

**BEFORE SH. S. C. YADAV, COMMISSIONER
(UNDER EMPLOYEE'S COMPENSATION ACT, 1923)
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI
5 – SHAM NATH MARG, DELHI-110054**

No. CEC/D/55/ND/2022/ 163.

Dated: 25/11/2024.

IN THE MATTER OF :

1. Smt. Bhagwaan Devi W/o Late Sh. Dayanand Singh
2. Ms. Chameli Kumari D/o Late Sh. Dayanand Singh
3. Sh. Harish S/o Late Sh. Dayanand Singh
4. Sh. Parveen S/o Late Sh. Dayanand Singh
5. Ms. Nisha D/o Late Sh. Dayanand Singh

Resident of :

H. No. 97, Mukundpur Village,
Mukundpur, Samaipur, North West Delhi,
Delhi-110042

.....Applicants/Claimants

Versus

1. Sh. Nagender
Proprietor of M/s Baba Construction
Contractor of Larson & Turbo
Office At: Admin Block L & T Construction
318 MLD WWTP Coronation Project,
Burari, Delhi-110084

ALSO AT:

C-223, SLF, Ved Vihar,
Loni, Ghaziabad, Uttar Pradesh

2. M/s Larson & Turbo Co. Ltd.
32, Shivaji Marg,
Block-C, Moti Nagar, New Delhi-110015
3. The Chief Executive Officer, Delhi Jal Board,
Varunalaya Complex, Delhi Jal Board, Staff Colony,
Jhandewalan Extension, Jhandewalan,
New Delhi -110005

..... Respondents



ORDER

1. Vide this order, I shall dispose of the application dated 18.03.2019 of the Applicants/Claimants seeking death compensation under the provision of the Employee's Compensation Act, 1923.
2. In the claim petition, it has been stated by the applicant/claimant that the deceased Late Sh. Dayanand Singh S/o Late Sh. Karam Chand, husband of claimant no. 1 was working with Sh. Nagender, Proprietor of Baba Construction - Respondent No. 1, who is the contractor of Larson & Turbo Company Limited and Larson & Turbo Company Limited is the contractor of Delhi Jal Board, the office of Larson & Turbo Limited is 32, Shivaji Marg, Block C, Moti Nagar, New Delhi - 110015. The husband of claimant no. 1 was working with M/s Baba Construction and was performing his duty from 9:00 AM to 7:00 PM as a Labourer. On 13.12.2018 as usual he left for work at the site of Delhi Jal Board, he usually returned back at home at about 7:00 PM but on 13.12.2018 he (the husband of claimant no. 1) did not return back at home till late night. She (claimant no. 1) went to the house of the colleague of her deceased husband Sh. Balwan to know the where about of her husband. At about 7:00 PM Sh. Balwan came to the house of claimant no. 1, where some neighbors were also present at her house . Sh. Balwan told the claimant that the husband of claimant no. 1 has fell down after feeling giddiness due to heavy weight of the saria (TMT Bar). At the time of lifting saria at the site of Delhi Jal Board and the saria fell on his back and Sh. Dayanand Singh (deceased) husband of the claimant no. 1 became unconscious and at the time his co-staff took him to Vinayak Hospital, Derawal Nagar, Delhi where after checking doctor declared him dead. Thereafter the proprietor of M/s Baba Construction again took the dead body to B.J.R.M Hospital, Jahangir Puri, Delhi. The doctor of above said Hospital declared him dead. When she reached at B.J.R.M Hospital along with Sh. Balwan, then the proprietor of M/s Baba Construction told her that her husband has expired due to accident while working them, she asked the owner, why she was not told about the same till that time. Then the proprietor of M/s Baba Construction told it was an accident which has happened and threatened her that you need not to lodge any complaint etc. in any Police Station. He further told that he was not ready to talk to her about the said incident. When she tried to talk to the owner/proprietor regarding this by going at the site but the owner/proprietor did not meet her. The deceased workman Sh. Dayanand Singh has left behind him the claimant no. 1 (his wife), claimant no. 2 (daughter), claimant no.3 (son), claimant no. 4 (son) and claimant no. 5 (daughter). After the death of the workman Sh. Dayanand Singh there is no earning hand in the family of the deceased and they are on the verge of starvation. The Management of M/s Baba Construction, Larson & Turbo Limited and Delhi Jal Board made the workers to left the weight more than their capacity and the husband of the claimant no. 1. Due to lifting heavy saria the husband of the claimant no. 1 Late Sh. Dayanand Singh and the heavy saria fall on his head due to which husband of the claimant no. 1 died at the site of Delhi Jal Board. On the above



