

**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

ECD/64/NW/2020 | 16.

Date: 19/04/2024.

1. Smt. Madhu Bala W/o Late Sh. Rahul Kumar,
2. Miss Madhuri D/o Late Sh. Rahul Kumar,
3. Master Ravi S/o Late Sh. Rahul Kumar

**All resident of:**

House No. C-77, Gali No. 04,  
Jivan Park, Siraspur,  
District North-West, Delhi - 110042

.....Applicants/Claimants

Versus

**M/s Shree Roshan Enterprises,**  
Through its proprietor,  
Office at: B-995, Ground Floor,  
Shastri Nagar, North West District, Delhi - 110052

**Factory at:**

Khasra No. 29/1, Master Mohalla,  
Libaspur, North District, Delhi - 110042

.....Respondent

**ORDER**

1. Vide this order, I will dispose of the application of the applicants/claimants seeking death compensation dated 04.11.2020.
2. The case of first applicant Madhu Bala , wife of deceased is this that her deceased husband Rahul Kumar S/o Sh. Niranjan Thakur was employed as Machine Man with the respondent for last 5 years in the Gatta factory owned by the respondent situated at Libaspur. The deceased employee was working in factory where the work of manufacturing of corrugated boxes was going on and the working hours were 9:00 am to 8:00 pm in the factory. On 13.09.2020 at about 04:00 PM he was working in the factory and then he was given an assignment outside the factory premises. While going with the



said assignment he was hit by a vehicle and because of that he sustained serious injury in his head. He was got admitted in Dr. Baba Saheb Ambedkar Hospital, Rohini vide MLC No. 5388 of 2020. Thereafter he was taken to Safdarjung Hospital, Delhi and was got admitted there. During the treatment he succumbed to the injuries on 15.09.2020. Post Mortem was conducted at Safdarjung Hospital, Delhi and dead body was handed over to the relatives. It was ambulanced from the Hospital to his place and he was cremated there. The Employer paid to the family an amount of Rs. 40,000/- for his cremation etc. The FIR was registered by the Police at Police Station Samaipur Badli vide FIR No. 0573 dated 13.09.2020. The applicants are the dependents of the deceased Employee being his widow and minor children and the deceased was sole earning member in his family. He was drawing Rs. 15,000/- per month and at the time of accident he was aged 24 years. The Respondent/Employer is having the notice of accident since the day of its occurrence as the applicant was informed by them about the incident. Even otherwise, a notice under section 10 of the Employee's Compensation Act, 1923 has been served upon the respondent. The deceased was an employee and died out of and during the course of employment. The applicant is entitled to receive compensation as per Employee's Compensation Act. She is also entitled to interest at the rate of 12% per annum from the date of the accident till realization and penalty to the extent of 50% of the principal amount.

3. Summons was sent to the respondent with direction to appear before this Authority to file reply in the matter.
4. Respondent filed its reply and submitted that the application filed by the applicants is gross misuse of the process of Law and liable to be rejected. That applicants have based their case on false and fabricated facts and have approached this Hon'ble Commission with unclean hands and hence not liable for any compensation. It is further submitted by the answering respondent that the claimant have suppressed the facts that the deceased was employed as a helper and was employed for 5 months and not in continuation. That working hours of deceased was from 09:00 AM to 05:30 PM with 30 minutes lunch break from 1:30 PM to 02:00 PM. That on 13/09/2020 the deceased had worked till 05:30 PM as usual. That on 13/09/2020 at about 04:00 PM the deceased was not given any assignment to outside the factory premises and the CCTV footage and photographs obtained from CCTV footage from CCTV installed at the factory premises are clearly showing the presence of the deceased in the factory premises till 05:30 PM and leaving factory along with his friends on bike after 05:30 PM. That after going out of the factory after finishing the work on the day of 13/09/2020, the deceased consumed alcohol with his friends at a nearby theka and thereafter the deceased started for his residence and met with an accident and thereafter succumbed to his injury. That police authority investigated the case properly and clearly gave the report that death of the deceased was because of road accident and was not in the course of employment by the respondent. That the applicant





has also received Rs. 40,000/- on 22/09/2020 towards full and final settlement which was given out of sympathy from the factory owner without having any liability in any manner. In the last the answering respondent further denied rest of the contents in toto and in the last prayed that the application of the applicants is liable to be rejected with cost.

5. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
6. On 25/03/2021 the following issues were framed for adjudication:
  - i. Whether accident leading to death of deceased has occurred in the course and out of his employment and if so to what amount of compensation are the claimant entitled to?
  - ii. Any other relief?
  - iii. Whether the respondent is liable for penalty and if so to what extent and what amount?
7. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex.AW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. AW1/1 to Ex. AW1 i.e. Copy of FIR No. 573 dated 13/09/2020, copy of receipt for post-mortem report, copy of Aadhar card of deceased, copy of Aadhar card of the deponent. Her statement was recorded and was also cross examined by counsel of respondent on 04/04/2022.
8. For respondent Sh. Roshan Lal – filed his evidence by way of affidavit Ex. RW1/A. The contents of affidavits were corroborative to those eply. The respondent also filed document Ex. RW1/1, Ex. RW1/2 and Mark 'A' i.e. copy of photographs taken from the CCTV footage installed at Factory premises, copy of MLC dated 13/09/2020, copy of affidavit and receipt executed by applicant. His statement was also recorded and was also cross examined by counsel of claimant on 07/11/2023.
9. The matter was fixed for arguments. The written arguments were filed on behalf of applicant and respondent. Oral arguments were also addressed.
10. On the pleadings of the parties, evidence adduced therein and arguments addressed, I give my findings as under.

