



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.1262 OF 2018

ECA Infrastructure (India) Pvt. Ltd.
Through its Authorised Signatory,
Shri Ajay s/o Mahadeorao Mahadure,
Arambha Toll Plaza, Samadrapur,
District-Wardha. .. Appellant
(Original Non-Applicant No.1 on R.A.)

..Versus..

1. Tejrao s/o Keshao More,
aged about 55 years, Occ : Nil.
2. Maya w/o Tejrao More,
aged about 52 years, Occ.: Nil.
3. Neeta d/o Tejrao More,
aged about 19 years, Occ.: Nil.
4. Jyotsana d/o Tejrao More,
aged about 18 years, Occ.: Nil.

All R/o. Teacher Colony, Ward No.1,
Karanja, District-Wardha-442203.

(Original Applicants 1 to 4)

5. Ankit Construction
Through its Proprietor/Partner
R/o. Plot No.30, Staff Irrigation Society,
Trimurti Nagar, Ring Road,
Nagpur-440 022. (Original Non-Applicant No.2)
6. Rushi Karunde
Aged Major, Occ : Labour Supplier.
R/o. Near Library, Pansheel Nagar,

Gittikhadan Chowk, Katol Road,
Nagpur-440013.

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Respondents

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Shri R.B. Puranik, Senior Advocate assisted by Shri Yashodhan Chauhan, Advocate for Appellant.

Shri S.W. Sambre, Advocate for Respondent Nos.1 to 4.

Shri R.S. Charpe, Advocate for Respondent No.5.

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CORAM : PRAVIN S. PATIL, J.
RESERVED ON : 30.09.2025.
PRONOUNCED ON : 17.10.2025.

JUDGMENT

1. By way of present appeal, the appellant has challenged the judgment and order passed by the Commissioner under the Employees Compensation Act, 1923 in E.C.A. Case No. © 132/2013 decided on 21.12.2017.

2. The present appeal being filed by the employer under Section 30 of the Employees Compensation Act, 1923 (hereinafter referred to as 'E.C. Act'), the same can be entertained only in case there is a substantial question of law is involved in the appeal. Therefore, in the present appeal, from the submission made by both the parties, the following

substantial question of law arises in the matter. “When the accident took place outside the premises of the employer, in such case, whether the burden to prove that deceased employee met with an accident out of and during the course of employment includes the burden on employer to show that there was a casual connection between the accident and the employment of the deceased.”

3. To answer the substantial question of law, according to me, the basic facts of the present appeal needs consideration in the matter.

4. Admittedly, the present appellant is the employer of deceased. The deceased was attended and entrusted with the work of computer operator in a toll booth and duty was casted upon him to collect the toll from the vehicles passing through the toll plaza and issued them receipts.

5. It is also undisputed fact that the toll plaza runs 24 hours and collect the toll from the vehicles. Therefore, employees engaged thereunder are working in two shifts. One shift was between 8.00 am to 8.00 pm and second shift started

from 8.00 pm to 8.00 am.

6. In the present appeal, it is not disputed that on 11.3.2014 deceased Sunil More resumed the service at about 8.00 pm and worked till 9.00 pm. During this period he has collected the toll from the vehicles passing through the toll plaza. However, after one hour, he has taken a break for tea.

7. In the present appeal, it is brought on record by the appellant and also clear from the evidence available on record that the canteen facility was not made available by the employer. As such, the deceased was required to go nearby village which is at around 2 to 3 km. to take a tea. Hence, the deceased went to take a tea to nearby village Nandori.

8. According to the appellant, the deceased without permission of the Supervisor of Toll Booth went to take a tea break and while returning back to the toll plaza to resume on duty, he was met with an accident by unknown vehicle and succumbed to death on the spot.

9. In the background of above said factual position, the legal heirs of the deceased filed proceeding under Section 22 of

the Employees Compensation Act before the learned Commissioner. Before the learned Commissioner, the present appellant appeared and contested the application by filing reply in the matter. From the perusal of the reply it is clear that the appellant did not disputed the fact that the deceased was appointed by him as a computer operator. But disputed the fact by stating that in the premises of toll booth, there was canteen available for employer, hence according to appellant, there was no reason for the deceased to go to village Nandori for tea which is at a distance of 3 to 4 km away from the toll plaza. It is further stated that there is no proximate connection between the death and employment and, therefore, the claimants are not entitled for any compensation in the matter.

