



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 160 OF 2025

National Insurance Co. Ltd.,
Jabalpur (MP)
Through : The Branch Divisional Manager,
National Insurance Co. Ltd.,
Shubhri Towers, Datta Chowk, Solapur
Insurer of Truck No. MP-20-HB-5499
Policy No. 320700311810003227
Validity from 27/07/2018 to 26/07/2019

Through its Authorised Signatory, -
Asst. Manager (Legal Hub),
Divisional Office, Aurangabad

.....APPELLANT

Original respondent no.2
(Insurer)

VERSUS

1. Rubinaanjum Samsuddin Ansari,
Age : 31 years, Occu.:Household,
2. Mohd. Siyanali Samsuddin Ansari,
Age : 9 Years, Occu.: Education (Minor),
Under Guardianship of Respondent No.1
3. Alishabaara Samsuddin Ansari,
Age : 11 Years, Occu.: Education (Minor)
Under Guardianship of Respondent No. 1
4. Islamoddin Mohiyoddin Ansari,
Age : 54 Years, Occu.: Labour,
5. Asma Begum Islamoddin Ansari,
Age : 54 Years, Occu.: Household,
A11 R/o : H. No. 983, AzadNagar,
Quadri Compound,
Jabalpur (MP)

.....RESPONDENTS

Original Claimant nos.1 to 5
(Claimants)

6. Shaikh Gaffar Shaikh Wajeer,
Owner of Truck No. MP-20-HB-5499,
(Died ... Through Legal Heirs),
(Truck owner/employer)
- 6-a. Nafisa Sk. Gafar Shaikh,
Age : 59 years, Occu.: Household,
R/o : H. No. 573, Nasimabad,
Char Khamba, Ashafakulla Ward,
Jabalpur (MP)
- 6-b. Shaikh Harun Shaikh Gafar,
Age : 34 Hears, Occu.: Trader,
R/o : As above.
- 6-c Shaikh Akil Shaikh Gafar,
Age : 31 Years, Occu.: Trader,
R/o : As above.
- 6-d. Shaikh Arif Shaikh Gafar,
Age : 30 Years, Occu.: Trader,
R/o : As above.
- 6-e Shaikh Aasef Shaikh Gafar,
Age :28 Years, Occu.: Trader,
R/o : As above
- 6-f Amrin Firdos Shaikh Gafar,
Age : 27 Years, Occu.: Household,
R/o : As above

.....RESPONDENTS

Original Respondent nos.1 to 1f
(L.Rs. Of truck owner)

**WITH
CROSS OBJECTION NO.114 OF 2025**

1. Rubinaanjum Samsuddin Ansari,
Age: 34 years, Occu.: Household,

2. Mohd. Siyanali Samsuddin Ansari,
Age: 13 years, Occ.: Education (Minor),
Under Guardianship of Respondent No.1
3. Alishabaara Samsuddin Ansari,
Age: 15 years, Occu: Education (Minor)
Under Guardianship of Respondent no.1
4. Islamoddin Mohiyoddin Ansari,
Age: 56 years, Occu: Labour,
5. Asma Begum Islamoddin Ansari,
Age: 58 years, Occu: Household,
All R/o : H. No. 983, Azad nagar,
Quadri Compound,
Jabalpur (MP)

.....OBJECTION PETITIONER
Original Claimant Nos.1 to 5
(Claimants)

VERSUS

1. National Insurance Co. Ltd.,
Jabalpur (MP)
Through : The Branch Divisional Manager,
National Insurance Co. Ltd.,
Shubhri Towers, Datta Chowk, Solapur
Insurer of Truck No. MP-20-HB-5499
Policy No. 320700311810003227
Validity from 27/07/2018 to 26/07/2019
Through its Authorised Signatory, -
Asst. Manager (Legal Hub),
Divisional Office, Aurangabad

.....RESPONDENT
Original Respondent No.2
(Insurer)

