

Labour Law Insights

May 2024



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Labour Law Insights for May 2024

Minimum wages

Central/State Labour dept.	Notification details														
Madhya Pradesh	<p>The Labour Commissioner of Madhya Pradesh, vide notification dated 24.05.2024, has released the revised minimum wage rates, including the variable dearness allowance w.e.f. 01.04.2024 on the basis of the latest Consumer Price Index available, with respect to the workers under 67 scheduled employments and other employments as prescribed in the below mentioned schedules pursuant to the provisions of the Minimum Wages Act 1948.</p> <table><thead><tr><th>Schedule</th><th>Employment</th></tr></thead><tbody><tr><td>A</td><td>67 Scheduled employments</td></tr><tr><td>B</td><td>Pencil manufacturing factories</td></tr><tr><td>C</td><td>Printing press</td></tr><tr><td>D</td><td>Agriculture sector</td></tr><tr><td>E</td><td>Tobacco manufacturing, including <i>beedi</i> planning</td></tr><tr><td>F</td><td>Agarbatti planning</td></tr></tbody></table>	Schedule	Employment	A	67 Scheduled employments	B	Pencil manufacturing factories	C	Printing press	D	Agriculture sector	E	Tobacco manufacturing, including <i>beedi</i> planning	F	Agarbatti planning
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Uttar Pradesh	<p>Commissioner of Labour, Uttar Pradesh, vide Notification dated 16.05.2024, released the revised rates of minimum wages and the Variable Dearness Allowance (VDA) for the below periods in respect of 74 scheduled employments (as prescribed in the notification):</p> <ul style="list-style-type: none">• Revised minimum wages from 01.10.2023 till 31.03.2024• VDA from 01.04.2024 till 30.09.2024• Total monthly and daily wages from 01.04.2024 till 30.09.2024														
Chhattisgarh	<p>Commissioner of Labour, Chhattisgarh, vide notification dated 24.05.2024, released the revised rates of minimum wages and VDA for the two periods - i) from 01.10.2023 till 31.03.2024 and ii) from 01.04.2024 till 30.09.2024 - in respect of scheduled occupations (specified in notification) pursuant to the Minimum Wages Act 1948. The scheduled employment prescribed in the notification includes below categories of employments:</p> <ul style="list-style-type: none">• Schedule A - Employment in Agriculture• Schedule B - Employment in Planning Part-I (45 Planning)• Schedule C - Various Government Departments• Agarbatti industry• Beedi roller, rail workers, membrane installation, labelling, making or pasting puda.														
Uttarakhand	<p>The Labour Commissioner of Uttarakhand, vide notification dated 19 May 2024, notified the variable dearness allowance for the period 01.04.2024 till 30.09.2024 as INR 2,940/- in respect of the unskilled category workers employed in agricultural employment and rotational employment under the Minimum Wages Act 1948.</p>														

Central/State Labour dept. Notification details

Rajasthan

On 2 May 2024, the Labour Commissioner of Rajasthan published the notification dated 06.10.2023 with revised minimum wages rates and variable dearness allowance for the period from 01.10.2023 till 30.09.2024 in respect of the below mentioned employments pursuant to the Minimum Wages Act 1948:

- Employment in stone breaking or grinding (outside mines)
- Glass and chinaware
- Salt industry
- Planning of woollen carpet, making and dushala weaving institute
- Papad industry

GT Insights: Employers in Madhya Pradesh, Uttar Pradesh, Chhattisgarh, Rajasthan and Uttarakhand shall follow the revised minimum wages and variable dearness allowance as applicable to them pursuant to the notifications issued by the Labour Department.

Few notifications also provides clarification and an exemplary list of unskilled, semi-skilled, skilled and highly skilled workers.

Also, few notifications have also prescribed other conditions such as the category of scheduled employments, category of workers such as unskilled, semi-skilled and skilled, payment conditions, effect of revised wage rates, and VDA.

Interestingly, the Madhya Pradesh notification also provides that if the same type of work is being done in more than one employment, then better rates will be payable to working employees in an establishment.

Professional tax

West Bengal

The Commissioner of Commercial Taxes and Profession Tax, Kolkata, vide an order dated 31.05.2024, by suppression of the order issued on 27.04.2024 and 14.05.2024, has extended the last date of filing the return in Form-III under the West Bengal tax on Professions, Trades, Callings and Employments Rules, 1979, to be filed for the FY ended 31.03.2024 till 15.06.2024 by transmission of data electronically and till 30.06.2024 by furnishing the paper return.

