefore contended that the liability of respondent No.1 arises not from a direct contract of employment but by virtue of Section 12(1) of the Act, which fastens liability upon a principal employer in respect of compensation payable to workmen engaged through a contractor. Consequently, respondent No.1,



being the principal employer, is liable to compensate the appellants.

11.3. Learned counsel further submitted that the Commissioner has failed to give effect to the special statutory provision contained in Section 12 of the Act. It is contended that where liability of a principal employer is specifically governed by Section 12, the determination of the claim must necessarily be undertaken within the framework of that provision. The Commissioner, instead of examining the matter under Section 12, erroneously applied the general definitional provision contained in Section 2 of the Act and thereby arrived at an unsustainable conclusion.

11.4. Section 12 is reproduced hereunder for easy reference:

*12. **Contracting.**- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been*



*liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of 1 Subs. by Act No.9 of 1938 2 Ins. by Act No.9 of 1938 Sec. 14 The Workmen's Compensation Act, 1923 15 compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.*

*(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, 1[or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.*

*(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.*

*(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.*



11.5. Elaborating upon the scope and effect of Section 12 of the Act, learned counsel submitted that the provision creates a distinct statutory liability upon a principal employer in cases where work is entrusted to a contractor. According to him, Section 12 is a beneficial provision intended to ensure that a workman, or in the event of his death, his dependants, are not deprived of compensation merely because the workman was engaged through an intermediary contractor rather than directly by the principal employer. The legislative intent underlying the provision is to secure payment of compensation by fastening primary liability upon the principal employer, who has engaged the contractor for execution of work connected with the principal's trade or business.

11.6. Learned counsel submitted that a plain reading of Section 12(1) indicates that certain essential requirements must be satisfied before liability can be imposed upon the principal employer. Firstly, there must exist a contractual arrangement between the principal and the contractor. Secondly, such arrangement must have been entered into in the course of, or for



the purposes of, the trade or business of the principal. Thirdly, the contract must relate to the execution of the whole or any part of the work which ordinarily forms part of the trade or business of the principal. Fourthly, the workman must have been employed in the execution of such work and must have suffered injury or death arising out of and in the course of such employment.

11.7. It was contended that all the aforesaid ingredients stand satisfied in the present case. Respondent No.1 had admittedly entrusted the repair work of its boiler to M/s. Dinesh Contracts. The repair and maintenance of machinery and equipment installed in the industrial establishment of respondent No.1 was, according to learned counsel, an activity integrally connected with the functioning of the establishment and, therefore, formed part of, or was undertaken for the purposes of, its trade or business. The deceased was engaged in the execution of the said work and it was during the course of such execution that the fatal accident occurred. Consequently, the liability



contemplated under Section 12(1) stood attracted.

11.8. Learned counsel further submitted that the Commissioner proceeded on an erroneous understanding of the statutory scheme by examining whether there existed a direct employer-employee relationship between the deceased and respondent No.1. According to him, such an enquiry was misplaced in a case governed by Section 12. The appellants do not assert that the deceased was directly employed by respondent No.1. Their case is that respondent No.1 had entrusted the repair work to M/s. Dinesh Contracts and that the deceased was engaged in the execution of such work. The very purpose of Section 12 is to impose liability upon a principal employer notwithstanding the absence of a direct contract of employment between the principal employer and the workman. If the existence of a direct employer-employee relationship were to be insisted upon, the operation of Section 12 itself would stand substantially defeated.



11.9. It was therefore submitted that once it is established that the deceased was engaged in the execution of work entrusted by respondent No.1 to a contractor and that the accident occurred during the course of such execution, respondent No.1 would, by operation of law, assume the position of a principal employer and become liable to pay compensation under Section 12(1).

11.10. Referring to Section 12(2), learned counsel submitted that while Section 12(1) fastens primary liability upon the principal employer vis-à-vis the workman or his dependants, Section 12(2) simultaneously safeguards the interests of the principal employer by conferring upon it a statutory right of indemnification against the contractor. Thus, the legislative scheme strikes a balance between the interests of the workman and those of the principal employer. The workman is assured of an effective and financially secure remedy, while the principal employer is entitled to recover the amount paid by it from the contractor who had directly engaged the workman.



11.11. According to learned counsel, disputes relating to indemnification are matters to be worked out inter se between the principal employer and the contractor and cannot constitute a ground to defeat the claim of the workman or his dependants. The liability towards the workman is primary and immediate, whereas the right of indemnity is secondary and consequential.

11.12. Learned counsel further submitted that M/s. Dinesh Contracts had obtained an insurance policy from respondent No.5-Insurance Company. Consequently, if respondent No.1 were required to satisfy the compensation claim under Section 12(1), it would be entitled to seek indemnification from the contractor under Section 12(2), and the liability of the contractor would, in turn, be required to be discharged by respondent No.5 in accordance with the terms and conditions of the policy issued in favour of the contractor.

11.13. Referring thereafter to Section 12(3), learned counsel submitted that the provision expressly preserves the right of a workman to recover compensation from the contractor instead of



the principal employer. The use of the expression "instead of the principal" demonstrates that the statute contemplates concurrent remedies against both the principal employer and the contractor. The workman, or in the event of his death, his dependants, are therefore entitled to proceed against either of them for recovery of compensation, leaving questions of indemnity and ultimate liability to be determined separately.