10. In view of the rival submission of the parties, the learned Commissioner by his order dated 15.3.2016 vide Exh.27 framed the specific issue, "Do applicants prove that on 11.3.2013 deceased Sunil More met with an accident out of and during the course of employment and died as alleged", along with his other issues.

11. In the light of issues framed by the learned

Commissioner, the parties have led their respective evidence in the matter. It is herewith clarified that the evidence was led by both the parties on the basis of issues framed by the learned Commissioner vide Exh.27 and same were not recasted till the delivery of judgment by the learned Commissioner.

12. One more aspect which was brought to the notice of this court by the respondents that they have obtained the documents of criminal case registered vide Crime No.23/2013 at Police Station, Hinganghat due to accident of deceased. The said document were the chargesheet, first information report, spot panchanama, postmortem report etc. produced before the learned Commissioner vide Exh.31.

13. In the background of above said factual position, the learned Commissioner proceeded to decide the appeal and by the impugned judgment dated 21.12.2017 awarded the compensation to the respondents of Rs.6,69,110/- along with 12% simple interest per annum from the date of accident till the realization of amount.

14. In the light of above said factual position, to decide

the question of law involved in the matter, it will be expedient to first understand the object of Employees Compensation Act. The object of the act is to provide payment to the employees in service where they caused injury by way of accident during the course of service. As such, this act is a piece of welfare legislation in favour of employees to provide for the payment towards the injury caused to them.

15. By and now the legal position in India in respect of Employees Compensation Act is well established that where the workman meets with an accident while in the act of satisfying thirst or satisfying his bodily needs in the nature of food, drink and even tobacco, is to be regarded as employment injury i.e. to say, injury received in course of employment. The principle underlying all these cases is that an act which is reasonable or necessary, having regard to all the circumstances, though not one, which is part of the workman's original duty may be within the sphere of his employment. What is necessary is that there should be a causal connection between the accident and the employment and further that the cause should be a proximate cause and not a very remote cause.

16. This court in the case of *Bhagubai .vs. General Manager, Central Railway, VT. Bombay, reported in 1954 ALLMR Online 18* has observed in respect of causal connection as under :

“Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration.”

17. Likewise the Hon’ble Supreme Court of India while interpreting the phrase, “accident occurred while commuting to workplace or returning to the residence” considered within the scope of employment if the theory of notional extension is applied. How this theory of the notional extension is applied is clarified in the judgment of *Daivshala and others .vs. The Oriental Insurance Company Limited and another, reported in*

2025 INSC 904, wherein the Hon'ble Supreme Court has observed in para 31 and 32 as under :

31. As early as in 1958, this Court had to grapple with the said issue in Saurashtra Salt Mfg. Co. v. Bai Valu Raja, 1958 SCC OnLine SC 131. This Court recognized the theory of notional extension and set out the statement of law as under:—

“7. 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.”

(Emphasis supplied)

32. On facts, the claim for compensation was declined. What is however, significant is that this Court recognized the theory of notional extension which is to be applied to an area outside the precincts of the office premises. However, it was left to be determined in each case as to whether the area fell within the notional extension or not.”

18. Hon'ble Supreme Court further observed in the case of *Daya Kishan Joshi and another .vs. Dynemech Systems Pvt. Ltd. Reported in 2018 I CLR 8*, clarified the words 'out of' which according to the Supreme Court involves the idea that the accident arises out of a risk incidental to the employment, as distinguished from a risk common to all mankind, although the risk incidental to the employment may include a risk common to all mankind. It will be relevant to refer para 6 of this judgment as under :

"6. The words "arising out of" and "in the course of employment" are in fact two different phrases and have been understood as such. If the accident had occurred on account of a risk which is an incident of employment, the claim shall succeed unless, of course, the workman had exposed himself to an added peril by his own imprudent act. The phrase "in the course of employment" suggests that the injury must be caused during the currency of employment, whereas the expression 'out of employment' conveys the idea that there must be a causal connection between the employment and the injury caused to the workman as a result of the accident."

