

**IN THE COURT OF 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/SD/D/10/2018/323.

Date: 22/12/2022.

IN THE MATTER OF:

Smt. Samtulia W/o Deceased Sh. Visheshwar Rai
Ward 11, Village Mahish, Samastipur Bihar - 848160

.....Petitioner

V/s

- 1. M/s Pratibha Engineering Erectors & Fabricators**
Office :- 301 B-Type, Manisha Paradise Maharal,
Post Varap, Tal. Kalyan Dist. Thane, Maharashtra Pin-421103
- 2. M/s FEMC-PRATIBHA JV**
Project Office : NDMC Park, Opp. Pushpa Bhawan
Pushp Vihar, Sec-7, New Delhi - 110062
- 3. M/s Pratibha Industries Ltd.**
Office: - Shrikant Chambers, Near R.K Studio,
Siontrombay Road, Union Park, Chembur, Mumbai, Maharashtra- 400071
- 4. M/s Delhi Metro Rail Corporation,**
Metro Bhawan, Fire Brigade Lane, Barakhamba Road,
New Delhi-110001

.....Respondents

ORDER

1. By this order, I will dispose of the application dated 06/02/2018 of the applicant/claimant seeking death compensation from the respondents under EC Act, 1923.
2. Claimant Smt. Samtulia has submitted that her deceased husband Sh. Visheshwar Rai was employed at the site of Delhi metro – Panchsheel Park, CC-23 through M/s Pratibha Engineering Erecter and Fabricator (Respondent no 1). The claimant further submitted that on 07/04/2016 in afternoon the deceased workman had complained for pain in his chest and for that he informed to the management/respondent regarding the same but the respondent/management asked him to continue his work and the deceased kept working till 08 PM, after that the deceased workman went to a doctor nearby his place of residence and the doctor suggested him to go the hospital and on 08/04/2016 at 04:30 AM the deceased passed away on the way to hospital. The claimant further submitted that



the contractor and the management are responsible for the death of the deceased workman because they failed to provide any timely treatment/help to the deceased. In the last petitioner prayed that the applicant being the wife of deceased employee is liable to receive death compensation as per Employee's Compensation Act, 1923.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter. Respondents appeared and filed reply on record.
4. Respondent No. 1 (herein referred as answering respondent) in its reply submitted that the answering respondent denies each and every averment, statement contention made in the claim application/rejoinder for compensation. That the claim application filed by the applicant(s) is all together false, frivolous, capricious and nefarious and the same deserve to be dismissed as the information facts allegations stated are all baseless and have been alleged to squeeze money from the answering respondent because the deceased was not working with answering respondent as the deceased last worked upto 31/03/2016 under the answering respondent and thereafter that contract between the respondent no 1 (answering respondent) and respondent no 2 was expired on 31/03/2016. It is further submitted that death of deceased was occurred on 08/04/2016 at 4:30 AM due to heart-attack at that time he was neither employee of the respondent nor he was working with respondent no 1 as such he is not entitled for compensation as per provision of EC Act 1923. It is further submitted that letter head filed by the petitioner which was never issued by resp. no 1 at any point of time, such document is forged and fabricated and created by the petitioner. It is further submitted that any employee or present claimant being the dependant of deceased employee with entitled to receive compensation only when employee employer relationship exists between the claimant and respondent and accident resulting in injury or death occurred out of and in the course of employment with respondent. But in this case neither employee employer relationship exists as alleged by the claimant nor death of deceased employee Visheshwar Rai was occurred out of and in the course of his employment. On this ground in the last respondent no 1 prayed that the claim is deserved to be dismissed.
5. The respondent no 3 also filed its reply stating therein that the deceased employee was never employed by the answering respondent no 3 and as such no relationship of Employer and Employee/Master and servant exists or ever existed between the deceased and the answering respondent no 3. And as such the deceased was not a workman as defined u/s 2(S) of the ID Act, 1947. It is further submitted by the respondent no 3 that the claimant has neither annexed any proof of employment of the legal heirs of the deceased worker at the sites of answering



management nor attached any proof of employment. It is further submitted by the respondent no 3 that the construction activities were carried out on the sites of answering respondent during 09:00 Hrs to 18:00 Hrs and no work was carried out at 04:30 Hrs on 8th April 2016 at the DMRC site as alleged. Attack of deceased workman was occurred on the way to hospital not in worksite. Further rest of contents of claim petition has been denied in toto and in the last prayed that application in question is liable to be dismissed.