11.14. Learned counsel also relied upon Section 12(4), which stipulates that the accident must have occurred on, in or about the premises where the principal has undertaken or ordinarily undertakes the execution of the work, or which are otherwise under his control or management. He submitted that the accident in the present case admittedly occurred within the premises of respondent No.1 while the deceased was carrying out repair work on the boiler belonging to respondent No.1. Thus, the requirement stipulated under Section 12(4) also stood fully satisfied.



11.15. Proceeding on the aforesaid basis, learned counsel submitted that respondent No.1 and M/s. Dinesh Contracts were admittedly bound by a contractual arrangement for carrying out the repair work and that the deceased was engaged in the execution thereof. Thus, for the purposes of Section 12, respondent No.1 would assume the position of principal employer and the deceased would be a workman engaged through a contractor. It was therefore contended that the Commissioner erred in concluding that no jural relationship existed so as to attract liability under the Act, since the matter ought to have been examined in the light of Section 12 rather than solely with reference to the definition contained in Section 2.

11.16. On the basis of the aforesaid statutory scheme, learned counsel contended that every ingredient necessary for the invocation of Section 12 stood established on the facts of the present case. The Commissioner, however, failed to examine the matter from the perspective of Section 12 and instead confined the enquiry to the question whether the



deceased was directly employed by respondent No.1. Such an approach, according to learned counsel, defeats the object and purpose of Section 12 and has resulted in an erroneous rejection of the claim petition.

11.17. Learned counsel lastly submitted that, having regard to the statutory scheme embodied in Section 12 and the existence of insurance coverage in favour of the contractor, respondent No.5 could be directed to satisfy the compensation awarded to the appellants. On these grounds, he urged that the impugned judgment and award be set aside, the appeal be allowed, and respondent No.1 be held liable as the principal employer with liberty to seek indemnification in accordance with law from the contractor and its insurer.

12. Per contra, Sri Manjunath Ginni, learned counsel appearing on behalf of Smt. Hem L.K., learned counsel for respondent No.1, while not disputing the contractual arrangement between respondent No.1 and M/s. Dinesh Contracts for carrying out the repair work, submitted that respondent No.1 cannot be held liable to compensate the appellants merely on



account of the occurrence of the accident. According to him, there is no material on record to establish any negligence, breach of duty or omission on the part of respondent No.1 which contributed to the accident resulting in the death of the deceased. Learned counsel therefore contended that, notwithstanding the contractual relationship between respondent No.1 and the contractor, respondent No.1 cannot be saddled with liability to pay compensation. He accordingly submitted that the Commissioner was justified in rejecting the claim petition and that the appeal is liable to be dismissed.

13. Ms. Preeti Patil Melkundi, learned counsel appearing on behalf of respondent No.5-Insurance Company, supported the impugned judgment and order and opposed the appeal. Elaborating her submissions, she contended as under:

13.1. Learned counsel submitted that a careful reading of the claim petition would indicate that the appellants had not laid any independent foundation for fastening liability upon respondent No.5-Insurance Company. The primary case pleaded before the Commissioner was that respondent No.1 was liable to



compensate the appellants on account of the death of the deceased and that respondent No.1 stood in the position of an employer vis-à-vis the deceased. It was therefore submitted that the Commissioner was justified in examining the existence of a jural relationship between the deceased and respondent No.1 with reference to the relevant definitions contained in Section 2 of the Act.

13.2. According to learned counsel, the entire adjudication before the Commissioner proceeded on the question whether respondent No.1 could be regarded as the employer of the deceased and whether the deceased could be treated as a workman or employee under the Act. The Commissioner, upon appreciation of the evidence on record, arrived at the conclusion that no such relationship had been established. It was submitted that the said finding was based on the pleadings and evidence adduced by the parties and did not warrant interference in appeal.

13.3. Learned counsel further contended that the appellants cannot be permitted to substantially



alter the nature of their claim at the appellate stage by shifting the foundation of their case from one based on a direct employer-employee relationship to one based on the statutory liability contemplated under Section 12 of the Act. According to her, an appellate proceeding is not intended to provide an opportunity to construct an entirely new cause of action or introduce a fundamentally different basis of liability which was not specifically pleaded or urged before the Commissioner.

13.4. Learned counsel further submitted that there exists no contractual relationship whatsoever between respondent No.1 and respondent No.5–Insurance Company. The contract of insurance was entered into exclusively between respondent No.5 and M/s. Dinesh Contracts. Thus, the rights and obligations arising under the policy are governed entirely by the terms of the contract executed between the insurer and the insured.

13.5. According to her, in the absence of any contractual nexus between respondent No.1 and respondent No.5, the Insurance Company



cannot be directed to satisfy any liability allegedly arising on the part of respondent No.1. It was contended that the liability of an insurer cannot be enlarged beyond the scope of the contractual undertaking embodied in the policy and that no direction can be issued against the insurer except in accordance with the express terms and conditions governing the policy.

13.6. Learned counsel submitted that the appellants are, in effect, seeking to bypass the contractual limitations contained in the policy and directly fasten liability upon the Insurance Company without first establishing the legal liability of the insured in terms of the contract of insurance. Such an approach, according to her, is wholly impermissible in law.

