

2, Ajay Singh Chauhan. The denial of compensation under the Act to the appellants suffers from grave misappreciation of facts and the evidence available on record. The nature of duty performed by the deceased required him to be with the bus twenty-four hours, failing which the employer's requirement could not be fulfilled. The presence of the deceased on the bus was by compulsion, and not by choice. PW-2 deposed that the deceased was required to be with the bus and was therefore paid salary of Rs.6,000/- p.m. for twenty-four hours. Merely because the accident took place while the deceased was coming down the roof of the bus after having his meals, cannot be sufficient, sans the evidence, to hold that death did not arise out of and was not in the course of employment. The facts of the case adequately reflect notional extension of the duty, relying on **General Manager, B.E.S.T. Undertaking, Bombay vs. Mrs. Agnes**, (1964) 3 SCR 930.

4. Learned counsel for the respondent contended that the duty of the deceased got over at 7:30 pm. He is stated to have fallen off the bus after duty hours at 8:30 pm. The deceased cannot be said to have died in course of and arising out of the employment.

There was no proximity between the death and discharge of duties. The deceased cannot be said to have been on duty while he was eating food on the roof of the bus by choice.

5. We have considered the submissions on behalf of the parties. The deceased, aged around 42 years, was the driver of the public bus belonging to respondent no.1. He met an accidental death on 18.07.2010 at the Burhanpur bus stand while coming down the roof of the bus of which he was a driver, after eating his meal. The salary of the deceased at the time of death was determined by the Tribunal at Rs.4,275/- per month while dismissing the claim case.

6. The deceased was required to drive the public bus daily, ferrying passengers from Indore to Burhanpur and back from Burhanpur to Indore. The travelling time in one direction was approximately 5 hours, according to PW-2. The bus ferried passengers from Burhanpur at 6:30 AM and reached Indore at about 11:00 AM. The return journey would commence from Indore at 3:00 PM and terminate at Burhanpur on or after 7:30PM. According to PW-2, because of the nature of their duty,

the deceased and the conductor of the bus, were required to remain with the bus twenty-four hours. The appellants also deposed that because of the nature of his duty, the deceased at times, would not come home for as long as a week.

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.

8. The deceased did not remain at the bus stand living in the bus as a member of the public or by choice after arrival at Burhanpur till departure for Indore the next morning. It is not the case of the respondent that the deceased was at liberty to proceed home and return at leisure the next morning after parking the bus at the Burhanpur bus stand at night. The Act being a welfare legislation, will have to be interpreted in the facts of each case and the evidence available, to determine if the

accident took place in the course of employment and arose out of the employment. In **Agnes** (supra) it was observed :-

“...The man’s work does not consist solely in the task which he is employed to perform. It includes also matters incidental to that task. Times during which meals are taken, moments during which the man is proceeding towards his work from one portion of his employers’ premises to another, and periods of rest may all be included.”

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 **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.”

10. If the requirement of the deceased to stay with the bus was integrally connected with the efficiency of the service to be provided to the public by respondent no.1 and the deceased was not present at the bus terminal with the bus in his nature as a member of the public by choice, we see no reason why the doctrine of notional extension of the employment will not be applicable.

11. **Agnes** (supra) has been followed in **Manju Sarkar and Ors. vs. Mabish Miah and Ors.**, (2014) 14 SCC 21, observing as follows:

“As rightly contended by the learned counsel appearing for the appellants there is a notional extension in the present case also and we would, therefore, hold that Sajal Sarkar met with the road accident in the course of his employment under Respondents 1 and 2. The courts below have misdirected themselves while dealing with this question and the finding rendered by them is perverse and unsustainable.”

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. The appeal is allowed.

.....**J.**
(Arun Mishra)

.....**J.**
(Navin Sinha)

New Delhi,
January 22, 2019.