



IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.126 of 2022

(From the judgment dated 31st March 2022 passed by the learned Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Hqrs., Bhubaneswar in E.C. Case No.2 of 2021)

Managing Director, Kalinga Jute Appellant
Products Pvt. Ltd., Fulki Nagar,
Dhenkanal

-versus-

Smt. Sabita Rout and others Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. P.K. Mishra, Advocate

For Respondents : Mr. B.S. Tripathy, Advocate
For Respondents 1 to 4

CORAM: JUSTICE B.P. ROUSTRAY

JUDGMENT

Date of Hearing : 6th May 2026

Date of Judgment : 22nd June 2026

B.P. Roustray, J.

1. The Employer has come in the present appeal challenging the award to the tune of Rs.11,48,175/- towards compensation to the Respondents in terms of the Employees Compensation Act, 1923 (in short, "E.C. Act").



2. The deceased, namely, Prasanta Kumar Rout, who was husband of Respondent No.1, was employed as Machine Operator-cum-Mechanic under the Appellant and on the fateful day on 24.01.2021, while working as such died at the work place sustaining severe injury in his neck and other parts of the body.

3. The Appellant-Employer upon death of the deceased-employee deposited a sum of Rs.6,92,579/- counting his daily wage @Rs.348/- per day before learned Divisional Labour Commissioner, Dhenkanal on 22.02.2021. Dissatisfied with the same, the Respondents filed E.C. Case No.2 of 2021 before learned Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Hqrs., Bhubaneswar claiming higher compensation. As per their claim, the deceased was receiving monthly wage of Rs.15000/- at the time of accident and thus they are entitled for higher compensation.

4. The relationship of the deceased and the Appellant as employee and Employer is not disputed. The death of the deceased during and in course of his employment and arising out of the employment is never disputed. The age of the deceased as 50 years with application of age factor 153.09 for the purpose of computing compensation is also remaining undisputed. The only contest is with regard to the wage of



the deceased-employee at the time of accident. The learned Commissioner while determining the amount of compensation, without getting into the dispute of wage of deceased, determined the same @Rs.15000/- per month to arrive at the compensation of Rs.11,48,175/- payable by the employer subject to adjustment of such amount as already deposited. The relevant observation of the learned Commissioner in this regard is as follows:-

“xx xx In such view of the matter, the contentions of parties litigating on the issue of quantum of wages and amount of compensation is set at rest in view of the notification of the Govt. of India, Ministry of Labour and Employment dated the 3rd January, 2020. Therefore, for the purpose of monthly wages of the deceased employee, the same is calculated at Rs.15000/- per month irrespective of his actual payment of wages. xx xx”

5. This Court earlier vide order dated 04.08.2022 disposed of the appeal computing the compensation to the tune of Rs.6.92,579/- with observation that such monthly remuneration prescribed in Notification dated 03.01.2020 is the maximum limit prescribed.

6. However, the Respondents sought review of the said order dated 04.08.2022 in RVWPET No.206 of 2022 and this Court upon adjudication has recalled order dated 04.08.2022 for the error committed regarding observation of the maximum prescription of wage



limit in said Government Notification. It would be profitable here to re-produce such observation of this Court made in the judgment dated 20th December 2023 in RVWPET No.206 of 2022.

“6. Upon deletion of Explanation-II, Section 4(1-B) was introduced with effect from the same date, i.e. 18th January, 2010. Said Section 4(1-B) states that the Central Government may by notification specify for the purpose of Sub-Section (1) such monthly wage in relation to an employee as it may consider necessary. In pursuance to the provisions of Section 4(1-B), subsequent notifications dated 31st May, 2010 and 3rd January, 2020 were issued prescribing the amount of monthly wage at rupees “eight thousand” and “fifteen thousand” respectively.

