

**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/NW/D/190/17 / 22 .

Dated: 12/04/2022 .

IN THE MATTER OF :

Smt. Santosha
W/o Sh Vinod Kumar

Master Nar Singh @ Happy
S/o Late Sh. Vinod Kumar

Smt. Reshma Devi
W/o Late Sh. Surjan Singh

All resident of:-
R/o Village Hardua,
P/o – Nawabganj
Tehsil – Kayamganj,
District – Farukhabad, U.P

.....Applicants

Versus

M/s Simbhawali Sugar Mills,
B-46, Wazirpur Industrial Area,
Lawrence Road, Delhi – 110032

..... Respondent

ORDER

1. This claim petition was disposed of by the then Ld. Employees Compensation Commissioner vide his order dated 24/01/2018. Aggrieved by this order claimant filed FAO bearing No 362/2018 and CM No 31008/208 through his counsel before the Hon'ble high Court of Delhi. Hon'ble High Court of Delhi vide order dated 01/11/2019 set aside interim order dated 24/01/2018 of the Commissioner Employees Compensation and the claim/case stand reviewed on the file of Commissioner Employees Compensation who shall proceed with it further in accordance with the law and directed the parties to appear before this said forum on 25/11/2019.



2. In view of order of Hon'ble High Court as discussed above, I will dispose of the claim application dated 09/01/2017 filed on 11/01/2017, u/s 22 of The Employee's Compensation Act, 1923 for seeking death compensation by the claimant.
3. In the application, filed by the applicants/claimants submitted that the deceased Sh. Vinod Kumar S/o Late Sh. Surjan Singh was employed as a packer with the respondent for the last about 07 years. The deceased was working in a very hectic routine. The applicant/claimant further submitted that there was a lot of workload put on him and resting time was too little and the working hours were also not fixed and he used to sometimes work day and night. The claimant submitted that on 12/08/2016 he has been working for way too long and had too little rest, when he was doing his work at his workplace in Wazirpur Industrial area at about 03.30 AM he collapsed. That he was immediately taken to Mahaveer Hospital, Ranibagh, where he was declared dead. Thereafter he was taken to Babu Jagjivan Ram Memorial Hospital where Post-mortem was conducted and dead body was handed over to the family. The dead body was taken to his native place and he was cremated there. The case was registered under concerned Police station. It is further submitted that deceased died due to stress and strain put on his body and mind because of excessive work. The applicants are dependants of the deceased, being his widow, minor son and mother. The deceased was getting wages Rs. 500/- per day plus overtime charges and thus Rs. 15,000/- per month. The deceased was aged about 29 years at the time of accident. The claimants further submitted that the respondent, the owner of the vehicle is having the notice of accident since the day of its occurrence and a notice under section 10 of EC Act has been served upon the respondent. In the last claimant submitted that since the death of deceased was occurred out of and in the course of his employment as such respondent is liable to pay Death compensation to claimants under the provision of Employees' Compensation Act, 1923. Accordingly claimant wife of deceased employee prayed that she is entitled to receive death compensation along with interest at the rate of 12% per annum from the date of accident till realization and penalty to the extent of 50% of the principal amount from the respondent. Claim is supported by application for exemption of court fee, Aadhar Card of petitioner No 1 (wife of deceased), Post- mortem examination report dt. 12/08/2016, High School certificate of deceased Sh. Vinod Kumar and Vakalatnama of the counsel.
4. In terms of order of Hon'ble High Court of Delhi only counsel for petitioner was present on 25/11/2019 before the then Ld Commissioner. The respondent was present on 29/07/2020 before the then Ld Commissioner. The respondent filed