6. Respondent no 2 did not file any reply, despite given opportunities.
7. Petitioner rebutted all the contents of Respondents as stated in their reply and reiterated contents of the claim petition in his rejoinder.
8. On 04/06/2019 following issues were framed for adjudication:
 1. Whether there was employee-employer relationship between the deceased and the respondent?
 2. Whether the deceased died in the course of employment with the respondent?
 3. If yes, what relief and what directions to be passed?
9. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. CW1/A of Sh. Vikash Kumar son of deceased Sh. Visheshwar Rai. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. CW1/1 to CW1/4 i.e. Copy of Identity card of the deceased workman, Copy of Adhar Cards, Copy of Claim Application, Copy of Medical Records. His statement was also recorded on 14/11/2019 and was also cross examined by counsel of respondent No.1 and 3 on 14/11/2019 and on 15/01/2020 respondent no. 2 adopted the cross examine done by respondent no 1 of Ex. CW1/A. Further Claimant examined another witness Sh. Ugeshwar Ray @ Sh. Jugeshwar Ray (a co-worker) by way of affidavit Ex. CW2/A, further the witness CW2/A has given evidence in favour of claimant and further tendered his evidence and was also cross examined by counsel of R-1, 2 & 3 on 15/01/2020.
10. For Respondent No. 1 Sh. Prakash Gadade S/o Sh. Mukinda, sole proprietor of M/s Pratibha Eng. Erectors and Fabricators, filed statement/evidence by way of affidavit Ex. RW1/A, along with documents Ex. RW1/1 to RW1/3 i.e. Copy of Aadhar card, Copy of PAN Card, Copy of letter of award dated 21/10/2015 and also tendered the evidence and was also cross examined by the counsel of claimant and respondent no 3 on 28/01/2020. The contents of affidavit are corroborated of those reply. Ex. RW/1 denied employee employer relationship with the claimant on the ground that there was contract between resp. no 1 & 2 from 26/10/2015 till 31/03/2016 copy of same



has been placed on record and on 31/03/2016 contract with resp. no 2 was expired and the alleged deceased employee had also worked upto 31/03/2016 and thereafter he was not in the employment and identity card issued to deceased employee was also expired on 31/03/2016. The letter head filed by the claimant which was never issued by the resp. no 1 at any point of time as such same was forged and fabricated and doctored by the LR of deceased claimant and same was admitted in the cross examination of CW/2 Sh. Ugeshwar Ray. As such, such letter was not given or such money was not given to the Ugeshwar Ray. Further deceased employee had died on 08/04/2016 at 04:30 AM due to heart attack at that time he was neither employee of the respondent nor he was working with respondent no 1 and also does not fall an accident during the course of and out of employment as per provision of employees compensation Act to qualify for payment of compensation under the Act.

11. For Respondent No. 2 Sh. Ansoo Saurabh S/o Sh. Krishna Prasad Sinha, authorised representative of FEMC Pratibha JV filed statement/evidence by way of affidavit Ex. RW2/A, along with documents Ex. RW2/1 i.e. Copy of Authorization letter and also tendered the evidence and was also cross examined by the counsel of claimant on 18/04/2022 and completed the same on 24/08/2022. The contents of affidavit are corroborated of those reply and respondent no 2 also denied employee employer relationship with deceased and accident occurred out of and in the course of his employment.
12. For Respondent No. 3 Sh. Gulab Chandra Jha S/o Sh. Binod Jha, authorised representative of M/s DMRC Ltd. filed statement/evidence by way of affidavit Ex. RW1/A, along with documents Ex. RW1/1 to RW1/3 i.e. Copy of Authorization letter, Copy of Aadhar Card, Copy of Identity Card and also tendered the evidence and was also cross examined by the counsel of claimant on 18/04/2022. The contents of affidavit are corroborated of those reply. Respondent no 3 also denied employee employer relationship with the deceased employee and accident occurred out of and in the course of his employment.
13. The matter was fixed for arguments. Arguments were filed by the parties and oral submission were also heard in detail.
14. 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

The case of claimant/petitioner is this that deceased Visheshwar Rai was employed through M/s Pratibha Engineering Erector and Fabricator (respondent no 1) at the site of Delhi metro (respondent no 3) – Panchsheel Park, CC-23. In this case Respondent no 3 had awarded contract work to respondent no 2 and



