



IN THE COURT OF COMMISSIONER EMPLOYEES COMPENSATION
(UNDER EMPLOYEES COMPENSATION ACT, 1923)
OFFICE OF THE JOINT LABOUR COMMISSIONER
LABOUR WELFARE CENTRE, DISTRICT – WEST, F-BLOCK:
KARAMPURA, NEW DELHI – 15

No. CEC/D/1/54-59/WD/20/ /506-513
No. CEC/D/8-11/WD/20/

Dated:- 22/01/21

In the matter of:-

Sh. Guddu S/o Sh. Kamlesh
Local Address- RZ C-107, Gali No.2,
Vishnu Garden, Khyala, Delhi- 110018

Sh. Guddu S/o Sh. Kamlesh
Permanent Address – Village Shivri, P.S. Hariyawa,
District Hardoi, Uttar Pradesh- 241405
workmen--1

... Injured

Sh. Ravi S/o Sh. Ramji Lal
C/o RZC-12, Vishnu Garden, Khyala
New Delhi-110018
workmen--2

... Injured

LR/Dependents of the deceased Late Sh. Ramesh
C/o RZC-12, Vishnu Garden, Khyala
New Delhi-110018

... deceased workmen-1

LR of the deceased Late Ms. Chaina Devi w/o Sh. Nandram
C/o RZC-12, Vishnu Garden, Khyala
New Delhi-110018

... deceased workmen--2

LR of the deceased Late Ms. Dimpal Devi @ Twinkle
C/o RZC-12, Vishnu Garden, Khyala
New Delhi-110018

... deceased workmen--3

LR of the deceased Late Ms. Guddi w/o Sh. Mumtaz
C/o RZC-12, Vishnu Garden, Khyala
New Delhi-110018

... deceased workmen--4

VERSUS

Shij
Sh. Mahinder Pal Singh S/o Sh. Suresh Pal
& Sh. Pinku s/o Sh. Mahinder Pal Singh
RZG – 181, Vishwas Park, Uttam Nagar, New Delhi -59

..... Factory owners

ORDER

1. This order shall dispose of the notice dated 21.12.2020 issued under section 10 A(1) of the Employees Compensation Act, 1923 (hereinafter referred to as the Act) making injured employees/deceased family members and employer parties to it. This order shall also dispose of four claim petitions filed by the deceased family members on 13.01.2021 through their counsels before CEC during the pendency of proceedings initiated under section 10A (1) of the Act.
2. The brief background of the case is that on receiving information published in print media/newspaper publication dated 20.12.2020, an inspector was deputed to visit the accident site and accordingly preliminary investigation were carried out about the nature of accident taking place in the establishment/factory located at RZC-12, Vishnu Garden, Khyala, New Delhi-110018 leading to death of 04 workmen/work-lady namely Sh. Ramesh, Ms. Chaina Devi, Ms. Dimple @ Twinkle & Ms. Guddi and injury of other 02 workmen Sh. Guddu and Sh. Ravi during and in the course of employment at the said premises.
3. Also the copy of FIR No.1032 dated 19.12.2020 as registered in this case at P.S. Khayala, New Delhi-110018 was obtained for the purpose of summoning. As per directions issued by the Hon'ble Delhi High Court in the FAO no 385/2013, parties were summoned through the IO of PS Khayala dealing with the case for fact finding.
4. In response to notice dated 21.02.2020, Sh. Guddu, one of the injured employees appeared before CEC alongwith I.O. Sh. Arvind Kumar from P.S. Khayala. On the said date, it was confirmed that 4 deaths and 2 accidental injuries took place on the said accident site. Also, it came to the knowledge that the owner/employer was not paying salary/wages as per Govt. Notified Minimum rates of wages. The concerned IO was directed to produce the employer and provide details of family members, age profile of the injured/deceased and to file EAR on next date of hearing for the purpose of facilitation of CEC.
5. On 05.01.2021, employer Sh. Mahender Pal appeared alongwith this counsel and requested time for filing reply, which was allowed in the interest of justice. The reply to the notice issued under the Act of 1923 was later filed on 20.01.2021 and matter was fixed for arguments/oral submissions on 21.01.2021.
6. On 21.01.2021, employer appeared alongwith counsel and made oral submissions re-emphasizing the grounds taken by them in their written reply submitted a day earlier disclaiming the liability. During the hearing, it is observed that the place where the accident took place was approx. 50 square yards and was/is owned by Sh. Mahender Pal for commercial activity i.e. stamping of table fan in the name M/s MM Industries at ground floor level and upper floors were given on rental basis for residential purpose. During the proceedings, counsel Sh. Kshitij Kumar, made submission that due to the earthquake that took place on 18.12.2020, the

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structure became weak and due to which it fell the next very day. He further submitted that the owner had unwritten contract agreement with contractor Sh. Ramesh (now deceased in same accident) who, was ultimately responsible for workers deployment and payment.