reply on 07/09/2020, wherein respondent submitted that there is no establishment by the name "Simbhawli Sugar mills" at the given address D-46, Lawrence Road, Delhi. Infact, the company "Simbhawli Sugar Ltd." has its establishment at the given address. Assuming the claim application is intended for "Simbhawli Sugar Ltd." accordingly respondent submits that there is o relationship of employer and employee relationship between the respondent company and Vinod Kumar, the deceased. It is further submitted that the deceased was employed as casual worker on need of daily basis with the company's contractor Shri Parul Seth. Further respondent submitted that no accident occurred or much less to say any injury was caused to the deceased by any accident arising out of and in the course of his employment with respondent on 12/08/2016 or any other day at the premises of the respondent. Hence respondent is not liable to pay compensation under the Act. Further the present claim suffers from informative admittedly having not sent notice to the respondent by the applicants, as required under Section 10 of the Act. Further respondent raised the objection that the applicants/petitioners have no locus standee to file present claim. They may be put to strict roof that they are dependant under sec 2(1)(d) of EC Act, 1923. Further respondent submitted that in fact company is engaged in manufacture of sugar having its sugar mill at Simbhawli, Distt. Hapur UP. The company has one of its warehouse and a small packaging unit in Delhi at Lawrence road. In this packaging unit sugar is repacked in small sachets on orders of specific costumers. The operation of this packaging unit is given on contract basis to Smt. Parul Seth who is responsible for engaging and supervising manpower for this purpose. Except these averments the respondent further denied in toto that deceased was working in a very hectic routine or there was lot of workload put on him and resting time was too little or the working hours were not fixed or he was sometimes work day and night. The respondent submitted that as a matter of facts this unit operates on fixed working hours viz. 9.30 AM to 6 PM with necessary intervals of lunch and rest periods and Sunday is weekly off and there is no rush of orders for the packaging unit and under the said circumstances engagement of manpower for this unit by the contractor is generally need based and moreover packing of sugar in small packets would not be termed as heavy duty job. The respondent further submitted that it is denied that on 12.08.2016 the deceased had been working for way too long. As a matter of fact the deceased was engaged by the contractor for the day of 11.08.2016 and after the duty which ended at 06 PM all the workers including the deceased left the workplace for their homes and it was only the next day viz. 12/08/2016 it was reported to the contractor that Vinod Kumar was taken at night to Hospital from his home where he was declared dead and further submitted that



as per Post Mortem report the reason of death of Vinod Kumar was not due to any stress or strain as alleged, but was due to consumption of alcohol. It is further denied by the respondent that the deceased was paid Rs. 500 per day and was instead paid minimum wages as declared by the GNCT of Delhi. It is also further denied by the management that the age of the deceased was about 29 years at the time of accident as the PMR shows that he was 33 years of age at the time of accident. In the last the respondent prayed that the prayer clause of the claim application is totally wrong and misconceived and submitted that respondent is not liable to pay any compensation to the applicant.

5. Claimant filed rejoinder by which she denied all the contents of reply filed by respondent and reiterated the contents of claim application.
6. On 17/09/2020 following issues were framed for adjudication on the basis of pleadings of the parties and documents available on record:-
 1. Whether employee, employer relationship was existed between the respondent and deceased employee Vinod Kumar?
 2. If so, whether accident of deceased employee Vinod was caused out of and in the course of his employment with respondent resulting thereby he died?
 3. If so what relief and what directions are necessary in this regard?
 4. Whether claimant is entitled for penalty u/s 4A of the Act and if so from whom?
7. Matter was fixed for the evidence of the parties. Claimant examined herself by way of filing her affidavit Ex. AW1/A. The contents of affidavit are corroborated to those claim petition. Claimant also filed documents Ex. AW1/1 to AW1/3 i.e. Copy of Aadhar Card of claimant, copy of Adhar Card of deceased and copy of 12th passing certificate of the deceased and other documents as Mark 'A' to Mark 'J' i.e. Copy of Police complaint, copy of Post Mort Mortem report, copy of acknowledgment of case acceptance of Forensic Science Laboratory, copy of request letter to Autopsy surgeon, Copy of Forwarding letter (Chemistry Division), Copy of FIR, Copy of mortuary application form. Claimant has tendered her evidence on 23/11/2020. She was also cross examined by AR of respondent on 23/11/2020. Claimant examined 2 other witnesses Sh. Rajesh Kumar s/o Sh. Surjan Singh (brother of deceased) by way of affidavit Ex. AW2/A. The contents of affidavit are corroborated to those claim petition and also filed document Ex. AW2/1 i.e. copy of Aadhar Card and Sh. Malikhan Singh s/o Sh. Hotelal (an eye witness of the incident) by way of affidavit Ex. AW3/A. Both the witnesses