Karnataka

The finance department of Karnataka issued Removal of Difficulties Order (01/2024) dated 30.05.2024, wherein by amendment of the Section 10 of the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976, it has extended the due date for the payment of tax before 31 May 2024 from 30 April 2024 in respect of the persons enrolled before the commencement of Financial Year 2024-2025. The due date has been extended due to technical glitches faced on the portal.

GT Insights: Employers in West Bengal under the state Professional Tax Act were given an opportunity to file the return with extended timelines, and employers in Karnataka were given an opportunity to pay tax with extended timelines.

Heat wave measures by state governments

Delhi

The Office of Commissioner (Labour) Labour Department, Government of Delhi, has vide a circular dated 08/05/2024 and 27.05.2024, advised all the establishments/factories/shops/construction sites to make the arrangements and precautions to tackle the extreme heatwave conditions in the capital.

Gurugram

Further, the office of the District Magistrate-cum-chairperson of the District Disaster Management Authority, Gurugram, has vide an order, dated 31.05.2024, directed the employers, contractors, labourers and the RWA societies to make necessary arrangements to tackle the outbreak of severe heat wave.

The common key advisory steps include:

- Adequate clean drinking water availability at the workplace.
- Availability of coolers/fans at the workplace. Avoid overcrowding and maintain ventilation.
- Availability of the Make Emergency kit (Ice packs, ORS, etc.).
- Change of shift to avoid peak hours (12 pm to 4 pm)
- Availability of fire safety equipment.
- Reporting to a hospital in case of heat-related illness.
- Execution of electrical installation works by the licensed electrical contractor.

Tamil Nadu

The government of Tamil Nadu has, vide a memorandum dated 9 May 2024, advised the joint directors of Chennai and Madurai (BOCW) to advise all construction companies to not carry out construction work in open air between 10 am to 4 pm, in order to prevent workers from the adverse effects of the extreme heat wave and the same shall be followed till 31.05.2024.

GT Insights: The employers, contractors and labourers in Delhi, Gurugram and Tamil Nadu have been instructed by respective government departments to ensure preventive measures and strategy to tackle extreme heat waves during work.

Declaration of paid holiday due to Lok Sabha elections

Delhi

The office of the Commissioner (Labour), Government of NCT of Delhi, vide an order dated 7 May 2024, pursuant to Section 135 of the Representation of People Act, 1951, directed all business establishments, industrial undertakings, establishments falling under the Delhi Shops and Establishment Act, 1954, and factories falling under the Factories Act, 1948, to observe the day of poll, i.e., 25 May 2024, as a paid holiday to enable their employees to cast their vote.

Madhya Pradesh

The Labour Department of Madhya Pradesh, vide a notification dated 7 May 2024, pursuant to Section 135 of the Representation of People Act, 1951, notified the paid holiday to employees and workers of the state on the day of the poll, i.e., on 7 May 2024, enabling the employed voters of the state to exercise their right to vote.

GT Insights: The various state governments, by providing the paid holiday on account of the Lok Sabha Elections, have motivated the employees and workmen to exercise their right of vote.

Delhi - Labour law updates

License fee to be deposited under the Contract Labour (Regulation and Abolition Rules)

Order dated 02.05.2024

The Labour Department of the government of Delhi, vide an order dated 02.05.2024, pursuant to the Contract Labour (Regulation and Abolition Rules), directed that the license fee of INR 5,000/- to be deposited by the placement agency shall be deposited in the Head '0230 Labour and Employment 00106 fees'.

The services of the grant of licenses to private placement agencies providing workers is available on the e-district portal at a fee of INR 5,000/- that was earlier deposited in the head '0230 Labour and Employment 00106 fees' under the Contract Labour (Regulation and Abolition Rules).

Nomination of Nodal Officer and Compliant Officer for transgender persons

Order dated 09.05.2024

The Labour Department of Delhi has nominated the head of office as the Nodal Officer for providing information on transgender persons, and nominated the Section Officer (Admn.) as the Complaint officer to deal with the grievance of transgender persons.

The move comes after a D.O. letter dated 2 April 2024, received from the Secretary, Department of Social Welfare, requesting that transgender persons be included as eligible beneficiaries in all welfare schemes, to publish and display equal education and no discrimination policy, and to organise sensitisation programmes on the Transgender Persons (Protection of Rights Act), 2019.

