Tata AIG General Insurance Company Ltd. v. Shibi Devi

- **TOPIC :** Multiple Claims For Same Accident Not maintainable Under Employee's Compensation Act
- **BE**NCH : Justice Sushil Kukreja
- **FORUM:** Himachal Pradesh High Court
- **MAIN ISSUE**
  - Regarding an appeal filed a dependent mother under the Employee's Compensation Act
- **OBSERVATIONS**
  - A Single Judge Bench of Justice Sushil Kukreja dismissed an appeal filed a dependent mother under the Employee's Compensation Act. It held that multiple claim petitions for the same accident are not maintainable. \
  - The court ruled that when the widow and daughter of the deceased employee had already settled their claim in 2015, a subsequent petition by the mother in 2023 could not be allowed
  - Raju, a truck driver, died in a road accident in 2013 while transporting bricks from Chandigarh to Theog. His mother, Shibi Devi, filed a claim alleging dependency on her son's earnings. The employer confirmed Raju's employment, his valid driving license, and his salary. However, Tata AIG, the insurer, argued that the claim was barred, as Raju's widow and daughter had already settled this claim in 2015 through an agreement before the Workmen's Compensation Commissioner.
  - However, in 2023, the Workmen's Compensation Commissioner awarded Shibi Devi ₹2,34,053 in compensation and imposed a penalty of ₹1,05,324 on the employer (''2023 award''). This was awarded on the grounds that she was a dependent of the deceased and claimed to have been excluded from the earlier settlement. Aggrieved by this decision, the insurer, the employer, and Shibi Devi herself (seeking enhancement) filed appeals
  - Firstly, the court noted that under Section 167 of the Motor Vehicles Act and Section 22 of the Employee's Compensation Act, only one claim is maintainable per cause of action. It held that all dependents must be included in the initial petition. It explained that the compensation awarded either under the Motor Vehicles Act or the Employee's Compensation Act represents the amount payable to all legal representatives of the deceased
  - Further, the court explained that the proviso to Section 166(1) of the Motor Vehicles Act mandates that an application for compensation must be filed for the benefit of all legal representatives. It ruled that if some dependents are not part of the initial petition, they must be impleaded as respondents.
  - Lastly, the court observed that Shibi Devi neither sought impleadment in the earlier proceedings nor did she challenge the 2015 award. It held that her failure to do so at the time barred her from filing a separate claim years later. Since the 2015 settlement covered all dependents collectively, the court ruled that her subsequent petition in 2023 was not maintainable. Thus, it allowed the appeals filed by the insurer and the employer, and set aside the 2023 award

State of Up vs Vashishta Muni Mishra

- **TOPIC:** Appointment Didn't Comply With Drivers Service Rules, Allahabad HC Denies Governments Servant Status To Special Sugar Fund Employee
- **BENCH** : Chief Justice Arun Bhansali & Justice Jaspreet Singh
- **FORUM:** Allahabad High Court
- **MAIN ISSUE**
  - Regarding an employee appointed under the Special Sugar Fund
- **OBSERVATIONS**
  - A division bench of the Allahabad High Court comprising of Chief Justice Arun Bhansali & Justice Jaspreet Singh held that an employee appointed under the Special Sugar Fund cannot be regarded as a government servant, as the appointment was not made in accordance with the Uttar Pradesh Sugar Department Drivers Service Rules, 1984
  - The Special Sugar Fund was created from the Uttar Pradesh Sugar Cane (Purchase Tax) Act, 1961 (Act of 1961) in the year

1974. The Cane Commissioner, Uttar Pradesh was delegated with the power to act as the Appointing Authority of the employees engaged under the Special Sugar Fund. In the year 1987, the Special Sugar Fund purchased certain motor vehicles and certain drivers were appointed for the same.

