



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/FIRST APPEAL NO. 1315 of 2020**

**With  
R/FIRST APPEAL NO. 538 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE J. C. DOSHI**

Approved for Reporting	Yes	No
	✓	

SHARDABEN MAGANBHAI ZALA & ORS.  
Versus  
DIVISIONAL CONTROLLER

Appearance:

MR PARESH J BRAHMBHATT(9788) for the Appellant(s) No. 1,2,3,4  
MR HS MUNSHAW(495) for the Defendant(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**

**Date : 27/04/2026**

**JUDGMENT**

1. The captioned First Appeals arise out of the same judgment and award dated 13.06.2019 passed by the learned Workmen's Compensation Commissioner, Kheda in W.C. (Fatal) Case No.4 of 2016, whereby the learned Commissioner, under the provisions of the Employees' Compensation Act, 1923, awarded compensation of Rs.6,52,280/- alongwith 12% accrued interest, 40% penalty and costs of Rs.3,000/-.

2. The brief facts of the case are that the deceased Shri Maganbhai Shnabhai Zala, husband of claimant No.1 and

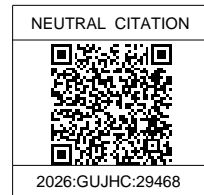


the father of claimant Nos.2 to 4, was working as a driver with the S.T.Corporation, Nadiad bearing Badge No.8517, since 16<sup>th</sup> September, 1993 and was earning a monthly salary of Rs.9,128/- prior to his death. On 31<sup>st</sup> May, 2008, the deceased, while performing his duties as a driver with S.T.Corporation, was assigned to drive S.T.Bus bearing No.GJ.18-V-7768 from Mahudha Depot alongwith conductor Mr.Udaysinh Zala. During his night duty, he was assigned the Nadiad-Ghodasar route and was instructed to remain at the Ghodasar bus stand overnight.

2.1 According to the claimants, there was no rest room at the Ghodasar S.T.Bus stand. As the custody of the bus was with the conductor, Mr. Udaysing Zala, the deceased slept on the top of the bus during the night. Unfortunately, he accidentally fell from the top of the bus and sustained serious injuries, and died as a result thereof.

2.2 In this background, the claimants contended that the deceased died while in service and during the course of his duty. The claimants, being dependents, were therefore entitled to compensation. Accordingly, considering the statutory provisions along with the monthly income and age of the deceased, a claim of Rs.7,29,327.20 paisa along with 50% penalty and 12% statutory interest was claimed by the claimants by way of a claim petition.

2.3 The S.T.Corporation, upon being served, filed written statement contending that the deceased had been assigned duty between Nadiad and Ghodasar, and after

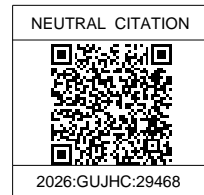


completing his last trip, he remained at Ghodasar. It is stated that though, there was no rest room at the Ghodasar Bus Stand, the deceased was expected to remain with the bus. It is further stated that, for the purpose of safeguarding the bus, the deceased was required to sleep inside the cabin and not on the top of the bus. However, of his own volition, the deceased climbed to the top of the bus from where he accidentally fell and sustained fatal injuries. It is also stated that the incident occurred during the night hours, which was not part of his active duty period, and therefore, it could not be said that the death occurred in the course of employment. In the absence of any nexus between the accident and the duty hours, the claim petition, according to the S.T. Corporation, deserves to be dismissed.

2.4 The learned Commissioner, after permitting both parties to led evidence, partly allowed the claim petition and awarded compensation of Rs.6,52,280 with interest @ 12% along with 40% penalty and costs of Rs.3,000/-.

2.5 Being aggrieved, both parties preferred appeals; the claimants, on the ground that the compensation awarded was inadequate, and the S.T. Corporation, on the ground that the deceased did not die during the course of his employment and therefore, the dependents were not entitled to compensation.

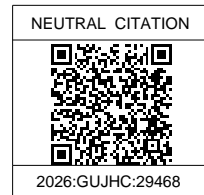
3. I have heard learned advocate Mr.Paresh Brahmhatt for the original claimants and learned advocate Ms.R.R. Gautam for learned advocate Mr.H.S.Munshaw for



S.T.Corporation.

4. Learned advocate Mr.Brahmbhatt questions the assessment of compensation on the ground that the learned Commissioner was required to assess the income of the deceased as per the salary slip, but instead took the monthly salary to be Rs.8,000/-, thereby committed a serious error. He further submitted that, while determining the age of the deceased, learned Trial Court failed to consider the necessary evidence on record and erred in applying the factor of 163.07, which is on the lower side. It is further argued by learned advocate Mr.Brambhhatt that the learned Trial Court has not given any reason for awarding 40% penalty of the awarded amount and thereby has erred in assessing the fair and equitable compensation.

