

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-D/ED/13/2018/ 50

Date: 24/02/2023

IN THE MATTER OF:

Ms. Shweta Rai & Ors
R/o A-46, Street No. 2,
Shiv Vihar Phase-7, Delhi - 110094

...Petitioner/Claimant

V/s

M/s Shivalik Buildtech Pvt. Ltd.
Through its Director,
Regd. Office: A-2/516, Ekta gardens,
Near Mother Dairy, Patparganj,
Delhi - 110092

....Respondent No. 1

Sh. Sandeep Bhatia (Director)
M/s Shivalik Buildtech Pvt. Ltd.
Regd. Office: A-2/516, Ekta gardens,
Near Mother Dairy, Patparganj,
Delhi - 110092

....Respondent No. 2

Sh. Arjun Bhatia (Director)
M/s Shivalik Buildtech Pvt. Ltd.
Regd. Office: A-2/516, Ekta gardens,
Near Mother Dairy, Patparganj,
Delhi - 110092

....Respondent No. 3

M/s R.K Infra,
H.No. 17, Sector-18-A,
Chandigarh - 160018

....Respondent No. 4

ORDER

1. By this order, I will dispose of claim application dated 02/05/2018 filed by the claimants for seeking death compensation under the Employees Compensation Act, 1923.



2. Claimant no. 1 is the wife of deceased Sh. Vikram Pratap who has submitted in the claim application that respondent no 2 & 3 are the directors of the respondent no 1 company and are responsible for day to day affairs of the respondent no 1 company. It is further submitted by the claimants that the deceased Vikram Pratap was employed with the respondent as mechanic / technician and was getting a salary of Rs. 26,000/- per month besides other service benefits since November, 2016 till his death / accident. It is further submitted by the claimants that on 05/03/2018 at between 02:00 PM to 03:00 PM, the deceased employee Vikram Pratap Rai got electrocution injury at the site of management during the course of his employment and was taken by the management to the Yashoda Super Speciality Hospital at Ghaziabad and during his treatment he expired on 14/03/2018. An MLC No. 58/18 was prepared by Yashoda Super Specialty Hospital, Ghaziabad, UP and Post-mortem report was conducted by Lal Bahadur Shastri Hospital, Delhi on 14/03/2018. It is further submitted by the claimants that in this regard an FIR No 77/2018 u/s 336/337 IPC, P.S. Gazipur, Delhi was registered on 05/03/2018. In the last petitioners prayed that since accident of deceased employee occurred out of and in the course of employment with respondents resulting in death hence respondent is liable to pay compensation of Rs 80,00,000/- along with interest at the rate of 14% per annum to the petitioners/claimants being the legal heirs of the deceased/ employee. Being the legal heirs of the deceased claimant also filed documents such as copy of FIR, Post-mortem report, death certificate issued by Yashoda Super Speciality Hospital and Gaziabad Municipal Corporation, copy of dead body receipt and cremation receipt, copy of legal demand notice and copy of Aadhar card of the claimants.
3. Summons were sent to the respondents with direction to appear before this Authority to file reply in the matter. Respondent appeared and filed reply on record.
4. Respondent No. 1 has filed reply on behalf of respondents 1, 2 & 3. In its reply respondents submitted that the present claim is liable to be dismissed as it is devoid of merits. Respondents further submitted that the present defendant company is a sub-contractor and not a principal employer. The answering respondent no. 1 further submitted that respondent no 1 is a Civil Contractor company apart from other construction sites and they were supplying RMC (Ready Mix Concrete) for Delhi-Meerut Expressway, after getting the order from M/s RK Infratech. It is further submitted that the answering respondent made extra efforts to save the life of the deceased employee but went vain. The answering company also paid each and every bill raised by the hospital in the course of treatment and almost 4 Lakhs was spent as medical expenditure. It is further submitted by the answering respondent that it is admitted fact that the deceased husband of the claimant was employed with respondent no 1 on



01/11/2016 and was posted as a site-in-charge (Mechanical) at Delhi Meerut Expressway work site on 30/01/2017. It is further submitted by the answering respondent that the fatal incidence occurred on 05/03/2018 wherein the deceased employee Sh. Vikram was not assigned any work on the site and further submitted that it is pertinent to note that the deceased was off duty, as he worked on previous night from 10PM to 6AM. It is further submitted that although the deceased was present at the site, he was not doing any official duty, rather before going for his personal work and leaving the site, he started washing his own motor cycle with the help of a water pump and was running DG set and during the same course of action the deceased got electrocuted. The answering respondent further submitted that the respondent also offered an amount of Rs. 2 Lakhs to the claimant and a job offer to four (4) family members of deceased family on humanitarian grounds. The respondent in the last prayed that application in question is liable to be dismissed.

Further it is pertinent to mention that during the course of proceedings respondent no 4 moved an application requesting for the deletion of their name from the array of parties and after hearing detail submission adduced by the counsel of claimant the respondent no 4 was deleted from the array of parties and was discharged from the matter.