further respondent no 2 awarded work to respondent no 1. The claimant further submitted that on 07/04/2016 in afternoon the deceased workman had pain in his chest and he informed the respondent regarding the same but the respondent asked him to continue with his work and the deceased kept working till 08 PM after that the deceased workman went to a doctor nearby his place and the doctor suggested him to go the hospital and on 08/04/2016 at 04:30 AM the deceased passed away on the way to hospital due to attack. The claimant further submitted that the contractor and the PE are responsible for the death of the deceased workman because they failed to provide any timely treatment/help to the deceased. In reply respondent no 1 denied employee employer relationship on the ground that claimant was not in employment of respondent no 1 on 08/04/2016 because work contract arrived between respondent no 1 & 2 had expired on 31/03/2016. The identity card issued to the deceased employee Visheshwar Rai was also expired on 31/03/2016 and thereafter deceased Visheshwar Rai had never worked on construction site with respondent no 1. On the day of death due to attack i.e. on 08/04/2016 4:30 AM while he was carrying to the hospital was occurred in his home not in workplace. Respondent no 2 & 3 also taken same plea in this case, as taken by the respondent no 1. I have gone through the pleading of the parties and documents available on record and after that I found that Smt. Samtulia w/o deceased Visheshwar Rai had filed a complaint before Commissioner Employee's Compensation vide letter dated 06/02/2018 and same was considered for hearing by the Commissioner. As per whole record the claimant wife of deceased had never appeared before this court to give the evidence in his favour. Sh. Vikash Kumar son of deceased Visheshwar Rai appeared as a witness Ex CW1/A and narrated same as discussed above in para no 1. Another witness Ugeshwar Ray @ Sh. Jugeshwar Ray (a co-worker) Ex. CW2/A, this witness gave evidence in favour of deceased employee that he was co-worker with deceased Visheshwar Rai and at the time of alleged incident deceased Visheshwar Rai was on the employment of the sub-contractor respondent no 1. Further CW2/A submitted that the deceased had told the management regarding suffering from chest pain on 07/04/2016 and requested for leave but the resp. no 1 not granted the leave not provided the medical treatment, but CW2/A did not disclose the name of management that whom deceased Visheshwar Rai had made complaint for chest pain and requested for leave. Further letter dated 11/05/2016 pertaining to resp. no 1 is marked A wherein CW2/A had signed and mentioned that he had received payment upto April of Visheshwar Rai due to his death. In cross examination this witness categorically admitted that Mark A document i.e. letter head dated 11/05/2016 of Pratibha Eng. Erectors & fabricators was issued. But from the evidence of CW2/A it could not be proved that on the day of death deceased was in the employment of respondents since work agreement arrived between resp. 1 & 3 was expired on 31/03/2016 and identity card was also issued till 31/03/2016 to deceased employee as such prior to 31/03/2016 there was employee employer relationship between deceased employee and respondents it is proved by the



evidence of CW2/A. but claimant/petitioner failed to prove that on the day of death i.e. 08/04/2016 there was employee employer relationship between deceased and the respondents. Claimants/petitioner failed to prove completely and nothing has been proved by the witnesses as examined by the petitioner in this case. Moreover the main complainant the wife of deceased after filing the claim could not appear for witness in her defence to prove contents of her claim application. In these circumstances I have not found any grounds from the pleadings of the petitioners in their favour as such I hold that on the day of death of deceased due to heart attack there was no employee employer relationship between deceased employee and respondent no 1. As such issue No1 is decided in favour of respondent and against the claimant.

Issue No. 2 & 3

After deciding the issue no 1 I come to issue no 2 i.e. whether the deceased died in the course of employment with respondent or not. From the pleadings it was the case of claimant that on 07/04/2016 deceased Visheshwar Rai had complained regarding chest pain to the management but it has not brought any witness from the claimant that from whom deceased Visheshwar Rai had made complaint on 07/04/2016 about the chest pain and requested for the leave. CW2/A Ugeshwar Ray who is the witness of claimant has also stated in his cross examination that on 07/04/2016 deceased Visheshwar Rai had left workplace at 05:00 PM and nothing disclosed about whom deceased had made complaint about chest pain on 07/04/2016. It is not disputed in this case that work contract had expired between R1 & R2 on 31/03/2016. Identity card on which claimant relied is also had expired on 31/03/2016. The deceased Visheshwar Rai had died on 08/04/2016 at 4:30 AM while he was going to Hospital on the way due to heart attack. From this it is ample clear that on 08/04/2016 deceased Visheshwar Rai was not in the employment of the respondents. As such same cannot be considered as a death occurred out of and in the course of his employment. As per provision of Employee's Compensation Act, 1923 for qualifying for payment of compensation employee must meet employee employer relationship first then accident occurred out of and in the course of his employment with respondent only then employer can be held liable to pay compensation under the Act to the claimant or their dependants. But in this case these 2 ingredients are not found to decide this case in favour of claimant, since death of deceased is not established or proved out of and in the course of his employment as such this issue is decided against the claimant / petitioner and in favour of respondents. As such claimant is not entitled for any relief.

15. Given under my hand and seal of this Authority on this 22nd day of December, 2022.

(S.C. Yadav)
Commissioner

Employee's Compensation Act, 1923