GT Insights: The nomination of designated authorities for handling the grievances of transgender persons is a welcome move by the state government.

Clarification on employee compensation

Order dated 15.05.2024

The Labour Department of Delhi, vide a clarification dated 15 May 2024, has clarified that the compensation not covered under para 10 of the Employees Compensation Act, 1923 shall be disbursed at the end of the limitation period, i.e., 60 days, and there shall not be any requirement of a show cause notice.

Meghalaya - Labour law updates

The Labour Department of Meghalaya, in pursuance to the government of India's instruction in the Ministry of Labour & Employment dated 19.03.2024, has, vide a notification dated 10 May 2024, notified the Deputy Labour Commissioner/Assistant Labour Commissioner as ex-officio District Nodal Officers for the enforcement of the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986.

GT Insights: The nomination of designated authorities for enforcement of the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986, is a welcome move to strictly implement the provisions of the Act.

Rajasthan - Labour law updates

The Labour Department of Rajasthan has, vide an extraordinary gazette dated 2 May 2024, published the notification dated 15 April 2024, through which exemption is provided to all the registered shops and establishments in Rajasthan from the provisions of Section 12(1) of the Rajasthan Shops and Commercial Establishments Act, which mandates to close shops and establishments for one day in a week subject to the following key conditions:

- All employees will be given paid weekly holiday one day a week on a rotation basis.
- The daily working hours shall not exceed 9 hours, and weekly hours shall not exceed 48 hours.
- Overtime shall be paid if the working hours exceed as per the applicable provisions.
- Appointment letters shall be issued to all employees.
- Exemption is only for shops and establishments, and employees will continue to receive all due benefits under the Act.
- Violation of any condition will automatically revoke this exemption.

Section 12(1) provides for keeping shops and commercial establishments closed for one day a week.

GT Insights: The move to exempt shops and establishments from weekly holiday allows them to work throughout the week, thereby increasing productivity, however, subject to conditions that will also ensure all due benefits of employees remains intact.

Employees' Provident Fund (EPF) updates

The Employees' Provident Fund Organisation (EPFO) has notified some recent circulars/notifications providing benefits to its members, which are as follows-

EPFO relaxes the rules relating to mandatory uploading of cheque leaf image/attested passbook – Circular dated 28 May 2024:

Earlier, a cancelled original cheque bearing the member's name, the bank account number, and the IFSC code of the bank was mandatory to be uploaded, along with the claim form. However, the EPFO, vide its circular WSU/E-49885/1333 dated 28 May 2024, relaxed the requirement of mandatory uploading of cheque leaf image/attested passbook for certain eligible cases.

This relaxation has been provided based on certain validations, which include:



Going forward, the EPFO shall colour code such forms to make it easier for the officers to identify claims that qualify for this relaxation. Till the time such a colour scheme is implemented, the EPFO has given internal instructions to the dealing assistants (DA) to look out for the following message in the claim forms to identify the claims eligible for this relaxation:

“The bank KYC has been online verified by the bank and has been digitally signed by the employer for this case among other validations; therefore, mandatory uploading of the image of cheque leaf/attested bank passbook is not required.”

GT Insights: This is an appreciated step from the EPFO. The said circular will help expedite the settlements of claims filed online and reduce the number of cases that are rejected due to the non-availability of the cancelled cheque/attested passbook.

EPFO receives the central government’s approval on the rate of interest declared for Financial Year (FY) 2023-24.

The EPFO, vide its UO Note No. INV-11/2/2021-INV/155, dated 20 March 2024, had declared the interest to be paid on the member’s EPF accumulations for FY 2023-24 at 8.25%.