13.7. Referring to the insurance policy, learned counsel submitted that the policy was admittedly issued in favour of M/s. Dinesh Contracts and was intended to provide indemnity in respect of liabilities arising towards workmen or employees engaged by the insured concern. The coverage under the policy



was therefore confined to employees or workmen falling within the scope of the policy and the provisions of the Act.

13.8. Learned counsel emphasised that the deceased was not an employee of M/s. Dinesh Contracts but was, in fact, its sole proprietor. The proprietor and the establishment are distinct legal entities for the purpose of determining employer-employee relationships. A proprietor cannot simultaneously occupy the position of both employer and employee in relation to the same establishment. Consequently, the deceased could not be treated as a workman employed by M/s. Dinesh Contracts.

13.9. It was therefore contended that the very foundation upon which an insurance claim could arise under the policy is absent in the present case. The policy would become operative only where a liability arose on account of injury caused to, or death suffered by, a workman employed by M/s. Dinesh Contracts. Since the deceased himself was the proprietor of the concern, no such liability could arise and no



corresponding obligation could be fastened upon the insurer.

13.10. Learned counsel further submitted that the risk undertaken by the insurer is confined to those categories of persons specifically covered under the policy. In the absence of any provision extending coverage to the proprietor of the concern, the Court cannot rewrite the terms of the contract or enlarge the scope of coverage by a process of interpretation. According to her, an insurer can be made liable only in respect of risks expressly assumed under the policy and not in respect of risks which were never intended to be covered.

13.11. Referring to the submissions advanced on behalf of the appellants based upon Section 12 of the Act, learned counsel submitted that the provision itself does not support the case of the appellants. According to her, Section 12 proceeds on the premise that a workman is employed by a contractor and is engaged in the execution of work undertaken by a principal employer. The statutory liability contemplated



under the provision is therefore in respect of a workman employed through a contractor.

13.12. Learned counsel submitted that the language employed in Section 12(1), particularly the expression "workman employed in the execution of the work", makes it abundantly clear that the beneficiary of the provision must be a workman standing in a relationship of employment with the contractor. The provision cannot be extended to cover a contractor himself or the proprietor of the contracting establishment.

13.13. According to her, the deceased, being the proprietor of M/s. Dinesh Contracts, occupied the position of a contractor and not that of a workman employed by a contractor. Thus, one of the foundational requirements for the invocation of Section 12 stood absent. In such circumstances, the statutory liability sought to be fastened upon respondent No.1 under Section 12 does not arise at all.

13.14. She further submitted that even assuming, without admitting, that respondent No.1 could be regarded as a principal employer, the



liability of respondent No.5 would nevertheless depend upon the terms of the insurance policy issued to M/s. Dinesh Contracts. Since the policy does not cover the proprietor of the concern, the insurer cannot be made liable either directly or indirectly.

13.15. Learned counsel also disputed the contention that respondent No.5 could be directed to satisfy the compensation amount on the basis of the indemnity mechanism contained in Section 12(2). According to her, the right of indemnification contemplated under Section 12(2) is a statutory right available inter se between the principal employer and the contractor. Such a right can arise only after liability under Section 12(1) is established and only in respect of a workman who falls within the ambit of the provision.

13.16. It was submitted that the appellants cannot directly invoke the indemnity arrangement contemplated under Section 12(2) against the insurer. The right of indemnity belongs to the principal employer and not to the claimants. Therefore, the appellants cannot seek a



direction compelling the insurer to discharge a liability which has neither accrued nor been established in accordance with law.

13.17. Learned counsel lastly submitted that the appellants themselves did not invoke Section 12 before the Commissioner nor did they seek adjudication of the claim on the basis of the statutory liability contemplated thereunder. No specific issue was framed on that basis and no adjudication was sought regarding the applicability of Section 12 to the facts of the case.

13.18. According to her, the attempt made in the present appeal is to introduce an entirely new legal and factual foundation for the claim. Permitting such a course would cause serious prejudice to the respondents, particularly respondent No.5, which had contested the proceedings before the Commissioner on the basis of the pleadings as originally framed. It was therefore submitted that the appellants cannot be permitted to fundamentally alter the nature of the proceedings at the appellate stage.



13.19. On the basis of the aforesaid submissions, learned counsel contended that the Commissioner was fully justified in dismissing the claim petition and that no grounds had been made out for interference with the impugned judgment. She accordingly prayed that the appeal be dismissed insofar as respondent No.5-Insurance Company is concerned.

14. I am in agreement with the substantial questions of law formulated by my sister, which reads as under:

15. The substantial questions of law formulated are as under

- i. Whether appellants established jural relationship between respondent No.1 and M/s Dinest Contractors and if so whether such relationship binds respondent No.1 to make good the loss sustained by appellants due to the death of deceased Venkatachala Rajagopal?**
- ii. Whether respondent No.5 being the insurer of the risk of workmen who were working under M/s Dinesh contracts is liable to compensate the appellants by treating the deceased**



**Venkatachala Rajagopal to be a workman?**

16. I answer the substantial questions as under:
17. **Answer to Substantial Question No.1: Whether appellants established jural relationship between respondent No.1 and M/s Dinest Contractors and if so whether such relationship binds respondent No.1 to make good the loss sustained by appellants due to the death of deceased Venkatachala Rajagopal?**

**Analysis of the Statutory Scheme**

- 17.1. The Commissioner examined the claim entirely from the standpoint of the definitions of "employer" under Section 2(e) and "workman" under Section 2(n) of the Act. In my considered opinion, such an approach was fundamentally flawed. The Commissioner proceeded on the premise that unless a direct employer-employee relationship was established between the deceased and respondent No.1, no liability could be fastened upon respondent No.1. Such an approach overlooks the statutory framework specifically enacted by Parliament to govern situations where work is executed through contractors.