### ISSUE NO. 1, 2 & 3

11. The case of the applicants/claimants is that the deceased was employed with the respondent. He was given outside assignment and for doing that assignment he met with





an accident. This be so the accident and consequential death has been caused out of and during the course of his employment. Respondent has admitted that the deceased was employed. Respondent has stated that he had completed his duty and after completion of his duty he had already left the respondent premises and he met with an accident for which respondent cannot be held liable. It has further been stated that out of benevolence they have paid the family an amount of Rs. 40,000/-.

The difficulty is that there is a gap where there is no evidence as to what happened after leaving the premises of the factory premises. The question then comes as to onus of proof. Here the burden was on the respondent to bring evidence and they did not bring that in that situation. And further it was also onus upon the respondent to prove that at the time of accident deceased was under alcohol in these circumstances when respondent failed to prove his case then the adverse inference goes against the employer.

In this regard, the counsel for the applicants has relied on the judgements - **Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ritta Fernandez cited at 1969 ACJ 419** and **Shahajahan & Anr. Vs. Shri Ram Gen Insurance Co. Ltd. & Anr.** cited at 2021 SCC Online SC 3133 in Civil Appeal No. 6775 of 2021 as per these judgments it has been established that the onus was heavily on the employment to bring evidence in this regard and it failed adverse inference must go against them.

On the issue of notional extension, claimant has further relied on the judgment of the Hon'ble Supreme Court in - **Daya Kishan Joshi & Anr. Vs. Dynemech Systems Pvt. Ltd. (2018) 11 SCC 642**, relevant portion of the judgment are reproduced as under:-

*"...18. Again, in the case of Union of India v. Surendra Pandey [(2015) 13 SCC 625] this Court has explained the principle of notional extension of employment giving examples as under:*

*"It was also pointed out by Lord Denning in the aforesaid case of R. v. National Insurance Commr., Michael that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment, may be extended even to cases while an employee is sent on an errand by the employer outside the factory premises But in such cases, it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his work place in the usual course of his employment. Latham, C.J. in South Maitland Railways Pty. Ltd. v. James observed that when the workmen on a hot day in course of their employment had to go for short time to get some cool water to drink*





*so as to enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for water.” (emphasis supplied).*

*19. The aforementioned observations are reiterated by this Court in a number of subsequent judgments, including in the case of Manju Sarkar v. Mabish Miah [(2014) 14 SCC 21)].*

In another case settled by the Uttarakhand High Court in a case titled as **National Insurance Co. Ltd. v. Suman Devi**, cited at 1093 (ACJ 2010), relevant portion of the judgment are reproduced as under:-

*“Section 3 (1)—Notional extension—Arising out of and in the course of employment—Tree fell on workman when he was returning to his house after duty and he sustained fatal injuries—Contention that death of workman neither took place within the factory premises nor during the course of actual employment or during the period of his duty—Expression ‘employment’ in section 3 is wider than the actual work or duty which the workman had to do—Accident occurring when the workman is proceeding from place of employment to his residence is regarded as arising out of and in the course of employment—Whether applying the principle of notional extension the Commissioner was justified in concluding that death of workman arose out of accident during the course of his employment—Held: yes.”*

Given the above discussions, I am of the view that the theory of notional extension does apply and accident is deemed to have been caused out of and during the course of employment. The employer has failed to bring evidence which he was required and could have done in that adverse inference is taken against him. I, therefore, hold that the accident has been caused out of and during the course of employment. The said issue is decided in favour of the applicants and against the respondent.

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 it has been stated that the deceased was aged 24 years. As per his Aadhar Card his date of birth has been shown 01.01.1996. Meaning thereby the deceased had completed 24 years of his age on the day of accident. Hence his age is held and taken 24 years. For the wages the Notification issued by the Govt. of India for computing compensation under the Employee's Compensation Act, it is Rs. 15,000/- per month. Hence his wage is taken Rs. 15,000/-. Keeping that age the relevant factor as per



Schedule IV appended to the Act the relevant factor is 218.47 in the age of 24 years. As per Section 4 the 50% wages are to be multiplied by the relevant factor. In the given wage and age of the deceased the applicants/claimants are entitled to compensation as under:

i) Relevant factor of 24 years	:	218.47
ii) 50% of wages @ Rs. 15000/- pm	:	Rs. 7500/-
7500 * 218.47	:	Rs.16,38,525/-
iii) Amount of compensation	:	Rs.16,38,525/-

The claimants are also entitled to interest as per Section 4A ( 3 ) ( a ) of the 'Act' @ 12% per annum from 30 days after the accident. As far as imposition of penalty under Section 4A (3 ) ( b ) is concerned, though the respondent has made a payment of Rs. 40,000/- to the applicants but this amount is not considered to be sufficient for the bereaved family. However, keeping that in view, I find that this is a fit case of penalty as the accident took place about more than 3 years and claimants have not been paid their due compensation, hence I find it appropriate to impose a penalty, as per statute, to the extent of 40% against the respondent.

13. In view of above discussion, I direct Respondent to deposit before this Authority an amount of **Rs.16,38,525/- ( Rupees sixteen lacs thirty eight thousand five hundred twenty five )** on account of death compensation payable to the applicants/claimants along with interest @ 12% p.a. w.e.f. 13.10.2020 till its realization and the respondent is further directed to **deposit 40% penalty of awarded amount i.e. Rs. 6,55,410/-** through pay order in favour of **"Commissioner Employee's Compensation"** within a period of 30 days from pronouncement of the order before this Authority.

14. Given under my hand and seal of this Authority on this 19th day of April, 2024.

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