said incident husband of claimant no. 1 died at Vinayak Hospital as to why the husband of the claimant no. 1 was taken to B.J.R.M. Hospital the claimant has an apprehension of some conspiracy behind this and not showing the deceased workman to any family members/claimants and no documents of attendance, provident fund etc. were not given by the proprietor of M/s Baba Construction in connivance of Police Officials. The claimant no. 1 Bhagwan Devi has written a complaint to the SHO Police Station Jahangir Puri for registration of FIR against the Respondents. As per D.D. No. 064A the husband of the claimant no. 1 was found unconscious near Choudhary Petrol Pump to Co-worker Sh. Neeraj seems a big conspiracy of the Management. The CCTV footage of the Chaudhary Petrol Pump was also not taken this is also a subject matter of investigation. All these things seem to be a conspiracy between the owner of M/s Baba Construction, proprietor Nagender and Police Officials. In the D.D. No. 064A it has been clearly mentioned that information has been received from B.J.R.M. Hospital that Late Sh. Dayanand Singh S/o Karam Chand age 34 years, R/o H. No. 97, Mukundpur Village, Samai Pur, Delhi was got admitted in B.J.R.M. Hospital through MLC No. 1652091/18 from Chaudhary Petrol Pump by his Co-worker. It submitted by the claimants that the deceased workman was about 34 years old and was drawing the salary of Rs. 13,000/- per month and as per the Workmen Compensation Act 1923 the claimants are entitled for the compensation in the sum of Rs. 20,00,000/- from the proprietor of M/s Baba Construction namely Nagender, M/s Larson & Turbo Company and Delhi Jal Board.

3. The summons were sent to the respondent with the direction to appear and to file written statements/documents, if any in their defense.
4. Respondent No. 1 appeared and filed his written statement stating therein that the claim application of the applicants is not maintainable as there is no employee employer relationship between the deceased and respondent No. 1. It was further stated that the deceased was not in the ambit of the definition of workman as per workmen's compensation Act. There is no document to show that the deceased was their employee. It was further stated that as per agreement and contract executed therein the liability must fell on M/s Larsen and Tubro, hence the application is not maintainable qua respondent No. 1. It was further stated that this is not an accident and the deceased had expired due to heart attack as it is a natural death i.e. heart blocked with the opinion that "Death is due to Acute Coronary Insufficiency - A natural cause of death " as per P.M.R. and that's why it cannot be an accident. As per P.M.R. no injury has been shown hence there is no question of accident. It has been prayed that the claim application be dismissed. Claimant filed rejoinder and denied all the contents of reply of Respondent No. 1 and reaffirm her claim.
5. Respondent No. 2 appeared and filed his written statement stating therein that there is no employee employer relationship between respondent no. 2 and the deceased and he was in fact an employee of respondent no. 1. There is no documentary evidence to show that the accident has been caused out of and during the course of employment.



As per P.M.R. clearly mentioned that there is no antemortem or post mortem external or internal injuries present on the body of the deceased, therefore, this is a case of natural death. In that view, the claim application be dismissed.

6. Respondent No. 3 appeared and filed his written statement stating therein there is no employee employer relationship between the deceased and respondent no. 3. He was an employee of the contractor and for that he must claim from the contractor who was actually his employer. No occurrence of accident and injury due to an accident has been proved. The claim application needs to be dismissed.
7. On 02.03.2022 on the basis of pleadings of the parties and documents available on record the following issues were framed for adjudication:
 - i) Whether employer employee relationship existed between the deceased Sh. Dayanand and Respondent No. 1?
 - ii) Whether the accident resulting into death of deceased is caused out of and during the course of employment? And if so, to what amount of death compensation the dependents of deceased are entitled to?
 - iii) Relief If any?
 - iv) Whether the respondents are liable for penalty and If so, to what extent and what amount?
8. The case was fixed for the evidence of the parties.
9. On behalf of the applicants/claimants, the claimant – Smt. Bhagwaan Devi, has filed her own evidence by way of affidavit exhibit CW1/A alongwith documents—copy of Attendance Card, copy of MLC Register of Babu Jagjivan Ram Memorial Hospital, Delhi, copy of Postmortem Report (PMR No. 995/18), copy of Aadhar Card of dependents, copy of complaint to SHO, PS Jahangirpuri, copy of dead body receipt, copy of cremation slip, copy of Death Certificate, copy of Information report issued by Delhi Police and copy of Aadhar Card of Nisha. The claimant was cross examined by the Ld. counsel for Respondents. The claimant has produced witnesses, namely Sh. Ravi, Exhibit CW-2/A, Sh. Hukam Chand, Exhibit AW3/A and they were also cross examined by Ld. Counsel for Respondents.
10. Respondent No. 1 did not lead any evidence despite given many opportunities to them.