2. Shaikh Gaffar Shaikh Wajeer,
Owner of Truck No. MP-20-HB-5499,
(Died ... Through Legal Heirs),
(Truck owner/employer)

- 2-a. Nafisa Sk. Gafar Shaikh,
Age : 59 years, Occu.: Household,
R/o : H. No. 573, Nasimabad,
Char Khamba, Ashafakulla Ward,
Jabalpur (MP)
- 2-b. Shaikh Harun Shaikh Gafar,
Age : 34 Years, Occu.: Trader,
R/o : As above.
- 2-c. Shaikh Akil Shaikh Gafar,
Age : 31 Years, Occu.: Trader,
R/o : As above.
- 2-d. Shaikh Arif Shaikh Gafar,
Age : 30 Years, Occu.: Trader,
R/o : As above.
- 2-e. Shaikh Aasef Shaikh Gafar,
Age : 28 Years, Occu.: Trader,
R/o : As above
- 2-f. Amrin Firdos Shaikh Gafar,
Age : 27 Years, Occu.: Household,
R/o : As above

.....RESPONDENTS

Original Respondent nos.1 to 1f
(L.Rs. Of truck owner)

Mr. Vinodkumar R. Mundada, Advocate for Appellant
(Insurer)
Ms.Tanishka Chavan h/f Mr. P.S. Chavan, Advocate for
Respondent nos.1 to 5 (Claimants)
None for R.No.6-a to 6-f (L.Rs. of Truck Owner/employer)

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : 06TH OCTOBER, 2025
PRONOUNCED ON : 07TH OCTOBER, 2025

JUDGMENT :-**1. Subject-Matter :**

Feeling aggrieved by the judgment and award dated 06.05.2024, delivered by the learned Commissioner, Employees Compensation @ learned Civil Judge, Senior Division, Osmanabad in W.C.F.A. No.37 of 2019, the original respondent no.2/Insurance Company has preferred this First Appeal.

On the other hand, feeling dissatisfied with the quantum granted by the judgment and award (supra), the claimants have preferred Cross Objection in the First Appeal. Hence, both the matters are heard together and are being disposed of vide present judgment and order by consent of Ld. Counsel for the parties

For the sake of convenience and to avoid confusion in the nomenclature, the parties are referred to by their 'factual status'.

2. Core issues:

The core issue in these cases are,

- (i) Whether the Ld. Commissioner ought to have confined income of the deceased to the Fixed Monthly Wages as notified by the Central Govt. in 2010 i.e. Rs. 8,000/- p.m.?

If the answer to above is “No”, what formula or mechanism can be applied if the deceased's income could not be proved by any documentary evidence or otherwise?

(ii) Whether the provision under Section 4A(3)(b) of the Workmen’s Compensation Act, 1923 mandates a fixed penalty @ “50% of the amount of compensation” or whether the Ld. Commissioner can use discretion to fix the quantum of penalty ?

3. **Facts In Brief:**

(i) One Samsuddin Islamoddin Ansari happened to be driver of truck bearing registration no.MP-20-HB-5499. It was contended in the claim petition that while driving the said truck on Takli to Nizamoddin road in the Shivar Takli Tq. Paranda, Dist. Osmanabad, at about 11:00 a.m., of 10.03.2019, the accident took place.

It was contended that while the said Samsuddin Islamoddin Ansari climbed up on truck’s top together with Cleaner namely Brijbihari Rajendra Lodi to tighten the ropes, Samsuddin slipped from the top and fell down on the ground. Unfortunately at the same time due to some technical fault the truck turned neutral and rolled back.

It is further contended that Samsuddin was pressed under the truck's wheels, resulting in fatal injuries.

(ii) The claimants i.e. present respondent nos.1 to 5 lodged claim under Section 4 read with Section 10 of the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act of 1923) against the appellant and the respondent no.6 for an amount of Rs.15,00,000/- to be recovered jointly and severally from them. During pendency of the claim, the truck owner namely Shaikh Gaffar died and the Respondent Nos. 6-a to 6-f (as per First appeal title clause) came to be impleaded as his legal representatives.

(iii) Considering the case put up by the claimants, the defence raised by the original respondents and the evidence that was on record the Ld. Commissioner for Employees Compensation vide impugned judgment and award adjudicated the claim. Ld. Commissioner directed the appellant and truck owner to pay compensation of Rs.12,23,100/- to the claimants with interest @12% per annum with effect from 10.03.2019. The truck owner was also saddled with a penalty amounting to Rs.2,00,000/- under Section 4A(3)(b) of the Act of 1923 with interest @ 12 % per annum with effect from 06.06.2024.

Thus, the parties are before this court with their respective cases.

