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COMMISSIONER UNDER EMPLOYEE'S COMPENSATION ACT, 1923  
(DISTT. SOUTH-EAST)  
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI  
LABOUR WELFARE CENTER, BAL MUKUND KHAND  
GIRI NAGAR, KALKAJI NEW DELHI-110019

No. CEC/SED/D/15/2023 | 2860 - 66

Dated 28/5/25

In the matter of:

Smt. Najma W/o Late Sh. Akhtar Ali (Deceased)  
R/o A-53, Brij Vihar, Prem Nagar-3  
Kirari Suleman Nagar, New Delhi - 110086

Master Koshai S/o Late Sh. Akhtar Ali (Deceased)  
R/o A-53, Brij Vihar, Prem Nagar-3  
Kirari Suleman Nagar, New Delhi - 110086

Baby Mariyam D/o Late Sh. Akhtar Ali (Deceased)  
R/o A-53, Brij Vihar, Prem Nagar-3  
Kirari Suleman Nagar, New Delhi - 110086

Ahmad Ali S/o Babulla  
R/o Gram Shambhupur Post Bhai Sachaubey  
Gaur RS Basti, U.P.-272163

.....Claimant

Adv. Bhagwan Jha  
Chamber No. 302, Lawyers Block Chambers  
Saket District Court Complex  
New Delhi - 110017

.....Claimant's Counsel

V/s

Sh. Saurabh Nair  
R/o No. B-347, New Friends Colony  
New Delhi

.....Respondent No. 1

Sh. Bhola Prajapathi S/o Sh. Lal Chand  
R/o D-376, Agr Nagar  
Prem Nagar-3, Nithari  
Sultanpuri, C-Block,  
New Delhi-110086

.....Respondent No. 2

**ORDER**

1. This order shall dispose of a claim filed by Smt. Najma W/o deceased & Ors. claiming death compensation in respect of her husband Late Sh. Aktar Ali under the provisions of





Employee's Compensation Act, 1923 before the CEC, South East against the two respondents namely Sh. Saurabh Nayyar & Sh. Bhola Prajapati.

2. In the claim petition, she has mentioned that the deceased was a professional skilled worker (Painter) doing work in building/houses for longer time at Delhi/NCR. In the month of Nov., 2021, the deceased was working as a deceased worker in the house of Sh. Saurabh Nair at New Friends Colony, New Delhi. The contractor namely Sh. Bhola Prajapati and Sh. Vijay along with 20 workers were working in the house for complete modification of the building. All the workers were working at the direction and guidelines of the owner of the house namely Sh. Saurabh Nair. On 11.11.2021, at 01:00 PM, the deceased workman Aktar Ali fall down from the roof of the 3<sup>rd</sup> Floor of the servant quarter. After falling, the deceased sustained the major injuries. He was taken to the nearest Holy Family Hospital by the co-workers who was declared brought dead. The body was sent for postmortem at Department of Forensic Medicine and Toxicology. The incident was reported in the PS New Friends Colony vide FIR No. 372/2021 u/s 288/304A/34 of the IPC. The claimant alleged that the accident caused due to the negligence of Sh. Saurabh Nair and the Chief Contractor Sh. Bhola Prajapati because the deceased and other workers were not provided protective measures by Sh. Saurabh Nair & Sh. Bhola Prajapati. The deceased is survived by widow and children. The deceased was only earning member in the family and deceased has no other income for livelihood and education. The owner of the house as well as the chief contractor are pressuring the complainant to compromise the matter but the claimant refused to settle the matter outside the court. Sh. Bhola Prajapati has taken signature of the claimant on the blank papers with the intention to create false settlement agreement. In the end, the claimant to release the death compensation of Rs.50,00,000/- and pass suitable order in this regard. Along with the claim, affidavit of Smt. Najma, postmortem report, FIR report, aadhar card and vakalatnama of the counsel has been filed.
3. The matter was listed for hearing on 30.05.2023, 04.07.2023, 01.08.2023, 05.09.2023, 05.10.2023, 22.11.2023, 14.12.2023, 25.01.2024, 05.03.2024, 18.04.2024, 30.04.2024, 08.07.2024, 01.08.2024, 04.09.2024, 07.10.2024, 16.10.2024 and 18.11.2024. On the last date of hearing i.e. 18.11.2024, proceedings were concluded for passing suitable order on 20.12.2024. However, due to complexity of the case, administrative reasons, Delhi elections and other preoccupation and pendencies of disposals, order could not be announced on 20.12.2024, 13.01.2025, 30.01.2025, 06.02.2025, 25.02.2025.
4. During aforesaid dates, the representative from R-1 & R-2 appeared, received copy of claim and filed their WS's. The amended memo of party was also filed and Ahmad Ali father of the deceased was also made party from the claimant side. The rejoinder was also filed.
5. In the WS, the R-1 stated that the present claim is not maintainable, because the matter has been amicably settled vide agreement dated 01.12.2021. The claimant Smt. Najma has entered into settlement on behalf of all the claimant. The said agreement was entered by the claimant amicably without any pressure in front of his brother Mohd. Ali to end all disputes related to death of Aktar Ali. The R-1 stated that the claimant filed claim before CEC with unclean hands and has not disclosed about the settlement terms & conditions. According to clause 1 & 2 of the settlement, Smt. Najma received Rs.3,00,000/- vide DD No. 000374 dated 29.11.2021 from Bank of India, Asaf Ali Road as