- The respondent was appointed on the post of driver vide order dated 19.02.1990. He continued as an employee of the Special Sugar Fund. The salary was paid from the Special Sugar Fund. The bonus was disbursed to the respondent after deducting the contributory provident fund. The relation between the State and the respondent was that of employer who employed the respondent for the Special Sugar Fund. The respondent was never granted any benefit nor he was ever treated as a government servant.
- The Special Sugar Fund was repealed from 1st of July, 2017 due to the enactment of the Goods and Service Tax (GST) Act, 2016. The State Government absorbed all employees who were appointed under the Special Sugar Fund, in different Cane Development Councils. Therefore on 07.03.2019, the service of the respondent was absorbed. Later the respondent was transferred to the Cane Development Council, Nawabganj, District Gonda and during his service at Gonda, the respondent expired on 21.05.2021.
- The respondent's legal heir filed a writ petition to allow the respondent to be treated as a Government Servant, having been appointed in the office of Cane Commissioner, Uttar Pradesh with all consequential service benefits. The petition was allowed by the single judge by passing an order dated 01.05.2019 directing the State to consider the respondent's claim.
- Aggrieved by the same, the State preferred an appeal against the single judge order
- It was contended by the state that the respondent was never appointed in the office of Cane Commissioner. The appointment of the respondent was under the Special Sugar Fund. It was further contended that the appointment of a Government driver is governed by the Uttar Pradesh Sugar Department Drivers Service Rules, 1984. And the Rule 3(a) of these rules specifically provide for an Appointing Authority which was not the case with the respondent.
- Therefore the respondent was always an employee of Special Sugar Fund and not of the State Government.
- On the other hand it was contended by the respondent that the appointment and regularization order of the respondent was passed by the Cane Commissioner. It was never indicated that the respondent was appointed under the Special Sugar Fund. It was further argued that the Cane Commissioner was covered under the Rules 3(a) of the Rules of 1984, hence the respondent was appointed in accordance of the Rules of 1984
- It was further argued that no post of a driver was sanctioned in the Special Sugar Fund, hence, the appointment of the respondent was in the Sugar Cane Department of the State of U.P.
- It was observed by the court that the appointment made by the Cane Commissioner was on behalf of an authorized nominated member of the Special Sugar Fund Committee constituted under Section 3(12) of the Act of 1961.
- The Cane Commissioner was not acting in his capacity as an Appointing Authority under the Drivers Service Rules, 1984. It was observed that the contributory provident fund was being deducted from the salary of the respondent during his service, and the GPF was never deducted at any point of time.
- It was further observed by the court that the Special Sugar Fund did not have any sanctioned post of a driver, so the respondent was engaged on temporary and daily wages to work as a driver and the salary was being paid from the said fund. Therefore the respondent was not appointed as a driver by the Cane Commissioner under the Drivers Rules of 1984. It was further observed that the service of the respondent was made under the Special Sugar Fund
- It was held by the court that the respondent could not be treated as a Government employee as his appointment was not against a sanctioned post in terms of the Drivers Service Rules, 1984. It was further held by the court that the Single Judge erred in holding that the Cane Commissioner could confer the status of a government servant to the respondent. The order passed

by the Single Judge was set aside by the court

- With the aforesaid observations, the appeal was allowed

Umar Bashir Khan Vs UT of J&

- **TOPIC :** ‘‘Be Sensitive’’ : J & K High Court Urges Trial courts To Avoid ‘Copy –Paste’ Practices in Bail Orders
- **BENCH :**Justice Sanjay Dhar
- **FORUM:** High Court of Jammu & Kashmir and Ladakh
- **MAIN ISSUE**
  - Regarding the necessity for judicial sensitivity and diligence in dealing with bail applications
- **OBSERVATIONS**
  - The High Court of Jammu & Kashmir and Ladakh has stressed the necessity for judicial sensitivity and diligence in dealing with bail applications.
  - A bench Justice Sanjay Dhar has emphasized that courts must avoid the ‘‘copy-paste syndrome’’ that has infiltrated judicial proceedings, as such practices can compromise the fundamental rights of individuals.
  - Justice Dhar made these observations in a plea involving petitioner Umar Bashir Khan, who sought bail in connection with FIR registered under Sections 451, 376/511, 354, and 506 of the Ranbir Penal Code (RPC).
  - These observations came in a case involving one Umar Bashir Khan, who sought bail in connection with FIR registered under Sections 451, 376/511, 354, and 506 of the Ranbir Penal Code (RPC). Khan was accused of trespassing into the prosecutrix's house, assaulting her, attempting sexual assault, and issuing life threats
  - The prosecutrix had earlier filed a complaint in December 2018, alleging that during the night of December 5–6, the petitioner entered her house and attacked her. She claimed that he attempted to sexually assault her and threatened her life. Following these allegations, the police registered an FIR, recorded her statement under Section 164 of the CrPC, and filed a chargesheet in 2021, establishing offenses under the stated sections.
  - While the case progressed, the petitioner remained in custody in connection with another FIR under the NDPS Act. Upon his release from that case, he applied for bail in this case, which was denied by the trial court in September 2024. The trial court's denial relied on an incorrect set of facts, suggesting that the petitioner had sexually exploited the prosecutrix on the pretext of marriage a claim unrelated to the actual case.
  - Khan's counsel argued that the trial court had rejected the bail application mechanically, without examining the facts of the case or the evidence on record. It was submitted that the prosecutrix, during her testimony in court, had resiled from her earlier allegations, stating that the incident stemmed from a family dispute.
  - After examining the submissions and evidence, Justice Sanjay Dhar strongly criticized the trial court's handling of the bail application.
  - The High Court found that the trial court's reasoning relied on an entirely irrelevant narrative that had no bearing on the petitioner's case. Justice Dhar remarked,
  - ‘‘From a perusal of the afore-quoted observations of the trial court and, in fact, from a perusal of the order passed by the trial court on 02.09.2024 as a whole, it appears that the said court has decided the bail application of the petitioner on the basis of facts of some other case
  - The court added, ‘‘This clearly reflects absolute non-application of mind and casual approach on the part of the trial court. It is unimaginable that an officer of the level of a Sessions Judge would approach the bail application... in such a casual manner.’’
  - The High Court noted that the prosecutrix's testimony in court contradicted her initial allegations. She admitted that the incident arose from a family dispute and stated that no sexual assault had occurred
  - This, Justice Dhar observed, created reasonable doubt about the petitioner's involvement in the alleged offense of attempted rape.