11. On 01.08.2024 during the proceedings Respondent No. 2 stated that he did not want to lead any evidence in the matter as such stage of evidence of Respondent No. 2 was closed.
12. Respondent No. 3 was proceeded as Ex-Parte. And they did not lead any evidence despite given opportunities.
13. The case was fixed for arguments and written arguments were filed and oral arguments were also heard.
14. On the pleadings of the parties, documents filed therein and the evidence adduced on their behalf, I have to give my findings in the case as under:

Issue No. 1 & 2

The case of the applicant/claimant is this that her deceased husband was employed on the work of Respondent No. 3 which was contracted to Respondent No. 2 and the Respondent No. 2 then sub-contracted it to Respondent No. 1. When the work was going on and the bundle of saria was being carried to the point of work. In between the other workers engaged in carrying the saria bundle lost grip and the entire log fell on my husband and that caused impact on his head, chest and back. He was taken to nearby hospital and then was advised to buttress his treatment by taking him to bigger hospital. He was taken to B.J.R.M Hospital and there he was declared dead. It has been stated that the death has been caused out of and during the course of employment. In evidence the applicant has come and filed her affidavit. Alongwith that she filed his M.L.C. and P.M.R. as also the copy of D.D. The applicant has filed a photocopy of Identity card of some other co-worker whereby she has tried to show that her husband was also issued similar identity card which has been misplaced. P.M.R report captions the injury at work place. In M.L.C. it has been mentioned -brought by contractor. In evidence a witness namely Ravi (Exhibit CW-2/A) co-worker of deceased Sh. Dayanand has filed his affidavit and he has deposed that the deceased was working with the respondent and he sustained injuries due to fall of saria on his body which caused internal injuries and due to that he expired. Similarly another witness Hukam Chand (Exhibit AW3/A) also came and corroborated the same version. The witnesses were cross examined by the counsel of the opposite parties.

The counsel for the applicant has argued that given the facts and case law on the basis of the judgments by the Hon'ble Supreme Court and Higher Courts his case is proved that the accident was caused out of and during the course of employment. He placed on record judgment wherein it is submitted that on the issue of CONTRACTOR the law has been declared by the Hon'ble High Court in the case titled as "Govind Goenka Vs. Dayawati & Ors." Cited at 2013 ACJ 1897, whereby the Hon'ble High Court has held the principles employer liable to pay the compensation.



The similar issue of contractor and principle employer was raised and decided in the case titled as "Brajesh Kumar Verma Vs. Aurangjeb & Anr." in FAO 345 of 2016, decided on 20.12.2017, whereby the Hon'ble High Court of Delhi has held as under:

45. The appellant is the owner of property bearing No. BU-48, Pitam Pura, Delhi on which he raised a four storeyed building through the contractor (respondent no.2). On 06th March, 2012, respondent No.1 was working as a labourer on the construction site of the aforesaid building when he fell down and suffered grievous injuries. The aforesaid accident arose out of and during the course of the employment of respondent No.1 with respondent No.2. Respondent no.1 is held to be an employee as defined in Section 2 (1) (dd) of the Employee's Compensation Act read with Clause (viii) (a) of Schedule II of the Employee's Compensation Act.

46. The definition of 'workman', as it originally existed in the Workmen's Compensation Act, 1923, excluded the workmen whose employment was of a casual nature and who were employed otherwise than for the purpose of employers —trade or business. Section 2 (1) (n) of the Workmen's Compensation Act, 1923 was amended by Workmen's Compensation (Amendment) Act, 2000 with effect from 8 th December, 2000 whereby the words "other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business" in the definition of 'workman' in Section 2(1) (n) were omitted. The effect of the omission of words "other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business" in the definition of workman in Section 2(1)(n) by the amendment in 2000 is that a person whose employment is of a casual nature and who is employed other than for the purposes of the employer's trade or business is covered within the meaning of —employee as defined in Section 2 (1) (dd) of the Employees Compensation Act. Applying the rules of 'purposive interpretation', 'superior purpose', and 'felt necessity', this Court is of the view that the words 'trade or business' in the definition of —employee in Section 2 (1) (dd) were omitted to grant all the benefits of the Act to casual employees and employees employed other than for the purposes of employer's trade or business. In Govind Goenka v. Dayawati (supra), this Court examined the effect of Workmen's Compensation (Amendment) Act, 2000 and held that, after the amendment, the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business, would also be covered within the definition of "workman". This Court agrees with the above interpretation.