5. On 17/05/2019 following issues were framed for adjudication:
 1. Whether at the time of accident leading to death of Vikram Pratap Rai occurred during the time when he was on duty?
 2. Whether the deceased was performing extended duty at the time of accident?
 3. Whether the deceased was engaged in personal work at the time of accident?
 4. Whether the claimants are entitled to death compensation from the respondent/management M/s Shivalik Buildtech Pvt. Ltd.?
 5. Whether claimants are entitled for medical expenses and interest and penalty on the principal compensation amount?
6. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex. CW/1A (wife of deceased Vikram Pratap Rai). The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. CW1/1 to CW1/16 i.e. Copy of salary certificate, copy of Mark Sheer of deceased, copy of 10th certificate, copy of provisional national trade certificate, copy of Delhi school sports and activities board, copy of National Trade certificate, Copy of MLC certified, Copy of Post-mortem, copy of certified of charge sheet, copy of demand notice, Postal receipt in original, A/D card, Copy of officer letter notice by respondent in original, Identity proof of all the



claimants, Copy of death certificate. Her statement was also recorded on 29/08/2019 and was also cross examined by counsel of respondent No. 1, 2 & 3 on 26/09/2019.

Further claimant examined another witness Sh. Rajbir Singh (an eye-witness) by way of affidavit Ex. CW2/1A and further tendered his evidence on 02/03/2020 and was also cross examined by counsel of respondent No. 1, 2 & 3 on 02/03/2020.

7. Further for respondents Sh. Adesh Kumar Jain (AR of respondent no 1) filed his evidence by way of affidavit vide Ex. DW1. The contents of affidavit are corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 15/06/2022.
8. The matter was fixed for arguments. Written Argument was filed by the claimant and oral submission was also heard in detail on 12/12/2022. On 12/12/2022 matter was heard and kept for the order respondent was not present to file the written argument on record but he moved an application dated 12/12/2022 with the request to grant opportunity to lead the arguments in the matter and accordingly application was heard on 12/01/2023 and opportunity was granted to the respondent to file written submission, if any on 16/01/2023 by 01:00PM in the interest of principle of natural justice, but respondent neither appeared nor filed any sort of written submission on record on 16/01/2023 as such again matter was reserved for order, but respondent through his application dated 16/01/2023 enclosing written arguments deposited in DAK receipt branch in labour department on 17/01/2023. Though the conduct of the counsel for respondent is not appreciable but in the interest of justice I have taken written submission of respondent on record, since final order have not been passed in the matter.
9. 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

The case of claimant is this that her deceased husband was employed with the respondent as mechanic / technician and was getting a salary of Rs. 26,000/- per month besides other service benefits since November, 2016 till his death / accident. Her deceased husband Vikram Pratap Rai on 05/03/2018 at between 02:00 PM to 03:00 PM, got electrocution injury at the site of management during the course of his employment and was taken by the management to the Yashoda Super Speciality Hospital at Ghaziabad and during his treatment he expired on 14/03/2018. An MLC No. 58/18 was prepared by Yashoda Super Specialty Hospital, Ghaziabad, UP and Post-mortem report was conducted by Lal Bahadur



Shastri Hospital, Delhi on 14/03/2018. It is further submitted by the claimants that in this regard an FIR No 77/2018 u/s 336/337 IPC, P.S. Gazipur, Delhi was registered on 05/03/2018. Respondents did not pay compensation to the claimants under the Employee's Compensation Act. In reply respondent admitted employee employer relationship to the extent that deceased was his employee, fatal incident occurred on 05/03/2018 but he was not on duty since he was not assigned with any work on that day as deceased worked on previous night i.e. 04/03/2018 from 10PM to 6:00AM, though the deceased was present at the site he was not doing any official duty and deceased, before going for his personal work and leaving the site was washing his own motor cycle with the help of water pump and was running DG set and during the same course of action, the deceased got current and became unconscious and during the treatment he expired. As such accident resulting in death of the deceased was not out of and in the course of his employment and there was no connection between work and accident of the deceased. As such respondent are not liable to pay any compensation to the claimant.

To prove her case claimant examined herself by way of Ex. CW/1A and other co-worker Rajbir Singh CW2/1A. CW2/1A did not clearly depose that on the day of incident deceased was on his duty on the worksite. CW2/1A has only stated that he was working in the respondent company and on the day of incident he was on duty at the site at that time deceased reached there. It came out in his cross examination. But it has been not proved by the statement of the CW2/1A that deceased was met with an accident out of and in the course of his employment. Claimant did not produce any cogent documents or any co-workers evidence who prove that deceased was on his duty when he met with an accident. As such statement/evidence of CW2/1A is not reliable. Onus lies upon the claimant to prove her case when denial comes from the opposite party regarding incident, which it has been not proved in this case.

As such claimant failed to prove her case on merit. Accordingly claimant is not entitled for any relief and all the issues are decided accordingly.

Issue No. 4 & 5

10. In view of discussion as made in para no. 9 above the claimant is not entitled for any relief.
11. Given under my hand and seal of this Authority on this 24th day of February, 2023.

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