full & final settlement in her bank account maintained at Central Bank, Kirari Suleman Nagar, Delhi-110086. The claimant has concealed the fact before the CEC in order to harass the respondent to pay her more money. Further, the R-1 is not the employer of the deceased and Aktar Ali is not his employee. In the para-wise reply on merit, all the contents of petition from Para No. 1 to 16 has been denied as false and incorrect. The WS is supported by affidavit of Sh. Saurabh Nayyar, settlement agreement dated 01.12.2021 according to which Rs.3,00,000/- has been paid to Smt. Najma as full & final settlement regarding FIR and all other disputes between the parties. The settlement is filed both in English & Hindi version.

6. In the WS filed by the R-2, it is stated that the claim is not maintainable and liable to be rejected. The deceased was engaged only two hours before his death. The deceased has completed his job, came down at the ground floor after completing his job. Without the permission of the respondent, he went again at his workplace and was talking on his mobile phone, suddenly skipped and fell down and lost his life. The deceased died due to his own carelessness and negligence. If he has not gone to the site where he had worked without the permission, the death could not have happened. When they came for financial help, the respondent agreed to payment of Rs.5.25 Lakhs to Smt. Najma and executed an agreement saying that she will receive Rs.2,25,000/- and she will not file claim against respondent. Smt. Najma has already been paid a sum of Rs.75,000/- and she will get the sum of Rs.1,50,000/- on quashing of FIR. The said agreement is signed between Najma and Bhola Prajapati. After entering into settlement, the claimant is debarred from raising any claim/dispute. Smt. Najma has already been paid Rs.3,00,000/- by the owner Sh. Saurabh Nair. Both the respondent has agreed to pay her total of Rs.5,25,000/- on humanitarian ground. The claim is not maintainable because she approached CEC Court without clean hands and not stated the true facts about the settlement with the CEC. In the para-wise reply on merit, all the contents of claim mentioned from para no. 1 to 17 has been denied by the R-2 as false and incorrect. Lastly, the R-2 prayed to dismiss the claim.
7. In the rejoinder filed by claimant of R-1, it is stated that the contents of the WS is denied, she has not entered in any agreement with contractor Sh. Bhola Prajapati to quash the FIR, also denied that she received Rs.75,000/- from contractor Sh. Bhola Prajapati.
8. In the rejoinder filed by claimant of R-2, it is stated that the respondent Sh. Saurabh Nayyar has raised objection that the matter already settled with the claimant. They stated that the party cannot settled the case out of Court under threat coercion and undue influence.
9. During the course of proceedings, an agreement executed on 01.12.2021 between Sh. Bhola Prajapati and Smt. Najma both English & Hindi version has been filed. According to this agreement, Sh. Bhola Prajapati agreed to pay Rs.2,25,000/- as full & final settlement of FIR and all other disputes between the parties. Out of this, only part amount of Rs.75,000/- was released as DD No. 396627 dated 01.12.2021 from PNB, Nangloi, Delhi in favour of Najma in her bank account of Canara Bank, Kirari Suleman Nagar, Delhi. The balance amount of Rs.1.50 Lakhs shall be paid at the time of quashing of FIR.