7. In a recent judgment of this court dated 15th December 2023 passed in *FAO No. 617 of 2020*, this court have held that,

“7. The Employee’s Compensation Act, 1923 is undoubtedly a socio-beneficial legislation and its provisions and amendments must not be interpreted to deprive the poor employee of the benefits under the Act. In *K. Sivaraman and Others v. P. Sathishkumar and Another, (2020) 4 SCC 594* the Hon’ble Supreme Court have observed that the Legislature keeping in mind the purpose of EC Act, 1923 did not enhance the quantum in the deeming provision but deleted it altogether. The relevant observation is reproduced below:-

“26. Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs 4000 even where an employee was able to prove the payment of a monthly wage in excess of Rs 4,000. The legislature, in



its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of providing to all employees compensation for accidents which occur in the course of and arising out of employment. The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them. However, there is nothing to indicate that the legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment.”

8. When the question of compensation comes for determination, the interpretation must be on the principles of just compensation, whether it is under the Motor Vehicles Act or Employee’s Compensation Act or under any other beneficial legislation. It is because no compensation should be an unjust compensation. The compensation to be computed cannot be inadequate or unjust. While determining compensation, the socio-economic condition and the cost factor at the relevant period of time in respect of the deceased and his family members are the common criteria required to be considered for the purpose of interpreting the provisions of the EC Act for fixing the minimum wage of the employee and for grant of compensation and a pragmatic approach should always be taken. Under the provisions of the EC Act, unless the monthly income of the employee is fixed, it would not be possible to determine a definite compensation. As per Section 5 of the EC Act the monthly wage



of the employee should be the amount received for a continuous period of last 12 months preceding the accident divided by twelve. As per Section 4, the amount of compensation shall be, in case of permanent disablement, an amount equal to 60% of the monthly wage multiplied by the age factor prescribed in Schedule IV. Therefore, the monthly wage of the deceased employee is an important consideration to quantify the compensation amount. As held by the Supreme Court in *K. Sivraman's* case (supra) the objective of 2010 amendment was to remove the deeming cap on the monthly income of the employee and extend him the compensation on the basis of the actual monthly wage drawn by him. It is now therefore settled that the actual monthly wage of the employee has to be taken into account for grant of compensation. But here the question arose that where there was no material or incomplete material to determine the actual monthly wage of the employee, then what would the recourse. In the humble opinion of this court, in such circumstance where there is no clear material or acceptable evidence with regard to the actual monthly wage of the employee, then the rates prescribed by the Government as minimum wages for unskilled, skilled, semi-skilled and highly skilled labourers, as the case may be, read with the wages prescribed under section 4(1-B) of the E.C. Act, would govern the field. However, in the case at hand since materials are available on record to determine monthly wage of the injured workman, the same is determined accordingly.

9. So from the above analysis and discussions it becomes clear that the actual monthly wage of an employee is to be taken into account in determining the compensation amount. The actual monthly wages has to be brought on record by way of acceptable evidence. If the evidences and materials are unclear to determine the actual monthly wages, then the prescription of minimum wage



rate during that relevant period read with the amount notified by appropriate government under Section 4(1-B) of the E.C. Act, is to be followed for determining the compensation amount.”

8. In the case at hand the accident took place on 24th January 2021 resulting instantaneous death of the employee. The claimants are the wife and children of the deceased. In view of the principles decided above and that this Court proceeded for computation of compensation amount taking prescription of Rs.15,000/- as the maximum limit, which appears to be error apparent on record, the order dated 4th August 2022 passed in FAO No.126 of 2022 is recalled. The appeal may be placed for hearing afresh before the regular roster Bench.”

7. Thus, what is to be seen is the actual monthly wage of an employee for determining the compensation amount and such monthly wage has to be brought on record by way of acceptable evidence. As stated earlier, the relationship of the deceased, his age and cause of death arising out of and in course of his employment is not disputed in the case at hand. The only dispute remains towards determination of wage. According to the claimants while the deceased was paid his wage of Rs.15000/- per month, the Employer on the other hand disputes the same to confine it at Rs.348/- per day. This is what the entire dispute is and the parties contest on this score.



