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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**FIRST APPEAL NO.1063 OF 2010
WITH
FIRST APPEAL NO.1180 OF 2010**

FIRST APPEAL NO.1063 OF 2010

1. The Dy.Chief Engineer (C) Ajni,
Central Railway, Nagpur.

2. The General Manager,
Central Railway, Mumbai, CST. **Appellants.**

:: V E R S U S ::

Smt.Laxmi wd/o Rajanna Kotpalliwar,
Aged about – 47 years,
Occupation – household, r/o plot No.106,
Zingabai Takli, Krishna Nagar,
Godhani Road, Nagpur. **Respondent.**

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Shri N.P.Lambat, Counsel for the Appellants.
Shri S.A.Kalbande, Counsel for the Respondent.
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FIRST APPEAL NO.1180 OF 2010

Smt.Laxmi wd/o Rajanna Kotpalliwar,
Aged about 55 years, occupation:Nil,
R/o 106, Zingabai Takli,
Krishnanagar, Godhani Road, Nagpur. **Appellants.**

:: V E R S U S ::

1. Dy.Chief Engineer (C) Ajni,
Central Railway, Nagpur.

2. General Manager,
Central Railway, CST Mumbai. **Respondents.**

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Shri S.A.Kalbande, Counsel for the Appellant..
Shri N.P.Lambat, Counsel for the Respondent.
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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 28/02/2023

PRONOUNCED ON : 21/04/2023

COMMON JUDGMENT

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1. These first appeals are directed against the judgment and award dated 18.5.2010 passed by learned Commissioner under the Compensation Act, 1923 and Judge, First Labour Court at Nagpur in Application (WC/F) No.20/2006 whereby learned Commissioner granted compensatoin at the rate of Rs.3,12,940/- with interest to Smt.Laxmi wd/o Rajanna Kotpalliwar (claimant).

2. First Appel No.1063/2010 is filed by the Central Railway Nagpur. Whereas, First Appeal No.1180/2010 is filed by the claimant for grant of interest from the date of accident and 50% penalty in view of Section 4(a) of the Employees' Compensation Act, 1923 (for short, the said Act).

3. Facts in brief, necessary for disposal of appeals, are as under:

The claimant is the widow of Rajanna (deceased). The deceased was an employee of the Central Railway working as a Khalashi (helper) under the control and supervisioin of the Inspector of Works Department, Ajni in Nagpur Division. As per the contentions of the claimant, her

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husband had gone to Mumbai for official work on 3.8.2004 and while returning to Nagpur by Mumbai-Howrah Express on 8.8.2004, he died due to heart attack. The deceased had travelled from Nagpur-Mumbai-Nagpur. Thus, the deceased had sustained the heart attack during the course and in the course of the employment and died due to the said heart attack. As the death of the deceased was caused during and in the course of the employment, she applied for grant of compensation vide letter dated 15.3.2005. However, the claim of the compensation was rejected by the Railway Administration. Thus, the claimant is entitled to receive the compensation as the death of the deceased is caused during and in the course of the employment.

4. In response to the Notice, the Railway Administration resisted the application moved by the claimant on the ground that the death of the deceased was natural death as he sustained the heart attack while travelling. There is no previous record to show that the deceased was suffering from any heart ailment and was

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under stress and, therefore, the claimant is not entitled for any compensation.

5. In support of the contentions, the claimant adduced her evidence before learned Commissioner. The Railway Administration has also adduced evidence in support of the contentions of the Railway Administration.

6. Learned Commissioner, after appreciating the evidence adduced by the parties, held that the nature of the work and the hours of the work caused stress to the deceased and hence his death is caused and as such the claimant is entitled to receive the compensation on account of the death of her husband.

7. Heard learned counsel Shri N.P.Lambat for the Railway Administration and learned counsel Shri S.A.Kalbande for the claimant.

8. Learned counsel Shri N.P. Lambat for the Railway Administration submitted that the employment of the deceased with the Railway Administration is not disputed. There is no nexus between the cause of the death and nature

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of the employment of the deceased. The claimant has not adduced any evidence to show that the deceased had sustained heart attack due to the nature of work, he was performing, while he was returning from Mumbai to Nagpur. No previous medical record is adduced to show that the deceased was having heart ailment. As nexus between the nature of work and the death of the deceased itself is not proved, the claimant is not entitled to receive any compensation.

9. *Per contra*, learned counsel Shri S.A.Kalbande for the claimant submitted that the deceased was sent for official work to Mumbai. While returning from Mumbai to Nagpur, he had heart attack. Thus, the death of the deceased is caused during and in the course of the employment and, therefore, learned Commissioner had awarded the compensation which cannot be faulted with.

