



Received on :- 03/02/2021  
Registered on :- 03/02/2021  
Decided on :- 18/03/2026  
Period :- 5Y; 01M: 15D

**BEFORE THE COMMISSIONER FOR EMPLOYEES'**  
**COMPENSATION ACT, & JUDGE SECOND LABOUR COURT,**  
**KOLHAPUR**  
***(Presided over by – K.B. Kamgauda)***  
***(JO Code – MH-1894)***

**E. C. Application No. 09/C-4/2021**  
CNR No.MHLC090000442021

1. **Smt. Rupali Rahul Saswade,**  
Age:- 28 Yrs, Occu.- Household,
2. **Kum. Harshada Rahul Saswade,**  
Age:- 11 Yrs, Occu.- Education,
3. **Kum. Aradhya Rahul Saswade,**  
Age:- 6 Yrs, Occu.- Education,  
(Applicant No. 2 & 3 Minor through  
minor guardian mother Applicant No.1)
4. **Sou. Maya Laxman Saswade,**  
Age:- 53 Yrs, Occu.- Household,
5. **Shri. Laxman Hindurao Saswade,**  
Age:- 60 Yrs, Occu.- Nil,  
All are R/o. Plot No.4,  
Nursing Colony, Lakshtirth Vasahat,  
Kolhapur.

**.. Applicants**

**Versus**

**Prop. Dhananjay Bhosale,**  
For Dhananjay Metal Works,  
Age:- Major, Occu. Business,  
R/o. 1029, Gavati Mandai,  
Shivaji Udyamnagar,  
Kolhapur.

**.. Opponent**

**APPEARANCES :-**

Adv. Shri. S. D. Salokhe, for Applicants.

Adv. Shri. A. P. Chaugale, for Opponent.

**:- J U D G M E N T :-**

( Delivered on this 18<sup>th</sup> day of March, 2026 )

1. Applicants being wife, daughters and parents of deceased Rahul Laxman Saswade have filed application for claiming compensation from the Opponent under Section-4 read with Section 22 of The Workmen's Compensation Act, 1923, now known as Employees' Compensation Act, 1923. (hereinafter referred to as "the Act") on the count of death occurred out of and in the course of his employment with Opponent.

**Brief facts of the case of Applicant's claim are as follows :-**

2. Deceased Rahul Laxman Saswade working with Opponent from December 2013 and was getting salary of Rs. 14,000/- per month. On 03/10/2020 deceased Rahul Saswade was working with Opponent industry. He was on duty from 8.30 am to 5.30 pm. On the same day as usual he went for duty. In the afternoon had come for

lunch at home and again went for his work. At the evening deceased did not return from his work. Applicant No. 4 and 5 made a call to the deceased but no response to the said call by the deceased. Therefore, Applicants started searching the deceased but could not trace him anywhere.

3. On 04/10/2020 at about 9.30 am Applicant No. 4 again had a call on the deceased mobile. Opponent picked the call and said that deceased left his mobile in the industry. Thereafter on the same day at 10.30 am Opponent called back and said that deceased Rahul Saswade was admitted in CPR Hospital, Kolhapur. Applicants went to said hospital and saw that the hands and legs of the deceased were covered by charcoal mud of the industry. On 04/10/2020 deceased was shifted to Savitribai Phule Hospital for better treatment. Unfortunately on 06/10/2020 he died in the said hospital. Postmortem was not done. Applicant could not get the exact cause of death of Rahul Saswade.

4. Opponent being a employer did not compensate the Applicants. The last call was picked by Opponent and having custody of cell phone of Rahul Saswade it is inferred by Applicant that he died out of and in the course of employment. It is alleged that Opponent deleted call history of cell phone of Rahul Saswade. Applicants being a dependent on the income of the deceased. At the time of death Rahul Saswade was 33 years old and getting Rs. 14,000/- per month as a salary. Applicants have suffered great financial loss which cannot

be calculated in terms of money. Therefore, Applicants calculated total compensation amount of Rs. 14,36,620/- plus 50% penalty amount which comes Rs. 21,54,930/-.

5. Opponent filed written statement at Exh.C-6. The relationship between deceased and Opponent is denied. Application barred by law of limitation, misjoinder of parties. Mr. Dhananjay Bhosale is not a proprietor of Dhananjay Metal Works. Deceased was not employee of Dhananjay Bhosale or Dhananjay Metal Works. Application is not tenable. Mr. Dhananjay Bhosale received notice on the address which he carries another business. The deceased was not on duty or not appointed by the Opponent on 04/10/2020. The main defence of the Opponent is that the said industry was closed on 13/12/2010. Therefore, no question would arise to employ deceased Rahul Saswade. Lastly it is submitted that application be rejected.