AW2/A and AW3/A has given evidence in favour of claimant. AW3/A is the eye witness of the incident as who he was the co worker of the deceased and narrated in detail the incident of the case regarding death of the deceased Vinod Kumar. These both witnesses were cross examined by counsel of respondent.

8. For Respondent Mr. Vikas Kumar, designated as clerical-1, one of the employee filed his statement/evidence by way of affidavit Ex. RW1/A, he has also tendered his evidence on 22/09/2021. The contents of affidavit are corroborated of those reply. He was also cross examined on 22/09/2021 by counsel for the claimant/petitioner.
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 he was employed as a packer with the respondent for the last about 07 years. The deceased was working in a very hectic routine. The applicant/claimant further submitted that there was a lot of workload put on him and resting time was too little and the working hours were also not fixed and he used to sometimes work day and night. The claimant submitted that on 12/08/2016 he has been working for way too long and had too little rest, when he was doing his work at his workplace in Wazirpur Industrial area at about 03.30 AM he collapsed. That he was immediately taken to Mahaveer Hospital, Ranibagh where he was declared dead. That he was taken to Babu Jagjivan Ram Memorial Hospital. That PMR was conducted there. That the deceased was getting wages Rs. 500/- per day plus overtime charges and thus Rs. 15000/- per month. That the deceased was aged about 29 years at the time of accident. The claimant further submitted that the respondent, the owner of the vehicle is having the notice of accident since the day of its occurrence, when respondent did not pay compensation hence she filed this claim for seeking death compensation from the respondent. Respondent denied employee-employer relationship and accident also as alleged on 12/08/2016. To prove case claimant examined herself by way of Ex. AW1/A, Brother of deceased Sh. Rajesh Kumar Ex. AW2/A and an eye witness namely Sh. Malikhan Singh Ex. AW3/A. Respondent also examined an employee namely Sh. Vikas Kumar by way of Ex RW1/A. In this case since respondent has denied employee-employer relationship with claimant and accident as alleged on 12/08/2016 and put the burden to prove case on the claimant/petitioner. After considering the material available on record such as evidence and the reply filed by the parties and accordingly I have come to this



conclusion that deceased Sh. Vinod was working with the respondent on the day of accident which has been proved from the evidence of Ex. AW3/A Malkhan Singh, Co-worker who was working with the deceased employee. Further petitioner the wife of deceased employee and Sh. Rajesh Kumar Ex. AW2/A (brother of the deceased) have also stated that deceased employee was working with respondent situated at B-46, Lawrence Road, Delhi. Here it is considerable facts that family of the workmen know that where deceased employee is working, as such I have no reason to disbelieve in the statement given by the claimant as well as the witnesses in favor of claimant. Further respondent could not produce any solid evidence which can prove that respondent is deposing correctly. When any objection regarding employee employer relationship raised by the respondent then onus also lies upon respondent to prove by producing records of other employees of the company such as attendance register, payment of wages register etc. to prove that management is maintaining proper records of their employees who are working in the establishment, but in this case nothing has been brought on record, further respondent has stated that Vinod Kumar deceased was employed as a casual worker on need basis with the companies contractor Shri Parul Seth this also establish that there was casual connection between deceased Vinod Kumar and the respondent Company. Further respondent company has not brought any documents regarding contractor Shri Parul Seth to establish that claimant was engaged by the contractor, hence principle employer is not liable for payment of compensation to claimants. Hence statement of respondent is not considerable in view of this I hold that there was employee employer relationship between deceased Vinod and the respondent. Further respondent argued that on the day of that night 5-6 workers including vinod Kumar deceased had dinner in the premises and went for sleep in different cabins. At about 03: 00 AM the deceased co-worker who was sleeping with him awake the other workers sleeping in the premises that Vinod Kumar was shivering while he was sleeping and was needed to be taken to the hospital, Pitampura where he was declared dead. His co-workers, 1 of them was his cousin, told the doctors that Vinod had consumed alcohol at night but as per the viscera analyses report opinion report No 369/2017 dated 20/09/2017 (metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not found in the contents of viscera). Opinion – No definite opinion regarding cause of death can be given. The respondent relied upon the judgment of RL Bhalla vs Poonam Devi 2006 LLR 919 Delhi, wherein Hon'ble Court held that no accident occurred or any injury caused by any accident arising out of and in the course of his employment. Vinod Kumar dies while he was sleeping in night hence there was no accident occurred in the premises or any injury arising by the accident arising out of and in the course of employment the contention of petitioners



