

**BEFORE SH. S.C YADAV, COMMISSIONER
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)
LABOUR DEPARTMENT, GOVT. OF N.C.T. OF DELHI
5, SHAM NATH MARG, DELHI-110054**

No. CEC/SD/D/39-44/2017 | 120 .

Dated: 17/06/2022

IN THE MATTER OF:

1. **Smt. Nazia (Wife of Late Bhura Lal)**
2. **Baby Sabia (Daughter of Late Bhura Lal)**
3. **Master Aas Mohammad (Son of Late Bhura Lal)**
4. **Baby Aaliya (Daughter of Late Bhura Lal)**
5. **Baby Samaira (Daughter of Late Bhura Lal)**

R/o Vill. Subzi Pur Umri,
Pakbada, P.O UMRI
Tehsil Bilari, Distt. Moradabad

..Applicant/Claimant

V/s

1. **Sh. Amiruddin @ Babli S/o Sh. Akbar Ali**
R/o C-20/2, Okhla Vihar,
Shaheen Bagh, New Delhi - 110020

Also At:

F-190, Shaheen Bagh,
High Tension Road, Okhla New Delhi – 110020

2. **Irshad S/o Nanne Khan**
R/o Kanurki Kaswa Kabristan
Near Tehsil Bilari, Distt. Muradabad, U.P
3. **DTL (Delhi Transco Ltd.)**
Through managing Director,
Shakti Sadan, Firoz Shah Kotla Road,
New Delhi

.....Respondents

ORDER

1. Vide this order I will disposed of claim application dated 27/03/2017 filed on 03/04/2017 by claimant under section 22 of the Employee's Compensation Act, 1923.



2. The claimant No. 1 has submitted that she is the widow of the deceased Sh. Bhura Ali and claimant No. 2 to 5 are the minor children of the deceased Bhura Ali. It is further submitted that since the claimants no. 2 to 5 are minors hence they are being represented to claimant no. 1 who is their mother and natural guardian and her interest is not adverse to that of claimant no. 2 to 5 except these there is no any other legal heir of the deceased. It is further submitted that the deceased was hired along with other labour/mason namely Intihar S/o Sh. Sitapur, by the respondent for fitting/laying the tiles, in the under construction building owned by the respondent. On 23/04/2016 while fitting the tiles on the first floor at about 03:00 - 03:15 PM, the deceased and other labourers accidentally came within the range of the current of the said 220KV high tension cable wire and were pulled by the force of the current and both of them were electrocuted and sustained severe burn injuries. Lt. Bhura Ali died at the spot and the other labourer namely Intihar was rushed to Safdarjung Hospital, where he also subsequently succumbed to his injuries. The claimant further stated that the impact of the electrocution and the burn injuries was so severe that all the clothes of the deceased were burnt to ashes except his underwear which was in partially burnt state and even the skin and the scalp hairs of Lt. Bhura Ali were burnt. The Burn injuries resulting from the electrocution caused the instant death of the Lt. Bhura Ali. It is further stated that regarding the accident the local police was intimated and the deceased workman Lt. Bhura Ali was taken to AIIMS Hospital, New Delhi where he was declared brought dead vide MLC No. 4432/2016 dated 23/04/2016 also a FIR U/s 288/304A/338 was registered at the Police Station Zamia Nagar, New Delhi against the owner of the premises i.e. respondent – herein vide FIR No. 351/2016 dated 23/04/2016. The body of the deceased was removed by the police, after the spot and the body were got photographed. Further subsequently the post-mortem of the deceased was conducted at AIIMS, Delhi and the reason of the death was given as “Shock due to antemortem burns” vide post-mortem report bearing No. 351/2016 P.S. Jamia Nagar. Further it is stated that after post-mortem the body of the deceased was handed over by the police to the relatives and his last rites were performed. Claimant further submitted that the nature, manner and the extent of the work to be executed was directed, controlled and supervised by the respondent himself. It is submitted that the deceased and the other labourer were under the direct instructions of the respondent while performing their work and in fact how and in what manner, the work was to be executed and performed was controlled by the respondent himself and even the raw material was provided by the respondent himself. Further the claimant stated that being under direct control, supervision and directions of the respondent, there is/was employee and employer relationship between the deceased and respondent. The claimant further stated that there was a clear lack of proper safety measures, which the respondent/employer was bound to undertake and none of the



