

**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. ECD/84/NW/2019/162.

Dated: 22/11/2024.

IN THE MATTER OF :

Smt. Chunur Devi W/o Sh. Parmanand
R/o. House No. A-303/9, Gali No. 3,
Inder Enclave 2, Kirari, North West Delhi,
Delhi-110086

.....Applicant/Claimant

Versus

Mohd. Rashid Khan @ Bablu
Basement Factory No. C-207,
Sector-5, Bawana Industrial Area,
Delhi-110039

..... Respondents

ORDER

1. Vide this order, I will dispose of claim application filed on 19.08.2019 before this Authority under section 10 of the Employees Compensation Act, 1923 for seeking death compensation.
2. In the claim petition claimant stated that her deceased husband Sh. Parmanand S/o Sh. Yogeshwar Kumar was working as a Supervisor with respondent on wages Rs. 20,000/- per month since one year. Claimant further stated that her deceased husband was working with full honesty and devotion and never gave any chance of complaint to the respondent during his service period. Claimant further stated that on the instructions of the respondent on 19.12.2018 the deceased was shifting the machinery parts from the First Floor to Basement by operating crane and suddenly during the shifting the crane got disbalanced, due to this the machinery part fell on the head of deceased due to this deceased sustained grievous injuries and thereafter he was taken to Dr. Baba Saheb Rao Ambedkar Hospital for treatment by the respondent, where the doctors declared him dead and an FIR No. 698/2018 under section 287/304A was registered with Police Station – Shahbad Dairy, Delhi. It is further stated that the



accident occurred due to the negligence of the respondent and crane operator as no safety precautions was taken during the shifting process. Claimant further stated that at the time of accident the deceased was 50 years old and the deceased was only bread earner in his family. It is further stated that the claimant sent a demand letter dated 12.07.2019 demanding accident compensation but the respondent despite knowledge of accident respondent neither gave any reply nor took any action of any kind. Claimant prayed that claimants are entitled to received Rs. 11,00,000/- as compensation alongwith 12 % interest and 50% penalty from the respondent. Claimant filed copy of demand notice alongwith postal receipt which was sent to the respondent, copy of FIR bearing no. 0698 dated 19.12.2018 registered with PS-Shahbad Dairy (Rohini), Delhi, copy of aadhar card of claimant Smt. Chunur Devi.

3. Summon was issued to the respondent with direction to file reply/defense in this case.
4. Respondent appeared and filed reply wherein it is stated that the claimant has not approached this Authority with clean hands and has suppressed the true and correct facts from this Authority and there was no relationship of employer and employee ever existed between the respondent and the husband of the claimant namely Sh. Parmanand, hence the claim of the claimant is liable to be dismissed with deterrent punishment. It is further stated that the claimant has filed the present claim only with the motive to extort money from the respondent at the behest of certain vested interest by misusing the liberty given under the law. Respondent further stated that all the employees working with the respondent are covered under the ESIC. It is further stated that since the deceased Sh. Parmanand was not under the employment of the respondent, therefore the question of involvement of the ESIC in the present case does not arise and prayed that the claim of claimant is liable to be dismissed.
5. No rejoinder was filed by the claimant.
6. On 19.7.2023 the following issues were framed for adjudication:-
 - i. Whether the employee employer relationship was existed between the respondent and deceased Late Sh. Parmanand?
 - ii. And If So, whether deceased Late Sh. Parmanand met with an accident resulting into his death out of and in the course of his employment?
 - iii. And If so, What relief & direction s necessary in this regard ?
7. Matter was fixed for the evidence of the parties.



8. Claimant examined herself by way of filing evidence by way of affidavit exhibit CW1/A. The contents of affidavit are corroborative to those claim petition. Claimant also filed documents exhibit PW1/1 to PW1/8 i.e. copy of Aadhaar Card of claimant and deceased, copy of FIR bearing no. 698/2018, copy of PAN card of her deceased husband, copy of PM Report, copy of death certificate, copy of demand notice dated 12.09.2019 and original post receipt. Her statement was also recorded on 16.11.2023 and was partly cross examined on 16.11.2023 and was completed on 31.07.2024 by counsel for respondent.
9. On 10.11.2024 during the proceedings the counsel for respondent had submitted that he did not want to lead any evidence and will relies upon pleadings. On 28.11.2024 oral submission of counsel for claimant was heard and counsel for respondent also argued in the line of written submission placed on record.
10. I have gone through the pleadings of the parties and documents available on record and accordingly I am giving my findings on the issues framed in the matter as under:

ISSUE NO. 1

The case of claimant is this that the husband of the claimant was working under the respondent since one year on last drawn wages Rs. 20,000/- per month as a supervisor. On 19.12.2018 during the course of his employment her deceased husband was working under the instruction of the respondent and was unloading machine parts from First Floor portion of the factory premises to Basement , the crane suddenly fell down over the head of husband of the claimant due to which husband of the claimant sustained grievous injuries and resulting thereby he fell down on earth and was taken to Dr. BR Ambedkar Hospital for treatment where he was declared brought dead. Complaint was lodged by claimant where upon an FIR bearing no. 698/2018 under section 287 / 304 A IPC was registered at Police Station – Shahbad Dairy, Delhi and post mortem was conducted. The allegation of the claimant is this that the said incident took place due to the negligence on the part of respondent as there was no sufficient safety measures available at the work place at the time of alleged incident. In claim, claimant sought directions against the respondent for payment of compensation.

The respondent denied claim of the claimant on the ground that there was no employer employee relationship was existed between husband of the claimant Sh. Parmanand and the respondent. The claimant has filed his claim against the respondent only with the motive to extort money from the respondent by misusing the liberty given under the Law. Further respondent has taken ground that all the



employees working with the respondent duly covered under the ESIC since the said Sh. Parmanand was not under the employment of the respondent therefore, the question of enrolling under ESIC in the present case does not arise. Further respondent has taken ground that no alleged incident occurred at the premises of the respondent on the alleged date i.e. 19.12.2018. In so far as an FIR bearing no. 698/2018 at P.S. – Shahbad Dairy, Delhi is concerned the same was registered by the Police in collusion with claimant under some vested interest. In view of this respondent denied his liability towards payment of compensation to the claimant under the Act.

To prove her case claimant examined herself Exhibit CW1/A. She was also cross examined thoroughly by the counsel for respondent. During the cross examination claimant expressed her unawareness about the name of the company at C-207, Sector-5, Bawana Industrial Area, Delhi but Voluntary said that she knows the name of the owner of the company is Bablu but no documents in this regards has been placed on record. The onus was lying upon the claimant to prove her case beyond doubt by way of filing cogent documents regarding employment of her deceased husband such as Appointment letter, wage slip, Identity Card etc. even claimant could have filed the bank details where salary of her husband was transferred or any other documents which established that her husband was working with respondent. But the claimant did not bring any such documents on record. Even claimant did not examine any co-workers or I.O. of the concerned Police Station to establish her case. It was onus upon claimant to prove her case beyond doubt when issue comes of denying employee employer relationship and the accident occurred in the premises of respondent but nothing was exhausted by the claimant. In absence of these evidence I am unable to decide this case in favor of claimant. As such claim of claimant is not maintainable as claimant failed to prove her case beyond doubts. As such issue no. 1 is decided against the claimant and in favor of the respondent.

In view of above Issue No. 2 and 3 are not required for any answer.

11. Given under my hand and seal of this Authority on this 22nd day of November, 2024.

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