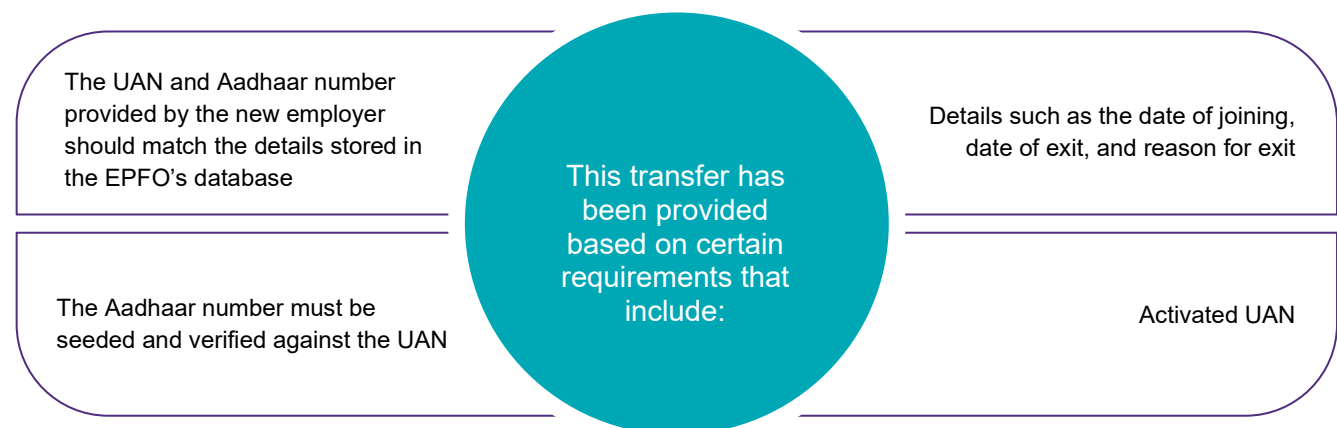
The EPFO, vide its Notification No. R-11018/01/2023-SS-II, dated 24 May 2024, has informed that it has now received the central government’s approval for crediting the interest at the rate of 8.25% on the members’ EPF accumulations for FY 2023-24.

GT Insights: The EPFO has increased the rate of interest on members’ EPF accumulations from 8.15% for FY 2022-23 to 8.25% for FY 2023-24. The interest is accrued on the monthly balance and is credited once annually.

EPFO – Automatic transfer of member balances.

When a member switched jobs earlier, the new employer opened a new PF account for the employee and attached it to the existing UAN.

The EPFO has enabled the facility of automatic transfer of EPF accounts when members switch jobs. The automatic transfer helps existing EPF members switch jobs and move their PF balances to new employers without any manual intervention. This facility was first introduced in 2017 vide circular number Manual/Amendment/2011/13326 dated 20 September 2017.



GT Insights: The EPFO has streamlined the process for employees to transfer their EPF accounts. In case the earlier UAN was Aadhaar seeded and verified, the declaration by the employer of transfer request made by the employee in Form-11 will trigger an auto-transfer process, which will transfer the accumulations against his previous PF ID to the new PF ID.

It is worthwhile to note that this facility was made available since 2017 but has been implemented in a better way from April 2024. Further, the exempted PF trusts are not covered under the automatic EPF transfer facility.

EPFO – Extension of timeline for mandatory Aadhaar seeding with UAN of EPF members for filing of ECR

The EPFO, vide its Circular No. BKG-27/5/2021-VKG/E-38791, dated 5 June 2024, had granted an extension of time for mandatory seeding of Aadhaar for filing ECR up to 30 June 2024 for certain classes of establishments, i.e., beedi-making, building and construction and plantation industries (Tea, coffee, cardamom, pepper, jute, rubber, cinchona, cashewnuts, etc.) and for the North-Eastern region comprising the states of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura.

GT Insights: The EPFO has granted an extension of time for mandatory Aadhaar seeding with UAN only for the specific classes of establishments and to the North-Eastern region. This timeline was initially up to 31 March 2024. However, basis the representations made with the department, this timeline has been extended up to 30 June 2024.

EPFO – Settlement of physical claims without UAN where details of the member are inaccurate/incomplete in the Aadhaar database

The field officers had intimated their inability to seed and authenticate Aadhaar in death cases due to inaccurate/incomplete member details in the Aadhaar database.

However, through Circular No. WSU/2020/Claim settlement without UAN-clarification(E25432) dated 17 May 2024, it was decided to remove such difficulty in case of death cases where details in UAN are correct, but the claim is rejected due to:



The settlement of physical claims without seeding Aadhaar may be allowed as a temporary measure but only with the due approval of the OIC in an e-office file duly recording verification details of deceased members and the genuineness of the claimants to avoid any fraudulent withdrawals.

GT Insights: This is a welcomed step from the EPFO. The said circular aims to streamline the process for beneficiaries, ensuring timely access to benefits without any administrative hassles and need for interactions with government offices.

Important judgements for May 2024

Industrial Disputes Act, 1947

The General Manager, m/s Barsua Iron Ore Mines vs. The Vice President, United Mines Mazdoor Union & ors [sc]

Case note: Retirement based on incorrect date of birth.