- 17.2. Section 2(e) defines "employer" for the general purposes of the Act, while Section 2(n) defines "workman". These provisions ordinarily operate in cases where the claim is founded upon a direct relationship of employment between the employer and the workman. They do not govern the special situation contemplated by Section 12, where a principal employer entrusts work to a contractor and the workman engaged in the execution of such work suffers injury or death.
- 17.3. Section 12 of the Act creates a distinct and self-contained statutory regime. The provision is founded upon the legislative recognition that, in modern industrial and commercial establishments, work forming part of, or connected with, the trade or business of an establishment is frequently executed through contractors. If liability under the Act were confined only to cases of direct employment, a principal employer could, by the simple expedient of outsourcing work through contractors, effectively avoid responsibility towards persons engaged in the execution of work undertaken for its benefit. Such a



consequence would substantially dilute the beneficial object of the legislation and undermine the protection intended to be conferred upon workmen and their dependants.

- 17.4. It is for this reason that Section 12 introduces a statutory fiction. The provision treats a workman engaged through a contractor, for the limited purpose of compensation under the Act, as if he had been immediately employed by the principal employer. The liability thereby created is neither contractual in origin nor dependent upon proof of negligence. It is a statutory liability imposed by operation of law once the conditions specified in Section 12 are satisfied.
- 17.5. The Commissioner appears to have proceeded on the assumption that the absence of a direct contract of employment between the deceased and respondent No.1 was sufficient to non-suit the appellants. Such an approach overlooks the distinction between a claim founded upon direct employment under Section 3 of the Act and a claim founded upon the statutory liability of a principal employer under Section 12. The latter provision operates precisely in situations where



the workman is not directly employed by the principal employer.

17.6. The Commissioner's error lay in ignoring Section 12 altogether. The appellants' case, both before the Commissioner and before this Court, has consistently been that the deceased sustained fatal injuries while executing the repair work entrusted by respondent No.1 to M/s. Dinesh Contracts. Such a claim necessarily attracts consideration under Section 12. The Commissioner, however, confined the enquiry to whether the deceased could be regarded as a workman directly employed by respondent No.1 and thereby overlooked the true statutory basis of the claim.

17.7. Respondent No.1 has not disputed that it had entrusted the repair work of its boiler to M/s. Dinesh Contracts. Learned counsel appearing for respondent No.1 has fairly admitted the existence of such a contractual arrangement. The accident resulting in his death which occurred while the repair work was in progress and within the premises over which respondent No.1 exercised control and management. Thus,



the existence of a contractual relationship between respondent No.1 and M/s. Dinesh Contracts, the execution of the entrusted work pursuant thereto, and the occurrence of the fatal accident during the course of such execution are not matters of dispute.

- 17.8. Once respondent No.1 itself admits having entrusted the repair work to M/s. Dinesh Contracts, the existence of the contractual relationship forming the foundation of Section 12 is no longer a matter requiring proof. The dispute therefore does not concern the existence of the contract but the legal consequences flowing therefrom.

**Analysis of the Ingredients of Section  
12(1)**

- 17.9. Having regard to the admitted and undisputed facts on record, it becomes necessary to examine whether the requirements stipulated under Section 12 are satisfied.

**Ingredient (i) – Existence of a contractual arrangement between the principal and the contractor**



17.10. The existence of a contractual arrangement between respondent No.1 and M/s. Dinesh Contracts is not in dispute. Learned counsel appearing for respondent No.1 has fairly admitted that respondent No.1 had entrusted the repair work of the boiler to M/s. Dinesh Contracts. Once respondent No.1 itself admits having entrusted the work to the contractor, the foundational requirement of Section 12 stands established and requires no further proof.

**Ingredient (ii) – Contract entered into in the course of or for the purposes of the trade or business of the principal**

17.11. A boiler installed in an industrial establishment cannot be regarded as an independent or unrelated piece of equipment. It forms part of the operational infrastructure necessary for the functioning of the industrial undertaking. The maintenance, repair and restoration of such equipment are activities undertaken to ensure the continued functioning of the establishment. Though respondent No.1 may not itself be engaged in the business of repairing boilers,



the repair and maintenance of a boiler are undoubtedly activities undertaken in the course of, and for the purposes of, its trade or business.

17.12. The expression "in the course of or for the purposes of his trade or business" employed in Section 12 is of wide amplitude and is intended to include not merely the principal commercial activity of the establishment but also those activities reasonably necessary for carrying on such business effectively. Repair and maintenance of essential industrial equipment would therefore squarely fall within the ambit of the provision.