that Vinod Kumar died out of stress and strain remains unproved. Further respondent relied upon the judgment of Hon'ble Supreme Court (2010) 2 SSC (L&S) 332 para 13, wherein onus has been put upon the petitioners to show that it was the work and resulting strain which contributed to or aggravated the injury. Thus respondent is not liable to pay any compensation to the petitioner

On the other side counsel for petitioner also argued that death has been caused on 12/08/2016 at midnight at the workplace where the deceased workman was working. Death of deceased has been caused during the night hours and he was immediately taken to hospital by co-workers where on reaching in hospital he was declared dead. The employee – employer relationship and the presence of deceased workmen in his employment establishment is not disputed. The death has been caused due to stress and strain of the employment. The case is covered by the directions of the Hon'ble Supreme Court in case titled Parampal Singh, Rita Fadnaves, and Tata AIG General Ins. Co. Ltd vs Aruna Devi & ors FAO 91/2017 decided on 08/02/2018 of Hon'ble High Court of Delhi, where in Hon'ble Court has ruled that they not be automobile accident but there are other cases of stress and strain which also comes within the definition of the accident under the Act.

After considering the arguments adduced by both the Ld. Counsels and I have come to this conclusion that case of claimant is covered by the judgment of Hon'ble Supreme Court Civil appeal no 9084/2012 title as Param pal Singh vs national Ins. Co. Ltd., Mackinnon Mackenzi and Co. Pvt. Ltd vs Rita Fandavis 1969 ACJ 419 and Tata AIG Gen. Ins. Co. Ltd. vs Aruna Devi & Ors FAO 91/2017 decided on 08/02/2018. The judgment relied by the respondent is not favorable in comparison of judgment relied by the counsel for petitions. The judgment on which counsel for petitioner is relied are more applicable in this case.

Therefore the contention of the respondent is not considerable that death was caused due to consumption of alcohol. The case has also established that the death was due to stress and strain due to workload of the deceased employee as such I hold that claimant has died out of and in the course of his employment with Respondent. As such Respondent is liable to pay compensation to the claimant, hence issue no 1 and 2 are decided against the respondent and in favor of the claimant.



Issue No 3

For calculation of entitlement of compensation to claimant wage, age and loss of earning capacity of the applicant/claimant has been taken accordingly as under:

- | | | | |
|------|------------------------------|---|----------------|
| i. | Relevant factor of 33 years | : | 201.66 |
| ii. | 60% of wages @ Rs. 8000/- pm | : | Rs. 4800/- |
| iii. | Amount of compensation | : | Rs. 9,67,968/- |

$$201.66 \times 4800 = \text{Rs. } 9,67,968/-$$

The applicant/claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent.

10. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent, hence the respondent is directed to deposit before this Authority an amount of **Rs. 9,67,968/- (Rupees Nine Lakh Sixty Seven Thousand Nine Hundred and Sixty Eight Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 12/08/2016 till its realization and penalty of Rs. 2,41,992/- through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of the order before this Authority.

11. Given under my hand and seal of this Authority on this 12th day of April 2022.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1992

