BEFORE COMMISSIONER EMPLOYEES COMPENSATION
(THE EMPLOYEES COMPENSATION ACT, 1923)
OFFICE OF DEPUTY LABOUR COMMISSIONER (SOUTH)
LABOUR DEPARTMENT, GOVT. OF N.C.T. OF DELHI
PUSHPA BHAWAN, PUSHP VIHAR, NEW DELHI – 110062

Tel. No. 26055394 **E-mail:labdlcs.delhi@gmail.com**

No. CEC/SD/D/67/2019 11813-15 Date: 13/9/21

IN THE MATTER OF:

Smt. Sita Devi & Ors.
W/o Late Sh. Rakesh Kumar Chauhan
R/o C-48, Lal Bagh, Azadpur
North-West Delhi-110033

... Claimant/s

V/s

M/s Macro Developers Pvt. Ltd.
(Previous Name of the Company)
B-15, IInd Floor, Greater Kailash Enclave-II
New Delhi- 110048

Sh. Vijit Sikand (Owner)
M/s Natural Retreat Homes LLP
(Present Name of the Company)
A-17A, New Friends Colony,
New Delhi- 110065

... Respondent/s

ORDER

1. Vide this order I shall disposed of claim application dated 19.12.2019 filed by claimant under section 22 of the Employees Compensation Act, 1923. (Herein after referred as an Act).

2. The claimant has filed a claim against the respondents under Employees Compensation Act stating that the deceased Sh. Rakesh Kumar Chauhan joined the respondent No. 1 in 2009. The respondent subsequently changed its name from M/s Macro Developers Pvt. Ltd. to M/s Natural Retreat Homes LLP (R-2). That Sh. Rakesh Kumar Chauhan was 56 years old. The respondents paid Rupees 39,000/- in his bank account and Rupees 10,000/- per month was given incash to him. That on 30.07.2019 when he was working at the site of the company he met with an accident. The daughter of the deceased has got one

phone call that his father has slipped at the site and got injured and he has been taken to AIIMS Trauma Center. At 9:15 P.M. the family was informed by the doctor that Sh. Rakesh Kumar Chauhan has expired. The postmortem of the deceased was conducted vide No. TC-522-19 on 30.07.2019. In this regard a police complaint was also filed with the New Friends Colony, Police Station vide GD No. 041A on 30.07.2019. That the respondent even after having the knowledge of the death of the employee has not granted any provisional payment within one month of the death of the employee. Further after many request of the legal heirs of the deceased the respondent has made a payment of Rs. 5,27,800/- before this Authority in the month of October-2019 and intimated the same to the legal heirs of the deceased which is neither complete compensation nor the provisional payment within the stipulated period of one month as per the Act. The act of the respondent is in complete violation of Section-4A of the Employees Compensation Act, 1923. The respondent is liable to pay compensation amount of Rs. 25,73,025/-, Penalty of Rs. 12,86,512/- and interest amount of Rs. 1,54,381/- i.e. a total amount of Rs. 40,13,918/-. The claimant has prayed that the respondent be directed to pay Rs. 40,13,918/- to the claimants.

3. Summons were issued to the respondent. The respondent has appeared and submitted that they had already deposited compensation amount in this matter in the account of Commissioner Employee's Compensation. A show cause notice was issued Under Section 4 A 3 (b) for imposing penalty on the respondent for delay in depositing the compensation amount. The respondent filed its reply stating that they had already deposited the compensation amount, therefore the penalty Under Section 4 A 3 (b) should not be imposed on them.

4. There is no dispute with regard to the liability to pay compensation to the legal heirs of the deceased, as the respondent has already deposited compensation amount with Commissioner Employees Compensation. The dispute is only with regard to the quantum of compensation payable to the claimants and whether the respondent is liable to pay penalty Under Section 4-A (3)(b) of the Act. Section 4 of the Act provides for calculation of compensation amount which reads as follows:

Amount of Compensation- (1) Subject to the provisions of the Act, the amount of compensation shall be as follows, namely:-

(a) Where death results from the injury: An amount equal to {Fifty per cent} of the monthly wages of the deceased employee multiplied by the relevant factor;

OR

An amount of (one lakh and twenty thousand rupees), whichever is more;

(b) Where permanent total disablement results from the injuries: An amount equal to {Sixty per cent} of the monthly wages of the injured employee multiplied by the relevant factor;

OR

An amount of (one lakh and forty thousand rupees), whichever is more:

1-(B) The Central Government may, by notification in the Official Gazette, specify, for the purpose of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.