**Ingredient (iii) – Work contracted forms the whole or part of the work ordinarily connected with the principal's trade or business**

17.13. The repair of a boiler forming part of the industrial infrastructure of respondent No.1 cannot be viewed as an activity wholly disconnected from its business operations. Maintenance and repair of industrial machinery are integral incidents of industrial activity. Such



work is ordinarily undertaken to ensure continuity of operations and forms part of the broader business activity of the establishment. This ingredient is therefore satisfied.

**Ingredient (iv) – Engagement in execution of the contracted work**

17.14. The material on record clearly establishes that the deceased was personally engaged in carrying out the repair work at the time of the accident. The fatal accident occurred during the course of execution of the very work entrusted by respondent No.1 to M/s. Dinesh Contracts. The requirement that the injury or death should arise during execution of the contracted work therefore stands satisfied.

17.15. Whether the deceased, having regard to his status as proprietor of M/s. Dinesh Contracts, can be regarded as a "workman" or "employee" for the purpose of invoking Section 12 is a distinct question which shall be considered while answering substantial question No.2. For the purpose of the present point, it is sufficient to note that the deceased was admittedly



engaged in the execution of the contracted work when the accident occurred.

**Ingredient (v) – Compliance with Section 12(4)**

17.16. Section 12(4) requires that the accident should occur on, in or about the premises on which the principal has undertaken or ordinarily undertakes the execution of the work or which are otherwise under his control or management. This requirement constitutes an important jurisdictional condition for the applicability of Section 12.

17.17. In the present case, it is not disputed that the accident occurred within the factory premises of respondent No.1 while the deceased was carrying out the repair work entrusted to M/s. Dinesh Contracts. The premises were under the control and management of respondent No.1. The statutory requirement contained in Section 12(4) therefore stands fully satisfied.

**Analysis of the Submission of Respondent No.1**



17.18. Sri Manjunath Ginni, learned counsel appearing for respondent No.1, contended that no negligence, breach of duty or omission has been established against respondent No.1 and that liability cannot therefore be fastened upon it.

17.19. This submission proceeds upon a misconception of the statutory scheme of the Employees' Compensation Act. Liability under Section 12 is statutory and not tortious. The Act does not predicate compensation upon proof of negligence. Unlike an action for damages founded in tort, liability under the Act arises once the statutory ingredients are satisfied and the accident is shown to have arisen out of and in the course of employment. The absence of negligence on the part of the principal employer neither destroys nor diminishes the statutory liability created by Section 12.

17.20. Importing a requirement of negligence into Section 12 would amount to reading into the statute a condition which Parliament has consciously not incorporated. Such an interpretation would substantially defeat the



welfare-oriented object of the enactment. The submission advanced on behalf of respondent No.1 is therefore rejected.

17.21. Consequently, the finding recorded by the Commissioner, insofar as it proceeds on the basis that respondent No.1 could not be held liable in the absence of a direct employer-employee relationship, cannot be sustained.

**Position of Respondent Nos.2, 3 and 4**

17.22. The appellants have also sought to fasten liability upon respondent Nos.2, 3 and 4, who are officers of respondent No.1. However, neither before the Commissioner nor before this Court has any material been placed establishing any independent or personal liability on their part.

17.23. Section 12 fastens liability upon the "principal", namely the person or entity which contracts with the contractor for execution of the work. In the facts of the present case, respondent No.1 is the principal employer. Respondent Nos.2, 3 and 4 are merely officers of respondent No.1 acting in their official



capacities. No specific act, omission, direction or conduct attributable to them individually has been pleaded or proved so as to justify fastening personal liability upon them.

17.24. The claim insofar as it is directed against respondent Nos.2, 3 and 4 in their personal capacities, is therefore not established. The statutory liability, if any, rests upon respondent No.1.

### **Jural Relationship and its Legal Consequences**

17.25. The expression "jural relationship" requires to be understood in the context of Section 12. The relationship contemplated by Section 12 is not the conventional master-servant relationship arising from direct employment. Rather, it is a statutory relationship created between a principal employer and a person engaged in the execution of work through a contractor.

17.26. Once the ingredients stipulated in Section 12(1) are established, the statute treats the principal employer, for the limited purpose of compensation under the Act, as standing in the



position of an employer vis-à-vis the person engaged in the execution of the contracted work. The relationship thus created is statutory in character and arises by operation of law.

17.27. In the present case, respondent No.1 admittedly entrusted the repair work to M/s. Dinesh Contracts; the work was undertaken for the purposes of respondent No.1's industrial activity; the accident occurred during execution of the entrusted work; and the accident took place within the premises of respondent No.1. Consequently, the statutory relationship contemplated under Section 12 stands established.

17.28. Substantial question No.1 is answered in the AFFIRMATIVE. The appellants have successfully established the existence of a contractual relationship between respondent No.1 and M/s. Dinesh Contracts and the consequent statutory relationship contemplated under Section 12 of the Employees' Compensation Act, 1923.

17.29. The finding recorded by the Commissioner that no jural relationship existed between respondent No.1 and the deceased is therefore



unsustainable. The Commissioner erred in approaching the matter exclusively through the definitions contained in Section 2 and in failing to consider the legal consequences flowing from Section 12.

17.30. Consequently, respondent No.1 cannot avoid consideration of its statutory liability solely on the ground that the deceased was not directly employed by it. However, whether such statutory relationship ultimately fastens liability upon respondent No.1 to pay compensation to the appellants depends upon the determination of Point No.2, namely, whether the deceased falls within the class of persons protected under Section 12 of the Act.

