A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.267 of 2024

(An appeal under Section 30 of the Employees' Compensation Act, 1923)

The Senior Divisional Personnel Officer, East Coast Railway, Khordha Road Division, Khordha & Anr.	….	*Appellant (s)*
	-versus-	
Sabita Devi & Ors.	….	*Respondent (s)*

Advocates appeared in the case through Hybrid Mode:

For Appellant (s)	:	*Mr. S. N. Pattanaik, CGC*
For Respondent (s)	:	*Ms. Baijayanti Mohanty, Adv.*

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-19.12.2025
DATE OF JUDGMENT:-09.01.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present appeal has been filed by the employer (East Coast Railway) assailing the order dated 20.03.2024 passed by the Commissioner for Employees' Compensation-cum-Joint Labour Commissioner, Headquarters, Bhubaneswar in E.C. Case No. 5 of 2023.By the said order, the Commissioner allowed the claim application filed by the dependants of the deceased employee and awarded compensation under the Employees' Compensation Act, 1923 on account of his death stated to have occurred due to an accident arising out of and in the course of employment.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case as narrated by the appellants are as follows:

i. The claim proceedings were instituted by the parents/legal dependants of late Sri Nishant Kumar, who, as pleaded, was employed as an Assistant Loco Pilot (Electrical) under the Chief Crew Controller, East Coast Railway, Talcher. It was pleaded that the deceased was on duty in connection with railway operations and that while so discharging his official duty, he suffered a fatal accident.

ii. According to the claim petition, on 05.03.2023, the deceased was booked for duty at about 20:40 hours along with a Loco Pilot (Goods) from Talcher. It was further pleaded that on 06.03.2023, the deceased was found dead after having been run over by a running train bearing No. 20822 (Express) at K.M. 421/1-3 DN between Rajathgarh and Machhpur. The claimants asserted that the said death was the result of an accident arising out of and in the course of his employment with the employer.

iii. The claimants stated that at the time of the incident, the deceased was about 31 years of age and was drawing monthly wages inclusive of allowances. On such basis, the claimants sought compensation under the Employees' Compensation Act, 1923 and also claimed interest at the statutory rate from the date of accident till payment. The claim petition sought a lump sum amount as compensation, computed by applying the statutory factors under the Act.

iv. The employer contested the claim before the Commissioner. In substance, while not disputing the employment relationship pleaded by the claimants, the employer raised a contention on the mode of computation of wages for the purposes of compensation payable under Section 4 of the Act. The employer asserted that for computation of compensation, the monthly wages were required to be taken at Rs. 15,000/- in view of the Central Government Notification dated 03.01.2020 issued under Section 4(1-B) of the Act. It was further stated that the Railway Board had adopted the said wage figure for the purpose of computation by issuing Railway Board's RBE No. 64/2021 dated 02.09.2021.

v. On the above premise, the employer deposited a sum of Rs. 15,44,625/- before the Commissioner by way of demand draft on 07.07.2023, stating the same to be the compensation calculated at fifty percent of wages (Rs. 7,500/-) multiplied by the relevant age factor (205.95). It was also stated by the employer that apart from the statutory deposit, the family of the deceased had been paid Rs. 10,000/- towards funeral assistance and a further sum of Rs. 25,00,000/- as an ex-gratia payment under the Railway Board's policy (referred to as RBE No. 139 of 2016), being immediate assistance to the bereaved family.

vi. The Commissioner proceeded to determine the compensation payable. In the impugned order, the Commissioner assessed the "monthly wages" for the purposes of computation by taking into account the wages of the deceased during the twelve months immediately preceding the accident, in terms of the statutory computation contemplated under the Act. On such assessment, the Commissioner recorded that the total wages for the last twelve months preceding the accident were Rs. 5,40,187/-, and accordingly computed the average monthly wage as Rs. 45,015.58, rounded to Rs. 45,016/-.

vii. Applying fifty percent of the said monthly wages (i.e., Rs. 22,508/-) and multiplying the same with the age factor applicable for 31 years (i.e., 205.95), the Commissioner quantified the compensation amount at Rs. 46,35,522.60, rounded to Rs. 46,35,523/-. The Commissioner thus held that the claimants/dependants were entitled to compensation of Rs. 46,35,523/- under the Employees' Compensation Act, 1923 on account of the death of the employee.

viii. Under the impugned order dated 20.03.2024, the employer was directed to deposit:

(a) the balance compensation amount after adjusting the earlier deposit of Rs. 15,44,625/-, quantified in the order as Rs. 30,90,898/-;

(b) simple interest at 12% per annum on the total compensation amount of Rs. 46,35,523/- from the date of accident i.e. 06.03.2023 till 07.07.2023, assessed in the order at Rs. 1,87,452/-; and

(c) simple interest at 12% per annum on the balance compensation amount of Rs. 30,90,898/- from 07.07.2023 till the date of actual payment.

