

**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.ECD/98/NW/18/ 98.

Dated: 31/05/2022.

In the matter of :

**1. Smt. Zeenat**

W/o late Ziaul Hasan

**2. Master Afridi**

Through his natural guardian and real mother Smt. Zeenat

**Residents of:-**

H. No – J-3/172, Ground Floor,  
Kishan Kunj, Laxmi Nagar, Delhi - 110092

.....Applicants/Claimants

Versus

**1. M/s. Oriental Bank of Commerce**

**(Now Punjab National Bank)**

Shyam Chowk, Sector – 3,  
Rohini, Delhi

.... Respondent

**ORDER**

1. By this order, I will dispose of the application dated 16/08/2018, of the applicant/claimant seeking death compensation.
2. Claimant Smt. Zeenat has submitted that her husband deceased Ziaul Hasan used to do work as shutter mechanic for the last more than 10 years in Delhi and died on 16.08.2017 due to the injuries sustained by him during the course of his employment with the respondent bank. She further stated that on 31.05.2017, two days prior from the day of incident i.e. 02/06/2017, deceased Ziaul Hasan was employed by the respondent on the daily wages @ Rs. 1100/- per day and he started doing the work of repairing in the bank from 31.05.2017 and stated that the deceased workman was told by the bank respondent that all the wages will be paid after completion/finishing of entire repair work. She further stated that on 02.06.2017, in the morning when the deceased workman reached at the bank for doing repairs, respondent asked him to repair the shutter installed in the bank which was of 20 feet in height and stated that the deceased



workman refused to do the work as it was dangerous to do the work on bamboo stairs. She further stated that after the refusal by the deceased workman the respondent bank pressurised him stating that if he does not repair the 20 feet high shutter, his wages will not be paid and in pressure made by the respondent, the deceased had to climb on the bamboo stairs to repair the 20 feet high shutter and consequently during repairing the said shutter, the deceased fell down at about 3-4 PM on 02/06/2017 from the old bamboo stairs as there was no support for holding. That during the repairing of shutter on 02/06/2017, the deceased requested to the respondent to provide iron stair or chaali for the said work, but respondent did not provide required stairs and stated that bamboo stair is enough for this purpose and even the helmet was not provided despite so many requests made by the deceased workman. The claimant further submitted that due to falling down from the 20 feet high bamboo stairs, the spinal bone of the deceased fractured on the neck and was not in position even to move. The claimant further submitted that the deceased was taken to Baba Sahib Ambedkar Hospital, Rohini by someone as he himself was not in a position to have and as per opinion of doctors of said Hospital, the patient was unfit for statement. Further submitted that the deceased was taken to BSA Hospital from respondent bank through ambulance but no employee of said bank accompanied the deceased. The claimant submitted that she was informed by someone from Oriental Bank of Commerce, that Ziaul Hasan (deceased) has sustained injuries during the course of his work and has been admitted in BSA hospital and on receiving the information she directly reached at BSA hospital and found her husband (Ziaul Hasan deceased workman) unconscious and in serious condition. The claimant further submitted that deceased workman was referred to Safdarjung Hospital by BSA Hospital on 03/06/2017, but police of South Rohini Police Station did not perform its duty and also did not take any appropriate action till 8 days because Ziaul Hasan (deceased employee) sustained injuries during the course of his employment in Oriental Bank of Commerce, Rohini and the Police wanted to save bank officials. Further it is submitted that in these circumstances the claimant herself went to PS South Rohini on 10/06/2017 and requested to SHO of South Rohini Police station for registering FIR and then on the instance of SHO, The IO reached Safderjung Hospital to visit the deceased workman and thereafter on 11/06/2017 FIR No.0160/17, U/S 288/337, IPC was registered at P.S Rohini South. The claimant further submitted that after getting discharged from Safdarjung Hospital she along with the deceased claimant stayed in Safdarjung