At the time of joining, the employee deliberately provided the wrong date of birth, only to change it later after joining. The issue pertains to the retirement taken by the employee based on the date of birth provided earlier. The Supreme Court set aside the award and impugned judgement of the CGIT and High Court. It was affirmed that the employee was right to retire by the age specified at the time of joining.

The case was decided on 02.04.2024.

Brief facts: Respondent No. 3 initially declared his date of birth as 27.12.1948 at the time of joining but later changed it to 12.03.1955 without providing any proof. The employer changed the date of birth without any verification. In 2001, the employer determined his date of birth as 27.12.1948, allowing him to meet minimum age requirements, i.e., 18 years. A dispute over his date of birth was referred to the Central Government Industrial Tribunal (CGIT) in 2003. Meanwhile, he retired in 2008 based on the initially recorded date of birth. In 2018, the CGIT ruled that the employer's determination was unjustified and awarded the respondent 50% back wages until 2015 based on the revised date of birth. The employer challenged this decision in the High Court, which upheld the CGIT's ruling.

Decision: Appeal was allowed.

Rationale: The court has decided that neither the CGIT's award nor the High Court's judgment can stand. The respondent initially declared his age as 24 without proof, leading to his date of birth being recorded as 27.12.1948. Later, he claimed his date of birth was 12.03.1955 without providing evidence, and the employer accepted such change without due diligence. However, this would have made him underage for employment. The court views this change in date of birth as a deliberate plan by the respondent. Moreover, the respondent did not promptly provide proof, casting further doubt on his claim. The court finds no fault with the employer in determining the date of birth based on the initial declaration. The respondent's delayed disclosure and admission that he would not have been legally appointed at a later date of birth support this decision. Therefore, the court concludes that the respondent cannot rectify his date of birth and must accept retirement based on the initially recorded date. Consequently, the CGIT's award is set aside, and the respondent is held to have been rightly retired based on his date of birth as 27.12.1948.

Tamil Nadu Industrial Establishments (conferment of permanent status to Workmen) Act, 1981

Tamil Nadu Medical Services Corporation Limited Vs. Tamil Nadu Medical Services Corporation Employees Welfare Union and Ors. Vs Tamil Nadu Medical Services Corporation Limited vs. Tamil Nadu Medical Services Corporation Employees Welfare Union and Ors. And G. Sumathi and Ors. Vs. Tamil Nadu Medical Services Corporation Employees Welfare Union and Ors. [SC]

Case note: Wages and their regularisation

The issue is whether employees of a corporation are eligible for permanent status under the Act. The Supreme Court held that the establishment is covered under the ambit of the act, and thus, granted the permanent status to the employees.

The case was decided on 17.05.2024.

Brief facts: The case involves the Tamil Nadu Medical Services Corporation Limited, wherein employees sought regularisation under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. After some unsuccessful attempts, they filed writ petitions before the High Court.

In a judgement dated 21 July 2000, the learned Single Judge of the High Court directed the Inspector of Labour to inspect and verify the corporation's records and determine the employees' claims within three months. Pursuant to this order, the Inspector of Labour framed specific issues and concluded that some employees, including G. Sumathi and others, were eligible for permanent status.

The corporation appealed against this order, and the Division Bench of the High Court confirmed the inspector's order. The matter was then brought before the Supreme Court, which remanded it to the High Court for reconsideration.

In its subsequent judgement, the High Court agreed with the earlier decision, affirming that the corporation falls under the purview of the Tamil Nadu Industrial Establishments Act, 1981. The High Court observed that the corporation is an industrial establishment and, therefore, subject to the provisions of the Act.

Decision: Appeal by the Corporation was dismissed.

The permanent status was granted to the employees.

Questions before the court - The central issue is whether the Tamil Nadu Medical Services Corporation Limited qualifies as an industrial establishment under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, and whether the employees represented by the Union are eligible for permanent status under the Act.

Rationale: The High Court examined this question in light of the Act's definition of 'establishment' under Section 2(3)(e) of the 1947 Act. The Act defines 'establishment' as various commercial entities and 'commercial establishment' as businesses engaged in advertising, commission, forwarding, commercial agency, or clerical departments of factories or industrial undertakings.

The corporation argued that it did not engage in profit-making activities, and therefore, should not be considered a commercial establishment. However, the High Court found evidence to the contrary, including the corporation's turnover and profits over several years.