4. Upon hearing both the parties, this Court vide its order dated 03.04.2025, framed following substantial questions of law and posted the matter for final hearing:

(I) Whether learned Commissioner is justified in holding that the accident in question occurred due to involvement of insured vehicle with appellant, when accident is reported after seven days and FIR has been belatedly registered?

(II) Whether learned Commissioner is justified in assuming salary of Rs.12,000/- per month, when claim as regards to income of deceased @ Rs.15,000/- on the basis of salary certificate has been discarded by Commissioner?

(III) Whether learned Commissioner could have restricted assessment of compensation based on amount prescribed by Central Government under Notification as to monthly wages?

To my mind, I felt framing of an additional substantial question of law as follows that generated in view of the cases put up by the respective parties:

(IV) Whether the learned Commissioner is justified in imposing a penalty under Section 4A(3)(b) below 50 percent of the compensation amount?

As such in the light of the framed substantial questions of law, the parties have advanced their arguments and both the matters are adjudicated as follows:

5. **Appellant's arguments:**

(i) Mr. V. R. Mundada, learned Advocate for the appellant urged that the post mortem report is not in conformity with the injuries as usually sustained by the deceased. That the panchnama do not support the story raised by the claimants. Mr. Mundada thus doubts on the alleged accident and involvement of the insured vehicle. He would further submit that the delay in lodging the First Information Report ('FIR' for the sake of convenience) also creates doubt on the case raised by the claimants. He also submitted that there is nothing on record to indicate how the insured truck could automatically rolled back. Mr. Mundada also criticizes the contents of FIR, the spot panchnama and the post mortem report.

Mr. Mundada placed reliance on a case decided by the Hon'ble Supreme Court in the matter of *Gottumukkala and Others Vs. National Ins.Co.Ltd, reported in 2007 AIR SCW 5296*.

Referring to the said judgment, Mr. Mundada would submit that the deceased Samsuddin was son of the truck driver, and hence in view of the cited judgment the degree of evidence to prove the case of claimant ought to have been even higher.

(ii) Mr. V. R. Mundada would also rely upon another case decided by the Hon'ble Supreme Court in the case of *Vidyadhar Vs. Manikrao*, reported in *AIR 1999 SC 1441*. By referring to this citation, He would submit that failure on the part of the truck owner to enter into the witness box would lead to draw adverse inference. Mr. Mundada would submit that the cases cited are specifically in the light of fact that the appellant strongly believed and contends that the deceased was the son of the truck driver. With such arguments, the Appellant tried to convince that the involvement of the insured vehicle in the accident was false and that the delay in lodging the FIR clearly suggests it.

(iii) Mr. Mundada would further submit that Ld. Commissioner ought to have confined income of the deceased @ Rs. 8,000/- p.m. in view of the Notification issued by the Central Govt. in 2010.

That, an exaggerated award is resulted as the Ld. Commissioner held Samsuddin's income @ Rs. 12,000/- p.m. He therefore puts alternate prayer to reduce the compensation.

6. **Arguments of the claimants :**

(i) Ms. Tanishka Chavan Ld. Counsel representing the claimants supports the findings rendered by the Ld. Commissioner on the point of upholding involvement of the insured vehicle in the accident.

She would submit that the contents of FIR themselves are self explanatory. Ms. Chavan would submit that taking into consideration the events subsequent to the accident i.e. the post mortem of the deceased, carrying his body to Jabalpur in Madhya Pradesh etc. are the most natural acts of the informant Cleaner BrijBihari Lodi. It is further submitted that neither the Appellant nor the Commissioner were medical experts to explain how the injuries sustained by the deceased do not arise out of an accident where a vehicle passes over the body of a person. Conclusively Ms. Chavan would submit that the Appellant in order to address a Substantial question of law, may not be permitted to argue disputed questions of facts.

(ii) Ms. Chavan would further submit that if at all the Insurer wished to counter the accident papers, it ought to have led evidence in rebuttal. Thus, Ms. Chavan supports the findings of the Ld. Tribunal on involvement of the insured vehicle in the accident and justifies the delay caused in lodging the First Information Report.

(iii) Ms. Chavan extends her objection that Ld. Commissioner ought to have held income of deceased Samsuddin @ Rs. 15,000/- p.m. and Bhatta @ Rs. 300/- per day in order to fix just compensation. She would also urge that the penalty could not have been below 50% of the compensation amount.