6. From the rival contentions of the parties, issues are framed at Exh.O-3, I have recorded my findings with reasons stated below :

	<b><u>ISSUES</u></b>	<b><u>FINDINGS</u></b>
1)	Whether Applicants prove that there is employer-employee relationship between Opponent and deceased Rahul Laxman Saswade ?	<b><i><u>In the Negative</u></i></b>
2)	Do Applicants prove that the death of Rahul Laxman Saswade occurred out of and during the course of employment of Opponent ?	<b><i><u>In the Negative</u></i></b>

3)	Do Applicants prove that on the date of accident age of the deceased was 33 years and he was getting Rs. 14,000/- monthly wages?	<b><i><u>In the Negative</u></i></b>
4)	Do Applicants prove that they are entitled to get compensation with interest and penalty from the Opponent?	<b><i><u>In the Negative</u></i></b>
5)	What order ?	<b><i><u>As per final order</u></i></b>

**REASONS**

**AS TO ISSUE NO. 1 :-**

7. Applicant No.1 examined herself to prove their claim against Opponent. The defence of Opponent is total denial. Even they denied the letter dated 28/12/2019 issued in favour of deceased. After perusal of entire record, it shows that claim of the Applicants having based on letter dated 28/12/2019. Admittedly there is no postmortem report. Only birth and death certificates are produced on record. As per the strong defence Issue No. 1 casts burden on Applicants to prove employer-employee relationship. The letter dated 28/12/2019 it contents, whomsoever it may concerned this is to certify that the Rahul Laxman Saswade is working with us for last 4 years. His performance is satisfactory. He draws salary of Rs. 14,000/- per month. This letter is issued on the letter pad of Dhananjay Metal Works. Signing authority doesn't bear the designation. The letter dated 28/12/2019 shows that deceased Rahul Saswade was working with Opponent since 4 years form the date of issuance. It is important to

note that Opponent denied the letter and its contents. Therefore, Applicants have to prove that Rahul Saswade died out of and in the course of employment.

8. As per pleadings on 03/10/2020 deceased left his house for his duty. He was admitted in the Government Hospital, Kolhapur on 04/10/2020 and he died on 06/10/2020. The dates such as 03/10/2020, 04/10/2020 and 06/10/2020 are important. Applicant nowhere state that on 03/10/2020, 04/10/2020 deceased was working in the Opponent industry. Mere having custody of cell phone of deceased with Opponent it cannot be inferred that he was working with Opponent on the day of incident. There is no evidence showing that on 04/10/2020 deceased was working with Opponent and admitted by them to the hospital. Mere phone calls from the Opponent doesn't mean that they are responsible for the death of Rahul Saswade. Admittedly postmortem was not done on the Rahul Saswade. Therefore, the actual cause of death is not clear before us. There is no medical record showing that where he was found injured, who brought him for treatment etc. therefore, in the eyes of law, Rahul Saswade was brought to the hospital by unknown person. There is no evidence showing that he was admitted by the Opponent for further treatment. In the absence of proper medical evidence, liability cannot be fastened on the shoulders of Opponent.

9. The evidence of Applicant No. 1 is in consonance with pleading. She admitted that on 03/10/2020 she has not filed any

missing complaint of her husband. Even till the death of Rahul Saswade no one of the Applicants have filed missing complaint of Rahul Saswade. Therefore, there is a doubt about the death of Rahul Saswade out of and in the course of Opponent with Opponent. Applicants failed to prove relationship between Opponent and deceased Rahul Saswade as employer-employee. Hence, Issue No. 1 is answered in “Negative”

**AS TO ISSUE NO. 2 :-**

10. As Opponent strongly disputed the relationship. Applicants with sufficient evidence have failed to prove employer-employee relationship. Even Applicants also failed to prove that death of Rahul Saswade occurred out of and in the course of employment with Opponent. For the sake of convenience and even presuming that deceased was working with Opponent since 4 years as per letter dated 28/12/2019. It is the duty of Applicants to prove that death occurred out of and in the course of employment. the alleged letter dated 28/12/2019 would not suggest that on the day of death deceased was working with Opponent. Therefore, it can be easily said that Applicants failed to prove death of Rahul Saswade occurred out of and in the course of Opponent. Hence, Issue No. 2 is answered in “Negative.”

11. In support of his defence, Opponent relied on following citations.

1. **Mackinnon Mackenzie And Co.(P) Ltd. V/s. Ibrahim**

- Mahammed Issak, reported in (1969)2 SCC 607;**
- 2. Gottumukkalaappala Narasimha Raju and others V/s. National Insurance Co. Ltd. and Another, reported in (2007) 3 CLR 77;**
  - 3. Ram Bahadur and Another V/s. Sharda Leesa Factory Jawahar Jyoti, reported in Uttarakhand High Court, (2009) 3 LLJ 645.**

Above citations of Hon'ble Apex Court and Uttarakhand High Court relating to burden of proving relationship. It is also held that the employee having primary liability to prove that incident happened or arose out of and in the course of employment. In present case Applicants failed to discharge such burden of proving relationship and incident.

**AS TO ISSUE NO. 3 and 4 :-**

12. As per the discussion of Issue No. 1 and 2, it is concluded that Applicants failed to prove employer-employee relationship between deceased Rahul Saswade and Opponent. At the same time they also failed to prove that Rahul Saswade died out of and in the course of employment with Opponent. The age and salary of the deceased is no more remains to be discussed and calculated for compensation. Applicants are not entitled to get compensation with interest and penalty from Opponent. Hence, Issue No. 3 and 4 are answered in "Negative" and in answer to Issue No. 5 following order is passed.

**ORDER**

1. Application stands rejected.
2. No order as to costs.

Place : Kolhapur.  
Date :- 18/03/2026

( K. B. Kamgauda )  
Commissioner under Employees  
Compensation Act & Judge,  
Labour Court No. II, Kolhapur

Argued on :- 16/03/2026  
Judgment Dictated on :- 18/03/2026  
Judgment transcribed on :- 18/03/2026  
Judgment checked & signed on :- 18/03/2026