

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

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No. CEC/SD/D/01/2021/

3551-3552

Date: 04/05/21

In the matter of:

1. Sh. Laxman Ramnanadan Mishra
2. Smt. Vibha Devi Mishra W/o Sh. Laxman Mishra
3. Ms. Ruchi Laxman Mishra D/o Sh. Laxman Mishra

All Resident of:

Ramesh N Wakle Room No. 13
Allabax Chawl, Gaon Devi Road
Kajupada Poised, Kandiwali
East Mumbai, Maharashtra-400101

....Claimants

V/s

Sh. Dinesh Aggarwal S/o Sh. Jagdish Aggarwal
A/101, CHS Cindicate Staff
S.N. Dubey Road,
Raval Pada Dahisar, East Mumbai
Maharashtra-400101

... Respondent

ORDER

1. Vide this order I shall disposed of EAR filed on 06.01.2021 filed by Police as per the direction of Hon'ble High Court of Delhi in the case of Sh. Pooran Singh.
2. As per EAR Sh. Ravi Kumar S/o Sh. Laxman, Resident of Kagipada, Near Fish Market, Paisar Kandiwali, West Mumbai met with an accident on 19.08.2019 during pasting of poster plastic at Totto Showroom no. 63, Lajpat Nagar-III. Deceased Ravi Kumar slipped from the Bamboo tied for the work and fell down and got injured. He was admitted in IBS Hospital Lajpat Nagar, where he succumbed to death during treatment. He was employed by Sh. Dinesh Aggarwal S/o Sh. Jagdish Aggarwal, A/101, CHS, Cindicate Staff, S.N. Dubey Road, Ravalpada, East Mumbai, Maharashtra. A



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F.I.R. no. 276/2019 dated 19.08.2019 has been filed in this matter.
Postmortem report no. 1072/19 has also been enclosed with the EAR.

3. On the basis of EAR notice was sent to both the parties. The respondent as well as Sh. Laxman father of the deceased workman appeared. The claimant AR was directed to file the claim. He has filed his claim on 18.03.2021, wherein it is stated that the respondent has engaged the deceased namely Ravi Kumar as a labour for the pasting the binail poster on various states on a salary of Rs. 500/- per day and convenience extra. On dated 19.08.2019 Sh. Ravi Kumar was working on the direction and employment of the respondent in the Delhi on the TOTO Showroom at H.NO. 63, Ring Road, Lajpat Nagar-II, New Delhi for pasting the binail Poster on the height of 17 feet. The employee Ravi Kumar approached the respondent for the safety instrument for working on the height of 17 feet but the respondent refused his request due to the lack of the safety instrument the deceased Ravi Kumar fell down on the earth from a height of 17 feet and he received fatal injuries on his all over body and he has been taken to IBS hospital, New Delhi and during the treatment the decease Ravi Kumar has expired on dated 27.08.2019 due to this accident. An F.I.R. bearing no. 276/2019 under section 288/304 IPC was registered in Police Station Lajpat Nagar in regard of this accident. At the time of accident the deceased was under the employment and service of the respondent and the alleged accident took place due to the ignorance and negligent conduct of the respondent and it happened during the course of employment. At the time of the accident the deceased Ravi Kumar was under employment and service of the respondent and the accident took place during the course of employment of respondent, at the time of the said accident the deceased was unmarried and aged about 30 years. The claimants is entitled to death compensation as per Employee's Compensation Act 1923, along with interest 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount. It is therefore prayed that the respondent be directed to deposit the amount of death compensation as per Employee's Compensation Act, 1923 alongwith interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount.

4. The respondent has appeared and filed their written statement in which they stated that the petitioners have not come with clean hands before this Hon'ble Court and has suppressed the true facts. In fact it was the fault of the deceased Ravi Kumar that is why the incident has taken place. The respondent was not at fault it was the fault of deceased Ravi Kumar himself who did not take precaution and safety instrument while climbing the