10. In support of his contentions, learned counsel Shri S.A.Kalbande for the claimant placed reliance on the decisions of the Honourable Apex Court in the cases of :

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(1) General Manager, BEST Undertaking, Bombay vs. Mrs. Agnes, reported in AIR 1964 SCC 193;

(2) Param Pal Singh, thr. Father vs. National Insurance Company and another, reported in (2013)3 SCC 409;

(3) Jaya Biswal and others vs. Branch Manager, IFFCO Tokio General Insurance Company Limited and another, reported in (2016)11 SCC 201 ;

(4) United India Insurance Company Limited vs. C.S. Gopalakrishnan, reported in 1989(1) CLR 604;

(5) Messrs. Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ritta Fernandes, reported in 1969 ACJ 419, and

(6) Manju Sarkar and others vs. Mabish Miah and others, reported in (2014)14 SCC 21.

11. First Appeal No.1063/2010 was admitted on following substantial question of law:

Whether in the facts and circumstances of the case and whether on the basis of the evidence on record it could be said that the deceased Khalasi died due to stress or injury suffered by him during the course of employment?

The First Appeal No.1180/2010 was admitted on following substantial question of law :

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Whether the respondents were liable to pay penalty and whether the claimant is entitled to interest on the compensation amount from the date of the award or from the date of the incident?

12. Under Section 3(1) of the said Act, the injury must be caused to workman by an accident arising out of and in the course of employment.

Thus, the claimant has to prove that the alleged injury or the death was caused during and in the course of the employment.

13. In the light of Section 3(1) of the said Act, it is necessary to see, whether the deceased died natural death and whether there was any nexus between his death and his nature of work in the employment.

14. The specific stand of the Railway Administration is that the death of the deceased is due to natural cause.

15. To substantiate the contentions, the claimant adduced her evidence and deposed that her husband was sent for official work to Mumbai. When he was returning

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from Mumbai to Nagpur, he had heart attack and he died during the journey. Her cross-examination shows that she has not produced any document to show that her husband was suffering from heart ailment. Admittedly, the evidence on record led on behalf of the claimant nowhere shows that due to the nature of work, the deceased was under stress which resulted into suffering heart attack. The evidence of the claimant nowhere shows that what type of work was allotted to her husband due to which he was under stress. There is no medical evidence to show that the deceased was suffering from heart ailment or he was under stress due to the nature of work in the employment. Even, there is no evidence indicating that the nature of work, which the deceased performed, was such which would cause heart attack to him.

16. In my view, unless there is medical evidence on record, it would be difficult to infer that the nature of work performed by the deceased could cause stress to him which resulted in having heart attack.

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17. The claimant must establish that the deceased suffered an injury arising out of and in the course of employment for being entitled to claim compensation. The claimant was not able to establish that there was any nexus between the injury and the death suffered by the deceased and his work.

18. Besides the oral evidence of the claimant, there is no evidence on record to establish that the nature of the work of the deceased resulted into stress due to which he had heart attack. Unless the Railway Administration is able to establish a nexus between the injury or the cause of death and nature of work that he was performing, the claimant is not entitled to claim any compensation. In fact there is no evidence that the deceased was having any heart ailment due to the strenuous work which was allotted to him. In fact, the evidence was not adduced to show that it was the nature of work due to which the deceased was under stress which resulted into his death. The claimant must establish that the deceased suffered an injury arising out of and in the course of employment for being entitled to claim compensation. As

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the claimant failed to prove the nexus between the nature of the work and the cause of death of the deceased, the claimant is not entitled for any compensation.

19. Admittedly, the said Act is a social welfare legislation and the court must consider the provisions for whose benefits the legislation is enacted. However, primary burden is that heart attack suffered by deceased was due to work allotted to him and there was casual relationship between cause of death and employment.

20. In the present case, the claimant has not been able to establish the said casual connection or nexus between the injury or the death suffered by the deceased. Though learned counsel Shri S.A.Kalbande for the claimant placed reliance on catena of decisions cited *supra*, the said decisions can be differentiated on the facts of the relevant matters. There is no dispute regarding the legal principle that in view of Section 3(1) of the said Act, the injury must be caused to workman by an accident arising out of and in the course of employment.

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21. In fact, in the present case, as already observed, there was no nexus between the cause of death and the employment and, therefore, the claimant is not entitled for any compensation.

22. In the light of the above, as the award passed by learned Commissioner deserves to be set aside, this Court passes following order:

ORDER

(1) First Appeal No.1063 of 2010 filed by the Railway Administration is **allowed**.

(2) First Appeal No.1180 of 2010 filed by the claimant is **dismissed**.

(3) The judgment and award dated 18.5.2010 passed by learned Commissioner under the Compensation Act, 1923 and Judge, First Labour Court at Nagpur in Application (WC/F) No.20/2006 is hereby quashed and set aside.

(4) It is directed and made clear that if any compensation amount is withdrawn by the claimant, the Railway

Judgment

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Administration shall not insist for refund of the same. If the compensation amount is not withdrawn by the claimant, the Railway Administration is entitled for refund of the same.

With this, both first appeals stand disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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