IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

MISC. APPEAL No. 2606 of 2020

M/S MADHYA PRADESH FLYING CLUB LTD.

Versus

HASEENA KHATUN KHAN AND OTHERS

Appearance:

Shri G.S. Patwardhan, learned Senior Advocate assisted by Shri Mukul Bhutda, learned counsel for the appellant.

Shri Abhishek Gilke, learned counsel for respondents No.1 to 5.

WITH

MISC. APPEAL No. 2743 of 2020

NEW INDIA INSURANCE CO. LTD.

Versus

HASEENA KHATUN KHAN AND OTHERS

Appearance:

Shri S.V. Dandwate, learned counsel for the appellant.

Shri Abhishek Gilke, learned counsel for respondents No.1 to 5.

MISC. APPEAL No. 2854 of 2020

HASEENA KHATOON KHAN AND OTHERS

Versus

THE MADHYA PRADESH FLYING CLUB LTD. THROUGH MANAGER DEVI AHILYA BAI HOLKAR AIRPORT AND OTHERS

Appearance:

Shri Abhishek Gilke, learned counsel for the appellants.

Shri G.S. Patwardhan, learned Senior Advocate assisted by Shri Mukul Bhutda, learned counsel for respondent No.1.

Heard on : 05.12.2025

Pronounced on : 09.02.2026.

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ORDER

These appeals have been filed by the respective appellants against the common award dated 17.03.2020 passed by the Commissioner Employees' Compensation / Labour Court, Indore in Case No.06/WC/16(F).

1.1 Appeal No.2606/2020 has been filed by the employer (Madhya Pradesh Flying Club Limited) challenging the quantum of compensation.

1.2 M.A. No.2743/2020 has been filed by the Insurance Company against the direction to pay Rs.10,00,000/- again in view of the provisions of Section 8 of the Employee's Compensation Act and Appeal No.2854/2020 has been filed by the legal representatives of the deceased employee also on the question of the quantum of compensation.

1.3 As all three interested parties have filed their respective appeals, for the sake of convenience, they are hereinafter referred to as the employer, the 'Insurance Company' and the 'claimants'.

2. The facts relevant to the case are that the deceased Arshad Noor Qureshi was employed as Manager (Co-ordination) with the employer. The employer M/s Madhya Pradesh Flying Club was operating registered aircraft being registration number VT EUE (Victor Tango Eco Uniform Echo), Model : Cessna-152.

2.1 On 19.11.2014 at around 10:45 AM, deceased Arshad Noor was piloting the said aircraft. Along with him, one Pawan Deep Singh Pabla was also seated in the aircraft. While landing, the aircraft lost balance and as the pilot Arshad Noor could not control it, the aircraft crashed into the ground

and was damaged resulting in grievous injuries to both occupants.

2.2 Arshad Noor succumbed to the injuries sustained in the said accident and Pawan Deep Singh sustained grievous injuries to both his legs, spinal bone and other parts of his body. Both were rushed by the personnel of employer to Shri Aurobindo Institute of Medical Sciences Hospital, Indore, where Arshad Noor was declared dead and Pawan Deep Singh was admitted for treatment.

2.3 An inquest was registered in terms of Section 174 of the Cr.P.C. at Inquest No.88/2014.

2.4 The deceased Arshad Noor was 28 years of age at the time of the accident and Pawan Deep was 25 years of age. The aircraft in question was insured with the Insurance Company under Aircraft Insurance Policy which covered the risk of passengers under personal accident insurance to the extent of Rs.10,00,000/- only.

2.5 Consequent to the accident, the claimants filed an application under Sections 4 and 22 of the Employee's Compensation Act, 1923 before the Labour Commissioner for grant of compensation. In the claim petition, it was asserted that the deceased was earning Rs.20,000/- per month as salary and was additionally receiving Rs.300/- per hour for flying. The claim was denied by both, the employer as well as the Insurance Company.

3. The case of the employer was that the actual wages of Rs.20,000/- cannot be taken into consideration in view of the upper limit provided in Section 4 of the Employee's Compensation Act which according to the employer was Rs.8,000/- per month. It was thus contended that the entire

amount of compensation had already been paid through the insurer by issuance of cheque of Rs.10,00,000/- which had duly been received.

