



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.642 OF 2024**

The Managing Director,
Natural Sugar & Allied Industries Ltd.
Sai Nagar, Ranjani Ta. Kallamb,
District Osmanabad

..Appellant
(Orig. Respondent No.1.)

Versus

1. Manisha w/o Ramdhan Jadhav,
Age 50 yrs Occ. H.H.
R/o. Bhosa Ta. Latur Dist. Latur.

2. The Branch Manager,
The United India Insurance Co. Ltd.
Ambajogai Road, Latur Ta. Latur,
Dist. Latur.

..Respondents
(Res. No.1 is Orig. Applicant)

...

Mr. N. D. Kendre, Advocate for the Appellant.
Mr. P. S. Chavan, Advocate for Respondent No.1.
Mr. V. R. Mundada, Advocate for the Respondent No.2.

...

**WITH
CROSS OBJECTIONS NO.59 OF 2024
IN
FIRST APPEAL ST. NO.23325 OF 2023**

Manisha w/o Ramdhan Jadhav,
Age 50 yrs Occ. Household
R/o. Bhosa Tq. & Dist. Latur.

..Objection Petitioner
(Orig. Claimant)

Versus

1. The Managing Director,
Natural Sugar & Allied Industries Ltd.
Sai Nagar, Ranjani Ta. Kallamb,
District Osmanabad

..Respondent
(Orig. Appellant)

2. Branch Manager,
United India Insurance Company Ltd.
Ambajogai Road, Latur

..Respondent
(Orig. Respondent No.2)

...
Mr. P. S. Chavan, Advocate for Objection Petitioner.
Mr. N. D. Kendre, Advocate for Respondent No.1.
Mr. V. R. Mundada, Advocate for Respondent No.2.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATE : 03rd MARCH, 2025.

JUDGMENT:-

1. The appellant impugns judgment and order dated 08.05.2023 passed by Commissioner for Employees Compensation and Judge Labour Court at Latur in Application (W.C.A.) No.111/2017. The respondent no.1 has also filed Cross Objection assailing findings of Commissioner recorded in impugned judgment. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. Brief facts of case are as under:

The respondent no.1/original claimant instituted proceeding before Commissioner for Employees Compensation and Judge Labour Court at Latur contending that her husband Ramdhan Jadhav was retired soldier. He was appointed as watchman at Natural Sugar and Allied Industries Ltd, Sai Nagar, Ranjani, Tq. Kalamb, Dist. Osmanabad. He was getting monthly salary of Rs.11,351/-. On 10.05.2016, he was assigned night duty. On 10.05.2016, when he was proceeding towards Sugar Factor on motorcycle bearing Registration No.MH-24-L-0805, another motorcycle bearing Registration No.MH-29-AP-9511 gave forceful

dash to motorcycle of deceased. Due to such accident, he suffered fatal injuries and took his last breath on 17.05.2016. The accident was reported to police station. Eventually, offences was registered. According to the applicant, the deceased died during the course of or arising out of employment. The respondent is under obligation to pay compensation.

3. The respondent no.1-Natural Sugar and Allied Industries Ltd. filed written statement contending that on 10.05.2016, Ramdhan was absent from duty. There is no causal connection between his accidental death and employment. In alternate, they contend that they had obtained Employees Compensation Cover from respondent no.2-Insurance Company, who accepted liability to pay compensation.

4. The respondent no.2-Insurance Company denied all averments in claim application and submitted that they have no liability.

5. The learned Commissioner framed issues, recorded evidence of the parties and finally concluded that respondent no.1 is liable to pay compensation amount of Rs.6,25,880/- to claimant alongwith with interest @ 12% per annum.

6. Aggrieved employer filed present Appeal assailing judgment and award passed by the Commissioner. The applicant has filed

Cross Objection on the ground that Commissioner failed to award penalty. Secondly, compensation is not assessed as per actual salary. The cap of earning is wrongly imposed.

7. By order dated 19.01.2024 notices were issued to respondents indicating that First Appeal would be heard finally at the stage of admission and record and proceeding was also called for. Accordingly, heard finally at admission stage by consent of parties on following substantial questions of law:

- (A) Whether Late Ramdhan died during course of and arising out of employment with respondent-Sugar Factory, particularly when accident took place before commencement of his duty hours, outside place of employment between his motorcycle and third party vehicle?
- (B) Whether insurer could have been made liable to pay compensation based on Employees Compensation Policy obtained by appellant?
- (C) Whether compensation could have been assessed relying upon actual monthly wages of deceased ignoring Notification issued under Section 4(1)(1-B) by Central Government?

(D) Whether employer could have been made liable for penalty under Section 4-A(2) for making default in deposit of compensation amount?