47. In Payyannur Educational Society v. Narayani (supra), Public Works Department v. Commissioner, Workmen Compensation (supra), Bala Mallamma v. Registrar, Osmania University (supra), Govind Goenka v. Dayawati (supra), the Courts have interpreted the word „business' in Section 12 of the Employee's Compensation Act to include an activity which engages time, attention and labour. This Court agrees with the interpretation of the word 'business' in the aforesaid judgments. Applying the principles laid down in the aforesaid judgments, construction of a residential house by the appellant through the contractor (respondent no.2) would fall within the meaning of 'business' and, therefore, the appellant is liable to pay the



compensation to respondent no.1 under Section 12 of the Employee's Compensation Act.

48. All the ingredients of Section 12 are satisfied in the present case and the appellant, being the principal, is liable to pay the compensation to respondent no.1 with right to recover the same from the contractor (respondent no.2). This case is squarely covered by the principles laid down in the judgments discussed above.

49. There is no merit in the appellant's contention that the appellant cannot be held liable in view of written agreement with the contractor under which the contractor is liable. As held in *Koodalingam v. Superintending Engineer, Project Circle, Public Works Department Kozhikode (supra)*, Section 12 would apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. The agreement or contract between the principal and the contractor shall govern only their inter-se rights and liabilities, and cannot affect the right of the employee or the dependants of the employee, to get the compensation from the principal or from the contractor at their option. The appellant's contention is, therefore, rejected. 50. There is no merit in the defense of respondent no.2 that he had appointed Mohd. Rahil as sub-contractor who in turn had employed respondent no.1. Respondent no.2 filed an application under Order 1 Rule 10 of the Code of Civil Procedure for impleading Mohd. Rahil as a respondent which was rejected by the Commissioner vide order dated 02nd May, 2013. On the appreciation of evidence before the Commissioner, this Court holds respondent no.1 to be the employee of respondent no.2 and the defence of respondent no.2 before the Commissioner for shifting the liability to Mohd. Rahil is rejected. So far as the appellant is concerned, Section 12 imposes the liability on the principal where several tiers of contractors or petty contractors are employed as held in *Sardar Sewa Singh v. Hindustan Lever Ltd. (supra)*.

In addition to the above the Hon'ble Delhi High Court has dealt with various cases involving the similar issue in the cases titled as "Subhash Chaudhary Vs. Nirmala Devi & Ors." In FAO 228 of 2016, in this case as well the employee had died while working at the construction (house constructions work) of Respondent. The Respondent raised the plea of contractor but the said plea was declined by the Hon'ble Court and it was directed that the Principal Employer is liable to pay the compensation amount.

Therefore, given the above law the objection of the Respondent that the deceased employee was employed by the contractor needs to be rejected, being the settled law by the Hon'ble High Court.

It is submitted that the principles of Evidence Act are not applicable in the proceedings before the Commissioner and it is not incumbent on the part of the applicant to get his case proved beyond doubt. In this regard, I like to draw the attention of this Hon'ble Court towards a judgment of the Hon'ble Supreme Court of India in a case titled as *Maghar Singh vs. Jaswant Singh*, cited at 1997 ACJ 517, wherein it has been held :



"Workmen's Compensation Act, 1923, sections 3(1) and 2(1)(n) – Accident arising out of and in the course of employment – Workman – Claimant sustained injury which resulted in loss of both his hands just above the wrist resulting in permanent disability with 100 per cent functional loss while he was operating toka machine – Respondent contended that the claimant was not his employee – Claimant did not possess any letter of appointment or any documentary evidence for payments received by him for the work done – Evidence that the machine which the claimant was operating was that of respondent – Respondent had taken the claimant to the hospital after the injury and had signed the bed-head ticket – Whether the claimant was a workman under the respondent and the accident arose out of and in the course of employment – Held: yes."