7. Discussion on 1st substantial question of law:

(i) It is a matter of fact that the accident occurred on 10.03.2019. The copy of the FIR shows that it is registered on 23.03.2019. The complaint reveals that the accidental death was reported on 19.03.2019 by the eye witness Brijbihari Lodi.

(ii) It further reveals that on the basis of a statement given by the cleaner namely Brijbihari Lodi, the FIR was lodged. It is pertinent to note that both the deceased and also the cleaner Brijbihari are residents of District Jabalpur and Katni respectively of Madhya Pradesh. The complaint lodged by Mr. Suryakant Dattatray Anande, Police Head Constable reveals that the Cleaner and some people passing nearby removed Samsuddin from the wheels of truck and carried him to one hospital at Barshi.

(iii) That, Samsuddin was declared dead in the hospital and a post mortem was carried out at Barshi. That, the Cleaner Brijbihari telephoned to the father of the deceased and also telephoned to the truck owner informing them about the death of Samsuddin.

(iv) It further reveals that the Cleaner made a further statement that he was directed to carry the dead body to Jabalpur which he accordingly did, and the last rituals were performed on the next day there. The record reveals that the learned Tribunal has taken into consideration the FIR (Exhibit-4/1), Spot Panchnama (Exhibit-4/2), Inquest Panchnama (Exhibit 4/3) and Post Mortem report (Exhibit-4/4).

(v) In the light of above documents, their contents and particularly in the light of absence of any evidence in rebuttal from the appellant/insurer to demonstrate how the short delay in lodging the FIR falsifies the involvement of insured vehicle in the accident, the first substantial question of law can be answered as follows:

8. **Findings on the 1st substantial question of law:**

(i) The delay of 13 days caused in registration of FIR is not unjustifiable, unless something contrary is cogently proved showing that the death is caused by some other reason, and that the delay was to accommodate a cooked story.

Apparently It is recorded in the complaint itself that information of the accident and death of Samsuddin was received on 19-03-2019 itself. The statement of eye witness cleaner Brijbihari sufficiently demonstrates the sequence of events and his natural conduct and acts that would justify the little delay caused in lodging the First Information Report.

(ii) It is undisputed that Samsuddin was a driver engaged by the truck owner to drive the insured truck so also the said Samsuddin suffered accidental death while he was discharging his duty.

The informant Police head constable has clarified that upon receipt of information of the accident, he conducted enquiry and visited the spot. Under these circumstances and particularly when the police record/accident record is in conformity with the case raised by the claimants, the Appellant was under obligation to adduce evidence in rebuttal to falsify involvement of the insured truck in the accident, which appellant failed to do.

(iii) Mr. V. R. Mundada, learned Advocate has placed reliance on two cases rendered by the Hon'ble Supreme Court (supra). Mr. Mundada would urge that the cited cases would show how a delay could be fatal to a case raised by the concerned party. With due respect to the verdict passed in the cited cases, this court finds that facts in the present case are altogether different from the cited cases. As a matter of fact there is nothing to indicate that the deceased was the son of the truck owner. The name of the deceased is Samsuddin Islamuddin Ansari while the name of the truck owner is Shaikh Gaffar Shaikh Wajeer.

(iv) The original motor driving licence of the deceased Samsuddin issued by Jabalpur R.T.O. is on record at Exhibit-20.

The said licence shows the name of the deceased as Samsuddin S/o Islamuddin. Exhibit 4/5 is the copy of Pan Card as well as copy of Registration Certificate issued by Jabalpur R.T.O. in respect of truck bearing registration no.MP-20-HB-5499. Undisputedly, these two documents pertain to Shaikh Gaffar i.e. truck owner. By no stretch of imagination it could be inferred that the deceased was the son of the truck owner Shaikh Gaffar during the course of argument.

(v) Mr. V. R. Mundada, learned Advocate fairly submitted that although the objection had been raised, but he was not sure as to whether the deceased was really the son of the truck owner. It seems that due to the construction of statements of cleaner Brijbihari recorded by the Police Head Constable Suryakant Anande in the First Information Report, it was probably felt that the truck owner was father of the deceased driver Samsuddin. For the sake of convenience, the said portion is reproduced here as follows:

तेथे तो मयत झाल्याचे डॉक्टरांनी सांगितले. त्यानंतर सदर मयत शमशोद्दीन वर ग्रामीण रुग्णालय बाशीं येथे पी.एम. केले व ड्रायव्हरचे प्रेत माझे ताब्यात दिले.त्यावेळी मी ड्रायव्हर यांचे वडील व मालक शेख गफार शेख वजीर यांना त्यांचे फोनवर फोन करून ड्रायव्हर शमशोद्दीन मयत झाल्याचे कळवले.