8. Mr. Kendre, learned Advocate appearing for the appellant submits that accident took place before time of duty hours of deceased. It was a motor vehicular accident outside premises of employer. There is no causal connection between employment and death of the deceased. In support of his contentions he relies upon judgment of this Court in case of ***Meenakshi Gas Agencies, Warora Vs. Ramaji Kusum Yerme and Ors.***¹. He would further submit that insurer has accepted risk of employees under workmen compensation policy, but Commissioner wrongly exonerated him.

9. Per contra, Mr. Chavan, learned Advocate appearing for respondent no.1 submits that accident took place opposite to factory gate while deceased was on his way towards factory for attending duty. Therefore, by applying theory of notional extension, his accidental death must be treated as arising out of and during course of employment. In support of his contentions he relies upon judgments of the Supreme Court of India in cases of ***General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes***² and ***Poonam Devi and Ors. Vs. Oriental Insurance Co. Ltd.***³.

¹ AIROnline 2019 Bom 2910.

² AIR 1964 SC 193.

³ AIR 2020 SC 1305.

10. Having considered submissions advanced by learned advocates appearing for respective parties, first question that arises for consideration is as to whether subject accident occurred during course of and arising out of the employment. It is not in dispute that deceased was employed as watchman at the Natural Sugar and Allied Industries Limited, Sainagar. He was posted at Unit No.2 situated at Gunj, Tq. Pusad, District-Yavatmal. On 10.05.2016, while he was proceeding on his motorcycle to attend duty, another motorcycle gave forceful dash to his motorcycle. Eventually, he suffered fatal injuries. The place of accident is in front of factory gate.

11. FIR clearly shows that deceased was moving towards Factory on his motorcycle at the time of accident. The spot panchnama shows spot of accident on road in front of factory. In this background, although accident does not occur while deceased was actually on duty or during his duty hours, question as to when employment began would depend upon the facts of each case. In case of ***General Manager, B.E.S.T. Undertaking Bombay Vs. Mrs. Agnes***⁴ in reference to law laid down in case of ***Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja***⁵, wherein doctrine of “Notional Extension” of employer’s premises in the context of an accident to an employee has been elaborated thus : -

⁴ AIR 1964 SC 193.

⁵ AIR 1985 SC 881.

“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.”

12. In light of the aforesaid observations, Section 3(1) of the Employees' Compensation Act has been interpreted to hold that employment does not necessarily end when “down tool” signal is given or when workman leaves actual workshop where he is working. There is notional extension at both entry and exit by time and space. The scope of such extension must necessarily depend on circumstances of a given case.

13. Recently, in case of ***Poonam Devi and ors. Vs. Oriental Insurance Company Ltd.***⁶, again rule of Notional Extension has been reiterated and it is observed that employees compensation is a piece of socially beneficial legislation. The provisions will, therefore, have to be interpreted in a manner to advance a purpose of legislation, rather than to stultify it.

6 2020 Supreme Court 1305.

14. Similarly, in case of ***Manu Sarkar and ors. Vs. Mabish Miah and ors.***⁷, Supreme Court has further observed that there is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depending on the circumstances of a given case. As employment may end or may begin not only when employee begins to work or leaves his tools, but also when he used the means of access and, egress to and from the place of employment.

15. Yet in another judgment in case of ***Daya Kishan Joshi and Anr. Vs. Dyemech Systems Pvt. Ltd.***⁸, employee working for sales and installation of products while returning from field work met with an accident, it is held that the injury caused to him was during currency of the employment and arising out of employment.

16. The aforesaid exposition of law squarely covers present case. Hence, there is no room to interfere in findings recorded by Commissioner that accident and consequential death of deceased was during the course of and arising out of the employment, so also there was causal connection between death and his employment.

17. Now, turning to the second submission advanced on behalf of the appellant that risk of employees was covered under valid insurance policy issued by Respondent no.2-Insurance Company

⁷ (2014) 14 SCC 21.

⁸ (2018) 11 SCC 642

and, therefore, it could have been shouldered on them. Perusal of the insurance policy shows that it was issued to M/s. Natural Sugar and Allied Industries Limited, Sainagar, Ranjani, Kallamb, District Osmanabad. The clause regarding location of risk stipulates as Natural Sugar and Allied Industries Limited Sainagar, Ranjani, Tq. Kallamb. The clause regarding details of employees cover depicts that skilled, unskilled and administrative employees working under Natural Sugar and Allied Industries, various Divisions at Ranjani are covered. The place of employment is shown as Natural Sugar and Allied Industries at Ranjani.

18. The cross-examination of witness Ashok Dama examined on behalf of the appellant/employer shows that deceased was employed at Unit No.2 at village Gunj, Savna, Tq. Mahagaon, District Yavatmal. The insurance policy on record covers the risk of employees at Unit No.1 in Village Ranjani, District Osmanabad. Therefore, even if it is accepted that Unit No.1 and Unit No.2 are sister concerns of the same group of industries, the insurance policy obtained for one unit would not extend its coverage to employees appointed at another unit, particularly when the policy explicitly restricts its coverage to a specific unit. Therefore, second contention as raised by the appellant is not acceptable.