workman/labourer were provided with the proper safety equipments, while performing their duties of the fitting, at the first floor of the premises and as such the electrocution and the death resulting there from are a direct consequence of the negligence and the callousness of the respondent. The claimant further stated that the deceased was a skilled tile mason and had been working as a tile mason for last six-seven years prior to his death, the deceased was not suffering from some chronic or debilitating disease rather was quite healthy and was able to earn Rs. 700/- to Rs. 800/- per day and as such he was able to earn between Rs. 18000/- to Rs. 25000/- per month. The deceased was aged about 35 years at the time of his death. It is further stated that the deceased was sole bread earner of his family consisting of his wife, mother and three minor children at the time of his death. It is further submitted that petitioner no 6 mother of deceased Smt. Tasleema Begum w/o It Rafiq Ahmed has expired during the proceedings as such her name was deleted from the array of the parties and Sh. Rafiq Ahmed father of deceased has predeceased. It is stated that neither the claimant have any source of earning nor they own any agricultural land and the entire expenditure of the family were being borne by the deceased. It is further informed that due to non payment of any compensation by the respondent the claimants sent a legal demand notice dated 01/06/016 upon the respondent, further despite the service of the legal notice, the respondent has failed to comply with the said legal notice and has not paid any compensation. The claimant further stated that the claimants have not filed any other claim petition against the respondent in respect of the said accident. The claimant also submitted that the claimants have received an amount of Rs. 2,00,000/- as ex-gratia compensation from the Government of NCT of Delhi on 06/05/2016, however no compensation has been paid by the respondent to the present claimants.

In the last petitioner prayed that since accident of deceased employee occurred out of and in the course of his employment with respondent resulting in death, hence, respondent liable to pay compensation to the petitioners being the legal heirs of the petitioner employee Rs. 20,00,000/- along with interest of 24% per annum and 50% penalty. Along with claim petitioner filed documents such as Copy of Adhar card of deceased workmen, Photocopy of Voter ID Card of the claimant No. 1, Photo copy of the Adhar Card of other claimants No. 2 to 6, copy of digitized ration card, The photographs showing the injuries and the state of deceased, Copy of FIR bearing No. 351/2016 PS Jamia Nagar, copy of post-mortem report, copy of the death certificate of the deceased, Copy of legal notice dated 01/06/2016.

3. Summons were issued to the respondents with direction to appear before this authority to file reply in the matter. Respondent No 1 filed reply wherein respondent submitted that the LR's of the deceased has not come with clean



hands before this Hon'ble Court, that the Claimant/petitioner has wilfully, intentionally and deliberately concealed and suppressed the material facts from this court. The respondent further stated that the respondent/management has delivered the work of his house as a contract basis and both the deceased was working under the employment of namely Irshad S/o Nanne Khan R/o Kanurki Kaswa Kabristan, Near Tehsil Bilari, Distt. Muradabad, U. P. Respondent further stated that the applicant/claimants has already received the compensation of Rs. 2,00,000/- paid by D.T.L. (Delhi Transco Ltd.) under the Delhi Govt. And the heavy 220KV line is under the supervision of DTL and the DTL is necessary party for adjudication of the case. Respondent No 1 further stated that the photograph of the alleged accident site is already on the record and it shows that the high voltage tension wires of 220 KV is very near height from the house of respondent, it is clear that the said accident was occurred due to the own negligence of the deceased persons. Respondent further stated that there is no proof of income of the deceased person which he was earning as the claimant mentioned in his claim petition. Respondent further submitted that the respondent No 1 is not liable to pay the compensation amount to the claimants as the Contractor Irshad liable to pay the compensation as the deceased was not the workman of the answering respondent and not working under the guidance/direction of the answering respondent. Respondent further submitted that no demand notice dated 01/06/2016 was served on the answering respondent. In the last respondent prayed the claim of the claimant may be dismissed in the interest of justice.

