

MHLC040008062021

Exh.O-3



Received on : 21/10/2021
Registered on : 25/10/2021
Decided on : 06/03/2026
Duration : 04Y, 04M, 09D.

**BEFORE DHIRAJ P. KALE, COMMISSIONER UNDER
EMPLOYEES' COMPENSATION ACT & JUDGE,
FIRST LABOUR COURT, THANE.**

APPLICATION (ECA)No. 300/B-94/2021

- 1) Shri. Kunjalal Rajwar,
Age : 70 years,
- 2) Smt. Jhilmiliya Devi Kunjalal Rajwar,
Age : 51 years,
- 3) Smt. Rekhakumari Devi Rajwar,
Age : 21 years,
- 4) Shri. Jenath Rajwar,
Age : 18 years,
- 5) Shri. Dilip Kumar Rajwar,
Age : 14 years,

All Residing at :

Nichetola, Near Hanuman Temple,
Bakaspura, Navda, Bishugarh,
Hazari Baug, Zharkhand.

.. Applicants

V/s.

**M/s. Power Engineers Company Ltd.,
At : Airoli, B-404, Sector 20,
Navi Mumbai.**

.. Opp. No.1

And

**The New India Assurance Company Ltd.,
Registered and Head Office at :-
87, M.G. Road, Fort, Mumbai-400 001.**

.. Opp. No.2

Appearances: Ld. Adv. Deepa V. Gurav for applicants.
Ld. Adv. A. N. Mulla for opponent no.1.
Ld. Adv. G. M. D'mellow for opponent No.2.

JUDGMENT

(Delivered on : 06/02/2026)

This is an applicatdion under Section 4 of the Employees' Compensation Act, 1923 for claiming compensation for the death in the course of employment.

2. Brief facts of the case are as under ;

The deceased Mehendar Kunjalal Rajwal was employed with opponent no.1 company as a labour since July 2012 and was performing duty on Tower-line. The work of Tower line of opponent no.1 company was going on at Vasud, Tal- Sangola, Dist. Solapur near the railway line. On 05/06/2013 while the deceased was working on Tower-line and the work of pulling the wire was going on, suddenly the Tower collapsed on the deceased and he got injured. He was admitted in the hospital at Solapur and while undergoing treatement he succumbed to the injuries due to the accident on 11/06/2013. The deceased died during and during and in the course of his employment with the opponent no. No.1. The incident was recorded in police diary on 05/06/2013. The deceased was 26 years old at the time of accident.

3. The opponents were knowledge of the accident. A Memorandum of Agreement has been signed between applicant and opponent no.1 company and accordingly the

opponent no.1 has paid Rs.3,00,000/- as part payment towards compensation to the applicants on 04/07/2013. The opponent no.1 also agreed to pay remaining amount after recovery of the same from insurance company. On continuously enquiry the opponent no.1 for remaining compensation amount, it was informed to file application before the court for compensation. Therefore, there is delay in filing the present application. Hence, the applicants prayed for direction to the opponents for payment of balance amount of compensation of Rs.4,80,390/-.

4. Opponent No.1 filed written statement at Exh.C-3 and admitted the employment relations with deceased, accident during the course of employment on 05/06/2013, death of the deceased due to the accidental injuries. The opponent No.1 also admitted that, it has paid Rs.3,00,000/- compensation to the applicants and also assured to pay remaining amount after recovery of the same from opponent no.2 insurance company. It is submitted that the opponent no.1 after the accident immediately informed the said fact to the insurance company and also forwarded copy of policy requesting them to take necessary steps and releasing the compensation amount, but the insurer failed to deposit the amount either in the court or to the opponent company. Hence, prayed for direction to the opponent no.2 insurance company to pay compensation amount as prayed by the applicants.

5. Opponent No.2 filed written statement at Exh. C-6 and contended that, as per section-4A of the E. C. Act, the employer alone is liable towards making good any loss being caused to the injured employee. It is the contention of the opponent no.2 that, there is no employee-employer relationship between deceased and opponent no.1, deceased was not in employment as labour, accident did not arise out of and in the course of employment with opponent no.1, age of the deceased and the death of the deceased due to the injuries sustained the said accident. It is contended that, policy in respect of workers of opponent no.1 on the concerned Tower line at Vasud, Solapur site is confirmed.

6. It is contended that, applicants have admitted the receipt of Rs.3,00,000/- from opponent no.1, therefore opponent no.1 is liable to pay remaining amount to the applicants. The opponent no.1 has not taken safety measures and not provided safety equipments to the deceased and workers on site, therefore committed the breach of conditions of the policy. It is further contended that, if the applicants prove the employment of the deceased with opponent no.1, then the liability of the insurance company will be as per the premium paid by the opponent no.1 for its workers, subject to confirmation of the policy. The insurance company denied that they are liable to pay the compensation.