8. Now looking to the evidence brought on record with regard to the wage of the deceased on the date of accident, the claimants have examined three witnesses on their behalf. P.W.1 (Sabita Rout) is the widow, P.W.2 (Sarala Rout) is the daughter and P.W.3 (Amarendra Rout) is the brother of the deceased-employee. The Employer examined two witnesses Viz. D.W.1 and D.W.2. D.W.1 is the Personal Manager of the Employer and D.W.2 is the Supervisor under whom the deceased was working at the time of accident.

9. Admittedly, the deceased joined in employment under the Appellant on 18.12.2020. According to the Employer, he joined as “Apprentice Mechanical Learner” and worked as such till the date of accident and getting Rs.348/- per day. D.W.1 has stated in his evidence that the deceased was paid Rs.308/- per day similar to other unskilled workers and on the date of accident, he has completed only one month of his employment. It is further stated by D.W.1 that the wage of the deceased was upgraded to semi-skilled category in the month accident happens and thus a sum of Rs.6,92,579/- towards compensation was immediately deposited after the accident vide Cheque No.579360 dated 22.02.2021 computing the wage @Rs.348/- per day in the semi-skilled category. It is true that the Employer did not think it proper to produce



the relevant wage register to fortify their stand towards wage of the deceased as a semi-skilled labourer. D.W.2 – the co-worker, similarly has stated that the deceased was performing work as an unskilled mechanical helper and learner and was paid Rs.308/- per day alike to other unskilled workers. But this D.W.2 in his cross-examination has stated that he does not remember as to how much the deceased was getting towards his wages prior to the accident.

10. Conversely, it is contended on behalf of the claimants that the deceased was getting Rs.500/- per day and this has been consistently stated by all the three witnesses examined on their behalf. The mother, daughter and brother of the deceased-employee have stated in their evidence in chief that the deceased was getting Rs.500/- per day by working under the Appellant as Machine Operator-cum-Mechanic. It is their consistent evidence that the deceased-employee was a high-skilled labourer receiving his wage @Rs.500/- per day.

11. In view of such contradictory evidences brought from both the sides, where the Employer has not taken pain to produce the wage register or payment register in respect of the employees' wage, it is relevant to look into other ancillary materials.



12. The deceased was an experienced worker and earlier worked in Libra Carpet. As per the evidence of claimants' witnesses, the deceased had experience of electrical work, machinery work and machine fitting work before joining in Kalinga Jute Products Pvt. Ltd. (Appellant). The claimants have produced the National Trade Certificate issued in favour of the deceased inasmuch as his qualification in industrial training is not disputed. If such experience of the deceased-employee is taken in his favour, then the claim of Respondents towards receipt of Rs.500/- per day as wage of the deceased cannot be said exaggerated. At the same time, looking to the minimum wage rate prevalent on the date of accident, it is seen that the wage of the highly skilled labourer was Rs.458.05 paise per day, Rs.398.05 paise for skilled labourer, Rs.348.05 paise for semi-skilled labourer and Rs.308.05 paise for unskilled labourer. As seen from the record, the Employer has simply computed Rs.348/- prescribed in respect of semi-skilled labourer as the wage of the deceased-employee on the date of accident. But a person having qualification of industrial training and having National Trade Certificate in his favour, with previous experience in the machinery work, cannot of course be treated as a semi-skilled labourer for the purpose of computation of compensation under the E.C. Act.



Irrespective of his period of working under the Appellant, his previous experience in the same line of work in other industries cannot be overlooked. In view of his qualification and previous experience, the deceased cannot be treated any less than a high-skilled labourer. Keeping this in mind and the consistent evidence adduced on behalf of the claimants regarding wage of the deceased, it would thus be proper to accept the wage @Rs.500/- per day. Therefore, the wage of the deceased @Rs.15000/- per month is found justified and accordingly, the compensation amount of Rs.11,48,175/- as directed by the learned Commissioner for Employees' Compensation-cum-Joint Labour Commissioner in the impugned judgment is confirmed.

13. The appeal is accordingly disposed of confirming the order of the learned Commissioner. The award amount subject to adjustment as directed by learned Commissioner should be paid to the Respondents within a period of two months from today.

(B.P. Routray)
Judge