Additionally, the court rejected the argument that some employees had secured alternative employment, maintaining that this should not affect the claims of others. The court emphasised that once the Inspector of Labour had issued an order under the Act, there was no need to re-adjudicate the matter under different laws, such as the Industrial Disputes Act 1947.

Ultimately, the Supreme Court dismissed the corporation's appeal and upheld the union's appeal, affirming the applicability of the Act to the corporation and granting permanent employment status to the represented employees.

Workmen Compensation Act, 1923

Manager Legal, TATA AIG General Insurance Company Ltd. Vs. Santosh Behera and Ors. [HCOC]

Case note - This case underscores the importance of evidence and due process in legal proceedings, highlighting the burden of proof on the party making allegations and the need for specificity in pleading fraud.

Brief facts: The claimant, who worked as a driver for a vehicle owned by Respondent No. 2, suffered severe injuries in an accident on 18 April 2016 while driving from Palasola to Jagatsinghpur. The accident occurred when the claimant stepped out of the vehicle and he was struck by an unknown motorcycle. The Commissioner ruled in favour of the claimant, concluding that the injuries occurred during employment, and awarded compensation considering various factors such as age, wage, disability, and loss of earning capacity.

Subsequently, the insurer-appellant challenged the award in FAO No. 40 of 2022. During the hearing, both parties agreed to a reduced compensation of INR 4,00,000, and the court disposed of the appeal accordingly.

An interim application was submitted to recall an order issued on 5 January 2023 concerning FAO No. 40 of 2022. Initially, FAO No. 40 of 2022 was filed by the insurer-appellant to contest an award issued by the Commissioner for Employee's

Compensation-cum-Joint Labour Commissioner, Cuttack, granting compensation of INR 10,71,776 to the claimant in EC Case No. 429-D/16.

The case was decided on 08.05.2024

Decision: Appeal dismissed.

The court dismissed the insurer's claims and upheld the compensation award of INR 4,00,000 to the claimant.

Rationale: The insurer contests a compensation award, alleging that the claimant fabricated the accident to receive compensation under the Employee's Compensation Act. The insurer argues that since there was no police report or FIR filed regarding the accident, it must be fraudulent. However, the court examines the evidence presented by both parties.

The claimant provides testimony from witnesses, medical records, and documents such as the Out Door Patient ticket and prescription from the treating doctor, all supporting the occurrence of the accident. Additionally, the vehicle owner, under whom the claimant worked as a driver, corroborates the claimant's version of events.

On the other hand, the insurer fails to present substantial evidence to prove fraud or refute the claimant's account convincingly. The court emphasises the necessity of specific allegations and evidence to prove fraud, which the insurer fails to provide.

The court dismissed the insurer's claims and upheld the compensation award of INR 4,00,000 to the claimant.

Workmen Compensation Act, 1923

Meera Devi and Ors. Vs. State of H.P. and Ors. [HCHP]

Case note- This case highlights the importance of considering the circumstances leading to an employee's suicide and the liberal interpretation of 'death' under the Employee's Compensation Act. It emphasises the employer's duty to provide a safe working environment and the entitlement of dependents to compensation in case of work-related deaths.

Brief facts: Jagdish Kumar, a worker, committed suicide on the intervening night of 28.02.2004/01.03.2004 during his employment.

The appellants, comprising his widow and children, filed a claim petition seeking compensation under the Employee's Compensation Act, alleging that Jagdish Kumar's suicide was due to work-related stress.

They claimed that Jagdish Kumar was overworked, not granted leave, and forced to work beyond duty hours.

The respondents contested this, stating Jagdish Kumar was not on duty during the suicide and attributed it to personal reasons.

The trial court dismissed the petition, prompting the appellants to appeal.

The case was decided on 06.05.2024

Decision: Appeal was allowed.

The court awarded the appellants INR 3,45,040/- with interest, holding the respondents jointly and severally liable.

Rationale: The court observed that Jagdish Kumar's suicide occurred at the workplace and during his employment, entitling the appellants to compensation.

It held that the act of suicide falls under the definition of 'death' as per the Employee's Compensation Act.

The court criticized the respondents for not producing relevant documents, such as duty rosters, to refute the claim of overwork.

The court awarded the appellants INR 3,45,040/- with interest, holding the respondents jointly and severally liable.

The substantial question of law framed was answered in favour of the appellants, and the appeal was allowed.



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