18. **Answer to Substantial Question No. 2: Whether respondent No.5 being the insurer of the risk of workmen who were working under M/s Dinesh contracts is liable to compensate the appellants by treating the deceased Venkatachala Rajagopal to be a workman?**

18.1. The determination of this point requires an examination of the interplay between the statutory liability created under the Employees' Compensation Act, 1923, particularly Section 12 thereof, and the contractual obligation



undertaken by respondent No.5 under the policy of insurance issued in favour of M/s. Dinesh Contracts. The issue cannot be resolved merely by applying technical principles of employment law in isolation, nor can it be answered solely by reference to the nomenclature assigned to the deceased in relation to M/s. Dinesh Contracts. What is required is an examination of the true nature of the work being performed, the object sought to be achieved by the Act, the circumstances in which the accident occurred and the purpose for which the insurance policy came to be issued.

18.2. At the outset, it is necessary to notice that while answering substantial question No.1, I have already held that the contractual arrangement between respondent No.1 and M/s. Dinesh Contracts attracts the operation of Section 12 of the Act. I have also held that respondent No.1 occupied the position of a principal employer and that the fatal accident occurred while the contracted work was being executed within the premises of respondent No.1. The accident was not a fortuitous



occurrence unconnected with the contractual work. It arose directly from and during the execution of the very work entrusted by respondent No.1 to M/s. Dinesh Contracts. Thus, the foundational facts necessary for the invocation of Section 12 stand conclusively established.

**The Scope and Object of Section 12 and its Application to Proprietary Concerns**

18.3. Since the principal controversy raised by respondent No.5 centres around the status of the deceased as proprietor of M/s. Dinesh Contracts, it becomes necessary to examine the scheme, purpose and legislative philosophy underlying Section 12 of the Employees' Compensation Act in some detail.

18.4. Section 12 is one of the most significant provisions contained in the Act. It constitutes a deliberate statutory departure from the ordinary principles governing employer-employee relationships. Under the general law, liability for employment-related injuries ordinarily rests upon the employer who directly engages the workman. Section 12, however,



recognises the commercial reality that industrial and commercial activity is frequently organised through contractors and sub-contractors and that substantial portions of the work of a principal employer are often executed through such arrangements.

- 18.5. Parliament was conscious that if liability under the Act were confined only to situations involving direct employment, principal employers could effectively avoid statutory responsibility by outsourcing substantial portions of their operations. Such a consequence would substantially defeat the social welfare object underlying the enactment. It was therefore considered necessary to enact a provision which would ensure that the protection afforded by the Act remained available notwithstanding the contractual structure adopted for execution of the work.
- 18.6. Section 12 must therefore be understood as a provision intended to look beyond the technical architecture of contractual arrangements and identify the substantive reality of the work being performed. The focus of the provision is



not upon the formal legal relationship between the parties but upon the execution of work undertaken for the purposes of the principal employer's trade or business and the occupational risks associated therewith.

18.7. Significantly, Section 12 creates a statutory fiction. Once the ingredients prescribed therein are satisfied, the principal employer becomes liable to pay compensation "as if" the workman had been immediately employed by him. The legislature has therefore consciously chosen to disregard the absence of a direct contract of employment and substitute a statutory relationship in its place. The provision expands the reach of the compensation regime beyond conventional contractual boundaries.

18.8. The importance of this statutory fiction lies in the fact that Parliament deliberately preferred substance over form. The enquiry mandated by Section 12 is directed towards identifying who was engaged in the execution of the work and whether the accident arose during such execution. The provision is not primarily concerned with the corporate, contractual or



organisational structure through which the work was arranged.

18.9. The expression "any workman employed in the execution of the work" occurring in Section 12 must therefore be interpreted in a manner consistent with the object sought to be achieved by the provision. The expression cannot be construed in isolation from the legislative purpose. If a narrow and technical interpretation were adopted, the remedial character of Section 12 would be substantially diluted.

18.10. The significance of Section 12 becomes even more apparent when sub-sections (2), (3) and (4) are examined. Section 12(2) creates a right of indemnity between the principal employer and the contractor. Section 12(3) preserves the workman's right to proceed against the contractor. Section 12(4) specifies the circumstances in which the provision applies. Collectively, these provisions create a comprehensive statutory mechanism intended to ensure that compensation reaches the injured person or his dependants while



questions of ultimate financial responsibility are resolved between the principal employer, contractor and insurer.

18.11. The legislative concern is therefore not merely with identifying who ultimately bears the burden of compensation. The dominant concern is to ensure that compensation is not denied to a person who suffers injury or death while engaged in work undertaken for the benefit of the principal employer. Once that objective is appreciated, Section 12 necessarily requires a liberal and purposive construction.

18.12. The principal objection advanced on behalf of respondent No.5 is that the deceased Sri Venkatachala Rajagopal was admittedly the proprietor of M/s. Dinesh Contracts and therefore could not be treated as a workman. According to the insurer, the policy issued in favour of M/s. Dinesh Contracts was intended to cover only employees engaged by the concern and not the proprietor himself.

