

IN THE HIGH COURT OF ORISSA AT CUTTACK

**RVWPET No.206 of 2022**

(In the matter of an application for review of order dated 4.8.2022 passed in FAO No.126 of 2021)

Sabita Rout and others ..... Petitioners

Versus

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

Advocate(s) appeared in this case:-

For Petitioners : Mr.B.S.Tripathy, Advocate

For Opp.Party : Mr.P.K.Mishra, Advocate

**CORAM : JUSTICE B.P. ROUTRAY**

**JUDGMENT**

**20<sup>th</sup> December 2023**

**B.P. Routray, J.**

1. The order dated 4<sup>th</sup> August 2022 of this Court passed in FAO No.126 of 2022 has been assailed with a prayer to recall the same for the errors committed therein as per the present review Petitioners, who are the claimants-Respondents in the appeal.

2. According to Mr. B.S. Tripathy, learned counsel for the review Petitioners, the observation of this Court to fix prescription of Rs.15,000/- in terms of the Central Government Notification towards the income of deceased is erroneous. According to the submissions of Mr.Tripathy, the same is the minimum income to be counted for the purpose of compensation.

3. According to Mr.Mishra, learned counsel for the Opposite Party-Appellant, such prescription of Rs.15,000/- has rightly been assessed as the maximum remuneration of any workman in terms of the language of Section 4 of the Employee's Compensation Act, 1923 (hereinafter referred to as "the E.C.Act").

4. The operative portion of the order dated 4<sup>th</sup> August 2022 of this Court reads as follows:

"5. Learned Commissioner in the impugned award has straightaway accepted the income of the deceased at Rs.15,000/- on the ground that the limits of maximum remuneration was increased by the Central Government to Rs.15000/- per month by way of amendment in SO No.71(E) w.e.f. 3.1.2020. Therefore, such calculation of monthly remuneration to the tune of Rs.15000/-, which is the maximum limit prescribed by Government in the Ministry of Labour and Employment Department, against specific undisputed evidence is not found permissible. As such the finding of the learned Commissioner with regard to acceptance of income of the deceased at Rs.15000/- and determination of the compensation accordingly is liable to be interfered with.

6. In view of the admission of the employer and the undisputed evidence that the deceased was getting wage of Rs.348/- per day on the date of accident, the calculation is modified as follows:

$$\begin{aligned}\text{"Rs.348} \times 26 &= \text{Rs.9048} \\ \text{Rs.9048} \times 50\% \times 153.09 &= \text{Rs.6,92,579/-"}\end{aligned}$$

7. The age factor is not disputed. The amount of compensation is thus modified to the aforesaid extent of Rs.6,92,579/-."

5. Presently, clause (a) & (b) of Section 4(1) of the E.C. Act does not contain any Explanation II, which has been deleted by Act 45 of 2009 w.e.f. 18-1-2010. Prior to its omission, Explanation II was read as follows:

*"Explanation II.-Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only."*

6. Upon deletion of Explanation-II, Section 4(1-B) was introduced with effect from the same date, i.e. 18<sup>th</sup> 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 31<sup>st</sup> May, 2010 and 3<sup>rd</sup> 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 15<sup>th</sup> 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 be 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 24<sup>th</sup> 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 4<sup>th</sup> August 2022 passed in FAO No.126 of 2022 is recalled. The appeal may be placed for hearing afresh before the regular roster Bench.

9. The review petition is accordingly allowed.

*(B.P. Routray)*  
*Judge*



*C.R.Biswal.*