- Highlighting the importance of judicial diligence, the judgment stated, ‘‘Even a single day's delay in granting bail to a person who is otherwise entitled to it amounts to violation of his fundamental right to life and liberty.’’
- Granting bail to the petitioner with a bond of ₹25,000 the High Court used the occasion to issue broader guidance to subordinate courts. Justice Dhar directed that courts must remain vigilant and avoid the pitfalls of a copypaste approach in deciding bail applications.
- ‘‘..It is impressed upon the criminal courts to remain sensitive and careful while dealing with bail applications and avoid the copy-paste syndrome which, of late, has crept in the functioning of the courts.’’, the court concluded.

Govindji s/o Khodaji Maganji Thakor vs State of Gujarat

- **TOPIC :** Gujarat HC Calls For Explanation From Judicial Officer Over ‘Serious Allegations’ On conduct While Hearing Cheating Case
- **BENCH :**: Justice Sandeep Bhatt
- **FORUM:** Gujarat High Court
- **MAIN ISSUE**
  - Regarding a detailed explanation from a judicial officer
- **OBSERVATIONS**
  - The Gujarat High Court called for a detailed explanation from a judicial officer—of the rank of a sessions judge, after "prima facie" taking note of a plea making "serious allegations" about the officer's conduct while hearing proceedings in a forgery and cheating case
  - The order was passed in a plea wherein the petitioner had sought transfer of proceedings before the judicial officer on the "apprehension that he would suffer injustice not because he has no case but because the presiding officer has a preconceived notion about it". In the interim the petitioner had sought stay of the proceedings before the presiding/judicial officer, claiming that during the course of the hearing in the case the judicial officer had made "undue observations against the petitioner"
  - The petitioner had also sought a departmental enquiry with respect to the officer. After going through the averments made in the petition and perusing the documents, Justice Sandeep Bhatt in his order observed ‘‘this Court, prima facie, finds that matter requires consideration as serious allegations are made about the conduct of the presiding officer concerned, which should be considered in appropriate manner
  - This Court is conscious that such allegations are made against the judicial officer of the rank of appellate cadre i.e. Sessions Judge.’’

    The high court thereafter directed, ‘‘The Registry shall send the entire set of papers of this petition to the concerned Principal District Judge forthwith and call for detailed explanation of the concerned judicial officer regarding the allegations made in the petition and send the same with remarks of the Principal District Judge to this Court, through the Registrar General, on or before 01.01.2025
  - The Registrar General will do needful after receipt of such report and also place the same before this Court.’’ The high court then granted stay until the final disposal of the proceedings as interim relief as prayed in the petition and listed the matter on January 6, 2025.
  - As per the facts, the Petitioner filed a complaint regarding a forged Power of Attorney (PoA) of 2007 used to carry out the sale of his land in Thol, Mehsana.
  - It was alleged that the thumb impression and the signatures of his wife were forged in the documents and that he came to discover about it in 2021 when four people threatened him to vacate the land. After verifying the thumb impressions and signatures by the FSL expert, an FIR was registered under IPC Sections 406(Criminal Breach of Trust), 420(Cheating and Dishonestly Inducing Delivery of Property), 465(Forgery), 468(Forgery for Purpose of Cheating), 471(Using as Genuine a Forged Document),
  - 120B(Criminal Conspiracy), 34(Acts Done by Several Persons in Furtherance of Common Intention), 504(Intentional Insult

with Intent to Provoke Breach of Peace), 506(2) (Criminal Intimidation). The investigation was transferred to the Local Crime Branch of Mehsana by preferring an application as the initial investigation by the Mehsana Police was allegedly biased and incomplete. It was alleged that the chargesheet filed lacked critical evidence including Power of Attorney and failed to include the officers;