The deposit was directed to be made within the time stipulated in the order for onward disbursement to the claimants.

ix. Aggrieved by the aforesaid order, the employer has preferred the present appeal. It is stated in the memorandum of appeal that the employer disputes the method adopted by the Commissioner in computing the monthly wages by relying upon the actual wages drawn during the preceding twelve months, and contends that the statutory notification fixing monthly wages for the purpose of computation ought to have been applied. It is also stated that the employer seeks consideration of payments allegedly made to the family by way of funeral assistance and ex-gratia assistance under Railway policies.

x. For the purposes of maintainability of the appeal, it is pleaded that the employer has complied with the requirement under Section 30(1) of the Employees' Compensation Act, 1923 by depositing the amount payable under the order appealed against and obtaining the requisite certificate from the Commissioner. The appeal is thus directed against the award dated 20.03.2024 passed in E.C. Case No. 5 of 2023, particularly in relation to the wage figure adopted for computation, the resultant quantum of compensation, and the attendant directions regarding interest and deposit.

II. SUBMISSIONS ON BEHALF OF THE APPELLANTS:

3. Learned counsel for the Appellants earnestly made the following submissions in support of his contentions:

i. The petitioner–employer contends that the impugned order dated 20.03.2024 passed in E.C. Case No. 5 of 2023 is illegal, arbitrary, contrary to the statutory scheme of the Employees' Compensation Act, 1923, and liable to be set aside. It is urged that the Commissioner has erred in allowing the claim and directing payment of compensation of Rs. 46,35,523/-, along with interest, by adopting an impermissible method for determining the "monthly wages" of the deceased. According to the petitioner, the Commissioner has wrongly proceeded to compute the compensation on the basis of the deceased employee's "actual" wages derived from the twelve months' wage particulars preceding the accident, and has thereby inflated the wage figure and consequently the compensation payable.

ii. It is submitted that, for the purpose of computation of compensation under Section 4 of the Act, the "monthly wages" cannot be taken beyond the amount specified by the Central Government in exercise of powers under Section 4(1-B). The petitioner asserts that the Central Government, through the Ministry of Labour and Employment, issued a notification dated 03.01.2020 specifying Rs. 15,000/- as the monthly wages for the purposes of sub-section (1) of Section 4, and that this notified figure is binding for computation. It is further contended that the Railway Board, by RBE No. 64/2021 dated 02.09.2021, adopted Rs. 15,000/- as the wages for the purpose of calculation of compensation under Section 4, and the employer acted in accordance with the said notification and instructions. On that footing, the petitioner states that compensation was calculated by taking 50% of Rs. 15,000/- (i.e., Rs. 7,500/-) and multiplying it with the relevant age factor of 205.95, resulting in Rs. 15,44,625/-, which amount was deposited before the Commissioner on 07.07.2023 for disbursement to the dependants.

iii. The petitioner further argues that the Commissioner failed to properly consider, set-off, or adjust the amounts already paid by the employer to the bereaved family by way of immediate assistance. It is stated that, apart from the statutory deposit, the employer paid funeral assistance of Rs. 10,000/- and also paid an ex-gratia lump sum of Rs. 25,00,000/- as per Railway Board policy (referred to as RBE No. 139 of 2016) to the family/legal heirs of the deceased. The petitioner asserts that non-consideration of these payments vitiates the award and renders it unsustainable.