3.1 The Insurance Company on the other hand denied its liability by asserting that it had insured the employer only under Aircraft Insurance Policy and that there was no insurance coverage for any liability arising under the Employee's Compensation Act.

3.2 The Labour Court based on pleadings of the respective parties, framed as many as six issues. Upon consideration, it recorded a finding that the deceased was in the employment of the employer namely Madhya Pradesh Flying Club and that he died during the course of his employment. It was further held that the accident occurred during the course of 'employment' in terms of the provisions of the aforesaid Act. The Labour court also concluded that the deceased was earning Rs.20,000/- per month.

3.3 As such, compensation was awarded to the claimants to the tune of Rs.21,17,900/- along with interest at the rate of 12% *per annum* out of which an amount of Rs.10,00,000/- was directed to be paid by the Insurance Company and the remaining amount of Rs.11,77,900/-, along with the aforesaid interest was directed to be paid by the employer.

3.4 While directing the above, the Labour Commissioner discarded the contention of the Insurance Company that it had already discharged its liability by paying cheque of Rs.10,00,000/- to the employer. The Labour Commissioner held that in view of the provisions of Section 8 of the Employee's Compensation Act, the said amount was required to be deposited with the Commissioner. As the Insurance Company had paid the amount to

the employer instead of depositing it with the Commissioner, the same could not be treated as proper compliance with the statutory provision. Consequently, a direction was issued to the Insurance Company to pay the said amount.

3.5. Being aggrieved by the aforesaid directions/award, all three interested parties have come before this Court.

Contention of employer :-

4. Learned senior counsel for the employer (Madhya Pradesh Flying Club) mainly contends that the quantum of compensation awarded is excessive. Learned senior counsel for the employer further submits that the quantification of compensation has been done by taking into consideration the wages of the deceased at Rs.20,000/- per month which is contrary to the provisions of Section 4 of the Employee's Compensation Act.

4.1 Learned senior counsel particularly lays emphasis on the provisions of Section 4(1B) of the said Act and submits that the said provision empowers the Central Government to issue notification determining wages. The Central Government issued such notification on 31.05.2010 thereby fixing the monthly wages at Rs.8,000/- per month. As such, it ought to have been treated as the outer limit / cap for wages and the Labour Commissioner could not have considered the actual wages of Rs.20,000/- which were being paid to the deceased employee.

Submission of learned counsel for the Insurance Company :-

5. Learned counsel for the Insurance Company submits that the Labour Commissioner erred in directing payment of Rs.10,00,000/- by the

insurance Company by ignoring the admitted and established fact that the Insurance Company had already paid a cheque of Rs.10,00,000/- to the employer who in turn had paid the same to the claimants. He submits that the witness of the insured (DW-1) in Para 14 of his cross examination has expressly admitted receipt of the amount of Rs.10,00,000/-. As such, the direction to pay Rs.10,00,000/- again could not have been given.

5.1 He further submits that the Labour Commissioner erred in resorting to the provisions of Section 8 of the Employee's Compensation Act, which were not applicable in the present case for the reason that the Insurance Policy was Aircraft Insurance Policy containing clear exclusion of any liability under the Employee's Compensation Act. Consequently, the compensation in the present case, in the context of Insurance Policy was not covered under the provisions of Section 8 of the Act. Thus, the impugned award to that extent deserves to be modified.

Submission of the claimants :-

6. The claimants before adverting to the merits of the case, has emphasised that the appeal filed by the employer is not maintainable for the reason that the employer has not complied with the award. It is submitted that the employer has neither deposited the entire amount payable in view of the proviso to section 30 of the aforesaid Act, as the full interest part has not been deposited nor has the penalty, which became due, been deposited. It is further contented that the employer has also failed to file the certificate of deposit of the amount payable which was required to accompany the memo of appeal.