(vi) This Court appreciates the exercise and attempt made by Mr. V. R. Mundada, learned Advocate representing the appellant to make a point of delayed FIR and involvement of the insured vehicle in the accident. However, the reliance placed by Mr. Mundada on the cited judgment is misplaced for the reason that factually the deceased was not the son of the truck driver. The parameters to evaluate the evidence in cases, which are of a summary nature and being a piece of social beneficial legislation, are altogether different from evaluation of evidence done in typical Civil and Criminal cases.

(vii) Mere delay in lodging FIR of the accident doesn't itself indicate that the entire story is false. Considering that this is a social beneficial legislation requiring its disposal as a summary proceeding, I uphold the findings rendered by the learned Commissioner that the accident in question occurred due to involvement of insured vehicle even if the FIR of the accident is lodged a little belatedly.

(viii) Moreso, the appellant has dealt with this objection in the appeal as a question of fact but not a substantial question of law. Hence, I answer the first substantial questions of law in affirmative.

9. Discussion on the 2nd and 3rd substantial question of law:

Both these substantial questions of law are inter-linked and hence I propose to discuss both together. It is not in dispute that the amendment of the 2009 in the Employees' Compensation Act removed the ceiling cap of monthly wages. By the said amendment of 2009 explanation (II) to Section 4 of Employees Compensation Act has been deleted and Clause (1-B) has been added which reads as thus:-

“ Central Govt. May by notification in the official gazette specify, for the purpose of sub section (I) such monthly wages in relation to an employee as it may consider necessary”.

By Notification in the official gazette specified for the purpose of Sub Section (I), the Central Government vide its notification dated 31.05.2010 fixed the monthly wages @ Rs.8,000/- per month.

The Central Government vide subsequent notification dated 03.01.2020 revised the monthly wages and fixed it @ Rs.15,000/- with effect from the date of publication of the gazette Notification i.e. 03.01.2020.

In the light of above, it is to be seen as to (i) whether the Ld. Commissioner ought to have computed and restricted the award holding Samsuddin's salary @ Rs. 8,000/- p.m. as per the prevailing notification fo 2010 issued by the Central Govt.? or (ii) Whether the Ld. Commissioner is justified in holding such income of the deceased @ Rs. 12,000/- p.m.? or (iii) Whether the income of deceased Samsuddin ought to be held even on higher side overriding the notification of 2010?

(i) Mr. V. R. Mundada, learned Advocate for the appellant strenuously submits that on the date of accident, the Notification of the Central Government dated 31.05.2010 was in force. He would submit that therefore, the learned Commissioner ought to have restricted monthly wages of the deceased at Rs.8,000/- only.

(ii) Mr. Mundada would further submit that by holding the income @ Rs. 12,000/- p.m., Ld. Commissioner has exceeded its jurisdiction. He would vehemently submit that it was never in the consideration of the Hon. Supreme Court as to whether Central Govt. was empowered to modify wages or not.

(iii) On the contrary, Ms. Tanishka Chavan, learned Advocate for the claimants submits that it is settled law that the monthly wages fixed by the Central Government Notification is not the outer limit or ceiling cap. That, the learned Commissioner is bound to consider the actual salary of the deceased which comes on record. Ms. Chavan, learned Advocate therefore relies upon judgment and order rendered by this Court in the matter of ***Managing Director, Natural Sugar And Allied Industries Ltd. Vs. Manisha w/o Ramdhan Jadhav and Another***, reported in ***2025 (4) Mh.L.J. 37***. The relevant paragraph no.22 of the judgment (supra) is reproduced as follows:

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.

(iv) The judgment and order in ***Manisha Jadhav's*** case (supra) is based upon the view taken by the Hon'ble Supreme Court in the case of ***K. Sivaraman and others Vs. P. Sathishkumar and another.***

(v) Thus, it is no more in *res-integra* that the monthly wages published by the Central Government is not to be treated as a ceiling cap. Only if there is no salary proof or income proof of a victim/deceased, such fixed monthly wages could be used to determine the compensation in such cases.