19. Now, turning to cross-objection filed by original claimants seeking enhancement of compensation. Mr. Chavan, learned

advocate submits that salary certificate of deceased shows that his gross salary was Rs.11,351/- for April 2016. However, learned Commissioner erroneously worked out compensation taking his salary @ Rs.8,000/- p.m. applying ceiling under the Act of 1923. Mr. Chavan submits that ceiling of monthly wages has been removed by amendment of 2009. The Explanation (II) to Section 4 has been replaced by clause (1-B), which states that Central Government may, by notification in Official Gazette specify for purpose of sub-section (1) such monthly wages in relation to an employees as it may consider necessary. According to him, Commissioner ought to have considered actual monthly salary of deceased for the purpose of determining compensation. Mr. Chavan further submits that the learned Commissioner could have imposed a penalty at the rate of 50% of the compensation amount. Mr. Chavan relies upon judgment of Supreme Court in case of ***K. Sivaraman and Ors. Vs. P Sathishkuar and another***⁹.

20. The provisions of Employees' Compensation Act prior to amendment of 2009 shows that Explanation (II) to Section 4 was in the nature of cap of Rs.4,000/-, even for workman having wages above Rs.4,000/-. However, by Act of 45 of 2009, which came into force on 18.1.2010 Explanation (II) has been deleted and clause (1-B) has been added, which reads thus :-

“(1-B) Central Government may, by notification in the
9 AIR ONLINE 2020 SC 221.

official Gazette, specify, for the purpose of sub-section (I), such monthly wages in relation to an employee as it may consider necessary.

21. In light of the aforesaid amendment, Supreme Court of India in case of **K. Sivraman** (supra) observed in paragraph no.26, 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.”

22. It is, therefore, evident that when monthly wages of employee are proved on the basis of acceptable evidence, his salary @ Rs.11,351/- as per actual will have to be considered for the purpose of determining compensation. However, in case where employee is not in a position to prove his salary, notification issued by the Central Government as to monthly wages, under clause (1-B) of Section 4 would be relevant. Therefore, cap of Rs.8,000/- applied by the Commissioner while determining compensation cannot be countenanced. The compensation amount will have to be re-

determined by taking actual monthly wages of deceased at the time of his death.

23. Mr. Chavan further submits that employer committed default in making deposit within statutory period as contemplated under Section 4-A of the Act. Per contra, Mr. Kendre, learned Advocate submits that entire medical expenses have been borne by employer. There was no intention to deny the liability. There was bonafide dispute as regards to liability. Therefore, there is no case for imposing penalty in addition to interest. Section 4-A of the Employees' Compensation Act provides for penalty for default in depositing compensation under Section 4 as soon as it falls due. Sub-section (2) of Section 4-A mandates that where employer does not accept liability for compensation to the extent of claim, he shall be bound to make provisional payment based on extent of liability, which he accepts. In case of default in paying the compensation due within one month from the date it fell due in addition to the amount of compensation, penalty and interest can be directed to be paid by the employer.

24. In the present case, it is admitted position that employer has borne medical expenses for hospitalization of deceased, but compensation amount was not deposited. Only justification for non-payment is given that medical expenses were already incurred by employer.

25. It is true that, employer has incurred medical expenses, possibility that they were not sure about their liability and under belief that they had valid insurance policy covering risk of employees, they protracted to deposit amount. However, law mandates that in case of dispute as to liability, they could have deposited admitted amount of compensation or atleast could have raised claim to the insurer. Evidence on record do not state any such steps taken by employer. Apparently, they are defaulters in terms of Section 4(A) of the Employees' Compensation Act.

26. Looking to the totality of circumstances, this Court finds that employer is liable to pay penalty @ 20% of compensation amount in addition to the interest, as directed by Commissioner. In the result, following order is passed.

ORDER

- i. First Appeal No.642 of 2024 is **dismissed**.
- ii. Cross Objection No.59 of 2024 filed by the respondent-claimant is **partly allowed**.
- iii. The respondent no.1 shall pay compensation amount of Rs.8,88,045/- (Rs. Eight Lakh Eighty Eight Thousand and Forty Five only) to applicant alongwith simple interest @ 12% p.a. from the date of accident till actual realization of compensation amount.

- iv. In addition to the compensation amount, respondent no.1 shall pay 20% penalty i.e. Rs.1,77,609/- (Rs. One Lakh Seventy Seven Thousand Six Hundred and Nine) over compensation amount to applicant.
- v. The respondent no.1 shall pay Rs.5,000/- (Rs. Five Thousand) towards funeral expenses to applicant.
- vi. First Appeal and Cross Objection stand disposed off. Pending civil application, if any, also stands disposed off.

(S. G. CHAPALGAONKAR)
JUDGE