5. As provided above in Section 4(1)(a) the amount of compensation has to be calculated by taking 50% of wages into consideration. Further as provided under Section 4 (1) B the monthly wages has been notified by the Central Government as Rs. 8000 per month vide notification SO 1258 (E) dated 31.05.2010. However the claimant AR has submitted that monthly wages should be taken as Rs. 15,000/- per month as notified by the Central Government in January 2020, as it is having retrospective effect.

6. The Central Government vide SO 71 (E) dated 03.01.2020 has notified the monthly wages for the purpose of sub section 1 of section 4, which reads as- *"MINISTRY OF LABOUR AND EMPLOYMENT NOTIFICATION New Delhi, the 3rd January, 2020 S.O. 71(E).—In exercise of the powers conferred by sub-section (1B) of section 4 of the Employee's Compensation Act, 1923 (8 of 1923) and in supersession of the notification of the Ministry of Labour and Employment issued vide number S.O. 1258(E), dated 31st May, 2010; published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated 31st May, 2010, the Central Government hereby specifies, for the purposes of sub-section (1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the Official Gazette, namely:- "Fifteen thousand rupees"*

7. As per notification No. 71 (E) dated 03.01.2020 the monthly wages for the purpose of sub section 1 of section 4 have been notified as Rs. 15,000/- with effect from the date of publication of this notification in official gazette. The aforesaid notification is having only prospecting effect and the rates of monthly wages can not be applied retrospectively. Therefore, the contention of the claimant that the compensation amount should be calculated by taking Rs. 15,000/- as monthly salary is not sustainable, Hence the compensation amount will be calculated by taking Rs. 8,000/- as monthly wages.

8. The compensation amount payable to the claimant is calculated as under:-
The wages of the purpose of calculation of compensation as per section 4 (1) (B) is taken as 50% of Rs. 8000/- i.e. Rs. 4000/-
Age of the claimant is 56 years
Age factor is 131.95
Compensation Amount ; **4000 x 131.95 = Rs. 5,27,800/-**

The claimants are entitled to Rs. 5,27,800/- towards payment of compensation. However the respondent had already deposited Rs. 5,27,800/- towards payment of compensation with the Commissioner Employee's Compensation, therefore the respondent is not required to deposit any more amount on account of compensation.

9. The claimant during argument has argued that there is a delay in depositing the compensation amount, therefore penalty should be imposed upon the respondent as provided under section 4-A 3A. The respondent in his reply to show cause notice has submitted that the respondent had already deposited the compensation amount on 04.09.2019 with the Commissioner Employee's Compensation. The deceased Sh. Rakesh Kumar Chauhan met with accident on 30.07.2019. Section 4-A 3 provides, where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, The Commissioner shall;
"(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by

the Central Government, by notification in the Official Gazette, on the amount due; and

(b) If, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty."

10. The accident took place on 30.07.2019 and as per section 4-A 3 the compensation amount should be deposited within one month from the date it fell due. However the respondent has deposited the compensation amount on 04.09.2019 with the Commissioner Employee's Compensation and it was duly informed to the claimants. There is delay of only 04 days in depositing the compensation amount on the part of the respondent, therefore in my opinion it will be unjustified, if any penalty is imposed on the respondent. However, the claimant is entitled for funeral expenses of Rs. 5000/- as provided under section 4 (4).

11. Therefore the respondent i.e. M/s Natural Retreat Homes LLP is directed to deposit Rs. 5000/- towards funeral expenses in the favour of Commissioner Employees Compensation VIII within 30 days from the date of order, failing which same shall be recovered as per provision of the Act.

Given under my hand and seal of this Authority on this 13th day of **Sept, 2021.**

(Amardeep)
Commissioner Employee's Compensation (South)