

Sayali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 18070 OF 2024

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1. **Parveen Banu Nasir Khan,**
Age – 50 years, Loya Road,
Ramabai Ambedkar Colony,
Igatpuri, Nashik, Maharashtra –
422 403.
2. **Raeesa Rajubhai Mulla,**
Age – 45 years, Umersheth,
Chawl, Shastri Nagar, Bhiwandi,
Tal. - Bhiwandi, Dist. Thane.

... Petitioners

V/s.

1. **Vahaanvatti Sizars,**
H. No. 32,33, Vishnu Compound,
Near Telavane Medical Stores,
24/2, Aasbib, Kalyan Road,
Bhiwandi, Dist. Thane – 421 302.
2. **New India Assurance Co. Ltd.,**
Dombivli Divisional Office,
Raghukul Heights, B Wing,
1st Floor, Dr. R.P Road, Above
Jaoli Bank, Dombivli (East),
Dist. Thane - 421 201.

... Respondents

Ms. Seema Chopda for the Petitioner.

Mr. Devendranath Joshi for the Respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 5, 2026

PRONOUNCED ON : MARCH 12, 2026

JUDGMENT:

1. The present petition is instituted under Articles 227 read with Article 300A of the Constitution of India. By this petition, the Petitioners seek to challenge the order dated 27 January 2022 passed by the Commissioner under the Employees' Compensation Act, 1923 in Application (ECA) No. 48/B-6/2019. By the said order, the Commissioner declined the request of the Petitioners to be impleaded as legal heirs of the deceased applicant in the pending proceedings under the Employees' Compensation Act.

2. The material facts giving rise to the present petition are set out herein below. Late Mr. Ismail Abbas Sayed was employed with Respondent No.1 as an operator for a period of approximately ten years preceding the incident. His last drawn monthly wages were stated to be Rs.12,500/-. The deceased continued in service with Respondent No.1 until 30 August 2017. The record indicates that the deceased was born in the year 1951 and was about 66 years of age at the time of the accident. On 30 August 2017 at about 5.30 p.m., the deceased was performing his regular duties in the factory premises of Respondent No.1 and was operating a sizing machine in accordance with the instructions issued by the employer. After completing the assigned work on the said machine, the deceased was descending the stairs attached to the machine. At that stage he allegedly lost his balance and, while attempting to steady himself, his hand came in contact with a tube light, resulting in an electric shock. Owing to the shock, he fell from the machine and sustained a fall on his head. The fall occurred from a height and resulted in

serious injuries to his neck and severe impairment to his limbs, including both hands and legs. Immediately thereafter, the co-workers present at the factory shifted him to Prime Hospital at Bhiwandi where he was administered primary medical treatment. Subsequently, he was transferred to Zynova Shalby Hospital at Ghatkopar for further specialised treatment. The medical record indicates that the injuries suffered by him included cervical compression of the spine with myelopathy accompanied by quadriparesis, affecting all four limbs. The deceased remained admitted at Zynova Shalby Hospital for approximately eight days. However, his medical condition remained critical and reportedly deteriorated with the passage of time. In view of the seriousness of his condition, on 10 September 2017 the treating doctors advised that he be shifted to Lokmanya Tilak Municipal General Hospital, Sion, Mumbai for surgical intervention. Accordingly, he was transferred to the said hospital. Despite medical treatment, the injured employee succumbed to the injuries on 13 September 2017. The case of the claimants is that the death occurred as a consequence of the accident which arose out of and in the course of employment while the deceased was on duty with Respondent No.1. It is further alleged that the incident occurred due to negligence attributable to the employer. The Lokmanya Tilak Municipal General Hospital issued a death certificate in the prescribed police station form dated 13 September 2017. The certificate records that the cause of death was cervical compression of the spine with myelopathy with quadriparesis.

3. After the death of the employee, one Najmunissa Ismail Sayyed instituted an application under the Employees' Compensation Act, 1923 before the Commissioner under the said Act at the Labour Court, Thane. The application was registered as Application (ECA) No.48/B-6/2019 and sought compensation from the respondents under the provisions of the Act. The said claim was contested by Respondent No.2, the insurer, which entered appearance and filed its written statement opposing the claim.