(vi) Mr. V. R. Mundada however made an indescribable submission that "it was never in the consideration of the Hon. Supreme Court as to whether Central Govt. was empowered to modify wages or not".

(vii) This court finds it difficult to comprehend with such submission made by the Appellant. The law laid down by the Hon'ble Supreme Court in the said case is very clear and it holds the field. This Court while agreeing with the view taken by this Court in ***Manish Jadhav's*** case (supra) has observed that the view is as per the law settled by the Hon'ble Supreme Court in ***K. Sivaraman and Others*** (supra) and the same is being followed in this case too.

(viii) In view of above and as I too is of the same view that is expressed by this court in '**Manisha Jadhav**' case (supra) following the law laid down by the Hon. Supreme Court in the case of K. Sivaraman (supra), the contention of Mr.Mundada, learned Advocate that the learned Commissioner ought to have restricted monthly wages of the deceased at Rs.8,000/- per month in view of Notification of 2010, is unacceptable and is rejected.

(ix) Ms. Chavan, learned Advocate for the claimant strenuously argues that in the light of the view expressed by this Court in the case of **Manisha Jadhav** (supra), the learned Commissioner ought to have fixed the compensation holding monthly salary of the deceased @ Rs.15,000/- per month and that Bhatta @ Rs.300/- per day also ought to have been added into that.

She would further submit that once the learned Commissioner declines to accept the notified monthly wages of Rs.8,000/-, the learned Commissioner ought to have agreed that the deceased was earning Rs.15,000/- per month + Rs.300/- per day Bhatta.

(x) I am in full agreement with the view taken by this Court in the case of ***Manisha Jadhav*** (supra) that where the income of the victim/deceased is proved, the notified monthly wages must not be taken into consideration if the actual salary is higher than that. Meaning thereby, actual salary would prevail over the notified fixed monthly wages.

(xi) Hence, now it becomes necessary as to see whether the evidence tendered by the claimants is trustworthy and credible enough to hold that the deceased was being paid Rs.15,000/- salary per month + Rs.300/- per day towards Bhatta.

(xii) With able assistance of both the Ld. Counsels, I have gone through the record and proceeding in the case. A document titled as salary certificate is found at Exhibit-4/11. The salary certificate is reproduced as under:

SALARY CERTIFICATE

This is to certify that, Late Shamshoddin Islamoddin Ansari r/o Jabalpur (M.P.) was serving as a driver in my truck bearing No.MP-20/HB-5499 prior to two years. I am paying his monthly salary of Rs.15,000/- and daily Bhatta of Rs.300/-.

This Certificate is issued on the request of Smt. Rubinaanjum wd/o Samsuddin Ansari.

Hence this certificate.

Signature

Shaikh Gaffar (signed in Deonagari)

(xiii) The salary certificate is not proved by examining its scribe. In the Cross Objection of claimant no.1, she has deposed that she was unaware as to why the certificate was filed later but not with the claim petition. She also deposed that she does not know as to who has scribed that and what are its contents. She further deposed that the truck owner handed it over to her, but did not know at whose instance it was scribed.

(xiv) It seems that the learned Tribunal has not believed the said salary certificate (Exhibit-4/11). This court is well aware of the fact that every individual transport vehicle owner/employer may not maintain a proper salary book like an institution or any registered establishment. Hence in such cases the record of salary might not be maintained meticulously. But at least the record that such employer produces o, should appeal to the mind of the Court on genuinity of its contents. In the case in hand the said salary certificate remained to be proved by it's scribe. Evidence of claimant No.1 is of no use. Certainly the document Exh.4/11 doesn't inspire confidence in the mind of the court about its credibility.

I find that the learned Commissioner has not committed any error in discarding/ disbelieving the salary certificate (Exhibit 4/11).

Hence I hold that the evidence adduced by the claimants fell short to prove income of the deceased @ Rs. 15,000/- p.m. 'on the basis of the Salary Certificate'.

(xv) As such this turns out to be a case of a deceased person whose income proof is not on record or whose income proof is discarded, but who is in the state of earning, whose job is proved, and who died while on duty.

(xvi) Few things are most relevant in such cases, where compensation has to be fixed in the absence of any income proof and where the concerned person is capable of earning something.