7. The Factory branch/Directorate of Industrial Health & Safety, GNCTD has further confirmed that the ESI Act 1948 was/is not applicable upon the establishment vide their letter dated 23.12.2020.

8. Under section 3 of the Act, employer is liable to pay compensation amount in accordance with calculation as mentioned in section 4. Had the accident/building collapse happened immediately at the time of earthquake and/or the incidence of workmen sustaining injury/injury leading to death simultaneously been taken place, then only the contentions of employer would have any merit. If the employer was well aware that the earthquake took place the day before, he should have inspected the building to find out whether it is fit for dwelling or commercial purpose. Instead of work stoppage on the date of accident, the employer simply for the purpose of petty commercial gain continued to deploy those workmen/work-lady in the building adding to further risk of life. Therefore the reliance of employer on the phenomenon of 'Act of God' or 'force majeure' as an exception to liable in not legally sustainable. Also under section 12 of the Act, the employer being the principal is liable for depositing compensation amount. In this case, neither written contract nor any copy of billing, GST and wage payment records are produced before the CEC by employer, therefore the so called contractor now deceased cannot be legally designated by CEC as immediate employer. In case, the employer is able to prove principal-agent relationship or principal-independent contractor relationship, he may exercise legal remedies as available to him under the law of land and recover the ordered amount from the LR of the said agent/contractor.

9. After considering the documents on record, reply and arguments of the employer, the CEC is of the considered view that dependents of deceased namely

- I. Late Sh. Ramesh S/o Sh. Rajeevnand Rout
- II. Late Ms. Chaina W/o Wh. Nandram
- III. Late Ms. Dimpal Devi @ Twinkle W/O Sh. Joginder
- IV. Late Ms. Guddi W/o Sh. Mumtaz Shah

are found to be entitled for death compensation as per the provisions laid down under the Act.

10. The death compensation has been calculated on the basis of age and relevant factor of the deceased employees and 50% monthly wages of the employees (Rs.15000/- is restricted under the Act. In this case, no salary record of four deceased are available in case file, the same is restricted to Rs.15,000/- as per the maximum limit notified under the Act. It is also ascertained that the employer was

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not paying govt. notified minimum wages which ranges from Rs.15492/- to Rs.18797/- which is still more than the statutory wage limit of Rs.15000/-.

Calculation of Principal Amount in respect of dedeased Late Shri Ramesh Rout :-

The age of the claimant is taken as 40 years on the basis of DOB mentioned on Aadhar Card and the age factor of 40 years comes to 184.17.

As per Section 4(1)(a) of the Act in this case death of an employee, Claim amount is calculated as under:-

$$\begin{aligned} & 50\% \text{ of monthly wages } \times \text{ age factor} \\ & = 50/100 \times 15000 \times 184.17 = \text{Rs.}13,81,275/- \\ & \text{plus} \\ & \text{Funeral benefit- Rs. } 5000/- \end{aligned}$$

Calculation of Interest :-

Apart from above, since the employer has failed to release the entitled death compensation amount within specify period in the Act i.e. within one month date of accident i.e. 19.12.2020. Therefore the respondent is also liable to pay interest @ 12% of the principal amount of Rs.13,81,275/- w.e.f. 19.01.2021 till the date of realisation as per section 4A(3)(a) of the Act.

Calculation of Principal Amount in respect of deceased Late Smt. Chaina Devi:-

The age of the claimant is taken as 30 years on the basis of DOB mentioned on Aadhar Card and the age factor of 30 years comes to 207.98.

As per Section 4(1)(a) of the Act in this case death of an employee, Claim amount is calculated as under:-

$$\begin{aligned} & 50\% \text{ of monthly wages } \times \text{ age factor} \\ & = 50/100 \times 15000 \times 207.98 = \text{Rs.}15,59,850/- \\ & \text{plus} \\ & \text{Funeral benefit- Rs. } 5000/- \end{aligned}$$

Calculation of Interest :-

Apart from above, since the employer has failed to release the entitled death compensation amount within specify period in the Act i.e. within one month date of accident i.e. 19.12.2020. Therefore the respondent is also liable to pay interest @ 12% of the principal amount of Rs.13,81,275/- w.e.f. 19.01.2021 till the date of realisation as per section 4A(3)(a) of the Act.

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Calculation of Principal Amount in respect of deceased Late Ms. Dimple :-

The age of the claimant is taken as 20 years on the basis of DOB mentioned on Aadhar Card and the age factor of 20 years comes to 224.00.