Dharamshala for about one month and his treatment regularized in Safdarjung Hospital Delhi and further on 15/08/2017 the deceased claimant was taken to his native place at Rampur, UP from Safdarjung Dharamshala by the claimant and on 16/08/2017 Ziaul Hasan expired at Rampur. In the last petitioner prayed that since accident of deceased employee occurred out of and in the course of employment with the respondent resulting in death hence respondent is liable to pay compensation to the petitioners being the legal heirs of the petitioner employee of Rs. 30,00,000/-. Along with claim petitioner filed documents such as copy of FIR No. 0160/17 PS. South Rohini u/s 288/337 IPC, Copy of Death Certificate of Deceased workman Ziaul Hasan, Copy of Medical Documents and Bills, Copy of Aadhar Card of Claimant, Copy of Aadhar Card of Afridi.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply in the matter. Respondent submitted in reply in preliminary objection that the present claim petition is not maintainable in view of the facts that the deceased was not the employee of the respondent rather independent service provider and service provider cannot be said to be employee, hence he cannot claim compensation under EC Act, 1923. It is further submitted that as settled Law that by engaging a person for the work of painting under contract will not fall with the four corners of the EC Act , 1923 as settled law by Hon'ble Supreme Court of India in the case of Laxmi Narayan Sethi vs Shatanand & Anr. reported in 2003 (9) Supreme Court cases 190. The claimant has made false and previlous allegation against the management in order to harass and humiliate them and for extorting huge money from them hence petition is liable to be dismissed. It is further contented that the applicant have not opposed this Hon'ble Authority with clean hands and suppressed the material facts, relating to real cause of death of the deceased in the present claim petition as the claimant did not lodge any FIR and filing the present petition with malafied intention to extort huge amount. Further respondent submitted that there is no casual or direct or indirect connection between the injury sustained and cause of death of the deceased, the cause of death of the deceased is not due to injury sustained in the office of respondent, rather due to some another reason best known by the claimants. Even as per allegation the deceased was discharged from Safdarjung hospital on 13/07/2017 however discharged summary dated 13/07/2017 was not filed with the petition. Even claimant did not file any proof of staying in Dharamshala and no any other document pertaining to medical treatment after 13/07/2017 and he expired on



16/07/2017. Even no post mortem was conducted in this case. In short respondent prayed that claim is not maintainable on the ground as discussed and is liable to be dismissed. Further on merits respondent in its reply submitted that it is denied that deceased was employed by the respondent on the daily wages @1100 per day and the deceased started work of repairing in the bank from 31.05.2017 and further stated that the deceased was service provider who approached the guard of the Bank on 02.06.2017 for greasing the Shutter/main gate of the Bank and offered for doing the same for a sum of Rs. 200/- and told that he will finish the work in the same day, the guard of the bank apprised the same to official of respondent and in view of the same the deceased was allowed to do the work. The respondent further submitted that it is denied that the deceased stated that from the bamboo stairs doing repairing work is dangerous and he flatly refused to do the same as the deceased was greasing the 10 feet (approx) high shutter of the respondent. The respondent further denied that the respondent pressurized to the deceased stating that if he does not repair the 20 feet high shutter, his wages will not be paid and it is also denied that in pressure made by the respondent the deceased had to climb on Bamboo stairs to repair and it is further submitted that the deceased voluntarily started the work of greasing 10 feet (Approx.) high shutter without any interference of the respondent since the officers of the respondent bank was engaged in their daily routine work. Further respondent submitted that it is contradictory fact that as on one hand it was conveyed in the reply by the claimant that the deceased was taken to the Hospital by the respondent Bank through an ambulance but on the other hand it was submitted that no employee of the said bank accompanied the deceased. It is also denied by the respondent that there was no movement in the body of Ziaul Hasan and it is submitted that the deceased was properly treated upon in the hospital and when the doctors of the Safdarjung was satisfied that he has become fit and also on the request of the family members he was discharged. The respondent further submitted that upon being fully fit, the deceased left the hospital and thereafter no treatment was regularised in hospital. The respondent further submitted that no any call details nor voice transcription was submitted by the applicant/claimant which prove that I.O was informed but he did not turn up. Moreover in the case of unnatural death, Post mortem may be conducted with the assistance of local police. But the applicant in very clandestine manner buried the body of the deceased so that cause of death could not be ascertained. Further submitted that all the paras in the





application are wrong and denied. In the last respondent prayed the claim of the claimant may be dismissed in the interest of justice.