19. In the light of above said legal position, I proceeded to decide the present appeal by considering the submission advanced before me.

20. According to the appellant, the learned Commissioner has committed an error by recasting of issues while delivering the judgment and wrongly shifted the burden on the appellant to prove that there is no casual connection between the accident and the employment of the deceased employee. According to him, when the burden was on the claimants to prove that there was an accident arising out of and during the course of employment, it is their responsibility to prove that there was a casual connection between the accident and the employment of deceased employee. Therefore, the findings recorded by framing this issue vitiates the judgment.

21. Per contra, the learned counsel for the claimants vehemently opposed this submission of the appellant. It is the submission of the claimants that appellant has denied the proximate connection between the death and employment of the deceased and, therefore, the additional issue was framed while delivering the judgment by the learned Commissioner. According to him, by adding this issue, no prejudice was caused to the appellant because once he denied the accident was occurred arising out of and during the course of employment, it

is for him to satisfy that there was no casual connection between the accident and employment of deceased. He stated that the ground raised by the appellant is devoid of merit and cannot be accepted in the light of object and purpose of the Act.

22. In the present appeal, the issue which needs consideration, whether there was proximate connection between the deceased accident and employment in the matter. The claimants have brought on record the evidence to the effect that when the deceased left the toll plaza, he has sought prior permission of the Supervisor Nilesh Kodape and, thereafter, went to take a tea break. Admittedly, said Nilesh Kodape is a Supervisor of the toll booth. It is not disputed that the evidence of Nilesh Kodape was also examined before the Commissioner. At the relevant time he was working under the employment of the present appellant.

23. The perusal of the evidence of this witness established the fact that the deceased went to take tea from the toll booth. He has stated that the deceased had taken the permission of one Anil Talwekar. From the statement of this witness, one thing is

clear that this witness was aware that deceased has taken the permission and thereby left the toll booth. The respondents to support their submission that permission was sought by the deceased has relied upon the document which they have obtained under Right to Information Act from the Police Station, Hinganghat. The said record shows that after the police case was registered in the matter, the statement of this witness Nilesh Kodape was recorded and he has categorically stated before the Investigating Officer that by taking due permission the deceased has left the premises of toll booth for the purpose of a tea break. Therefore, one thing is clear that the evidence of this Nilesh Kodape is required to be considered to the extent that he was aware that deceased has left the toll booth.

24. One more important aspect required to be considered in the matter that working of a toll booth is 24 x 7. If the deceased would have left the toll booth without permission, certainly there would have been no person on the toll booth to collect the toll from the passing vehicles. Certainly in absence of deceased for at least one hour, the toll booth would not have

worked but no such thing is came on record that due to leaving of office by the deceased at 9.00 pm, any such chaos was taken place at the toll booth. This fact itself shows that the working of the toll booth was going on smoothly though the deceased has left the premises. Accordingly only conclusion can be that deceased had taken the permission from the concerned officer and then went for a tea break. Therefore, according to me, there is a casual and proximate connection between death and employment of the deceased.

25. The counsel for the appellant raised objection saying that for deciding the application for compensation, the learned Commissioner cannot relied upon the police case papers in the matter. The reliance placed by the claimants is not acceptable in the matter. However, the counsel for the claimants to substantiate his submission that the police document can also be considered in a compensation cases has relied upon the judgment of this Court in the case of **Bharti Axa General Insurance Company Limited.vs. Manohar Atmram Pardhi & Ors.** Reported in 2020 SCC Online Bombay 11790.

26. The bare perusal of this judgment revealed the fact that by considering the theory that the compensation proceedings are required to be decided on the preponderance of probability and not beyond reasonable doubt has considered the police papers by holding that in a summary proceedings, the only notes of evidence is required and detail evidence is not required. Hence, the material documents can be considered which is a part of proceeding before the court.