4. Claimant filed rejoinder by which he denied contents of reply filed by respondent No.1 and reiterated the contents of her claim application.
5. Despite given sufficient opportunities respondent no 2 neither appeared nor filed any reply as such he has proceeded ex-parte by the then Ld. Commissioner on 28/02/2018. Resp. No 3 also appeared and filed reply, wherein it is submitted that the answering respondent is neither a necessary nor a proper party. It is further submitted that the claim petition does not contain a single averment so as to make the answering respondent liable in any manner whatsoever. It is further submitted that the averments in the reply on behalf of respondent no. 1 (Amiruddin @ Babli) to the Claim Petition to the effect that the answering respondent (Delhi Transco Ltd.) is a necessary party for adjudication of the disputes in question is totally bald and baseless. It is further stated that the claimants in their rejoinder to the reply on behalf of respondent no. 1 to the claim petition has categorically stated that the answering respondent is not a necessary party in any manner whatsoever. It is further submitted that claimants in their rejoinder has further stated that it is the respondent no 1 who raised illegal construction beneath a high tension cable in the most negligent



manner and with the greatest disregard to the building bye laws. It is further stated that the application under order 1 Rule 10 CPC read with Section 151 CPC filed by the respondent no 1 is extremely vague and does not disclose any reason as to why and on grounds the answering respondent should be added as a party respondent. It is further stated that the 220 KV Pragati-Sarita Vihar D/C lines, which are passing over the place where the Respondent No. 1 was raising illegal construction were laid by the erstwhile DESU (the predecessor of Delhi Transco Ltd.) after taking all due clearances from all concerned authorities of the Government. It is further submitted that the respondent no 3 has issued notices to several people for unauthorized constructions in violation of the provisions of the Indian Electricity Act, 2003. It is further submitted that despite notice to the respondent no 1 indulged in illegal construction beneath the high tension wire in the most negligent manner and, therefore, the respondent no 1 cannot be allowed to make a futile effort to shift liability to someone else. It is further submitted that under the EC Act, 1923 the liability to compensate the employee for any personal injury caused by accident arising out of and in the course of employment is of the employer only. Respondent further submitted that there was no employer-employee relationship between the deceased and the answering respondent and therefore there is no question of any liability being fastened on the answering respondent. In the last respondent prayed the claim of the claimant is not maintainable against the answering respondent and deserves to be dismissed.

6. On 05/03/2018 following issues were framed for adjudication:

1. Whether there was employee employer relationship between the deceased and respondent?
2. Whether the deceased died in the course of his employment with respondents?
3. If, yes, what relief and what directions has to be passed?

7. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex. CW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed documents Ex. CW1/1 to CW1/14 i.e. Copy of Adhar card of deceased workmen, Photocopy of Voter ID Card of the claimant No. 1, Photo copy of the Adhar Card of other claimants No. 2 to 6, copy of digitized ration card, The photographs showing the injuries and the state of deceased, Copy of FIR bearing No. 351/2016 PS Jamia Nagar, copy of post-mortem report, copy of the death certificate of the deceased, Copy of legal notice dated 01/06/2016. Her statement was also recorded and was also cross examined by counsel of respondent No. 1 on 17/05/2018. Further on 17/05/2018 Ld. Counsel for respondent no. 3 during the course of proceeding



stated that respondent no 3 does not wish to cross examine the claimant. On 17/05/2018 Ld. Counsel for claimant prayed for summoning the I.O of the case from P.S. Jamia Nagar. On 05/10/2018 on receiving the summon Sh. Sher Singh, A.S.I, P.S Jamia Nagar appeared in witness box for testimony of his statement as such on 05/10/2018 Statement of Sh. Sher Singh, ASI, PS Jamia Nagar was recorded, he was also cross examined by Counsel of Respondent no. 1. It is pertinent to mention that on 05/10/2018 Ms. Surbhi Diwan, Ld. Counsel of R-3 alongwith Sh. Awadhesh Drivedi, JLO of R3 and Ld. Counsel of claimants and respondent no 1 stated that they have no objection if respondent no 3 is discharged from the case as respondent no 3 is not liable in the case in any manner as there is no employer employee relationship between respondent no 3 and the deceased. Accordingly the name of respondent no. 3 is deleted from the list of parties.