4. Claimant filed rejoinder by which she denied contents of reply filed by respondent and reiterated the contents of her claim application.
5. On 18/07/2019 and 16/10/2019 by the then Ld. Commissioner, following issues were framed for adjudication:
  1. Whether deceased was an employee as per provisions of the EC Act, 1923?
  2. Whether accident resulting into injury to deceased is caused out of and during the course of his employment and if so to what amount of compensation the dependants of deceased are entitled to?
  3. Whether deceased died due to injury sustained as claimed by the petitioners in the present petition or due to some other reason?
  4. Relief, if any?
  5. Whether penalty is imposable u/s 4A(3) and if so, the quantum thereof?
6. Matter was fixed for the evidence of the claimant. Claimant filed 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 CW1/9 i.e. Copy of Nikah Nama, Copy of Adhar Card of the claimants, Death certificate of the deceased, copy of MLC No 3553 prepared in BSA Hospital of the deceased, Copy of referral letter from BSA hospital to Safdarjung Hospital Copy of FIR No. 0160/17, U/s 288/337 P.S Rohini, Copy of Medical treatment papers and copy of medicine bills and copy of discharge summary. Her statement was recorded on 14/11/2019 and was also cross examined by counsel of respondent on 09/01/2020. Further despite given various opportunities Respondent failed to lead evidence nor appeared in witness box for testimony of his statement as such finally on 14/12/2021 right of respondent for leading evidence was closed and the matter was fixed for arguments. The claimant filed written submission on record, but despite given various opportunities the respondent did not file written argument on record hence finally on 07/04/2022 the right of respondent to file written argument was closed and further oral submissions adduced by the claimant heard in detail.



7. 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 & 3**

8. The main issue of this that the deceased Ziaul Hassan was the employee of the respondent or not. As per contention of claimant that deceased was the employee of the respondent bank i.e. Oriental bank of Commerce and during the course of his employment where he was repairing Shutter of the bank on 31/05/2017 he fall from 20 ft. In height and due to this he received grievous injuries and after sometime of treatment he expired on 02/06/2017 in his native place Rampura, UP. The facts of the case has already narrated in the Para no. 1. In reply respondent has taken stand that deceased was not employed by them as such no employee employer relationship existed between the deceased and the respondent. Further respondent had denied that any injury was occurred to the deceased Ziaul Hassan out of and in the course of his employment. The deceased was freelancer and was engaged for repair of the shutter of the bank. Since there was no employee employer relationship. Between deceased Ziaul Hassan and respondent as such respondent is not liable to pay any compensation to the dependants of the deceased. Claimant has examined herself as Ex. CW1/A and was also cross examined by counsel of respondent. After considering of the pleading of the case and available facts on record prima-fascia employee-employer relationship could not established in this case, since claimant has not filed any documentary evidence or co-workers of the respondent to prove his case that on the day of accident that he was employee of the respondent and sustained injury out of and in the course of his employment. It was the onus of the claimant to prove first employee employer relationship with respondent and thereafter other issues, in this situation when respondent has clearly denied employee employer relationship, but claimant could not produce any documentary evidence or examine any co-workers as a evidence in his favour in this case. Here it is pertinent to say that the case against whom claimant has filed this case is a Bank i.e. Oriental Bank Of Commerce which is nationalised bank as such it cannot be said that nationalised bank i.e. Oriental Bank Of Commerce respondent will not have maintained any records of their employees employed by them. Onus for the payment of compensation under section 3 of the EC Act, 1923 can be put on respondent only when employee employer relationship first established, only then employer can be held liable for compensation.





Section 3 of the EC Act, 1923 states as under :

*“Employer’s liability for compensation.*

1. *If a personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter.*

*Provided that the employer shall not be so liable –*

- a) *In respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding 03 days:*

- b) *In respect of any injury (injury not resulting in death (or permanent total disablement) caused by an accident which is attributable – to*

- I. *The employee having been at the time hereof under the influence of drink or drugs or*
- II. *The wilful disobedience of the employee to an order especially given or to a rule especially framed, for the purpose of securing the safety of employees or*
- III. *The wilful removal of disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of the employee.”*

9. In view of above provision of the Act claimant has failed to prove employee-employer relationship in this case. Further respondent has relied on the judgement of **Hon’ble Supreme Court of India** titled as **Laxmi Narayan Sethi vs Shatanand & Anr.** reported in (2003) 9 Supreme Court cases 190- wherein Hon’ble apex court has held that *“There was apparently a contract between the appellant and Ramu thereby Ramu had undertaken the work of painting the house. Whether the action of the appellant by engaging a person in this manner makes his employee or a workman of the appellant was a question to be decided. The case did not fall within the four corners of the said Act and, therefore the decision of the High Court was incorrect. We, therefore allow the appeal and set-aside the decision of the High Court.”*

10. The claimant did not file any judgement of Hon’ble Supreme Court in his support which supersede this judgement. As such I have not found any ground



to consider claim of the claimant. Hence claimant failed to establish employee-employer relationship with deceased and respondent. Hence issue number 1 is decided against the claimants.

11. In view of discussion made in issue no 1, issue no 2 to 5 are not required for any answer accordingly.

12. Given under my hand and seal of this Authority on this 21<sup>st</sup> day of May, 2022.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