27. It is further pertinent to note that Hon'ble Supreme Court in the case of *National Insurance Company Limited .vs. Rattani and others, reported in (2009) 2 SCC 75*, has occasioned to consider the issue, whether the first information report though per se not admissible in evidence can be looked into to decide the claim petition. The Hon'ble Supreme Court in this judgment has observed that though the first information report cannot be considered for the purpose of arriving of a finding but same can be referred if the first information report itself is a part of the claim petition. Therefore, considering the law laid down by this court as well as Hon'ble Supreme Court of India to arrive the proper conclusion considered, the documents

of police case can be considered in the matter.

28. In the present appeal, the appellant failed to demonstrate as to how the findings of the learned Commissioner that there was no canteen which according to appellant was in a running condition in the premises of appellant-company. The evidence which was brought on record in this regard clearly established the fact that in the premises of the toll of the office of appellant-company only the structure is made available but there is no canteen run by the company. Hence, there was a reason for the deceased to went outside to take a tea break during the course of employment.

29. The perusal of the judgment of the learned Commissioner *prima facie* shows that the doctrine of notional extension as clarified by Hon'ble Supreme Court in catena of judgments is rightly made applicable in the matter. I am in concurrence of the finding recorded by the learned Commissioner is of the same view if the death is caused to an employee outside the premises of an employer, notional extension cannot be reduced to mathematical formula.

30. In the present case, the reason for which the deceased went outside of the area is casual connection in the matter because by obtaining the permission he went for a tea break. Hence, the theory of notional extension is required to be made applicable to the facts and circumstances of the present case.

31. Hence, for the aforesaid reasons, I am of the opinion that though the accident occurred outside the premises of the employer, same is required to be held to be occurred during the course of employment and burden was on the employer to establish that there was no casual connection between the accident and employment of the deceased. However, from the reasons recorded hereinabove shows that there was casual connection and appellant failed to discharge his burden.

32. In the present appeal there was challenge to the imposition of penalty @ 50% of the amount of compensation. According to appellant, as per Section 4-A of the Act, the clause of penalty can be invoked only in case where employer is in default in paying the compensation due under the act within prescribed time period. But here appellant was not in receipt of any show cause notice nor any reasonable opportunity was

given to appellant. Learned Commissioner at the time of deciding application itself reached to the conclusion that as appellant participated in the proceeding, there was no need of show cause notice and thereby imposed penalty. The same is according to me not in accordance with the provisions of law, hence imposition of penalty is liable to be quashed and set aside.

33. In this regard, I am of the opinion that appellant is right to state that Section 4-A of the Act do not permit the Commissioner to directly imposed penalty without there being any fault on the part of appellant to pay the determined compensation amount. I am supported by the view taken by Coordinate Bench in case of *Udhav R. Pawar .vs. Sheshrao Jogdand, reported in 2009 III CLR 697*. In the said judgment, relying upon the judgment of Hon'ble Supreme Court in Mohd. Nasir's case, the principle laid down was that, "where the employer totally denies his liability to pay the compensation and does not accept it, then his liability to make provisional payment under Section 4-A (2) of the Act would not arise and his liability would depend upon the final adjudication by the

Commissioner under Section 19 of the Act". Hence, imposition of penalty is illegal in the matter.

34. For the aforesaid reasons, I proceed to pass the following order :

O R D E R

(1) Appeal is partly allowed.

(2) It is held that deceased caused death during the course and out of employment and, therefore, entitled for compensation as determined by Commissioner of Employees Compensation Act as per order dated 21.12.2017.

(3) The direction of Commissioner of Employees Compensation Act to appellant to pay penalty @ 50% of amount of compensation is hereby quashed and set aside.

(4) The claimants are entitled to withdraw the amount of Rs.6,69,110/- along with interest accrued thereon as directed by the Commissioner of Employees Compensation Act, Nagpur.

(5) Appellant is entitled to get refund of penalty amount along with interest from the office of the Commissioner Employees Compensation Act, Nagpur

(6) Rest of the order is confirmed. No costs.

(Pravin S. Patil, J.)