iv. It is further contended that the Commissioner's interpretation that, after the 2009 amendment, there is no ceiling and the "actual wages" must invariably be taken, is erroneous and overlooks the legislative intent. The petitioner submits that earlier the wage ceiling for computation was periodically revised by Parliament through amendment Acts (1984, 1995, 2000), and thereafter Parliament, through the 2009 amendment, delegated the power to the Central Government to specify monthly wages for computation by notification in the Official Gazette. According to the petitioner, the omission of the earlier Explanation II does not mean that wage limits were abolished; rather, the statutory mechanism was changed so that the Central Government would notify the wage figure from time to time. The petitioner relies on the Statement of Objects and Reasons and the memorandum regarding delegated legislation connected with the 2009 amendment to contend that the intent was not to remove any upper limit, but to shift the power of fixing the wage figure from Parliament to the Central Government. The petitioner accordingly submits that once the Central Government has notified Rs. 15,000/- as the relevant monthly wage figure, the Commissioner was bound to apply it and could not travel beyond it by adopting "real wages".

v. In support, the petitioner places reliance on the decision of the High Court of Madras dated 01.07.2022 in C.M.A. No. 3388 of 2017, wherein, as per the petitioner, the High Court upheld computation by applying the maximum wage as notified (Rs. 8,000/- at the relevant time) instead of adopting actual wages. It is submitted that the reasoning in the said decision supports the petitioner's case that Section 4(1-B) and the notifications issued thereunder prescribe the maximum monthly wages that can be taken for computation, and therefore the award based on actual wages is contrary to law. The petitioner also submits that the Commissioner wrongly relied on the Supreme Court's decision in Civil Appeal No. 9046 of 2019 (arising out of SLP (C) No. 18110 of 2019), contending that the said decision is distinguishable and not applicable to the present case. According to the petitioner, that case pertained to an accident that occurred prior to enhancement of the notified wage figure, and the Supreme Court's observations were made in that context; further, it is contended that the Supreme Court, in that matter, exercised powers to do complete justice under Article 142, and therefore the decision cannot be mechanically applied to justify adopting actual wages in the present case where the 2020 notification specifying Rs. 15,000/- was in force.

vi. On these grounds, the petitioner submits that the Commissioner's computation of average monthly wages at Rs. 45,016/- by taking the last twelve months' wages (Rs. 5,40,187/-) and dividing by 12, and the consequent award of Rs. 46,35,523/-, is arbitrary, contrary to the statutory notifications and the scheme under Section 4(1-B), and liable to be set aside. The petitioner accordingly prays for admission of the appeal, calling for records of E.C. Case No. 5 of 2023, and setting aside the impugned order dated 20.03.2024, with consequential reliefs.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. Learned Counsel for the Respondents earnestly made the following submissions in support of his contentions:

i. The respondents (claimants/dependants) submit that the present appeal has been filed by the employer challenging the order dated 20.03.2024 passed by the Commissioner for Employees' Compensation-cum-Joint Labour Commissioner, Headquarters, Bhubaneswar in E.C. Case No. 5 of 2023 on grounds that the order is illegal, contrary to law and evidence, and that it does not consider payments allegedly made as immediate assistance. The respondents contend that these grounds are misconceived. According to them, the impugned order is reasoned and is based on the applicable statutory provisions as well as the ratios laid down by the Supreme Court and various High Courts. They submit that the Commissioner has carried out a detailed calculation in the award, and has also excluded from "wages" the components which are not legally includible, and therefore the core dispute raised by the employer regarding computation of wages does not warrant interference.

ii. The respondents rely upon the statutory definition of "wages" under Section 2(1)(m) of the Employees' Compensation Act, 1923 and submit that wages include all privileges or benefits capable of being estimated in money, except those specifically excluded, namely travelling allowance, the value of travelling concession, employer's contribution towards pension/provident fund, and sums paid to cover special expenses entailed by the nature of employment. They assert that, in the present case, the deceased employee was drawing Rs. 34,959/- per month inclusive of Pay, D.A. and H.R.A., and that other components such as basic pay, dearness allowance, house rent allowance, overtime wages, kilometer allowance, night duty allowance, allowance for headquarters duty and leave allowance fall within the ambit of "wages" within the meaning of Section 2(1)(m), subject only to statutory exclusions. They submit that the Commissioner has correctly deducted Rs. 15,678/- from the total earnings towards items such as transport allowance and cell allowance (treated as non-wage components), and has thus arrived at the admissible wage figure in accordance with law. On this basis, the respondents contend that the Commissioner's computation is consistent with the Act and does not suffer from any infirmity.