7. My Ld. Predecessor framed issues at Exh.O-4.

These issues are hereby reproduced along with the findings thereon ;

<u>ISSUES</u>	<u>FINDINGS</u>
1. Whther there was employer-employee relationship in between deceased and opponent no.1?	: In Affirmative.
2. Whether the applicants prove that, deceased Mahendra Kunjalal Rajwar died on 11/06/2013 arising out of and in the course of employment?	: In Affirmative.
3. What was the age and monthly wages of the deceased at the time of accident?	: Age 26 years and wages Rs.7750/- p.m.
4. Whether the applicants are entitled to the reliefs as claimed?	: Partly in Affirmative.
5. What order?	: As per final order.

REASONS

8. The applicants have examined applicant No.1 Kunjalal Rajwar at Exh.U-3. The applicant no.1 was duly cross examined by the Ld. Advocate for the opponent no.1 and 2. The applicants are relying upon the documents i.e. copy of insurance policy at Exh.U-5, copy of case summary at Exh.U-6, copy of postmortem report at Exh.U-7, copy of report given by Solapur Municipal Corporation at Exh.U-8 and copy of death certificate of the deceased Mahendra at Exh.U-9. The applicants have closed their evidence vide pursis at Exh.U-10.

9. The opponent No.1 has examined Mr. Swapnil S. Deshmukh, Proprietor of opponent no.1 at Exh.C-6. He was duly cross examined by the Ld. Advoate for the applicants and opponent no.2. The opponent no.2 relied on documents filed below list Exh.C-4 and C-5 such as ; copy of insurance policy and correspondence at Exh.C-11, letter to Dy. Commissioner of Labour, Pune informing about the fatal accident and claiming compenastion from opponent no.2 at Exh.C-12, case summary given by Chief Medical Officer, Yashodhara Superspeciality Hospital, Solapur at Exh.C-8, copy of post mortem report at Exh.C-9, copy of settlement agreement and demand draft at Exh.C-13, character certificate given by police for service in opponent no.1 at Exh.C-10 and copy of attendance/wage register at Exh.C-11. The opponent no.1 closed its evidence vide pursis Exh.C-14.

10. The opponent no.2 examined Ms. Naina Nakle, Assistant Manager of insurance company at Exh.C-16. The witness was duly cross examined by the Ld. Advocate for the applicant and opponent no.1. The insurance company filed power of attorney issued by opponent no.2 to Ms. Naina Nakle to depose in this matter at Exh.C-18. The opponent no.2 closed its evidence vide pursis at Exh.C-19.

11. I have heard Ld. Counsels for the parties. Read written notes of arguments filed at Exh.C-20 and C-22 filed by opponent no. 1 and 2 respectively.

AS TO ISSUE NO.1 :

12. The applicant no.1 Kunjalal deposed in consonance with the contentions made in the application. He deposed that, deceased Mahendra was employed with the opponent no.1 as a labour since the month of July 2012. In cross examination he stated that, he has not produced any document to show that, deceased Mahendra was employed with opponent no.1. The opponent no.1 has examined its proprietor namely Swapnil Deshmukh, who has specifically deposed that deceased Mahendra was in the employment of opponent no.1 and he was covered under insurance policy. Once the opponent no.1 admitted the employment relationship with deceased Mahendra, then opponent no.2 has no concern with the employer-employee relationship between deceased Mahendra and opponent no.1. Thus, vague denial of employment relationship on the part of opponent no.2 is not sufficient to dispute the employment relationship in between deceased Mahendra and opponent no.1.

13. No doubt, no document as to employment is forth on record by applicants. However the opponent no.1 has filed attendance register at Exh.C-11 is mentioning the name of deceased Mahendra which clearly goes to show that, he was in the employment of opponent no.1. So also, opponent no.1 has also filed character certificate issued by Police Superintendent, Thane Rural in favour of deceased Mahendra which is placed on record at Exh.C-10. On perusal of said

character certificate it appears that, it was issued to deceased Mahendra for securing employment with the opponent no.1. Not only this, but in addition to character certificate Exh.C-10 there is admission tendered by opponent no.1 as deceased Mahendra was in the employment of opponent no.1 is more than enough to hold that, there was employer-employee relationship in between deceased Mahendra and opponent no.1. Hence, I answer issue no.1 in the affirmative.