18.13. There can be no dispute with the proposition that a proprietary concern has no legal existence separate from its proprietor. A



proprietary concern is merely the trade name, business style or commercial identity through which an individual carries on business. Unlike a company, corporation or partnership possessing an independent legal personality, a sole proprietary concern and its proprietor are, in law, one and the same person.

18.14. Equally, under traditional principles of employment law, a proprietor cannot ordinarily claim to be an employee of his own establishment. However, the controversy before this Court does not arise in the context of ordinary employment law. It arises in the context of a beneficial legislation which seeks to provide compensation to persons exposed to occupational hazards and to protect their dependants from the financial consequences of industrial injury or death.

18.15. The submission of respondent No.5 proceeds upon the assumption that the status of proprietor and the status of workman are mutually exclusive and incapable of coexistence. In the considered opinion of this Court, such an assumption overlooks both



commercial reality and the structure of a vast number of proprietary establishments functioning throughout India.

18.16. In India, a substantial proportion of commercial and industrial activity is carried on through sole proprietary concerns. Unlike large corporate organisations, public limited companies, multinational enterprises and major partnership concerns where ownership, management and labour are frequently separated into distinct layers, the proprietor of a small proprietary concern often constitutes the principal technician, mechanic, operator, supervisor, manager and administrator rolled into one. He secures the contract, arranges the resources, supervises the work and very often personally executes the work itself.

18.17. In many specialised trades such as electrical works, fabrication, welding, mechanical repairs, boiler maintenance, plumbing, civil works and other technical services, the proprietor frequently constitutes the principal labour force of the concern. The concern itself merely provides a recognised business identity through



which such work is undertaken. The reality is that the proprietor is simultaneously the owner of the business and the person physically executing the work.

18.18. The establishment of a proprietary concern is therefore often no more than the adoption of a recognised business name and style. The legal form adopted by the individual does not alter the substance of the work actually performed by him.

18.19. The Employees' Compensation Act is concerned with occupational exposure to risk. The underlying philosophy of the enactment is that a person who exposes himself to employment-related hazards while engaged in productive work should not be denied protection merely because of the legal structure through which such work is organised.

18.20. In determining whether a person answers the description of a workman for the purposes of the Act, the Court cannot be guided exclusively by his ownership status. The Court must examine the substance of the activity



undertaken and the nature of the risk to which the individual was exposed.

18.21. Where a proprietor merely owns a business and does not personally participate in the execution of the work, different considerations may arise. However, where the proprietor personally undertakes and executes the work forming the subject matter of the business, contributes his own labour, skill and physical effort, exposes himself to the same occupational hazards as any other worker and suffers injury or death in the course thereof, there exists no rational basis for denying him the character of a workman for the purposes of the Act.

18.22. If the interpretation suggested by respondent No.5 is accepted, manifestly anomalous consequences would follow. A technician employed by a proprietary concern would receive protection under the Act, but the proprietor who personally performs the identical work, assumes the identical risk and suffers death in the identical accident would be denied compensation. Such a distinction rests entirely upon the legal form of the business



organisation and bears no nexus to the object sought to be achieved by the legislation.

18.23. The hazard arises from the nature of the work performed and not from the legal form of the entity undertaking it. The source of the risk is the work itself. A person who physically performs that work and is exposed to its hazards cannot be denied protection merely because he also happens to own the business through which the work is carried on.

18.24. It is equally significant that Section 12 contains no language excluding a sole proprietor who personally executes the work. Had Parliament intended such an exclusion, it could easily have incorporated one. Courts cannot introduce limitations which the legislature itself has not chosen to impose.

18.25. This Court is therefore of the considered opinion that for the purposes of the Employees' Compensation Act, and particularly Section 12 thereof, a sole proprietor who personally undertakes and executes the work forming the subject matter of the contract and is exposed to the occupational risks arising therefrom is



entitled to be treated as a workman notwithstanding his ownership of the proprietary concern.

18.26. The deceased Sri Venkatachala Rajagopal was admittedly present at the site of work. He was personally carrying out the repair of the boiler entrusted to M/s. Dinesh Contracts. The boiler burst while such repair work was in progress, throwing him away from the place of work and causing the injuries which ultimately resulted in his death. The risk that materialised was not a commercial risk associated with ownership of a business. It was an occupational risk arising directly from the execution of hazardous industrial work. He therefore answers the description of a workman for the purposes of the Act.

### **Liability of Respondent No.5 – Insurance Company**

18.27. Once it is held that the deceased answers the description of a workman for the purposes of the Act, the objection raised by respondent No.5 substantially loses force.



18.28. The policy issued by respondent No.5 was admittedly obtained by M/s. Dinesh Contracts to cover liabilities arising under the Employees' Compensation Act. The very purpose of obtaining such a policy is to protect against financial consequences arising from injury or death occurring during execution of the work undertaken by the insured concern.

18.29. The insurer contends that the policy was intended to cover only employees and not the proprietor. However, no exclusion clause has been brought to the notice of this Court expressly excluding the proprietor of a sole proprietary concern from the scope of coverage. Equally, no material has been produced demonstrating that the insurer specifically excluded the risk which ultimately materialised in the present case.

18.30. It is a settled principle of insurance law that exclusions must be clear, express and unambiguous. An insurer seeking to avoid liability on the basis of an exclusion bears the burden of demonstrating that the case falls squarely within the exclusion relied upon. In the absence of such an exclusion, the policy must be interpreted in a manner consistent with its purpose.