5. Per contra, learned advocate Ms.Gautam submits that, though there was no rest room at the Ghodasar bus stand for drivers of the S.T.Corporation, driver is not permitted to sleep on top of the bus, but rather permitted to sleep inside the cabin of the S.T. bus. It is further contended that, after completion of the Ghodasar trip, the duty of the deceased had ended and he was no longer on duty. She further submitted that, if no rest room was available at the Ghodsar, he could have travelled back to District Kheda, which is only 35 km away, and could have rested in the rest room there. She further submitted that the learned Trial Court, in this factual aspect, wrongly applied the principle of notional extension of employment and thereby committed an error, particularly, in interpreting the provisions of law. Upon



above submissions, she prays for dismissal of the appeal filed by the original claimants and for allowing the appeal filed by the S.T.Corporation.

6. Regard being made to the rival submissions of learned advocates of both sides and upon perusal of the impugned judgment and award as well as the record and proceedings of the case, following facts emerge as incontrovertible:

(i) The deceased, Maganbhai Shanabhai Zala, was working as a driver with the S.T.Corporation;

(ii) He was appointed as a permanent employee on 16<sup>th</sup> September, 1993;

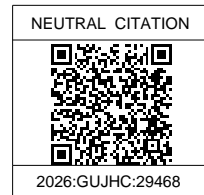
(iii) He was allotted Badge No.8517;

(iv) his monthly salary was Rs.9,128/-

(v) He was driving S.T.Bus bearing Bus No.GJ-18V-7768 alongwith conductor Mr.Udaysinh Zala;

(vi) On 31<sup>st</sup> May, 2008, he was assigned the duty on the Nadiad-Ghodasar route with conductor Mr.Udasinh Zala, and after completing his duty, he was instructed to remain at the Ghodasar bus stand overnight;

(vii) on 31<sup>st</sup> May, 2008, the deceased Maganbhai Zala was sleeping on the top of the bus, he accidentally fell down and sustained grievous head



injury, which later proved fatal;

(viii) A Notice was issued by the claimants on 14<sup>th</sup> September, 2015;

(ix) The birth date of the deceased was 01.06.1948.

7. In the above factual background, upon perusal of the judgment of the learned Trial Court, it appears that the Court applied principle of notional extension of employment, relying upon the judgment of the Hon'ble Supreme Court in the case of **Leela Bai and Anr. Vs. Seema Chouhan and Anr.** reported in **2019-II-LJ-148** and held that when a driver, as part of his duty, stays at a particular village and sleeps on the top of the S.T.Bus due to the absence of a rest room for security of the bus, and accidentally falls on the ground, the same amounts to an untoward incident occurring in the course of employment.

8. At the outset, this Court refers to the recent judgment passed by the Co-ordinate Bench of this Court in the case of **New India Assurance Company Ltd. Vs. Shree Vardayini Travels & Anr.** in **First Appeal No.715 of 2020**, mainly take the assistance from para 7 to 10, which read as under:

7. It would be profitable to refer following decision as they are akin to the question involved in the present appeal. In the case of **National Insurance Company Vs. Rayajibhai Vaghabhai Patel**, reported in **2008(0) GLHEL-HC 220595**, the Co-ordinate Bench of this Court has considered the notional extension theory and held that the deceased died during the course of employment when premises was allotted by employer at work site and before attending duty hours, deceased was taking bar an accident



occurred. In the case of **Saurashtra Salt Manufacturing Co. Vs. Bail Valu Raja** reported in AIR 1958 SCC 881, the Hon'ble Apex Court, in para 7 has observed as under:-

"7. As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and re-passes in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension."

8. The said decision has been referred in the case of **National Insurance Company Ltd. (supra)**, the principle of notional extension theory is not a novel theory. In *cantena* of decisions, the law is settled that even when the employee passes and re-passes in going to and in leaving the place of work, it would amount to an accident arising out of and in the case of employment. In para 15, the Co-ordinate Bench of this Court has observed as under:-

*"15. I have examined the appeal in merits as well as on substantial question of law involved or not. The appeal fails on both the counts as Commissioner has rightly decided the matter and deceased was died during the course of employment when premises was allotted by the employer at work sight and before attending the duty hours, he was taking bath and then, immediately accident occurred, therefore, it was considered to be a notional extension theory applied to the employment which period was covered the period prior to actual duty to be performed by workman. That principal has been recognised by Apex Court as discussed above and accordingly, Commissioner has rightly awarded compensation and penalty and interest, for that, Commissioner has not committed any error which requires interference by this Court. Therefore, contentions raised by learned advocate Mr. Shah cannot be accepted, hence, the same are rejected."*