iii. The respondents further submit that the method for computation of monthly wages is specifically provided in Section 5(a) of the Act and is squarely applicable as the deceased was in continuous employment under the employer, which, according to them, is an admitted position. They argue that under Section 5(a), the monthly wages are to be determined as one-twelfth of the total wages which fell due for payment in the twelve months immediately preceding the accident. They contend that the Commissioner has correctly applied this statutory method and, on that basis, has rightly held the compensation payable to be Rs. 46,35,523/- in terms of Section 4(1)(a), i.e., fifty percent of the monthly wages multiplied by the relevant factor.

iv. On the employer's reliance on the notification dated 03.01.2020 and Railway Board RBE No. 64/2021 to adopt Rs. 15,000/- as monthly wages, the respondents submit that the employer's interpretation is incorrect. They contend that the notification does not state that Rs. 15,000/- is the maximum wage, and therefore it cannot be applied as a wage ceiling to reduce compensation where the employee's actual monthly wages are higher. They further submit that, in any event, a government circular/notification cannot override statutory provisions, and the computation must follow Sections 4 and 5 of the Act read with the definition under Section 2(1)(m). The respondents rely on the decision of the Supreme Court in ***K. Sivaraman & Ors. v. P. Sathishkumar & Anr.***[1] to submit that the object of the 2009 amendment was to remove the deeming cap and extend compensation on the basis of the actual monthly wages drawn by the employee, and therefore the Commissioner was justified in adopting actual wages as per law. They also rely upon the decision of the Supreme Court in ***Ashok Ram Parhad and others v. State of Maharashtra and others***[2], to submit that government resolutions cannot override statutory rules, and on that premise contend that the notification dated 03.01.2020 cannot control or curtail the statutory computation prescribed under the Act.

v. The respondents also support the award of interest. They submit that the compensation determined, i.e., Rs. 46,35,523/-, became payable immediately in terms of Section 4-A of the Act, and since the employer made only a provisional payment of Rs. 15,44,625/- on 07.07.2023 i.e. about four months after the accident dated 06.03.2023; the Commissioner rightly awarded simple interest at 12% per annum on the total compensation from the date of accident till 07.07.2023, quantified at Rs. 1,87,452/-, and further

[1] AIR 2020 SC 954.
[2] (2023) 18 SCC 768.

directed interest at 12% per annum on the balance amount of Rs. 30,90,898/- from 07.07.2023 till actual payment, as contemplated under Section 4-A(3)(a) of the Act.

vi. In conclusion, the respondents submit that the Commissioner has correctly applied Sections 2(1)(m), 4, 5 and 4-A of the Employees' Compensation Act, 1923; has made appropriate deductions from earnings to exclude inadmissible components; has computed monthly wages on the statutory basis of the preceding twelve months; and has rightly quantified compensation and interest. They accordingly contend that the appeal is devoid of merit and liable to be dismissed, with no interference warranted with the impugned order dated 20.03.2024.

IV. FINDINGS OF THE IMPUGNED JUDGMENT OF THE JOINT LABOUR COMMISSIONER:

5. The Commissioner held that the claim under Section 10 of the Employees' Compensation Act, 1923 was maintainable and that the applicants, being the dependants of late Nishant Kumar, were entitled to compensation for his death which occurred on 06.03.2023 while he was discharging duties as Assistant Loco Pilot/Elect (OP) under East Coast Railway. The Tribunal recorded that the employer, in its written statement and through its witness, admitted the relationship of employment as well as the occurrence of the accident "arising out of and in the course of employment", and had already deposited an amount of Rs. 15,44,625/- suo motu towards compensation. In view of these admissions, the Tribunal treated the central controversy as the correct determination of the monthly wages for computation of compensation, rather than liability in principle. It framed issues on (i) quantum of compensation payable and (ii) liability of the opposite parties and by whom payable, and proceeded to decide the same primarily by examining the age of the deceased and the wage base to be adopted under the Act.

6. On the question of age, the Tribunal found there was no dispute. The applicants pleaded and deposed that the deceased was 31 years old at the time of the accident, giving his date of birth as 21.01.1992, and the employer also admitted the same in its pleadings and evidence. The employer produced the first page of the service record (Exhibit-B) reflecting the same date of birth. The Tribunal therefore accepted the age of the deceased as 31 years at the relevant time, observing in substance that in the absence of controversy between the parties it had no reason to take any different view. Having fixed age, the Tribunal moved to the decisive enquiry, namely determination of "monthly wages" for purposes of Sections 4 and 5 of the Act.