Very advantageous reference can be made to certain observations marked by the Hon. Supreme Court in the case of *Chandra@Chanda@Chandraram & Anr. V/s Mukesh Kumar Yadav and ors. [CIVIL APPEAL NO. 6152 OF 2021]*. Their Lordships while deciding a case of a Truck Driver's death has observed that,

In absence of salary certificate the minimum wage notification can be a yard-stick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guess-work is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income.

(xvii) Thus while in a case there is no income proof of a person, 'something more' has to be added realistically into the prevailing fixed/notified monthly wages. The term 'something realistic more' depends upon, and refers to the surrounding circumstances and such relevant factors of which the Courts shall with 'cautious, judicious and contemplative' mind take cognizance.

(xviii) This being a matter of benevolent legislation, merely because claimants are unable to produce documentary evidence to show monthly income, same doesn't justify adoption of a lower tier of minimum wages while computing the income and the compensation (emphasis).

(xix) In the instant case, the deceased was undisputedly a Truck driver by profession. He was driving a heavy transport vehicle and was also holding a valid and effective Motor Driving License to that effect. It also stands proved that the deceased Samsuddin died while on duty. As such to fix the compensation, his income needs to be assessed as he being a heavy transport vehicle driver.

(xx) Truly as per the Gazette Notification of 2010, the Minimum Fixed Wages were Rs.8,000/- p.m. However the accident & death occurred in March 2019. Within a short span of 09 months thereafter, on 03-01-2020 the fixed monthly wages came to be revised by the Union of India thereby escalating it from Rs. 8,000/- p.m. to Rs.15,000/- p.m. As such the rates are revised by at least 90%.

(xxi) Samsuddin died while working as Heavy Transport vehicle driver just a few months before the subsequent Gazette Notification of 2020 was published. Meaning thereby when Samsuddin died, escalation in the monthly wages was not only in the pipeline, but was almost on the verge of its official publication.

May it be or not, in the interest of justice and keeping in mind the guidelines issued by the Hon. Supreme Court and spirit of the observations quoted from the case of “Chanda” (supra), I feel it appropriate to adopt a realistic view and hold the income of the deceased Samsuddin @ Rs. 15,000/- p.m. inclusive of any allowance or bhatta to fix the just and proper quantum.

(xxii) In view of this and considering the benevolent legislation, In my considered view “just and proper” compensation in the given peculiar facts could be fixed holding income of the deceased @ Rs. 15,000/- p.m. for reasons recorded herein. Pertinently, I have discarded claimants’ case of monthly income of the deceased @ Rs.15,000/-, however disbelieving ‘the nature and quality of the evidence’.

(xxiii) The further prayer of the claimants that the compensation should also include Bhatta @ Rs.300/- per day is covered already as I have held the monthly income of deceased Samsuddin @ Rs.15,000/- inclusive of everything.

10. **Findings on 2nd and 3rd substantial question of law:**

In the light of above, I record my findings as follows and answer the second and third substantial questions of law accordingly:

(i) The learned Commissioner rightly refused to restrict assessment of the compensation based on the amount prescribed by the Central Government under Notification of Fixed Monthly Wages @ Rs. 8,000/- as per notification of 2010.

However the learned Commissioner is also not justified in assuming the salary of the deceased @ Rs. 12,000/- p.m.

(ii) In the light of the guidelines recorded by the Hon. the Supreme Court in the case of “K Sivaraman” and “*Chanda*” (supra), as also adopting the pragmatic view that the Central Govt. hardly within 09 months after the accident notified the Fixed Monthly Wages @ Rs. 15,000/-, I hold monthly income of the deceased @ Rs.15,000/- inclusive of everything to meet the ends of justice.