4. During the pendency of the said proceedings, the original applicant Najmunissa Ismail Sayyed expired on 31 May 2021. Thereafter, the present Petitioners, who claim to be the sisters of the deceased applicant and daughters of the deceased employee, filed an application before the Commissioner seeking to be impleaded as parties to the said compensation proceedings in place of their deceased sister. They also sought deletion of the name of the deceased applicant from the cause title. The said application was opposed by Respondent No.2. The insurer contended that the Petitioners, being married daughters of the deceased employee, could not be regarded as dependents upon the deceased at the time of his death and, therefore, were not entitled to claim or receive compensation under the provisions of the Employees' Compensation Act. Upon hearing the parties, the learned Commissioner rejected the application filed by the Petitioners by order dated 27 January 2022.

5. Learned Advocate Ms. Seema Chopda appearing on behalf of the Petitioners submits that the learned Commissioner has failed to

properly appreciate the true object and scheme of the Employees' Compensation Act, 1923. According to her, the Act is a beneficial and social welfare legislation intended to provide financial relief and protection to an employee who suffers an accidental injury arising out of and in the course of employment. The legislation also extends such protection to the dependents of the employee in cases where the accident results in death. She submits that the statutory scheme clearly provides that where an employee dies as a result of an accident arising out of and in the course of employment, the dependents as defined under Section 2(1) of the Act become entitled to receive compensation in accordance with the provisions contained in the statute.

6. Learned counsel further submits that the Petitioners, namely Mrs. Parveen Banu Nasir Khan and Mrs. Raeesa Rajubhai Mulla, are the married daughters of the deceased employee. She submits that the third sister, Najmunissa Ismail Sayed, remained unmarried during her lifetime and was wholly dependent upon the deceased employee at the relevant time. It is her contention that Najmunissa, being unmarried and not gainfully employed, squarely fell within the category of a dependent under the Act and was therefore entitled to claim and receive compensation arising out of the accidental death of the employee. It is further submitted that although the widow of the deceased employee was otherwise entitled to claim compensation as a dependent, she expired on 15 November 2018, which was prior to the filing of the compensation application. Thereafter, Najmunissa Ismail Sayed instituted the claim application under the Employees' Compensation Act.

However, during the pendency of the said proceedings, Najmunissa died intestate on 31 May 2021. According to the Petitioners, upon her demise she was survived by her two married sisters, who are the present Petitioners. Learned counsel for the Petitioners submits that the learned Commissioner ought to have appreciated that where a claimant who is entitled to receive monetary benefits dies during the pendency of the proceedings, the legal representatives or legal heirs of such claimant are entitled to prosecute the proceedings further. According to her, the right to pursue a monetary claim which had already accrued to the deceased claimant survives to the legal heirs and cannot be extinguished merely on account of the death of the claimant during the pendency of the proceedings.

7. It is further contended that the Commissioner failed to appreciate that although the Petitioners themselves may not independently qualify as dependents of the deceased employee within the meaning of the Act, they are nevertheless entitled to pursue the claim in their capacity as legal heirs of the deceased applicant who was otherwise eligible and entitled to claim compensation as a dependent of the deceased employee.

8. Learned counsel submits that the reasoning adopted by the Commissioner leads to an anomalous situation. She submits that if the claim application had been finally adjudicated during the lifetime of the dependent claimant Najmunissa and if she had thereafter expired before actually receiving the compensation amount, it would be wholly unreasonable to hold that the amount already awarded would become incapable of being received by her

legal heirs merely because they were not dependents of the deceased employee. In support of the above submissions, learned counsel for the Petitioners has placed reliance upon the judgment of the Supreme Court in the case of *Manjuri Bera (Smt.) v. Oriental Insurance Company Ltd. and Another* reported in (2007) 10 SCC 643. and *Royal Sundaram Alliance Insurance Co. Ltd., Chennai v. Madhu @ Mahadev s/o Govindrao Newade* (2016) 3 Mah LJ 102.