7. In order to determine monthly wages, the Tribunal first anchored its reasoning in the statutory definition of "wages" in Section 2(1)(m) and the statutory method of computation in Section 5(a) applicable to employees in continuous employment for not less than twelve months preceding the accident. The Tribunal extracted both provisions and treated them as the governing framework. It read Section 2(1)(m) to mean that wages include any privilege or benefit capable of estimation in money, with express exclusions limited to travelling allowance or travelling concession, employer contributions to pension/provident fund, and sums paid to cover special expenses entailed by the nature of employment. On that basis, and relying on judicial precedents, the Tribunal concluded that "wages" under the Act have a broad meaning and that allowances and overtime, so long as they are not of the excluded categories, form part of wages. For this proposition, the Tribunal referred to ***Luizina Cyril Vaz v. Caltex India Limited***[3] to hold that components like food allowance, overseas allowance, devaluation supplement and overtime wages can constitute "wages" within Section 2(1)(m), and also cited the Mysore High Court decision in ***Bhashyagariu Nayudu v. Ramayya Setti***[4] to emphasise that what is excluded from wage computation is essentially travelling allowance/travel concession and not other benefits.

8. Applying this understanding to the salary components proved through the employer's own evidence, the Tribunal noted that the employer witness (O.P.W.-1) produced salary particulars for thirteen consecutive months (Exhibit-A) and also detailed the deceased's gross earnings in February 2023, which included Basic Pay, DA, HRA, overtime, kilometre allowance, transport allowance, night duty allowance, allowance for headquarters duty, cell allowance and leave allowance. The Tribunal then classified the components: it treated "transport allowance" as being in the nature of travelling allowance, and "cell allowance" as falling within the category of special expenses, and excluded those two from the wage base. It held, however, that the remaining components: Basic Pay,

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[3]1973 Vol. 27 FLR 321.
[4](1967) 2 LLJ-163.

DA, HRA, overtime wages, kilometre allowance, night duty allowance, allowance for headquarters duty and leave allowance, fell within the ambit of "wages" under Section 2(1)(m). The Tribunal expressly recorded this conclusion in the following manner: "From the above analysis, this Court is of the view that except transport allowance, which is in the nature of travelling allowance and cell allowance which comes under special expenses, all other components … come within the ambit of the expression 'wages'..".

9. Having determined what constitutes wages, the Tribunal proceeded to compute "monthly wages" by applying Section 5(a). It accepted that the deceased was in continuous employment with the employer for the relevant period and, therefore, monthly wages had to be taken as one-twelfth of the total wages that fell due for payment in the twelve months immediately preceding the accident. Using Exhibit-A, it computed total earnings for March 2022 to February 2023 at Rs. 5,55,865/- and then deducted Rs. 15,678/- towards transport allowance and cell allowance, arriving at Rs. 5,40,187/- as the total wages for the twelve-month period. It then divided that figure by 12 to arrive at Rs. 45,015.58, rounded to Rs. 45,016/- as the monthly wages. The Tribunal further reinforced the acceptability of this computation by observing that the employer is the paymaster and "best person to speak on wages including its components" and that the assessment was based on the sworn testimony of O.P.W.-1 and the employer's own salary records. On the other hand, it rejected the employer's pleaded "average monthly wages" of Rs. 28,200/-, which the employer said was based only on Basic and DA, holding that such a truncated computation was inconsistent with Section 2(1)(m) read with Section 5(a).

10. The Tribunal then addressed the employer's core legal objection, its reliance on the Central Government notification dated 03.01.2020 issued under Section 4(1B) specifying monthly wages of Rs. 15,000/- "for the purpose of sub-section (1)", and the Railway Board RBE No. 64/2021 adopting Rs. 15,000/- as a wage ceiling. The Tribunal reproduced the notification and noted that the employer treated Rs. 15,000/- as an upper limit for computation and had therefore deposited compensation on the basis of 50% of Rs. 15,000/- (Rs. 7,500/-) multiplied by the relevant factor 205.95, resulting in Rs. 15,44,625/-. However, the Tribunal declined to accept the employer's characterization of the notification as a cap overriding the statutory method under Section 5. To reach that conclusion, it relied substantially on a line of judicial authority treating the post-2009 scheme as requiring computation on "actual wages" rather than on a deemed ceiling. It referred to the Gauhati High Court decision in ***United India Insurance Co. Ltd. v. Julekha Begum & Anr.***[5], which reasoned that before the 2009 amendment Explanation II to Section 4 imposed a deemed wage cap (Rs. 4,000/-), that the 2009 amendment omitted the Explanation altogether, and that the effect was to obligate Commissioners to compute compensation on 50% of actual wages. The Tribunal quoted and adopted the Gauhati High Court's reliance on the Supreme Court decision in ***K. Sivaraman*****(Supra)**, particularly paragraph 26 where the Supreme Court described the objective of the 2009