- Sub-Registrar and Mamlatdar who were allegedly involved as the mutation entry were recorded without the service of notice severed to the petitioner and his wife. The Petitioner moved to the High Court alleging bias and partial treatment by the Presiding Office showing undue favour to the accused persons. It was alleged that at the time of hearings, the Judicial Officer remarked on the delay in filing the FIR and stated that the petitioner had remained silent from 2008 to 2021 without pursuing the records and granted bail to two accused
- The Petitioner then alleged that his counsel was denied access to certified copies regarding the case from the department

Praveen Kochak Versus The State Of Madhya Pradesh And Others

- **TOPIC** : Merely Mentioning Person's Name in Official Documents As Nominee Is Of No Avail To Claim compassionate Appointment
- **BENCH :** Justice Subodh Abhyankar
- **FORUM:** Madhya Pradesh High court
- **MAIN ISSUE**
  - Regarding a person's name in departmental documents as a nominee.
- **OBSERVATIONS**
  - The Indore Bench of Madhya Pradesh High court recently held that merely mentioning a person's name in departmental documents as a nominee does not automatically confer a right to claim compassionate appointment on account of death of deceased employee
  - A single-judge bench of Justice Subodh Abhyankar observed, "...merely mentioning of the name of any person in the official documents referring the same to be the nominee of the employee is of no avail to such person to claim compassionate appointment on account of death of deceased employee in the face of a rival claim by the other family members of the deceased employee, as the compassionate appointment is provided under a policy formulated by the State Government and such policy would never promote the polygamy
  - In the present case, the petitioner is the son of a deceased Class-III employee, a Hand Pump Technician in the Public Health & Engineering Department, Rajgarh who died in harness during the Covid-19 pandemic period. After the death of his father Hiralal, the petitioner being the son of the deceased Hiralal applied for compassionate appointment which was rejected by the respondent (Public Health Engineering Department)
  - Stating that there is nothing on record to prove that the mother of the petitioner was the wife of the deceased Hiralal, as in his nomination form, the name of Shanti Bai was not mentioned, neither there is any reference that the petitioner is his son.
  - In the present petition, the aforesaid order has been challenged and on account of appointment of respondent no.6 (Son of second wife) on compassionate basis, by way of amendment, the second wife of the deceased and his children were also arrayed as respondents
  - The petitioner contends that he is the son of the first wife of the deceased Hiralal, who was Shanti Bai, and without taking any divorce from his mother, deceased Hiralal solemnized another marriage with Usha Bai, whose son Yuvraj/respondent no.6 has been subsequently granted the compassionate appointment
  - The counsel for the petitioner also brought to the notice of the court that on an application for maintenance u/s.125 of Cr.P.C. in 2007, Shanti bai, the first wife of Hiralal and his son-Praveen, have been awarded maintenance to the tune of Rs. 1,000/- and 500/ respectively.
  - Counsel for the respondents No. 4/second wife & 6/second wife's son contended that in judgment passed by the Trial Court judge, it has been observed that in the year 1992,
  - The marriage/Natra of Shantibai was solemnized with Hiralal. However, in the year 1994, she was driven out of the house

by Hiralal, and thereafter, he solemnized the marriage with Ushabai and started with living with her, and the court also took note of the reply filed by Hiralal that he has not married to Shantibai, and entered into Natra only. It was further submitted that Ushabai was validly married wife of Hiralal, and in all the certificates of the respondent no.6, the name of his father is mentioned as Hiralal

- Moreover, in the nomination form of the deceased, Ushabai's name was mentioned as his nominee.
- The counsel for the respondent/State also submitted that in all the Departmental documents Ushabai is mentioned as the wife of the deceased Hiralal, therefore, they have not erred in granting compassionate appointment to her son/respondent no.6.
- After considering the above submissions, the court observed, ‘‘Even if Hiralal belonged to Scheduled Tribe in which, they also have tradition of Natra also, in which, a woman resides with a man under contract, but, undoubtedly the petitioner was born out of a relationship between Hiralal Kochak and his first wife Shantibai, and thus, the petitioner was the legitimate son of Hiralal Kochak.
- The court placed reliance on Khursheed Ahmad Khan vs. State of Uttar Pradesh and others wherein Supreme Court had clearly deprecated the practice of polygamy holding that it is not an integral part of religion, and also that it is necessary for a person to take permission to solemnize second marriage if their custom permits the same.
- The court further said, ‘‘...there is nothing on record to suggest that Hiralal Kochak divorced his first wife Shantibai before contracting second marriage, or that he had informed the Government about contracting the second marriage, if his customs permit the same.’’
- Thus, the court remarked that merely mentioning the name of any person in the official documents as the nominee of the employee is of no avail to such person to claim compassionate appointment on account of death of deceased employee
- ‘‘...petitioner has made out a case for compassionate appointment being the son of Hiralal Kochak, born out of his first wife and the fact that Hiralal though mentioned the name of his second wife Ushabai and his son in all his service record, but did not inform his department regarding the factum of his second marriage with Ushabai which was a condition necessary as has been held by the Supreme Court in the case of Khursheed Ahmad Khan (supra).’’, the Court said.
- The court, thus, allowed the present writ petition and the appointment order of Respondent No. 6/second wife's son was set aside