As per Section 4(1)(a) of the Act in this case death of an employee, Claim amount is calculated as under:-

$$\begin{aligned} & 50\% \text{ of monthly wages } \times \text{ age factor} \\ & = 50/100 \times 15000 \times 224.00 = \text{Rs. } 16,80,000/- \\ & \text{plus} \\ & \text{Funeral benefit- Rs. } 5000/- \end{aligned}$$

Calculation of Interest :-

Apart from above, since the employer has failed to release the entitled death compensation amount within specify period in the Act i.e. within one month date of accident i.e. 19.12.2020. Therefore the respondent is also liable to pay interest @ 12% of the principal amount of Rs.16,80,000/- w.e.f. 19.01.2021 till the date of realization as per section 4A(3)(a) of the Act.

Calculation of Principal Amount in respect of dedeased Late Smt. Guddi :-

The age of the claimant is taken as 50 years on the basis of DOB mentioned on Aadhar Card and the age factor of 50 years comes to 153.09.

As per Section 4(1)(a) of the Act in this case death of an employee, Claim amount is calculated as under:-

$$\begin{aligned} & 50\% \text{ of monthly wages } \times \text{ age factor} \\ & = 50/100 \times 15000 \times 153.09 = \text{Rs. } 11,48,175/- \\ & \text{plus} \\ & \text{Funeral benefit- Rs. } 5000/- \end{aligned}$$

Calculation of Interest :-

Apart from above, since the employer has failed to release the entitled death compensation amount within specify period in the Act i.e. within one month date of accident i.e. 19.12.2020. Therefore the respondent is also liable to pay interest @ 12% of the principal amount of Rs.11,48,175/- w.e.f. 19.01.2021 till the date of realization as per section 4A(3)(a) of the Act.

Calculation of Half Monthly Payment in lieu of Injury Compensation

In respect of following workers Sh. Guddu & Sh. Ravi who met with the accident and were/are injured, but whose disability certificates and status of health are unknown for the reason for their non appearance.

1. Sh. Guddu S/o Sh. Kamlesh
2. Sh. Ravi S/o Sh. Ramjilal

In the present case, the accident took place on 19.01.2020 and two of the injured employee could not attend their normal duties due to the injury and loss of employment. Since the claimants are not appearing before CEC and therefore they cannot undergo medical test to ascertain their disability. In this case permanent disability has not taken place either total or partial, therefore the provision of 4(1)(a),(b)&(c) does not apply in this case. The provision of section 4(1)(d) is attracted in this case. The relevant section of the Act is reproduced below:-

*Section 4(1)(d) where temporary disablement, whether total or partial, results from the injury: a half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the *[employee], to be paid in accordance with the provisions of sub-section (2).*

*Section 4(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day -- (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or (ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter: Provided that-- (a) there shall be deducted from any lump sum or half-monthly payments to which the *[employee] is entitled the amount of any payment or allowance which the *[employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the *[employee] before the accident exceeds half the amount of such wages which he is earning after the accident. Explanation.-- Any payment or allowance which the *[employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.*

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In view of the above provisions, both the claimants Sh. Guddu & Sh. Ravi are found to be entitled for receiving half monthly payment from 16th day from the date of disablement which is calculated as under:-

- a. Date of accident:- 19.12.2020
- b. Disablement period:-19.12.2020 till date
- c. Monthly wages is restricted to Rs.15,000/- which is the last notified wages for the purpose of calculation under section 4(1B) of the Act.

- d. Half Monthly Payment which was first payable on 04.01.2021= 25% of monthly wages =Rs.3,750/-
- e. No. of Half monthly payment to which the claimant is entitled till date = 2 fortnight periods.
- f. The total amount payable under the half monthly scheme is Rs.3,750/- X 2 = Rs.7,500/-
- g. Max half monthly payment allowed under the Act is maximum 5 years or till the temporary disablement lasts whichever is earlier.

Since the half monthly payment was not made by the employer during the period of disablement the same is hereby commutated into lump-sum amount of Rs.7,500/- which is to be released to injured workmen/employee immediately failing which the employer is also liable to pay interest @ 12% of the principal on Rs.7500/- w.e.f. 21.01.2021 till the date of realization as per section 4A(3)(a) of the Act.

11. In exercise of power conferred under the act, the CEC directs the employer Sh. Mahender Pal to deposit in the court of CEC, compensation amount as calculated and ordered above at para no 10 within 30 days from receipt of the order by way of demand draft/ cheque in favour of Commissioner Employees Compensation- IX failing which the same shall be recovered as arrear of land revenue under section 3 of the Act.
12. As regards, penalty, employer is hereby given show cause notice as to why penalty @ 50% be not imposed upon them u/s 4A (3)(b) to the extent of 50% of awarded amount and reply for the same has to be filed on or before 25th February, 2021. After considering the reply the further action shall be initiated as per law.

Given under my hand and seal on the day of 22nd day of January 2021.

U.K. Sinha
22/01/2021

(U.K.SINHA)

Commissioner Employees Compensation