[5] 2023 (178) FLR-164.

amendment as removing the deeming cap and extending compensation on the basis of actual wages. Following the Gauhati view, the Tribunal recorded that the argument for capping wages at the notified figure could not be accepted, and that actual monthly wages had to be considered.

11. The Tribunal then strengthened this conclusion by citing similar reasoning from other High Courts. It referred to the Kerala High Court decision in ***Fertilisers & Chemicals Travancore Ltd. v. Sushama Kumari***[6], where it was held that the amended provision (1-B) would not have an overriding effect over Section 5 and that Section 5 governs the method of assessment of monthly wages for the purposes of Section 4(1). It also referred to the Delhi High Court's decision in ***Lancers Network Ltd. v. Rakhi Verma***[7] where higher monthly wages were accepted and compensation determined accordingly. Based on these authorities, and explicitly "relying on the decisions of the High Courts as above and the judgment of the Supreme Court … in K. Sivaraman", the Tribunal affirmed its adoption of Rs. 45,016/- as the monthly wages under Section 5(a) for the deceased employee.

12. Once monthly wages were determined at Rs. 45,016/- and age fixed at 31 years, the Tribunal applied the statutory formula under Section 4(1)(a) for death cases. It computed 50% of monthly wages as Rs. 22,508/- and multiplied it by the relevant factor for age 31, namely 205.95, to arrive at Rs. 46,35,522.60, rounded to Rs. 46,35,523/-. It then held that this was the compensation payable under the Act, adding that it is the duty of the

[6] 2023 (178) FLR-7001.
[7] 2023 (177) FLR-866.

Court to award "just compensation irrespective of lesser or higher claim." Accordingly, Issue No. I on quantum was answered by fixing compensation at Rs. 46,35,523/-.

13. On interest, the Tribunal held that compensation fell due from the date of the accident and that failure to pay within one month attracted interest under Section 4A. It noted that the accident occurred on 06.03.2023 but only part payment was deposited on 07.07.2023. Relying on ***Kerala State Electricity Board v. Valsala K***[8] and the Constitution Bench decision in ***Pratap Narain Singh Deo v. Srinivas Sabata***[9], it took the view that compensation becomes payable from the date personal injury is caused, not from the date of the Commissioner's order or the date of claim. On that basis, it directed simple interest at 12% per annum on the entire compensation amount from 06.03.2023 till 07.07.2023, quantified at Rs. 1,87,452/-, and further interest at 12% per annum on the balance amount (Rs. 46,35,523 minus Rs. 15,44,625 = Rs. 30,90,898) from 07.07.2023 till actual payment. It also relied on ***Ved Prakash Garg v. Premi Devi***[10] to state that interest is a part and parcel of compensation. Issue No. II on liability was then answered by holding the employer liable under Section 3 to pay the balance compensation along with interest as directed. Finally, in the operative portion, the Tribunal allowed the case on contest, confirmed entitlement of the applicants to Rs. 46,35,523/-, and directed deposit of the balance compensation and interest within 30 days for onward disbursement.

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[8] AIR 1999 SC 3502.
[9] AIR 1976 SC 22.
[10] AIR 1997 SC 3854.

V. COURT'S REASONING AND ANALYSIS:

14. Heard learned counsel for the parties and perused the material on record.

15. The sole issue is the correct basis for computing compensation under the Employees' Compensation Act, 1923. The Commissioner applied Section 5(a) of the Act by averaging the actual wages earned in the 12 months before the accident, arriving at a monthly wage of ₹45,016. The employer contends that the statutory notification (₹15,000) under Section 4(1-B) caps the wage for this purpose. The employer also seeks adjustment of amounts already paid (₹10,000 funeral assistance and ₹25,00,000 ex gratia) against the award.

