



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.2759 OF 2024**

1. The Divisional Railway Manger,
Nanded Division, South Central Railway,
Airport Road, nanded 431604.
2. Station Master,
Pedgaon Railway Station,
Pedgaon, T1. & Dist. Parbhani 431537 ..Respondents
(Orig. Respondents)

Versus

1. Smt. Reena Wd/o. Narendra Raikwad,
Age 30 yrs., Occ. Service,
2. Khushi d/o. Narendra Raikwar,
Age: 11 Yrs. Occu. Education,
R/o. As above.
3. Muskan d/o. Narendra Raikwar,
Age: 9 Yrs., Occu. Education,
R/o As above.
4. Vansh s/o. Narendra Raikwar,
Age: 7 Yrs., Occu. Education,
R/o. As above.
5. Anshika d/o. Narendra Raikwar,
Age: 5 Yrs., Occu. Education,
R/o. As above. ..Appellants
(Orig. Applicant Nos.1 to 5)

Applicant No.2 to 5 are minor
U/g. Of their mother i.e. appellant no.1
Smt. Reena wd/o. Narendra Raikwar

All R/o. Krishna Colony RB-I, 283
Opp. Hindi-English Church, Bhusawal
Tq. Bhusawal, Dist. Jalgaon 425201.

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Mr. A. G. Talhar, DSGI for Appellants.
Mr. P. S. Agrawal, Advocate for Respondent Nos.1 to 5.

...

AND

FIRST APPEAL NO.234 OF 2024

1. Smt. Reena Wd/o. Narendra Raikwad,
Age 32 yrs., Occ. Service,
R/o. Krishna Colony RB-I, 283

Opp. Hindi-English Church,
Bhusawal 425201, Dist. Jalgaon.

2. Khushi d/o. Narendra Raikwar,
Age: 12 Yrs. Occu. Education,
R/o. As above.
3. Muskan d/o. Narendra Raikwar,
Age: 10 Yrs., Occu. Education,
R/o As above.
4. Vansh s/o. Narendra Raikwar,
Age: 8 Yrs., Occu. Education,
R/o. As above.
5. Anshika d/o. Narendra Raikwar,
Age: 6 Yrs., Occu. Education,
R/o. As above.

..Appellants
(Orig. Claimants)

Applicant No.2 to 5 are minor
U/g. Of their mother i.e. appellant no.1
Smt. Reena wd/o. Narendra Raikwar

Versus

1. The Divisional Railway Manger,
Nanded Division, South Central Railway,
Airport Road, nanded 431604.
2. Station Master,
Pedgaon Railway Station,
Pedgaon, T1. & Dist. Parbhani 431537

..Respondents
(Orig. Respondents)

Mr. P. S. Agrawal, Advocate for Appellants.
Mr. A. G. Talhar, DSGI for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 01st APRIL, 2025.

ORDER:-

1. The present appeals are arising out of common judgment and award passed by Commissioner for Employees Compensation and Judge, Labour Court, Nanded in an Application (WCA)-C No.10/2022. The First Appeal No.2759/2024 is filed by original respondents/Divisional Railway Manager, Nanded, whereas First

Appeal No.234/2024 has been filed by original claimants seeking enhancement of compensation.

2. In nutshell, facts leading to present appeals are as under:

Late Narendra Raikwar was employed with respondents/Railway Department from 25.03.2009. He was drawing salary of Rs.26,000/- per month. On 07.07.2019, he was on duty from 08.00 am to 08.00 pm at railway crossing gate no.112 of Pedgaon Railway Station. After duty hours, he left for home. Since, he did not reach home. The search was taken and found dead besides railway track at gate no.12. He was found wearing uniform of department. The Identity Card was located in his pocket.

3. The applicants instituted proceeding under Section 4 of Employees' Compensation Act against respondents/Railway seeking compensation of Rs.25,30,320/- alongwith interest @ 12% per annum.

4. The respondents refuted claim mainly on the ground that accident occurred after duty hours, when late Narendra handed over his charge at about 20.20 hours. His dead body was found at 21.30 hours. Since his residence is hardly 700 meters away, incident cannot be covered within meaning of death during the course of and arising out of employment.

5. The learned Commissioner for Employees Compensation after evaluation of evidence, partly allowed claim and granted compensation of Rs.7,88,560/- alongwith interest @ 12% per annum from the date of accident till its realization.

6. Mr. Talhar, learned DSGI appearing for appellants/Railway Department vehemently submits that death of Narendra can never be termed as during the course of and arising out of employment in view of Section 3 of Employees' Compensation Act. He submits that undisputedly death is beyond working hours of deceased. There is sufficient material to show that he handed over charge at 20.20 hours and left the place of employment. His dead body was detected at about 09.30 pm. Therefore, such death can neither be attributed to employment nor considered as arising out of and in the course of his employment, so as to bring home liability of respondent/employer within meaning of Section 3 of the Employees' Compensation Act.