8. Further on 18/09/2019 for Respondent No. 1 Sh. Amiruddin @ Babli S/o Akbar Ali respondent/management has filed his evidence Ex RW1/A. The contents of affidavit are corroborative to its reply. He was also cross ex. by counsel of claimant on 26/12/2019. The claimant filed written submission on record and further oral submissions adduced were heard in detail.
9. On the basis of pleadings of the parties and documents available on record I am giving my findings on the issues framed in the matter as under:

ISSUE No. 1 & 2

The case of claimant is this that her deceased husband Bhura Ali and one other employee were working under respondent no. 1 on the day of accident as tile mason at on the first floor of the under construction building bearing shop no. F 190, Shaheen Bagh, Okhla, New Delhi owned by respondent no 1. While he was fitting the tiles on the first floor in the premises owned by respondent no 1 over which a high tention electricity cable wire was passing (220 KV cable) they accidentally came within the range of the current of the said 220 KV high tention wire and were pulled by the force of the current and both of them were electrocuted and sustained severe burn injuries. Lt. Bhura Ali died at the spot and the other labour namely Intihar was rushed to Safdarjung Hospital, where he also subsequently succumbed to his injuries. To prove her case claimant examined himself as Ex. CW1/A and concerned IO Sh. Sher Singh of PS Jamia Nagar, Delhi.

Respondent no 1 (Ex RW1/A) examined himself. The respondent no 1 was relied upon an agreement Ex. RW1/1 arrived between respondent no 1 and contractor Irshad which is notarized at Muradabad for carrying out work mentioned therein at the address F-190/2 Shaheen Bagh, Delhi. Md. Irshad



Contractor was impleaded as a respondent no 2 in this matter but he did not present in this case to depose his statement before this Authority. The agreement was notarized before notary at Muradabad for executing work at Delhi with respondent no 1 is not considerable on the ground that respondent no 1 did not present before this authority to admit or deny this agreement while on the other side claimant has submitted that her deceased husband was employed by respondent no 1. This issue has been not proved that deceased was employed by resp. No 2 contractor as such I am not considering this statement of the respondent no 1. Further the respondent no 1 in his cross examination regarding factum of employee employer relationship and accident caused out of and in the course of his employment has not disputed and in his cross examination he has admitted that on the day of accident deceased Bhura Ali was working as a daily wager for fitting tiles on first floor at his premises F-190/2, Shaheen Bagh New Delhi. The main objection of the respondent no 1 is this that he was employed by the Respondent no 2 Contractor but in this regard no authenticated documents has been placed on records while claimant has denied the averments of the respondent no 1 in his rejoinder. The another objection was this that death of deceased was occurred due to his negligence but in this regard also no evidentiary documents has been brought on record. In this case FIR has been lodged in PS Jamia Nagar, Delhi and Post-mortem was also conducted wherein it has been stated that the cause of death of deceased was electrocution. The claimant has placed the photographs of the accident of the deceased on record which clearly establish that deceased was burnt very badly due to electrocutions. Since the respondent no 1 could not bring any evidence on record against the claimant as such it is proved that there was employee employer relationship between deceased Bhura Ali and respondent no 1 as discussed above and death of deceased was occurred out of and in the course of his employment with resp. No 1 due to electrocution. Hence issue No 1 and 2 are decided in favour of claimant and against the responded no 1. In view of this respondent no 1 being the employer in this case as per section 3 of the Act is liable to pay death compensation to claimants/dependants of the deceased employee Sh. Bhura Ali.

Issue No 3

In view of above discussion made in Issue No 1 & 2. I hold that claimants are entitled to receive death compensation under the EC Act 1923 from respondent no 1. For considering the case of claimant for compensation I am taking age of deceased as 34 years on the day of accident on the basis of date of birth 01/07/1981 as mentioned in his Aadhar Card bearing no. 545107315872 and relevant factor as per age 199.40. 50% of Rs. 8000/- as restricted under the Act.



Accordingly compensation is calculated as under:

50% of Rs. 8000/- : 4000/-
Relevant factor : 199.40

4000* 199.40 : Rs. 7,97,600/-

10. In view of above discussion, I direct respondent no. 1 to deposit **Rs. 7,97,600/- (Seven Lakh ninety seven thousand six hundred only)** as compensation along with 12% interest from the date of accident i.e. 23/04/2016 till its realization by way of Demand draft in favour of "Commissioner Employees Compensation", failing, which same shall be recovered as per provision of the Act.

11. A separate Show Cause notice is to be issued to the respondents for penalty.

12. Given under my hand and seal of this Authority on this 27th day of June, 2022.

(S.C. Yadav)
Commissioner
Employee's Compensation Act, 1923