16. Section 2(1)(m) of the Act defines "wages" broadly, excluding only travel allowances and similar items. In line with this, the Commissioner correctly excluded transport and cell phone allowances as non-wage components and included basic pay, DA, HRA, overtime, etc., in the wage base. Having established total admissible wages of ₹5,40,187 for the year, the average monthly wage was computed at ₹45,016. Under Section 5(a), this figure is to be used in Section 4(1)(a)'s formula (50% of monthly wages × age factor).

17. This Court upholds the Commissioner's method. There is a plethora of judicial precedents that emphasize the fact that the 1923 Act is a benevolent social welfare statute, to be liberally interpreted for the benefit of the workmen. In fact, in the case of ***K. Sivaraman*** **(Supra)** it was held that the 2009 Amendment, which removed the former cap in

Explanation II to Section 4, has the effect of ensuring compensation on actual wages, and not on a deemed minimum. The Court held as under:

> *"25. The 1923 Act is a social beneficial legislation and its provisions and amendments thereto must be interpreted in a manner so as to not deprive the employees of the benefit of the legislation. The object of enacting the Act was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits. The amendments to the 1923 Act have been enacted to further this salient purpose by either streamlining the compensation process or enhancing the amount of compensation payable to the employee.*
> *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 toextend to accidents that took place prior to the coming into force of the amendment."*(Emphasis Supplied)

18. Hence, this Court sees no justification to limit wages to ₹15,000 when the employee's actual earnings were higher. Section 4(1-B) empowers the

Central Government to specify a wage figure, but does not negate Section 5(a)'s statutory scheme or reintroduce a ceiling once Explanation II was omitted. In my view, after the 2009 amendment, an employee in continuous employment (as here) is entitled to compensation based on actual earnings. This approach advances the Act's object of fairly compensating dependants of deceased workers. Accordingly, the monthly wages as ₹45,016 and the resulting compensation of ₹46,35,523 is confirmed.

19. The employer's contention that the ₹10,000 funeral grant and ₹25,00,000 ex-gratia should be set off against the statutory award is unsustainable. The Act provides specific provisions for funeral expenses (Section 4(1)(c)) and for distribution of compensation (Section 8 et seq.). Any payment made outside these statutory channels cannot discharge the employer's liability under the Act. In ***Nusrat Jahan and Ors. v. The Managing Director***[11]**,** it was held that an ex-gratia amount paid by the employer as a voluntary benefit is in addition to compensation payable under the Act and cannot be deducted from it. The relevant excerpts are produced below:

> *"Section 8 lays down distribution of compensation payable by the employer when an employer meets with an accident. Its object is that unscrupulous employer should not take advantage of ignorance of the employee in making payment a paltry sum. Therefore, the act safeguards the interest of the workman and any private payment will not discharge the statutory obligation. So, with these beneficial objects Sections 8, 28 & 29 are enacted. Any payment made dehors these sections cannot be deducted in*

[11]MISCELLANEOUS FIRST APPEAL NO.200839/2017(WC)

> *compensation determined and payable by the Commissioner of Employees Compensation under this Act."*

20. The court emphasized that "neither the Commissioner nor the court has jurisdiction to deduct such ex-gratia payments from the compensation determined under the Act.

21. This Court adopts the same principle. The funeral assistance similarly was not paid through the Commissioner and exceeds the statutory Rs. 5000, it cannot be treated as an advance against compensation. In short, the ₹35,000 already given outside the statutory mechanism does not reduce the dependants' statutory entitlement. The dependants remain entitled to the full compensation of ₹46,35,523 awarded under the Act.

22. Under Section 4A, compensation falls due from the date of the accident, and interest accrues at 12% per annum for any delay beyond one month. As held in ***Kerala State Electricity Board*** **(Supra),** the employer's liability crystallized on the date of the accident. Since full payment was not made within a month, the awarding of interest was justified. We note that the Commissioner granted interest on the entire compensation from one month after the accident until realization.This is in conformity with the statutory mandate and settled law. We therefore uphold the interest directions.

VI. CONCLUSION:

23. For these reasons, the appeal is **dismissed**. This Court upholds the Commissioner's award of ₹46,35,523 as compensation. The appellant-employer shall be credited with the ₹15,44,625 already deposited, leaving a balance of ₹30,90,898.

24. The appellants must pay this balance forthwith, together with interest as directed by the Commissioner (12% per annum on the full amount from one month after 06.03.2023 until payment).

25. Interim orders, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 9th Jan, 2026/