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height. The petitioner should not be granted any compensation as claimed for. After accident the respondent borne all medical expenses of the deceased Ravi Kumar total a sum of Rs. 4,91,191/- and other expenses without any fault of the respondent. The copies of medical expenses and acknowledge payments are enclosed. It is submitted that deceased Ravi Kumar undertake work for pasting the binail poster for Rs. 500/- per day and rest of para are denied. It is denied that the alleged accident took place on the whole negligence of the respondent because the respondent has been not provided any safety instrument to deceased Ravi Kumar and lack of safety instrument said accident occurred and deceased lost his life. The respondent cannot be held responsible for any compensation to the petitioners because it was the fault of the deceased Ravi Kumar himself and for the fault of the deceased Ravi Kumar, the respondent cannot be held liable to make the payment to the petitioner for compensation. The claimant filed rejoinder wherein he denied all the contention made by respondent. On completion of pleadings following issues were framed;

- (i) Whether Sh. Ravi Kumar (now deceased) sustained injuries out of and during course of employment; and if so,
- (ii) The claimants are entitled to compensation; and if yes, to what amount and what directions are necessary in this regard?
- (iii) Relief?

The claimant filed his evidence by way of affidavit and he was cross-examined by the respondent. Thereafter the matter was adjourned for filing evidence by the respondent but the respondent neither appeared nor filed his evidence despite notice, therefore the right of the respondent to file evidence was closed. The claimant filed his written arguments. Arguments heard, case concluded for order.

5. I have gone through the claims, replies and documents filed by the parties and my findings are as under:-

Issue No. 1

The claimant in his claim has stated that Sh. Ravi Kumar was employed with the respondent for pasting binail posters. On 19.08.2019 while Sh. Ravi Kumar was working under the employment and direction of the respondent on TOTO Showroom, H. No. 63, Lajpat Nagar-III, New Delhi for pasting of the binail posters at the height of 17 feet, he fell down and sustained injuries. He was taken to IBS Hospital for treatment, later on during the treatment due to this accident, he expired on 27.08.2019. The Respondent in his written statement has admitted that Sh. Ravi Kumar



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under take the work of pasting the binail posters @ Rs. 500/- per day. It is further stated that the accident has happened due to the fault of Sh. Ravi Kumar. The respondent cannot be held responsible for the fault of deceased Sh. Ravi Kumar for not taking precautions and safety instruments when he climbed the height. That after accident the respondent borne all medical expenses of Ravi Kumar amounting to Rs. 4,91,191/-.

6. The respondent has admitted in his written statement that Sh. Ravi Kumar (now deceased) was employed by them for pasting binail posters. It is also admitted by the respondent that Sh. Ravi Kumar met with an accident while pasting the poster at a height. Though the respondent alleges the negligence on the part of Sh. Ravi Kumar for not taking precautions and safety instruments while working at height but there is nothing on record which shows that claimant was provided safety instruments and he was given instructions, which he has disregarded. In view of the admission by the respondent that Sh. Ravi Kumar was employed by them and met with an accident while working, I hold that Sh. Ravi Kumar met with an accident out of and during the course of employment with the respondent.

Issue No. 2

Since Issue no. 1 has been decided in favour of the claimant, therefore the claimant is entitled for compensation which 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 30 years.

Age factor is 207.98

Compensation Amount : $4000 \times 207.98 = \text{Rs. } 8,31,920/-$.

The claimants are entitled to receive Rs. 8,31,920/- towards compensation.

7. Since the Respondent failed to deposit compensation within 30 days from the date of accident with this Authority hence Respondent is also liable to pay 12% interest per annum on awarded amount with effect from 19.08.2019. Further a show cause notice was issued to the respondent Under Section 4 (A) 3 (b) as to why penalty should not be imposed upon him for not depositing the amount in time. The respondent neither filed reply to the show cause notice nor deposited the compensation amount with this Authority. Therefore, penalty of Rs. 1,66,384/- i.e. 20% of the awarded amount is also imposed upon the respondent for not making the payment of compensation as provided under the Act.



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8. Therefore the respondent i.e. Sh. Dinesh Aggarwal S/o Sh. Jagdish Aggarwal, A/101, CHS Cindicate Staff, S.N. Dubey Road, Raval Pada Dahisar, East Mumbai, Maharashtra-400101 is directed to deposit Rs. 8,31,920/- (Rupees Eight Lakh Thirty One Thousand Nine Hundred Twenty Only) towards compensation along with 12% interest w.e.f. 19.08.2019 till the realization of compensation amount, penalty amount of Rs. 1,66,384/- (Rupees One Lakh Sixty Six Thousand Three Hundred Eighty Four Only) and 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.

9. Given under my hand and seal of this Authority on this 29th day of April, 2022.


(Amardheep)

Commissioner Employee's Compensation (South)