9. In the case of **Daivshala Vs. Oriental Insurance Company** reported in **2025(0) AIJEL-SC 75646**. The



*question arose before the Hon'ble Apex Court on a factual aspect that the accident which has occurred outside factory premises would not be considered as accident arising out and in the course of employment. While deciding the issue, it has come on record that there exist clear nexus between the circumstances, time and place of the accident and the deceased's employment as a watchman, accident occurred while deceased was proceeding to workplace during duty hours. The Hon'ble Apex Court in para 31 has also considered the decision in the case of **Saursthra Manufacturing Co. (supra)** and accepted the principle theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to leave and in leaving the actual place of work.*

*10. The notional extension of employers premises imagines the workplace extends beyond its physical boundaries to include a reasonable area and time around the actual work site. This principle is used to determine if an accident is covered by Workers' Compensation Laws, even if it happens outside workplace as long as it is directly connected to the employment. This covers situation like commuting to work if they travel, is an implied condition of employment. The doctrine extends the workplace and notionally to cover areas, places under the employers' control and reasonable time before and after the work hours. The doctrine of notional extension ensures that workers receive compensation for injuries, sustained in circumstances connected with their employment, even if the incidents occur outside the traditional settings or timings.*

*In the present case, the circumstances indicate that the accident has occurred in connection to the job. Deceased was sleeping on the roof of the bus and when the driver called him to resume his duties, deceased came into contact with a live wire while getting up from roof of bus and expired due to electric current. Applying the principle of notional extension of employer's workplace the case would fall within the purview of Section 3 of the Act. The learned Commissioner has rightly observed that the deceased might have gone to sleep on the roof of the luxury bus while looking after the bus. Such a presumption is justified in light of the facts and circumstances of the case and in absence of any contrary material. The substantial questions of law which are proposed are not substantial questions of law. The substantial question of law which are proposed are connected with factual aspects and the scope under Section 30 of the Act is limited. This Court can entertain appeal under Section 30 of the Act only if substantial questions of law are involved."*



8.1 In identical fact situation, the Co-ordinate Bench adopted and accepted the principle of “notional extension” of the employment.

9. In addition, the claimant examined Mr.Udaysinh Zala, the conductor of the bus, at the relevant point of time, as P.W.3 at Ex.23. In his Examination-in-chief, he unequivocally stated that it is the duty of both, the driver and conductor to ensure the security of the S.T.Bus assigned to them for the day, and that if they fail to do so, the S.T.Corporation would take necessary action against them. He further stated that they are paid a night allowance for maintaining the security of the bus. In his cross-examination, in response to the questions put by the learned advocate for the S.T.Corporation, he stated that he was aware of the rules of the S.T.Corporation permitting them to stay in the bus. He denied the suggestion that it was necessary only in remote areas for the driver and conductor to sleep in the bus. He further admitted that at the time of the accident, the deceased Maganbhai was sleeping on the top of the bus and, while turning, accidentally fell down. On the other hand, the S.T. Corporation has not led any evidence nor produced any rules prohibiting the driver from staying with the bus, or prescribing what should be done when rest rooms are not available in remote villages, or how the security of the bus is to be maintained in such places where proper bus stand facilities are not available.

10. When confronted with these factual position, learned advocate Ms.Gautam could not reply any other aspects.



11. The Hon'ble Supreme Court in the case of **Daya Kishan Joshi & Anr. Vs. Dynemech Systems Pvt. Ltd.** reported in **2018(1)SLR 441 (S.C.)**, while explaining the terms "arising out of" and "in the course of employment" in para 6 and 7, observed as under:

*"6. The words 'arising out of' and 'in the course of employment' are in fact two different phrases and have been understood as such. If the accident had occurred on account of a risk which is an incident of employment, the claim shall succeed unless, of course, the workman had exposed himself to an added peril by his own imprudent act. The phrase 'in the course of employment' suggests that the injury must be caused during the currency of employment, whereas the expression 'out of employment' conveys the idea that there must be a causal connection between the employment and the injury caused to the workman as a result of the accident.*

*Prima facie, while deciding the issue on hand, there is no material on record to show that the deceased workman had exposed himself to added peril by his own imprudent act.*