He further relied on *State of Mysore vs S.S. Makapur* cited at 1993, 2SCR 943 whereby he has tried to show that the rule of evidence and strictly C.P.C. do not apply hereby before the quasi judicial authority. The relevant portion of the judgment is read as under :

"that tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can unlike courts, obtain all information material for the points under the enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity depend on the facts circumstances of each case but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

He has further placed reliance on the judgment by the Apex Court in a case titled as *Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ibrahim Mahmood Issak* cited at 1969 ACJ 422, whereby the sufficiency of evidence has been laid down under the Act. The relevant portion of the judgment is read as under:

"Workmen's Compensation Act, 1923, section 3 – Whether an accident arose out of and in the course of employment – Burden of proof rests upon the workman – Commissioner can draw inference from proved facts but he should not base his finding merely on surmise or conjectures."

"Para no. 6....."

In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessary prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inference. On the



one hand the Commissioner, must not surmise, conjecture or guess, on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead, L.C. in Lancaster v. Blackwell Colliery Co. Ltd., observed:

"if the facts which are proved give rise to conflicting inference or equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."

On the issue of burden of proof it has been relied on the judgment by the Apex Court in a case titled as Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ritta Farnands cited at 1969 ACJ 419, wherein it has been held that :

"..... Whether the death arose out of and in the course of employment – The test is whether there was any casual connections between the death and his employment – Employer must produce evidence within his special knowledge, otherwise adverse inference should be drawn."

Further on the the issue of burden of proof was discussed by the Hon'ble Supreme Court of India in the case titled as "Shahajahan. & Anr. Vs. Shri Ram Gen Insurance Co. Ltd. & Anr." cited at 2021 SCC Online SC 3133 in Civil Appeal No. 6775 of 2021 whereby the Hon'ble Apex Court has held as under –

"8. Apart from the said fact, we find that the owner has taken a plea that the deceased was not engaged as a Driver, but that remained only a plea, unsupported by any evidence on record. It is the owner who had the best evidence to depose whether the deceased was engaged by him or not. In the absence of the best evidence, the findings recorded by the Commissioner could not have been interfered with by the High Court.

9. Consequently, we find that the order of the High Court suffers from patent illegality. Therefore, the same is set aside and the order passed by the Commissioner on 16.11.2016 is restored. The amount of compensation along with interest be paid within two months."

Further on the sufficiency it has been relied on the judgment settled by the Apex Court in a case titled as *Tebha Bai & Ors. Vs. Raj Kumar Keshwani & Ors. Cited at (2018) 7 SCC 705*. Wherein the oral testimony of the claimant has been seen to be sufficient to prove the claim. The relevant portion of the judgment is read as under:



"12. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and award reasonable compensation to the appellants as indicated herein below.

13. We have perused the evidence adduced the parties. In our view, the sworn testimony of appellant No.1 wife of the deceased that her husband was in the employment of Late Mangu Ram Keshwani father of respondent Nos.13, that he was being paid a monthly salary of Rs.2000/ per month and that he died while driving the offending vehicle deserves to be accepted as in our opinion there is neither any contradiction in her examination in chief or in her cross examination. Her evidence is throughout consistent. We also find that the Policy (Ex.P1) issued by the Insurance Company (respondent No. 4) was in force at the time of accident.

14. Indeed, in our view, there is no reason as to why the appellants would file a case on false grounds. The appellants having lost their bread earner at the time when appellant Nos. 2 and 3 were minors and for compensation they had to run from pillar to post."

The nature of employment as could be seen by the definition of 'employer' could be seen in a different manner whereby it is not necessary that a person employed must be regular in the work. Reliance has been placed on the judgment of the Hon'ble Supreme Court of India in a case titled as Zila Sahakari Kendrya Bank Maryadit Vs. Shahjadi Begum & Ors., cited at 2006 ACJ 2845, wherein it has been held :

"Workmen's Compensation Act, 1923 – Section 2(e) – "Employer" – Defined – Broad definition – Includes those who were in control of workman temporarily lent or let on hire to them by person with whom workmen entered into contract of service, besides person who employs another either permanently or on temporary basis."

