

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/85/ND/2022/ 31.

Date: 30/04/2024.

IN THE MATTER OF:

1. Smt. Kusum W/o Sh. Nater Pal
2. Pappu Singh (Son of deceased)
3. Rohit Kumar (Son of deceased)
4. Ms. Radha (Daughter of deceased)
5. Smt. Chandrawati (Mother of deceased)

H.No. 143, Village Tharesa Jaisingh,
District – Sambhal, UP – 202414

...Applicant/Claimant

V/s

Sh. Kali Charan S/o Sh. Niranjan Singh
R/o Jhuggi No. B-640, ITI Jhuggi,
Jahangipuri – Delhi – 110033

Sh. Rajender @ Raju S/o Sh. Shibu
R/o : - J-329, Lakhi Park, Jahangirpuri,
Delhi – 110033

.....Respondents

ORDER

1. Vide this order, I will dispose of the application dated 13/07/2017 filed by the applicant/claimant for seeking death compensation.
2. Claimant in the claim application submitted that the deceased namely Nater Pal was employed by the respondent no. 1 as a labourer on his business and trade and was working with full devotion for many months. That on 14-15/12/2014 the deceased was directed by the respondent no.1 to work on a marriage function at Lakhi Park, Jahangir Puri, Delhi for the marriage of daughter of Respondent no.2 - Rajender @ Raju S/o Shibu-R/o J-329, ITI Jhuggi, Jahangir Puri, Delhi. That the deceased Nater Pal was employed by the respondent no.1 to work on the Stall of Gole Gappe, Potato Tikki and Bhalle Papri. That the electric work was done by Sh. Musamiaswar Ali S/o Akhtar Ali, Light Manager, R/o 6/45, J.J.



Colony, Bhalaswa Dairy, Delhi, who has arranged the light arrangement through its Generator. That on the intervening night of 14/15.12.2014, the weather became uncertain and suddenly rain started. That due to the said sudden rain, the stall were transferred/shifted to other (K-Block) covered places/Dharamshala and the deceased and Kali Charan took heavy Patila (Pot) of Gole Gappe for shifting. That during the process of transfer/shifting of Patila (Pot) of Gole Gappe suddenly the foot of the deceased Nater Pal came on the naked and unprotected wire. As a result of it, there was spark on the wires and the deceased received a shock in the said spark and fell on the ground and Pot (Patila) fell on the body of the deceased Nater Pal and received the electric shock. That the deceased was immediately rushed to B.J.R.M. Hospital, Jahangir Puri, Delhi by the respondent no.1 and the doctor of the said Hospital declared him brought dead. That the deceased died due to above said accident which was arose out of during and in the course of his employment with respondent no.1. That the Post mortem of deceased was conducted at BJRM Hospital, Jahangir Puri, Delhi vide P.M. No.1133/14 dated 15.12.2014. That the FIR was registered with the P.S. Jahangir Puri, Distt. North-West, Delhi bearing no. 1060 dated 15.12.2014 U/s.,287/304A IPC. That the respondents are having the notice of said accident/incident. That the deceased was aged 45 years and drawing wages at the rate of Rs.10,000/- per month at the time of death. That the claimants are real dependents of the deceased at the time of accident/death. That the deceased was working and died due to the said incident which was arose out of during and in the course of his employment under Respondent no.1. The petitioners are entitled to receive death compensation as per E.C. Act. They are also entitled to interest at the rate of 12% p.a. from the respondents till realisation and penalty to the extent of 50% of the principal amount.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent filed its reply and submitted that the present application of the applicants is nothing but gross misuse of process of law, hence liable to be dismissed with cost. That the applicants have no locus-standi to file the present application against the answering respondent, therefore the applicants are not entitled to get any discretionary relief from this Hon'ble Court. It is further submitted that the applicants are now trying to take advantages of their own wrong. That the deceased was never worked with the Respondent No.1 at any point of time. That the applicants have not come to this Hon'ble Court with clean hands and has suppressed material facts very much in his knowledge, to file the present application malafidely with the intention to harass the answering respondent. Therefore, the application of applicants is liable to be dismissed. That the application of the applicant against the answering respondent is based on totally false and fabricated story, even nothing has been filed with the application. That the application of the applicants is not maintainable as the applicants have twisted concealed and distorted the true facts for the purpose of achieving the desire illegal object. That the application of the



applicants is not maintainable and liable to be dismissed as no cause of action has ever arisen in favour of the applicant and against the answering respondent and hence the present application is nothing but an abuse of process of law and as such the same is liable to be dismissed under order 7 rule 11 CPC. In the last claimant prayed that this Hon'ble Court may kindly be pleased to dismiss the claim of the applicant with an exemplary cost, in the interest of justice.