11. **Discussion, findings and answer to the IVth substantial question of law:**

(i) It seems that the Truck Owner was represented in the Trial by an advocate. This court vide order dated 19-12-2024 issued notices to the respondents expressly indicating that the matter shall be heard at Admission stage for final disposal. The record shows that the notices are served on the legal representatives of the deceased truck owner, but none represented them in the appeal. Ms. Tanishka Chavan, learned Counsel insisted that in view of Section 4A(3)(b) of the Act of 1923, the ld. Commissioner ought to have imposed a penalty on the truck owner @50 % of the amount of compensation. She would further submit that the Commissioner could not have varied the fixed % of the penalty, and ought to have followed the mandate of the provision:

(ii) For the sake of convenience, Section 4-A (3)(b) of the Act is reproduced below:

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

(iii) In view of this, I am of the considered view that the wording in the provision 4A(3)(b) does not put a mandate on the learned Commissioner to fix the penalty @ 50% of the compensation as is urged by Ms. Chavan. The wording '**not exceeding** 50 % of such amount' itself shows that the learned Commissioner is left to use his judicious discretion to impose a quantum of penalty, and that penalty fixed @ 50% of the compensation amount is not a thumb rule.

(iv) In my view the intention of the legislature is clear from the wording 'not exceeding' whereby it is apparent that the penalty to be fixed @ 50 percent is not contemplated. The provision is cautiously legislated enabling the learned Commissioner to test the 'approach of the employer' vis a vis 'bonafides or willful lapses' on employer's part as the case may be.

Hence, considering the facts in totality I feel that there is no reason to change the quantum of penalty imposed by the learned Commissioner under Section 4A(3)(b) of the Act of 1923.

12. **Conclusion:**

(i) The appellant raised few questions of facts e.g. disputing existence of license of Samsuddin, cause of death etc. However the disputed questions of facts on which findings are already rendered by the learned Commissioner assessing the evidence, have attained finality.

(ii) Learned Advocate for the appellant has submitted a list of as many as at least 4 citations. However, no point is made out as to what the facts of the enlisted cases were, and how they are relevant in the present appeal. Hence, this Court is unable to consider such a list and deprecates the practice of merely supplying a list of citations.

So far as reliance placed by Mr. Mundada on the case of K.Sivaraman (supra) which is followed by the High Court in a number of cases is concerned, I have expressed with extreme respect that the said law is binding and the same is followed by this court .

(iii) As such all substantial questions of law are answered with my findings as follows:

Substantial Questions of Law	Findings & Answer
(I) Whether learned Commissioner is justified in holding that the accident in question occurred due to involvement of insured vehicle with appellant, when accident is reported after seven days and FIR has been belatedly registered?	Yes
(II) Whether learned Commissioner is justified in assuming salary of Rs.12,000/- per month, when claim as regards to income of deceased @ Rs.15,000/- on the basis of salary certificate has been discarded by Commissioner?	No. However the claimants deserve compensation holding the deceased's monthly income @ 15,000/- for the reasons recorded herein.
(III) Whether learned Commissioner could have restricted assessment of compensation based on amount prescribed by Central Government under Notification as to monthly wages?	No.
(IV) Whether the learned Commissioner is justified in imposing a penalty under Section 4A(3)(b) below 50 percent of the compensation amount?	Yes.
What order?	As per final order

For the reasons recorded herein, the impugned judgment and award is modified holding the monthly daily wages/ monthly of the deceased @ Rs. 15,000/-.

Thus the modified award is computed as follows:

Monthly daily wages-	Rs.15,000/-
50% of the salary-	Rs.7,500/-
Multiplied by factor 203.85-	<u>Rs.15,28,875/-</u>

13. Hence, I pass following order:

ORDER

First Appeal No.160 of 2025

First Appeal No.160 of 2025 is dismissed with no orders as to costs.

Applications, if any pending in appeal stand disposed of.

Cross Objection No.114 of 2025

- A. Cross Objection No.114 of 2025 stands allowed partly thereby fixing compensation Rs.15,28,875/- in the place of Rs.12,23,100/- in the clause 2 of operative order of the impugned judgment and award dated 06.05.2024 delivered by the learned Commissioner, Employees Compensation @ learned Civil Judge, Senior Division, Osmanabad in W.C.F.A. No.37 of 2019.
- B. The R.No.1 and the Respondent Nos. 2-a to 2-f are jointly and severally liable to deposit the enhanced compensation in the court of the Ld. Commissioner within a period of 08 weeks from today with interest @ 12% w.e.f.10-03-2019.

- C. Upon such deposit, the claimants shall be entitled for its withdrawal in the tune and proportion if any, directed by the Ld. Commissioner.
- D. The rest of the judgment and award is kept as it is.
- E. Award be modified accordingly.

Pronounced in open court.

(AJIT B. KADETHANKAR, J.)

Rushikesh/2025