AS TO ISSUE NO.2 :-

14. The issue under consideration is in respect of accident dtd.05/06/2013, as to whether it arose out of and in the course of the employment resulted into the death of deceased Mahendra. In this regard, applicant no.1 Kunjalal has deposed that, his deceased son Mahendra was working on Tower Line at village Sangola, Dist. Solapur and while pulling the wire, the tower collapsed on the person of deceased Mahendra due to which he succumbed to the injuries and admitted in hospital for treatment, but during treatment he was declared as dead.

15. The opponent no.2 has nowhere either denied or disputed the alleged accident resulted into death of deceased Mahendra. The opponent no.1 has also admitted in written statement and deposed on oath that, deceased Mahendra was died when he was on duty at village Sangola, Dist. Solapur. The opponent no.1 has placed on record information

letter about fatal accident at Exh.C-12 and case summary given by Chief Medical Officer at Exh.C-8. Likewise, applicants have also placed on record copy of case summary at Exh.U-6 and copy of report given by Solapur Municipal Corporation at Exh.U-8. All these documents are self explanatory to show that, the accident of the deceased Mahendra arose out of and in the course of employment and corroborating the version of applicant no.1 Kunjalal. The opponent no.2 has not brought on record to disbelieve version of applicant no.1 Kunjalal as well as version of proprietor of opponent no.1 Mr. Swapnil Deshmukh. Even, the opponent no.2 has not raised any objection about the genuinity of documents placed on record showing the accident taken place arising out of and during the course of employment of deceased Mahendra. Hence, i answer issue no.2 in the affirmative.

AS TO ISSUE NO. 3 :

16. This issue relates to the salary and age of the deceased Mahendra. The applicants have not stated monthly wages of deceased Mahendra, but proprietor of opponent no.1 Mr. Swapnil Deshmukh has deposed on oath that, deceased Mahendra was drawing monthly wages around Rs.7,750/-. The opponent no.2 has not disputed the wages of deceased Mahendra and therefore there is no hesitation to hold monthly wages of deceased Mahendra as Rs.7,750/-.

17. The age of deceased Mahendra is stated to be 26 years at the time of accident. The opponent no.1 has placed on record photocopy of PAN card of deceased Mahendra below list Exh.C-5. The date of birth of the deceased Mahendra is mentioned as 05/01/1987. The accident took place on 05/06/2013. Having regard to the date of birth of deceased Mahenddra and date of accident, his age was 26 years at the time of accident. Thus, the applicants have proved the salary of deceased Mahendra as Rs.7750/- per month and his age as 26 years old at the time of accident. Hence, I answer issue no.3 accordingly.

AS TO ISSUE NO. 4 :

18. This issue deals with the entitlement of the applicants to the reliefs claimed. The applicants have claimed compensation of Rs.4,80,390/- alongwith interest @ 18%. The opponent no.2 i.e. insurance company has raised objection for granting compensation to applicants on the ground that there is breach of terms and conditions of insurance policy on the part of opponent no.1, as no safety measures were provided to deceased Mahendra at the time of incident. The suggestion to that effect was denied by witnesses. On perusal of insurance policy at Exh.U-5 and C-7 it appears that, there is no specific condition about providing safety measures. The opponent no.2 has not adduced cogent evidence to establish the specific precautions which were required to be taken by opponent no.1 by considering nature

of work. The opponent no.2 has not placed any material on record to show that, investigation was carried out in the accident or that, any action has been taken by the police against opponent no.1 for not providing safety measures to workers at site. Hence, I do not find any substance in the said objection taken by opponent no.2.

19. Further, the Ld. Counsel for opponent no.2 has argued that, proprietor of opponent no.1 Mr. Swapnil Deshmukh admitted in cross examination that, deceased Mahendra was covered under ESIC and therefore applicants are not entitled to claim compensation in the present proceeding filed under Employees' Compensation Act. The opponent no.2 has examined Ms. Naina Nakle, Assistant Manager. She has deposed that, the employee of opponent no.1 are covered under ESIC and hence applicants are not entitled to file this claim, as there is bar as per section 53 ESIC Act. In cross examination, she has specifically stated that, no document filed on record to show that deceased Mahendra was covered under ESI scheme. The said statement is sufficient to wash out the admission given by witness Mr. Swapnil Deshmukh as to deceased Mahendra was covered under ESI scheme, because in absence of documentary proof it cannot be concluded that, deceased Mahendra was covered under ESI scheme and opponent no.1 was paying amount towards ESI contribution in the name of deceased Mahendra.