Shiv kumar v. National medical commission & ors

- **TOPIC:** Medical Negligence Not Established By Mere Assertion Of ‘Expected Standard of Care
- **BENCH :** Justice Sanjeev Narula
- **FORUM**: Delhi High Court
- **MAIN ISSUE**
  - Whether a medical negligence can be established by mere dissatisfaction or the assertion of an 'expected standard of care or not
- **OBSERVATIONS**
  - The Delhi High Court has observed that medical negligence cannot be established by mere dissatisfaction or the assertion of an 'expected standard of care', rather it must be demonstrated that the doctor's conduct fell below the level of a reasonably competent practitioner in similar circumstances.
  - Justice Sanjeev Narula remarked, ‘‘While it is acknowledged that doctors are expected to apply a reasonable level of expertise and exercise due diligence in their practices, their conduct must not be judged against preconceived notions of a specific procedure or outcome. Consequently, the proper criterion for determining medical negligence lies in assessing whether the actions of the doctor fall below the accepted standards of a reasonably competent practitioner within the relevant field.’’

- The Court was considering the petitioner's case who alleged medical negligence and misconduct against respondent-doctors at Max Super Speciality Hospital, Delhi. The petitioner alleged that the lapses of the doctors resulted in the loss of his wife's life, who was diagnosed with Systemic Lupus Erythematosus/Hematemesis.
- The Delhi Medical Council (DMC) conducted a hearing and found two doctors responsible for professional negligence of duty
- It issued a warning and directed them to undergo at least one month of training in emergency medicine at a recognised hospital.
- The petitioner filed an appeal before the National Medical Commission (NMC) as it did not take action against the respondent-doctors
- However, the NMC through an order concluded that there was no sufficient basis to establish negligence against the respondent-doctors. The petitioner thus challenged the NMC's order
- One of the allegations by the petitioner was that the infusion of 850 mcg of the drug Fentanyl within a short timeframe was reckless, effectively poisoning the patient and leading to her death.
- The Court noted that the respondent-doctor's case record provided a detailed explanation regarding the calculation of the dosage of the drug taking into account the patient's specific health condition and weight requirements. It noted that this was duly considered by the NMC during its peer review process
- It remarked that the knowledge of administration and dosage of drugs is only within the expertise of medical professionals and that Court must trust such knowledge of qualified professionals.
- ‘‘Furthermore, the correct administration and dosage of drugs like FENTANYL is a matter that falls squarely within the expertise of qualified medical professionals.
- The Court, lacking medical expertise, must trust the domain knowledge of qualified professionals, especially when the decision is the product of a recognized peer review mechanism. In light of this, the Court, in the exercise of its judicial review, cannot substitute its own judgment for that of specialists and experts [9], whose primary responsibility is to uphold the highest standards of medical practice and professional conduct. Judicial interference here, would be unwarranted.’’
- The Court was of the view that none of the grounds raised provide any basis to conclude that the orders of the DMC or NMC are tainted by perversity or arbitrariness. It noted that the NMC determined that there was no credible evidence to prove medical negligence after reviewing the medical records and the course of treatment of the petitioner's wife.
- The Court stated the findings of medical bodies carry considerable weight and their findings cannot be overturned unless it is perverse or illegal.
- It observed that while doctors are expected to apply a reasonable level of due diligence in their practices, their conduct must not be judged against preconceived notions of a specific procedure or outcome.
- It stated, ‘‘While the Court empathizes with the Petitioner's loss and appreciates the earnestness of his pursuit, it must emphasize that the findings of medical bodies, composed of experts in the field, carry considerable weight
- Their determinations, supported by peer review, merit deference unless tainted by palpable perversity or illegality.’’
- It reiterated that the DMC and NMC's findings indicated that the line of treatment was provided considering the patient's complex medical profile.
- The Court thus did not find any illegality in the NMC's order and dismissed the petition.