9. Per contra, Mr. Devendranath Joshi, learned Advocate appearing for Respondent No.2, submits that the expression “dependent” has been specifically defined under Section 2(d) of the Employees’ Compensation Act, 1923. The provision enumerates an exhaustive list of relatives who may fall within the ambit of the expression “dependent” of a deceased employee. The statutory definition includes, inter alia, the widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, and a widowed mother. It further includes certain other relatives such as a son or daughter above eighteen years of age who is infirm and wholly dependent upon the earnings of the employee at the time of death. The provision also includes certain other categories of relatives who may qualify as dependents if they were wholly or partly dependent upon the earnings of the deceased employee at the relevant time. Learned counsel for Respondent No.2 submits that the present Petitioners do not fall within any of the categories specified in the statutory definition of “dependent”. According to him, it is not the case of the Petitioners that they were wholly dependent upon the earnings of the deceased employee at the time of his death. Consequently, the

provision contained in Section 2(d)(ii) of the Act cannot be invoked in their favour. He further submits that Section 2(d)(i) of the Act specifically includes only an unmarried daughter within the category of dependents and does not extend the benefit to married daughters. In view of the clear statutory language, the scope of the provision cannot be enlarged so as to include married daughters within its ambit. Therefore, according to the learned counsel, the Petitioners do not satisfy the statutory requirements necessary to qualify as dependents under the Act. Learned counsel further submits that compensation under the Employees' Compensation Act is payable on account of the injury suffered by the employee arising out of and in the course of employment. According to him, the claim for compensation essentially relates to the pecuniary loss caused by such injury or death. He submits that the amount of compensation represents a monetary claim arising out of such injury and, therefore, the entitlement to receive such compensation must strictly conform to the categories of persons recognised by the statute.

REASONS AND ANALYSIS:

10. I have heard learned counsel for the parties and considered their rival contentions. I have also perused the record. The facts are not in dispute. An application under the Employees' Compensation Act was filed by Najmunissa Ismail Sayed during her lifetime. She claimed compensation as a dependent of the deceased employee. While those proceedings were pending she died on 31.05.2021. The Petitioners are her two married sisters. They applied before the Commissioner to be impleaded as parties

and to prosecute the claim in place of their deceased sister. The Commissioner rejected that application by order dated 27.01.2022. This petition challenges that rejection.

11. I start with the statutory scheme of the Employees' Compensation Act. The Act provides a mechanism for payment of compensation where injury or death occurs during the course of employment. Section 4 lays down the manner in which compensation is to be determined. Section 4A recognises that the compensation becomes payable as soon as the liability arises. When an accident occurs in the course of employment and the employee sustains injury, the liability to pay compensation arises from that moment. Section 8 of the Act applies where the injury sustained by the employee results in death. In such cases the Act provides that the compensation amount must be deposited before the Commissioner and then distributed among the dependents of the deceased employee. The legislature has thus created a mechanism to ensure that the family members who were dependent on the earnings of the employee receive the benefit of compensation. Section 10 provides the procedure through which a claim for compensation is to be made before the Commissioner. The application for compensation is a mode through which the statutory right is adjudicated. Finally, Section 2(1)(d) defines the expression "dependent". This provision lists the categories of relatives who are legally recognised as dependents of a deceased employee. These provisions must be read together in order to understand the scheme and purpose of the Act.

12. When these provisions are examined together, it contemplates two situations. The first situation arises when the employee dies as a result of the accident. In that situation the statute specifically identifies who can claim compensation. The definition of “dependent” in Section 2(1)(d) then becomes relevant because the compensation is intended for those persons who relied on the earnings of the deceased employee. The second situation arises when the employee suffers injury but survives and himself or herself files a claim for compensation. In that case the right to claim compensation belongs to the injured employee personally. The statute allows the injured employee to seek compensation for the injury suffered in the course of employment. The problem arises only when the injured claimant dies before the claim is finally decided. At that stage the question naturally arises whether the claim itself comes to an end or whether it can be continued by the legal representatives of the deceased claimant.

13. The old common law maxim that a personal action dies with the person cannot be applied in every situation. such a rule should not be applied when it leads to injustice or defeats the purpose of a beneficial statute. The Employees’ Compensation Act is a piece of welfare legislation intended to provide monetary relief in cases of employment related injury. If a claim is properly instituted by an injured person during his or her lifetime, the right to pursue that claim normally survives to the estate of the claimant.

14. This principle has been clearly explained in the decision in *Royal Sundaram Alliance Insurance Co. Ltd. v. Madhu @ Mahadev*. In that case the Court examined the provisions of the Act in detail.