20. On the contrary, witness Ms. Naina Nakle has admitted in cross examination that, policy was valid from 02/08/2012 to 01/08/2013 and at the time of accident and death of deceased Mahendra the policy was valid. Even it is not the defence or contention of opponent no.2 that insurance policy was not valid when accident taken place. Further, the opponent no.2 insurance company in para no.5 of its written statement has contended that, policy in respect of workers of opponent no.1 and/or the workrs on concerned Tower Line at Vasud, Solapur site is confirmed. Apart from it, in para no.15 of written statement the opponent no.2 has specifically contended that, if applicants prove the employment of deceased with the opponent no.1, then liability of insurance company will be as per the premium paid by the opponent no.1 for its workers subject to confirmation of the policy.

21. In view of admission on the part of opponent no.2 as to the confirmation of insurance policy which was valid at the time of accident and its liability subject to proving employment of deceased Mahendra with the opponent no.1, is sufficient to hold that, opponent no.1 and 2 are liable to pay compensation to applicants jointly and severally. Hence, the applicants are entitled to compensation from the opponents.

22. The applicants have proved that deceased was 26

years old and was earning Rs.7750/- p.m. at the time of accident. However, for the purpose of Employees' Compensation Act, monthly wages of deceased Mahendra is to be considered as Rs.8000/-. So, in view of section 4(1)(a) to (c) of the Employees' Compensation Act, following calculation is taken into consideration ;

50% of Wages x Relevant factor of age = Compensation

8000/50% x 215.28 = Compensation

4000 x 215.28 = Rs.8,61,120/-.

Thus, the applicants are entitled to compensation amount of Rs.8,61,120/-.

23. As per section 4-A of the said Act, the compensation shall be paid as soon as it falls due. The opponent no.1 the employer has not given any justification for not depositing the amount of compensation in this Court. Further I have perused copy of insurance policy filed at Exh.U-5 and C-7. There is no dispute of issuance of such insurance policy. The Ld. Counsel for opponent no.2 has argued that, the insurance company cannot be saddled with interest and penalty as per terms and conditions of policy which is part of insurance policy, clause 2(1) mentioned in the policy. However, the insurance policy Exh.C-7 and U-5 has nowhere mentioning exclusion clause as to interest and penalty and even no terms and conditions placed on record by opponent no.2. Therefore, in absence of exclusion clause and terms and conditions of insurance policy, insurance

: 14 : A(ECA)No.300/B-94/2021

company cannot be exonerated from its liability to pay interest and penalty to the applicants. Therefore, opponent no.1 and 2 both are jointly severally liable to pay compensation amount alongwith interest @ 10% p.a. to the applicants.

24. Further, the opponent no.1 though admitted the employment and accident during the course of employment of the deceased Mahendra has failed to deposit the compensation amount in the court, hence opponent no.1 is liable to pay 50% penalty of the amount of compensation and it comes to Rs.4,30,560/-.

25. Having considered the above discussions, the opponent no.1 & 2 are under obligation to pay jointly and severally the amount of compensation with interest thereon. The opponent no.1 shall alone shoulder the payment of penalty. Hence, I answer the issue no. 3 and 4 accordingly.

AS TO ISSUE NO.5 -

26. The cumulative effect of the findings given above is that the application deserves to be partly allowed. Hence, I proceed to pass the following order -

ORDER

- 1) The application is partly allowed.

- 2) The applicants are entitled to compensation amount of **Rs.8,61,120/- (Rupees Eight Lakh Sixty One Thousand One Hundred Twenty Only)** alongwith interest @ 12% p.a. from the date of accident i.e. 05/06/2013 till its full realization jointly and severally from opponent no.1 and 2. The applicant is also entitled to 50% penalty of compensation amount i.e. **Rs.4,30,560/- (Rupees Four Lakh Thirty Thousand Five Hundred Sixty Only)** from opponent no.1.
- 3) The opponent no.1 and 2 directed to jointly and severally deposit the compensation of **Rs.8,61,120/- (Rupees Eight Lakh Sixty One Thousand One Hundred Twenty Only)** alongwith interest @ 12% p.a. from the date of accident i.e. 05/06/2013 till its full realization in the office of this court.
- 4) The opponent no.1 is directed to deposit 50% amount of compensation i.e. **Rs.4,30,560/- (Rupees Four Lakh Thirty Thousand Five Hundred Sixty Only)** as penalty in the office of this court.

Date : 06/03/2026

Place : Thane

Ast/-

(Dhiraj P. Kale)
Commissioner for Employees'
Compensation & Judge,
First Labour Court, Thane.

Argued on : 26/02/2026

Judgment dictated and typed on : 06/03/2026

Judgment checked & signed on : 07/03/2026