6.1 As regards the merits of the case, learned counsel for the claimants submits that the appeal filed by the employer does not involve any substantial question of law. He submits that the provisions of the Employee's Compensation Act were amended in the year of 2009. Since the accident occurred in the year of 2014, the amended provisions would apply. According to learned counsel, by virtue of the amendment, the issue relating to the cap of Rs.8,000/- stood settled and the said amendment was considered by the Hon'ble Apex Court in the case of ***K. Sivaraman and Others vs. Satishkumar and Another*** reported in ***(2020) 4 SCC 594***.

6.2 It is therefore contended that the actual wages of the deceased were required to be taken into consideration. Learned counsel further submits that although the Labour Commissioner has taken the salary of Rs.20,000/- per month into account, he has completely ignored the incentive of Rs.300/- per hour which was also being paid to the deceased employee. He submits that the witness of the employer Vikas (DW-1) has admitted in Para 5 of his examination that the deceased was receiving salary of Rs.20,000/- per month along with incentive of Rs.300/- per hour. As such, according to learned counsel for the claimants, the income of the deceased ought to have been taken at Rs.30,000/- per month and consequently, enhancement of compensation is warranted.

7. Heard learned counsel for the parties and perused the record.

The findings and conclusions in M.A. No.2606/2020 (Employer's Appeal) :-

Issue of maintainability of the appeal filed by the employer :-

8. The objection of the learned counsel for the claimants rests on the requirement of the third proviso to Section 30 of the Employee's Compensation Act. However, this Court while dealing with the said issue in the connected appeal M.A. No.2604/2020 has already held that the defect of non-deposit of the entire amount is curable in nature.

8.1 In the present case, although the appellant deposited the entire amount of compensation at the time of filing the appeal, however, the interest part was not deposited. Accordingly, arguments were heard on the question of maintainability of the appeal and *vide* order dated 08.09.2020, it was held that for maintaining appeal in terms of third proviso to Section 30 of the Employee's Compensation Act, the interest part is also required to be deposited. Pursuant to the said order, the employer in its appeal deposited the interest part as well.

8.2 The submission of the learned counsel for the claimants is that since the interest was not deposited within time, the employer has become liable for payment of penalty also. However, considering the fact that while depositing the amount of compensation, the employer did not deposit the interest amount by relying an order passed by this Court in M.A. No.935/2015 whereby it was held that in terms of third proviso to section 30 the employer is required to deposit only principal amount and not the interest part, thus this reason of not depositing the interest appears to be bonafide. The said order of M.A. No. 935/2015 was considered by this court again and while examining the said issue of pre-deposit, this Court held that in view of the settled position of law, the said order was *per incuriam*. Consequently,

the interest amount was thereafter deposited by the employer.

8.3 In these peculiar circumstances, this Court is not inclined to impose penalty upon the employer and the objection regarding maintainability of the appeal is hereby overruled.

On Merits :-

9. This Court *vide* order dated 29.07.2024 framed following substantial question of law.

> *"Whether, the learned Court below has failed to consider the upper cap of Rs 8,000/- while calculating the amount of compensation and whether the procedure adopted by the Commissioner to calculate the amount was proper and maintainable?"*

9.1 The employer in this appeal has contended that the quantum of compensation is excessive and is based on the erroneous conclusion that the entire actual wages of Rs.20,000/- per month were required to be taken into account, whereas in view of the cap of maximum wages at Rs. 8000/- entire actual wages could not have been taken into consideration. However, in the considered view of this court, the issue regarding the cap on maximum wages at Rs.8,000/- is no longer *res integra*.

9.2 The legislature in 2009 amended the provisions of Section 4 by deleting Explanation No.2 which was related to the cap on the monthly wages of an employee. Before this amendment the explanation No.2 provided that where the monthly wages of a workman exceeded Rs.4,000/-, the monthly wages for the purposes of Clause (a) and (b) shall be deemed to be Rs.4,000/- only.

9.3 As such, there was a clear cap on the maximum wages to be

considered for determining compensation under the Employee's Compensation Act. However, Explanation No.2 was omitted by the Act of 45 of 2009 with effect from 18.01.2010.