- 18.31. Insurance contracts issued to indemnify liabilities arising under welfare legislation must be construed harmoniously with the statutory object sought to be achieved. Where the insurer has accepted premium for covering liabilities arising from occupational injury or death connected with the execution of the contracted work, it cannot subsequently avoid liability by relying upon a narrow technical distinction that finds no expression in the policy itself.
- 18.32. The construction sought to be placed by respondent No.5 would result in a situation where the policy covers every person who physically performs the work except the person who owns the proprietary concern and personally executes the work. Such an interpretation would create an artificial distinction unsupported either by the language of the policy or by the object sought to be achieved by the insurance contract.
- 18.33. A sole proprietary concern, unlike a corporation or a large commercial organisation, frequently derives its identity and operational capability from the personal labour, skill and expertise of its proprietor. When the insurer issues a policy covering liabilities arising under the Employees'



Compensation Act in favour of such a concern, it must be presumed to be aware of the nature of the insured entity and the manner in which such entities ordinarily function. If the insurer intended to exclude the proprietor who personally executes the work from the scope of coverage, it was incumbent upon the insurer to expressly stipulate such exclusion. Having failed to do so, respondent No.5 cannot be permitted to rely upon an implied exclusion which finds no place in the policy.

18.34. The absence of an express exclusion assumes even greater significance when viewed in the context of the beneficial object of the Employees' Compensation Act. Insurance policies intended to support the operation of welfare legislation must receive a construction which advances the statutory purpose rather than frustrates it. Any ambiguity regarding the extent of coverage must ordinarily be resolved in favour of the class of persons whom the legislation seeks to protect.

18.35. The indemnity mechanism contemplated under Section 12 further reinforces this conclusion. Under Section 12(1), respondent No.1, as principal employer, becomes liable to compensate



the appellants. Under Section 12(2), respondent No.1 becomes entitled to indemnification from the contractor. M/s. Dinesh Contracts had obtained insurance coverage precisely to meet liabilities arising under the Act. The statutory and contractual arrangements therefore operate in a continuous chain of liability and indemnity.

18.36. The legislative purpose underlying Section 12 would be substantially undermined if compensation were made payable by the principal employer but the indemnity chain were permitted to break at the stage of insurance merely because the person executing the work happened to be the proprietor of the contracting concern. Such an interpretation would not only defeat the object of Section 12 but would also render the insurance coverage illusory in respect of a significant category of proprietary establishments functioning throughout the country.

18.37. To permit respondent No.5 to avoid liability merely because the workman happened also to be the proprietor of the concern would defeat both the object of Section 12 and the purpose for which the policy was issued. Such an



interpretation would enable insurers to collect premium for occupational risks while avoiding liability when those very risks materialise in relation to the person who personally executes the work.

18.38. The submission advanced on behalf of respondent No.5 that Section 12 was not specifically invoked before the Commissioner also does not merit acceptance. The applicability of a statutory provision is a question of law. All foundational facts necessary for the application of Section 12 were pleaded, proved and remain undisputed. The appellate Court is not precluded from applying the correct statutory provision merely because the Commissioner failed to do so.

18.39. No prejudice has been demonstrated to have been caused to respondent No.5. The insurer has participated fully in the proceedings before this Court, addressed elaborate submissions on the applicability of Section 12 and had every opportunity to contest both the factual and legal aspects of the matter.

18.40. A sole proprietor who personally undertakes and executes the work forming the subject matter of the proprietary concern and is exposed to the



occupational hazards associated therewith is a workman for the purposes of the Employees' Compensation Act, 1923 and particularly for the purposes of Section 12 thereof.

18.41. In the absence of any express exclusion clause to the contrary, the insurance policy issued by respondent No.5 in favour of M/s. Dinesh Contracts extends to and covers such proprietor-workman who personally executes the work of the proprietary concern and is exposed to the occupational risks insured against under the policy.

18.42. The deceased Sri Venkatachala Rajagopal was personally engaged in the execution of the boiler repair work entrusted to M/s. Dinesh Contracts. He suffered fatal injuries on account of the occupational hazards inherent in that work. The risk that materialised was precisely the risk against which protection was sought under the Employees' Compensation policy obtained by M/s. Dinesh Contracts.

18.43. Consequently, respondent No.5, being the insurer under the policy issued in favour of M/s. Dinesh Contracts covering liabilities arising under the Act, is liable to indemnify and satisfy the



compensation payable to the appellants, subject to the terms and limits of the policy.

18.44. Substantial question No.2 is answered in the AFFIRMATIVE. Respondent No.5 is held to be liable to satisfy the compensation payable to the appellants by treating the deceased Sri Venkatachala Rajagopal as a workman for the purposes of the Employees' Compensation Act, 1923 and the policy of insurance issued in favour of M/s. Dinesh Contracts.

19. In view of the above discussion, substantial questions No.1 and 2 are accordingly answered while concurring with sister Dr. Chillakur Sumalatha. J.

20. The appeal is ***allowed in part*** in the aforesaid terms.

21. Parties to bear their costs.

**Sd/-**  
**(SURAJ GOVINDARAJ)**  
**JUDGE**

Ln/-