5. Respondent no. 2 despite receipt of the claim application, failed to file written statement in the matter, hence resp. No. 2 was proceeded ex-parte on 29/01/2020.
6. On 29/01/2020 following issues were framed for adjudication:
 1. Whether employee-employer relationship exist between the parties?
 2. Whether accident resulting into death of deceased caused out of employment and if so what amount of death compensation, the dependants are entitled to?
 3. Relief, if any?
 4. Whether penalty is imposable u/s-4A(3) and if so the quantum thereof?
7. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex.PW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. PW1/1 and Mark PW1/2 to PW1/7 i.e. Copy of Aadhar card of Kusum, Copy of DD No. 33A dated 14/12/2014, copy of FIR No. 1060, dated 15/12/2014, PS Jahangir Puri, copy of final report from U/s 173 CrPC in regard FIR No. 1060, Copy of PMR No. 1133/14 dated 15/12/2014, Copy of Aadhar card of all claimants, copy of Ration card. Her statement was also recorded on 09/11/2022.
8. Further despite sufficient opportunities respondent failed to file/lead evidence, hence right of respondent to lead RE was closed on 28/11/2023.
9. The matter was fixed for arguments. Written arguments was filed by the claimant, respondents failed to file arguments, hence oral arguments adduced by claimant was heard in detail.
10. 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

11. That the case of the petitioner is this that the deceased namely Nater Pal was employed by the respondent no. 1 as a labourer on his business and trade and was working with full devotion for many months. That on 14-15/12/2014 the deceased was directed by the respondent no.1 to work on a marriage function at Lakhi Park, Jahangir Puri, Delhi for the



marriage of daughter of Respondent no.2 - Rajender @ Raju S/o Shibu-R/o J-329, ITI Jhuggi, Jahangir Puri, Delhi. That the deceased Nater Pal was employed by the respondent no.1 to work on the Stall of Gole Gappe, Potato Tikki and Bhalle Papri. That the electric work was done by Sh. Musamiaswar Ali S/o Akhtar Ali, Light Manager, R/o 6/45, J.J. Colony, Bhalaswa Dairy, Delhi, who has arranged the light arrangement through its Generator. That on the intervening night of 14/15.12.2014, the weather became uncertain and suddenly rain started. That due to the said sudden rain, the stall were transferred/shifted to other (K-Block) covered places/Dharamshala and the deceased and Kali Charan took heavy Patila (Pot) of Gole Gappe for shifting. That during the process of transfer/shifting of Patila (Pot) of Gole Gappe suddenly the foot of the deceased Nater Pal came on the naked and unprotected wire. As a result of it, there was spark on the wires and the deceased received a shock in the said spark and fell on the ground and Pot (Patila) fell on the body of the deceased Nater Pal and received the electric shock. That the deceased was immediately rushed to B.J.R.M. Hospital, Jahangir Puri, Delhi by the respondent no.1 and the doctor of the said Hospital declared him brought dead. That the deceased died due to above said accident which was arose out of during and in the course of his employment with respondent no.1. That the Post mortem of deceased was conducted at BJRM Hospital, Jahangir Puri, Delhi vide P.M. No.1133/14 dated 15.12.2014. That the FIR was registered with the P.S. Jahangir Puri. Distt. North-West, Delhi bearing no. 1060 dated 15.12.2014 U/s.,287/304A IPC. That the respondents are having the notice of said accident/incident. That the deceased was aged 45 years and drawing wages at the rate of Rs.10,000/- per month at the time of death.

The respondent No. 1 has denied employee employer relationship on the ground that deceased was never worked with resp. no. 1 at any point of time. Petitioner has filed this claim malafidely with the intention to harass the respondent no. 1. This application is based on totally false and fabricated story even nothing has been filed with the application. Further respondent no. 1 has taken ground that the deceased had worked independently and the incident took place on 14-15/12/2014 and the deceased had never worked with resp. no. 1 and on this ground the resp. no. 1 denied its liability for the payment of compensation. To prove his case claimant examined herself Ex. PW1/A. despite given sufficient opportunities resp. no. 1 neither lead evidence to prove his case nor cross examined to the claimant. Further resp. no., 2 also did not turn up to file his defense in the matter as such je was proceeded ex-parte. Onus was upon the respondent to prove his case by way of leading evidence, while the claimant has alleged that deceased was employed with resp. no. 1 on the day of incident when directly resp. no. 1 took work of a marriage function at Jahangir Puri Delhi for the marriage of daughter of resp. no. 2. While the deceased was employed by resp. no. 1. As such it is establish that deceased was employed by resp. no. 1 on the day of incident and he died due to electrocution. Further FIR bearing no. 1060 dated 15.12.2014 U/s.287/304A IPC was registered. Post mortem of deceased was conducted at BJRM Hospital, Jahangir Puri, Delhi vide P.M. No.1133/14 dated 15.12.2014. considering all the pleadings and the evidence available on record



incident occurred due to sole negligence on the part of respondents as they failed to provide the safety and even did not turn up to prove his case by way of evidence as such issue no. 172 are decided in favour of claimants and against the respondents.

ISSUE No. 3 & 4

12. In view of above discussion made. I hold that claimant is entitled to receive death compensation under the EC Act 1923 from respondent. For considering the case of claimant for compensation I am taking age of deceased as 45 years as per age in PMR No. 1133/4 dated 15/12/2014 of the deceased and relevant factor as per age 169.44 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/- : 4000/-

Relevant factor : 169.44

4000 * 169.44 : Rs. 6,77,760/-

In view of this calculation claimant is entitled to receive Rs. 6,77,760/- as compensation from the respondent. 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.

13. In view of above discussion, I direct respondent No. 1 to deposit Rs. 6,77,760/- as compensation along with 12% interest w.e.f. 13/01/2015 till its realization and the respondent No. 1 is also directed to deposit 25% penalty of awarded amount i.e. Rs. 1,69,440/- within 30 days from the date of order by way of Demand draft in favour of "Commissioner Employees Compensation", failing, which same shall be recovered as per provision of the Act.

14. Given under my hand and seal of this Authority on this 30th day of April, 2024.

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