9.4 In its place, Section 1B was added to the effect that the Central Government may by notification in the Official Gazette specify for the purposes of sub-section (1) the monthly wages in relation to an employee as may be considered necessary. Pursuant to this provision, the Central Government by a general notification issued in 2010 itself, specified Rs.8,000/- as the maximum wages.

9.5 Accordingly, learned senior counsel for the employer submits that Rs.8,000/- is the statutory cap and that the actual wages of the deceased cannot be considered.

9.6 The above mentioned amendment in the Employee's Compensation Act was considered by the Hon'ble Supreme Court in the case of ***K. Sivaraman and Others (Supra)***. In the said matter, the Hon'ble Apex Court keeping in view the complexity of the issue, appointed a learned counsel as *amicus curie*. The submissions of the learned *amicus curie* are recorded in Para 10 of the judgment by the Hon'ble Apex Court which are as under :-

> *"10. In appeal before this Court, the learned Amicus Curiae urged that both the Commissioner and the High Court have erred — the Commissioner having adopted a figure of Rs 4000 per month and the High Court, Rs 8000 per month. The learned Amicus Curiae submitted that in terms of the provisions of Section 4(1)(a) of the 1923 Act, where death has resulted from injury, the compensation payable is an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor. The relevant factor is specified in Schedule IV and for the deceased who was 26 years' old on the date of the accident, the multiplicand would be 215.28. The learned Amicus Curiae submitted that under sub-section (1-B) of Section 4,*

the Central Government is empowered to issue a notification specifying, for the purposes of sub-section (1), the monthly wages in relation to an employee as it may consider necessary. However, it was submitted that the notification does not impose a cap or ceiling on the monthly wages which form the basis of calculating the compensation due and payable. Where the actual wages of an employee are proved to be in excess of the amount which is specified in the notification, there is no bar in adopting the monthly wages so proved in terms of Section 4(1)(a). The learned counsel buttressed this submission by adverting to Act 45 of 2009, which took effect from 18-1-2010 and deleted the deeming provision in Explanation II to Section 4 ["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;"] . Moreover, it was urged by the learned Amicus Curiae that the method of calculating wages is specified in Section 5. It was urged that clause (a) of Section 5 will be attracted to the present case where the employee was, during a continuous period of not less than twelve months immediately preceding the accident, in the service of the employer."

9.7 These submissions were considered by the Hon'ble Apex Court and findings thereon were recorded in Paras 25 and 26 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 4000. 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."*** (emphasis supplied)

9.8 It is thus clear that the intention, as observed by the Hon'ble Apex Court, in amending the Employee's Compensation Act was to calculate compensation on actual basis wherever the actual wages are determinable.

9.9 In the present case, the claimants have asserted that the deceased employee was earning Rs.20,000/- per month, which has been expressly admitted by the employer. Therefore, in the considered view of this Court, the Labour Commissioner did not err in quantifying the compensation by taking wages of the deceased employee at Rs.20,000/- which were actually being paid at the time of his death.

9.10 In view of the above analysis, the contentions raised by the learned senior counsel are hereby discarded. Resultantly, the substantial question of law is answered against the employer and in favour of the employee.

In M.A. No.2854/2020 (Claimant's Appeal) :-

10. This Court *vide* order dated 29.07.2024 has framed following substantial questions of law.

> *"(i) Whether the compensation awarded by the Labor Commissioner is inadequate and not in accordance with provisions of Employee's Compensation, Act?*
>
> *(ii) Whether the wages includes the incentives received by the pilot for flying the aircraft apart from the basic salary and the Labour Commissioner erred in not giving any finding*

upon it ?"

10.1 The main emphasis of learned counsel for the claimants is that only Rs.20,000/- per month which was the salary of the deceased was taken into consideration while quantifying the compensation. However, it is contended that the incentive of Rs.300/- per hour was completely ignored by the Labour Commissioner. Learned counsel for the claimants relied on the statement of Vikas (DW-1), who allegedly admitted that an incentive of Rs.300/- per hour was also being paid to the deceased.