*7. When a workman is on the public road or public place or on public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. In other words, there must be a causal relationship between the accident and the employment. The expression 'out of employment' is not confined to the mere nature of the employment: the expression applies to employment as such, to its nature, its conditions, its obligations and its incidents. The words "arising out of employment" are understood to mean that during the course of employment, the injury has resulted from some risk incidental to the duties. Unless engaged in the duty owed to the employer, it is reasonable to believe that the workman would not otherwise have suffered.*

*There cannot be any dispute that the question as to when an employment begins and when it ceases, depends upon the facts of each case. There is a notional extension at both entry and exit by time and space. There may be some reasonable extension in both time and space and a workman may be regarded as in the course of his employment even though he has not reached or has left employer's premises. In India, the courts have recognized the principle of notional extension of time and space for over 60-70 years while determining whether the injury has been caused out of or in*



*the course of the employment of the workman. The Courts have held consistently that the employment does not necessarily end, when the tool down signal is given and when the workman actually leaves his place of work.”*

12. In the case of **Leela Bai (supra)**, which was referred to by the learned Trial Court with profit to reach at impugned judgment, this Court again referred to the said judgment, in paras 7, 9 and 12, it has been held that:

*“7. On the fateful day the deceased had returned from Indore to the Burhanpur terminus at about 7:30 pm. He met an accidental death while he was coming down the roof of the bus after having his meal at about 8:30 pm. The short question for consideration is whether the death occurred during the course of, and arising out of the employment. In the facts of the case, and the evidence available, it is evident that the deceased was present at the bus terminal and remained with the bus even after arrival from Indore not by choice, but by compulsion and necessity, because of the nature of his duties. The route timings of the bus required the deceased to be readily available with the bus so that the passenger service being provided by respondent no. 1 remained efficient and was not affected. If the deceased would have gone home every day after parking the bus and returned the next morning, the efficiency of the timing of the bus service facility to the travelling public would definitely have been affected, dependant on the arrival of the deceased at the bus stand from his house. Naturally that would bring an element of uncertainty in the departure schedule of the bus and efficiency of the service to the travelling public could be compromised. Adherence to schedule by the deceased would naturally inure to the benefit of respondent no.1 by enhancement of income because of timely service. It is not without reason that the deceased would not go home for weeks as deposed by the appellant. Merely because the deceased was coming down the roof of the bus after having his meal, cannot be considered in isolation and interpreted so myopically to hold that he was off duty and therefore would not be entitled to compensation.*

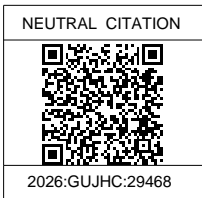
9. In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of “notional extension” of the employment considered in *General Manager, B.E.S.T. Undertaking, Bombay Vs. Ms. Agnes (supra)* as follows:



*“It is now well-settled, however, that this is subject to the theory of notional extension of the employer’s premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer’s premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all time this theory of notional extension.”*

*12. The appellants are held to have wrongly been denied compensation under the Act. The impugned orders are accordingly set aside. The Workmen’s Compensation Commissioner, Labour Court, Khandwa has already determined the salary of the deceased at the time of death as Rs.4,275/ per month and which is upheld. The compensation payable to the appellants shall be calculated on the aforesaid basis under Section 4 along with default penalty under Section 4A and costs to be awarded under Section 26 of the Act. The quantum of compensation shall be finally computed after hearing the parties within one month from the date of receipt and/or production of a copy of this order before the Commissioner. Respondent no.2 shall pay the determined amount to the appellants within three weeks from the date of such computation by the Tribunal.*

13. Applying the aforesaid principles to the case on hand, the appeal filed by the S.T.Corporation is found devoid of merit. As far as the appeal filed by the claimants is concerned, according to this Court, claimants have also failed to make out any ground warranting interference with the impugned judgment and award. The statutory limit of income of Rs.8,000/- cannot be enhanced on the basis of the figures reflected in the pay slip. As far as applying of the statutory factors is concerned, the same has been staunchly applied by learned Trial Court in accordance with the law. Considering the facts and circumstances of the case, the award of 40% penalty by the learned Trial Court is found just and legal.



14. For the foregoing reasons, both appeals fail and same are dismissed. No order as to costs. R&P, if any, be sent back to the concerned Court forthwith.

15. Connected Civil Application, if any, does not survive and stands disposed of accordingly. Interim relief, if any, stands vacated.

16. The learned Trial Court shall disburse the entire/remaining amount, if any, to the original claimants after deducting the Court fees and after due verification and identification.

17. Registry is directed to keep the copy of the judgment in each of the appeal.

MANOJ

**(J. C. DOSHI,J)**