10. When the matter was fixed for arguments, the main counsel of claimant Sh. Bhagwan Jha was asked to appear on multiple occasions but he never appeared on many dates. The claimant side argued that amount that has been received is not the part of settlement in agreement. The signature of the claimant has been obtained on settlement agreement by unfair means. The respondent counsel has filed three Hon'ble Supreme Court judgments to support his contention.
11. It is undeniable fact that the accident leading to death of Aktar Ali took place at the premises of R-1 i.e. Saurabh Nayyar and under the employment ship of R-2 i.e. Sh. Bhola Prajapati. The respondent has failed to prove that the accident has occurred due to negligence of the claimant himself. The fact that the death occurred during and in course of employment make respondents liable for payment of death compensation. As per the agreement executed between Saurabh Nayyar & Sh. Bhola Prajapati during the reconstruction/renovation of his house, it is clearly mentioned that the safety security of the workman shall be responsibility of the contractor and any accident that occurs the landlord shall not be responsible for the same. The contractor shall take ESI/Insurance in respect of the workers. According to this agreement, Sh. Saurabh Nayyar i.e. R-1 is given clean chit from the liability of the death compensation as he was not the employer. Further, the contractor has failed to take ESI or accidental policy due to which the death compensation amount could not be covered by such agency. The contractor being the main employer is liable to pay the death compensation, funeral expenses, interest & penalty, if applicable.
12. The agreement i.e. executed between R-1 & claimant and R-2 & claimant cannot be considered as full & final settlement amount because this amount is too low as compared to the entitlement under the Act. Therefore, the settlement amount agreed cannot be registered under the provisions of the EC Act, 1923 as the same pertains to the death case. Moreover, the settlement has not taken place before the CEC nor CEC is bound to accept this amount as full & final. Therefore, the CEC consider releasing balance amount in favour of the claimant.
13. As per the Act, the death compensation in this case is calculated on the basis of age, relevant factor and wage limit of the deceased employee in respect of accident/death occurred on 11.11.2021. In this case, no salary records of deceased employee Late Aktar Ali is available in case file, the same is restricted to Rs.15,000/- as per the maximum prevailing wage limit notified by the Government under the Act as per latest notification No. 71 (E) dated 03.01.2020 the monthly wages for the purpose of sub section 1 of section 4 have been notified as Rs. 15,000/- with effect from the date of publication of this notification in official gazette. The age and age factor of the claimant is considered as 35 years and 197.06 as per Schedule IV of the Act. The age is taken as 35 years on the basis of postmortem report.

Calculation of Principal Amount in respect of deceased employee Late Sh. Aktar Ali:

As per Section 4(1)(a) of the Act in this case death of an employee, claim amount is calculated as under:

$$\begin{aligned} & 50\% \text{ of monthly wages} \times \text{age factor} \\ & = 50/100 \times 15000 \times 197.06 = \text{Rs.}14,77,950/- \end{aligned}$$







Calculation of Funeral Expenses:

Apart from above, the building owner and/or contractor are also held liable jointly and severally to pay the funeral expenses of Rs.5,000/- (Rupees Five Thousand Only) as mentioned in the Act.

Calculation of Penalty Amount:

Since no show cause notice u/s 4A has been issued to the respondents, the penalty cannot be imposed at this stage. Moreover, there is no prayer on the part of respondents to release interest & penalty amount.

14. As per the record the claimant has already received the part payment of Rs.3,00,000/- from R-1 and Rs.75,000/- from R-2 total amounting to Rs.3,75,000/-. Therefore, the claimant is entitled for balance amount as calculated below:

For calculating balance amount of compensation payable, the formula used is as under:

The balance amount = (the actual death compensation amount and funeral expenses) - (any amount received by the deceased family)

$$\text{Rs.11,07,950} = \text{Rs.14,82,950} - \text{Rs.3,75,000}$$

15. In view of above, the R-2 i.e. contractor Sh. Bhola Prajapati is liable to pay balance amount of the death compensation amount, funeral expenses which comes to Rs.11,07,950/- (Rupees Eleven Lakhs Seven Thousand Nine Hundred Fifty Only). The said amount is required to be deposited in the name of Commissioner Employees Compensation, South East within 30 days of passing of this order by way of demand draft. This Court is unaware about whether the R-2 has paid the balance amount of Rs.1,50,000/- to Smt. Najma in the recent past. If this has happened, the R-2 can deduct Rs.1,50,000/- from Rs.11,07,950/- and pay rest of the amount.
16. It is pertinent to mention that failure to pay the aforesaid amount by the employer within 30 days of passing of this order, shall attract the recovery proceedings against him as per the provisions of the EC Act. Failure to deposit this amount within 30 days from today will attract interest @12% w.e.f. 18.11.2024 (i.e. from the date of concluding the proceedings) till the date of actual realization.
17. The claimant is given liberty to file separate application claiming interest and penalty as per section 4A against the contractor.

Given under my hand and seal of this 28<sup>th</sup> day of May, 2025.

(U.K. SINHA)  
COMMISSIONER UNDER  
EMPLOYEE'S COMPENSATION