10.2 However, the documents placed on record i.e. Exs. P-5 to P-9 do not show any such incentive. In fact, some of the documents indicate a lower salary. There is complete absence of any material to demonstrate that the deceased was being paid an incentive Rs.300/- per hour. Moreover, the claimants have not established the number of hours the deceased flew per day or the average flying in a month. In absence of such data, it is impossible to arrive at a conclusion regarding the total incentive. In fact, the very payment of Rs.300/- per hour is not established by evidence.

10.3 In these circumstances, this Court is not inclined to interfere with the findings recorded by the Labour Commissioner in this regard.

10.4 In view of the above, question No.1 and 2 are decided against the claimants since the payment of the incentive is not established.

In M.A. No.2743/2020 (Insurance Company's Appeal) :-

11. This Court *vide* order dated 29.07.2024 has framed following substantial question of law.

"Whether the learned Commissioner erred in directing the insurer without considering the policy where the liability

> *under any employee liability or workmen compensation legislation or any similar legislation having excluded under the policy and amount payable tinder: the policy for personal accident cover having paid by the Insurance Company, still whether the learned Commissioner erred in directing the Insurance Company to pay again sum of Rs.10.00 lakhs covered under the personal accident being contractual liability ?"*

11.1 The main emphasis of learned counsel for the Insurance Company is that there was complete exclusion of any liability under the Employee's Compensation Act in the Insurance Policy. He submits that the policy in question was not intended to indemnify the employer arising under the provisions of the Employee's Compensation Act; rather, it was an aircraft Insurance Policy.

11.2 A perusal of the Policy (Ex.D-1) shows that it contains the following clause with respect to liability :

> *"It is understood and agreed that notwithstanding any exclusion specifically relating to pilots and operational crew in the Section of this Policy covering the liability of the insured to passengers, such coverage shall extend to include the liability of the insured to the pilots and operational crew of the insured Aircraft,* ***but excluding liability required to be insured under the terms of any employers' liability or workman's compensation legislation or any similar legislation****."*

11.3 It is thus clear that the insurer while insuring the employer has clearly stipulated the exclusion of any liability required to be insured under the terms of any employer's liability or workman's compensation legislation or any similar legislation. Therefore, it is clear that the contract between the employer and the insurer did not cover liability for compensation under the Workmen's Compensation Act.

11.4 Having concluded that the insurance cover did not extend to

liability under the Workmen's Compensation Act, the next question is whether compliance with Section 8 of the Act was required.

11.5 Section 8 of the Employee's Compensation Act provides that no payment of compensation in respect of an employee whose injury has resulted in death shall be made otherwise than by deposit with the Commissioner and no such payment made directly by an employer shall be deemed to be a payment of compensation.

11.6 The term 'compensation' is also defined in the Act, in Clause (c) of sub-section (1) of Section 2 in the following manner :-

"compensation" means compensation as provided for by this Act.

11.7 As such, the term 'compensation' used in Section 8 refers to compensation payable under the Employee's Compensation Act. However, in the present case, the liability of the Insurance company is in no manner related to the liability under the Act as concluded in above paragraphs.

12. Thus, in the present case, the Insurance Company has correctly given cheque of Rs.10,00,000/- to the employer which was subsequently paid to the claimants.

13. In this view of the matter, the liability under the Insurance Policy has been fully discharged by the Insurance Company and the direction of the Labour Commissioner to pay the said amount again by complying with the provisions of Section 8 of the Act is not sustainable. As such, the substantial question of law in this appeal is answered in favour of the Insurance Company. It is hereby held that the Insurance Company is not liable to pay any further amount having already discharged its maximum liability of

Rs.10,00,000/- under the Aircraft Insurance Policy. Therefore, it is the employer who is liable to pay the entire amount of compensation.

14. In view of the above findings, appeal Nos.2606/2020 and 2854/2020 (filed by the employer and employee) are hereby dismissed and appeal No.2743/2020 (filed by the insurance company) is allowed in the above terms.

15. Let a copy of this order be kept in the above connected appeals.

No order as to costs.

Certified copy as per rules.

(PAVAN KUMAR DWIVEDI)
JUDGE

Anushree