7. Per contra, Mr. Agrawal, learned Advocate appearing for claimants vehemently submits that body of deceased found near railway track. Late Narendra was wearing railway uniform. He did not reach home at the end of duty hours. Therefore, search was taken and at about 09.30 pm dead body was located. Therefore, reasonable conclusion can be drawn that accident occurred while late Narendra was returning home.

8. Considering submissions advanced by learned Advocates appearing for respective parties, there is no dispute that late Narendra was employed with respondents/Railway Department and he attended his duty upto 08.20 pm on the date of incident. Thereafter, he left place of his employment and his dead body found at 09.30 pm. The exact time of accident is not on record. The record indicates that first Train No.17058 passed through Padegaon at about 20.31 hours and next Train No.17687 passed about 20.40 hours. Therefore, possibility that he received injuries in accident involving either of train cannot be ruled out. The cause of death may not be relevant in facts of case. However, proximity of time of end of his duty hours and injuries suffered by him leading to death would be relevant. From aforesaid material, it can definitely be inferred that death was in proximity of duty hours. Late Narendra had not reached home after end of duty hours and while leaving towards his home, he suffered injuries leading to his death. No contra evidence is brought on record on behalf of respondents to explain circumstances by which some different conclusion can be drawn.

9. The law on the aforesaid aspect has been elaborately discussed and considered by Supreme Court of India in case of ***General Manager, B.E.S.T. Undertaking Bombay Vs. Mrs. Agnes***¹ in reference to law laid down in case of ***Saurashtra Salt***

¹ AIR 1964 SC 193.

Manufacturing Co. Vs. Bai Valu Raja², wherein doctrine of “Notional Extension” of employer’s premises in the context of an accident to an employee has been elaborated thus : -

“As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.”

10. The findings recorded by Commissioner appears to be in tune with exposition of law stated above. Hence, no interference in this Appeal is called for.

11. The claimants have filed cross-appeal seeking enhancement of compensation. Mr. Agrawal, learned Advocate appearing for appellants/claimants submits that learned Commissioner has erroneously restricted monthly wages of deceased to the tune of Rs.8000/- per month while computing compensation relying upon Notification of Central Government dated 31.05.2010. He submits that in view of amendment in Employees’ Compensation Act, such restriction has been removed and compensation has to be worked

out on the basis of actual salaried income of employee. At this stage reference can be given to observations of Supreme Court of India in case of ***K. Sivaraman and Ors. Vs. P Sathishkuar and another***³. which reads thus:

“26. Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs.4000 even where an employee was able to prove the payment of a monthly wage in excess of Rs.4,000. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of providing to all employees compensation for accidents which occur in the course of and arising out of employment. The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them. However, there is nothing to indicate that the Legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment.”

12. The aforesaid observations are coming in light of object of amendment and particularly, deletion of Explanation II from original Act and insertion of Clause (1-B). Considering aforesaid exposition of law, compensation will have to be worked out considering actual salary of deceased. As per service certificate placed at U-17 on record of Commissioner, last pay of deceased is shown to be Rs.26,000/-. As such, there cannot be dispute on aforesaid aspect. It is also not in dispute that relevant factor of

194.64 would be applicable as age of late Narendra was 36 years at the time of his death.

13. The compensation will have worked out by applying provisions of Section 4(1)(a) of the Employee's Compensation Act, which prescribes that where death results from the injury, an amount equal to 50% of monthly wages required to be multiplied by relevant factor. Taking this formula, in light of aforesaid findings as to wages and applicability of relevant factors, compensation payable would be Rs.13,000/- X 194.64 = Rs.25,30,320/- alongwith simple interest @ 12% per annum, as prescribed under Section 4-A (3) of Employees' Compensation Act. In result, following order:

ORDER

- a. First Appeal No.2759/2024 stands dismissed.
- b. First Appeal No.234/2024 is partly allowed.
- c. The appellants (original claimants) in First Appeal No.234/2024 are held entitled for total compensation of Rs.25,30,320/- (Rs.Twenty Five Lakhs Thirty Thousand Three Hundred Twenty only) alongwith simple interest @ 12% per annum from the date of accident till realization of amount.
- d. The respondents shall deposit aforesaid compensation amount alongwith interest with Commissioner for Employees Compensation, Nanded within a period of two months from today.

- e. The amount paid/deposited in pursuance to impugned order dated 06.11.2023 shall be appropriated.
- f. On deposit of aforesaid compensation amount, same be equally apportioned amongst claimant nos.1 to 5.
- g. The amount falling to the share of minor claimant nos.2 to 5 be invested in Fixed Deposits till they attained majority.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2025