Respondent No. 2 M/s Larson and Turbo Co. Ltd. has also argued in the matter on the ground that claimant in the claim made a contradictory allegation that due to lifting of heavy saria by the husband of the claimant no. 1 died at the site of Delhi Jal Board. Further argued that without clear identification of the employer and the specific party from whom relief is sought, the claim cannot be adjudicated by this forum and is therefore liable to be rejected as the Respondent No. 2 denied employee employer relationship on the ground that deceased was employee of the Respondent No. 1. As such claim is also contravenes section 3(4) of the Act. Respondent relied upon the judgment of Hon'ble Apex Court in Jyoti ademmvs Plant Engineer, Nellore and Anr. AIR 2006 SC 2830 in this case Hon'ble Court held that under section 3 (1) of the Workmen's Compensation Act, it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a natural result of the deceased which he was suffering from the particular deceased he dies of that as a result of hear and tear, of the employment



no liability would be fixed upon the employer but if the employment is a contributory cause or has accelerated the death or if the death was due not only to the deceased but also the deceased coupled with the employment, then it can be said that the death arose out of the employment and employer would be liable.

I have consider all the pleadings of the parties and arguments adduced in the matter. As per the evidence lead by the claimant and 02 additional witnesses, one is co-worker Ravi, exhibit CW2/A and another Hukum Chand, worker of Delhi Jal Board, Respondent No. 3 exhibit AW3/A deposed in favor of claimant. From the pleadings it is proved that the deceased Sh. Dayanand was engaged by the Sub-Contractor, Respondent No. 1 hired by Respondent No. 2, Contractor Firm, doing work of Respondent No. 3, Delhi Jal Board. The case of claimant is that he had received injuries from fallen saria on his head while he was working on the day of accident which supported by co-worker Ravi, Exhibit CW2/A. Further on M.L.C. it is mentioned that contractor had taken deceased to the hospital for his treatment. From all this facts it is cleared that there is connection between deceased accident and work so I have no doubt to decide case in favor of claimant. Accordingly the judgment on which respondent no. 2 relied in argument is not applicable in this case.

From the above discussions, facts emerged by the pleadings and evidence, and the law relied upon by them, I hold that the deceased Sh. Dayanand had worked at the site of Respondent No. 3 engaged by Respondent No. 1, Sub-Contractor and Respondent No. 3 (main contractor) further respondents did not produce any evidence to prove their case. Accordingly it has been proved from the pleadings that accident has been caused out of and during the course of employment and the deceased sustained grievous injuries which rendered him unable to work and later on he expired. The said issue is decided in favor of the Claimants/applicants and against the respondents.

Issue No. 3 & 4

Next comes as to what amount of compensation and other relief the applicant is entitled to? In the claim petition the applicant/claimant has stated that the deceased employee was drawing wages at the rate of Rs. 13,000/- per month plus. But as per the Gazette Notification by the Central Govt. for that particular point of time the wage is notified Rs.8,000/- and therefore his wages is taken as Rs. 8,000/- per month. In the claim petition, she has further stated that the deceased employee was aged 34 years at the time his accident. In this regard aadhar card has been placed on record. The date of birth of the deceased in his Aadhar Card has been given 01.01.1975. Thus on the day of accident the deceased had completed 43 years of his age. Hence his age is taken 43 years.



In view the scheme in Section 4 of the Act, his age 43 years and wage Rs. 8,000/- per month the payable amount of compensation is calculated as under:

- i) Relevant factor of 43 years of age : 175.54
- ii) 50% of wages @ Rs. 8000/- pm : Rs. 4000/-
- iii) Amount of compensation : 175.54×4000 : Rs. 7,02,160/-

The applicants/claimants are also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident and Rs. 5,000/- per month towards funeral charges. As per provision laid down in the Act and invoking Section 12, Respondent No. 2 i.e. M/s Larson and Toubro is directed to deposit the ordered amount. Regarding issue on penalty no reply has been filed by the respondents as such Respondent No. 2 is also liable to pay 50 % penalty on awarded amount as per Section 4A(3)(b) of the Act.

Therefore, the applicants/claimants are entitled to receive death compensation from Respondent No. 2 . Accordingly the Respondent No. 2 is directed to deposit **Rs. 7,02,160/- (Rupees Seven Lakhs Two Thousand One Hundred Sixty Only)** on account of compensation payable to the applicants/claimants with interest @ 12% p.a. w.e.f. 12.01.2019 till its realization, and 50% penalty which comes to **Rs. 3,51,080/- (Rupees Three Lakhs Fifty One Thousand Eighty)** through pay order in favor of "**Commissioner Employees Compensation**" within a period of 30 days from pronouncement of the order in this court failing which the same shall be recovered as arrears of land revenue.

15. Given under my hand and seal of this Authority on this 25th day of November, 2024.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