The Court noted that the Act distinguishes between claims arising out of death and claims made by an injured employee. The Court further observed that when the injured employee himself files a claim and subsequently dies during the pendency of the proceedings, the statute does not prohibit the legal representative from continuing those proceedings. The Court also distinguished earlier cases where compensation claims were filed directly by persons who were not dependents of the deceased employee. In such cases the claim itself was not maintainable because the statute limits the class of persons entitled to claim compensation for death. However, where the claim was instituted by the injured employee himself, the position is different. The Court therefore held that the legal representative of the deceased injured employee can be brought on record and can continue the proceedings and receive the compensation that may be awarded.

15. The argument advanced by the insurer would have some force if the Petitioners were attempting to assert a fresh claim for compensation as dependents of the deceased employee even though they do not fall within the definition of “dependent”. But the facts here are different. The claim was not initiated by the Petitioners. It was initiated by Najmunissa. According to the pleadings she was an unmarried daughter and was dependent on the deceased employee. On that basis she filed the claim application before the Commissioner. The Petitioners are not seeking to establish that they themselves are dependents of the employee. Their case is narrower and more limited. They state that Najmunissa had a valid claim which she had already filed during

her lifetime, and after her death they should be permitted to continue those proceedings as her legal heirs.

16. Viewed from this angle, the approach adopted by the Commissioner appears to be incorrect. The Commissioner appears to have concentrated only on the fact that the Petitioners are married daughters of the deceased employee. On that basis the Commissioner concluded that they could not be treated as dependents and therefore could not be impleaded. This approach overlooks the real issue that arises at the stage of impleadment. The question at that stage is not whether the Petitioners themselves are dependents of the employee. The real question is whether the claim filed by Najmunissa survives after her death so that her legal representatives may continue it. If the original claimant had a valid claim which had already been instituted before the competent authority, the legal representatives of that claimant should normally be allowed to step into her place and prosecute the proceedings.

17. It must also be remembered that allowing the legal representatives to come on record does not automatically decide the entire case in their favour. The merits of the claim remain open for adjudication. The Commissioner will still have to determine whether the accident occurred in the course of employment, whether the deceased employee suffered injury leading to death, and what amount of compensation is payable under the Act. If compensation is ultimately awarded, questions relating to its distribution or entitlement may still arise and will be governed by the relevant legal principles. Those issues can be considered by the

adjudicating authority at the appropriate stage.

18. For this reason the insurer's reliance on the definition of "dependent" under Section 2(1)(d) is only partly relevant. That provision determines who may claim compensation when the employee has died and the claim is brought on behalf of the dependents. It does not answer the separate issue whether a claim already instituted by a dependent or injured person during his or her lifetime can be continued by legal representatives after death. Once it is accepted that the original claimant had a prima facie right to pursue the claim, the fact that the legal heirs do not fall within the category of dependents of the employee does not automatically extinguish the proceedings.

19. Litigation before the Commissioner may take time. Evidence has to be recorded and the facts have to be examined carefully. If the law were interpreted in the manner suggested by the insurer, a person who has already filed a valid claim could lose the benefit of that claim merely because he or she dies before the case is finally decided. Such a result would be contrary to the purpose of the legislation. The Act is designed to provide financial relief arising from employment related accidents. That objective would be defeated if claims could extinguish merely because the claimant died during the pendency of the proceedings.

20. In view of the foregoing discussion and reasons recorded above, the following order is passed:

- (i) The impugned order dated 27 January 2022 passed by the Commissioner under the Employees' Compensation Act,

1923 in Application (ECA) No. 48/B-6/2019 is quashed and set aside.

(ii) The application filed by the Petitioners seeking their impleadment as legal representatives of the deceased applicant Najmunissa Ismail Sayed is allowed.

(iii) The Petitioners shall be brought on record in the said proceedings in their capacity as legal heirs and legal representatives of the deceased applicant Najmunissa Ismail Sayed.

(iv) The Commissioner under the Employees' Compensation Act, Thane, shall proceed to hear and decide Application (ECA) No. 48/B-6/2019 on its own merits and in accordance with law, after granting an opportunity of hearing to all concerned parties.

(v) Considering that the proceedings are pending since the year 2019, the Commissioner shall make an endeavour to dispose of the said application as expeditiously as possible and preferably within a period of six months from the date of receipt of this order.

(vi) All contentions of the parties on the merits of the claim are expressly kept open.

(vii) The writ petition is accordingly allowed in the above terms. No order as to costs.

(AMIT BORKAR, J.)