

**BEFORE 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. ECD/136/NW/2019/ 125.

Dated: 12/09/2024.

IN THE MATTER OF:

Smt. Hemlata

R/o C-9/60, Sultan Puri,
Delhi-110086

ALSO THROUGH:

Sharmik Ekta Manch (Regd.)

D-1/152, Nand Nagri, Delhi-110093

.....Applicant/Claimant

Versus

Sh. Charanjeet Singh

R/o. H. No. 3533B/2, Jain Nagar,
Karala, North West Delhi, Delhi-110081

ALSO AT:

1322, Gali No. 4, Jain Nagar, Begampur,
Delhi-110081

.....Respondent

ORDER

1. Vide this order, I will dispose of claim application dated 17.09.2019 filed on 17.09.2019 before this Authority under section 22 of the Employee's Compensation Act, 1923 for seeking injury compensation.
2. Claimant in the claim application submitted that on 28.10.2018 at 04:00PM the respondent Sh. Chanranjeet Singh S/o Sh. Tirkha Ram R/o H. No. 1322, Gali No. 4, Jain Nagar, Begumpur, Delhi-110081 from the divider road of Rohini Sector 20 and 21 took Sh. Prem @ Sachin (Deceased labour) along with other laborers for the work of shifting goods from Jain Nagar Gali No. 2 to Jain Nagar, Gali No. 4. It is further submitted by the claimant that her deceased husband Sh. Prem @ Sachin alongwith other labourers reached the house of the respondent i.e. Jain Nagar, Gali No. 2 and after reaching there they started loading the goods from the house in truck bearing No. DL-1Y-2288 and after that reached to the new house of the respondent at 1322, Gali No. 4, Jain Nagar, Begumpur, Delhi-110081. After reaching the new house of the respondent, the respondent directed the labourers to shift the goods on the 1st and 2nd floor of the house. It is further submitted by the claimant that there were electric wires on the front of the house of the respondent and regarding this her



deceased husband Sh. Prem @ Sachin alongwith other labours told the respondent that there are electric wires in front of his house and they can get electrocuted and the labours also asked the respondent to provide them some gloves. It is further submitted that on this issue the respondent replied to the labours that if they will not complete the work they will not get their payment. It is further submitted by the claimant that her deceased husband alongwith other labours started shifting the goods. One of the labour Sh. Bhoop Singh was pulling the load of goods with the help of a rope to the 2nd floor and the deceased labour Sh. Prem @ Sachin was standing on the balcony of 1st floor and was giving the support from there. When the labourers were pulling the iron trunk (sandook), it got stuck on the railing grill of the 1st floor, and it was then when the deceased Sh. Prem @ Sachin was trying to pull the iron trunk (sandook) by holding its latch (kundi) and the iron truck (sandook) got in contact with the electric wires and the deceased Sh. Prem @ Sachin fell in the balcony. It is further submitted that other labourers along with Sh. Rakesh the son of the respondent Sh. Chanranjeet Singh on his motorcycle took the deceased to the Cygnus Hospital, Rama Vihar, Delhi and the doctors declared the husband of the claimant dead. It is further submitted by the claimant that co-labour Sh. Deepak @ Vishal S/o Sh. Laxmi Narayan lodged an FIR No. 0573 dated 29.10.2018 under section 304A against the respondent. In the last petitioner prayed that since accident of deceased employee occurred out of and in the course of employment with respondent resulting in death hence respondent is liable to pay compensation amounting Rs. 25,00,000/- alongwith 18% interest and penalty to the extent of 50% to the petitioner/claimant being the legal heirs of the deceased employee.

3. This matter was decided vide order dated 29.08.2023 in favor of claimant and against the respondent. In the mean time respondent filed an application dated 28.11.2023 supported with the affidavit of Sh. Charanjeet Singh, respondent for recalling of order dated 29.08.2023 on the ground that the order/judgment dated 29.08.2023 suffers from inhereed lack of jurisdiction and warrants recalling/rectification on the ground that the claim of the claimant Smt. Hemlata and all proceedings emanating therefrom including a final order in question are patently without jurisdiction and untenable. It is further stated that to invoke provisions of Employee's Compensation Act, 1923 every claimant, in law, is not only required to specifically plead that the person for whom the claim is made false within the domain of employees as envisaged U/S 2(dd) of the EC Act, 1923, but is also to specify under which item/category of schedule II of the Act he /she falls. Relevant extracts of Section 2(dd) of the Act are reproduced as under:

- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or
- (ii)
 - (a) a master, seaman or other members of the crew of a ship,
 - (b) a captain or other member of the crew of an aircraft,
 - (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,



- (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or
- (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependents or any of them;

In view of Section 2(dd) of the Act respondent submitted that benefit (s) are applicable and available only qua the person employed in the capacity as enumerated under Schedule II of the EC Act, 1923. Schedule II of the Act contains a detailed list of persons who are included in the definition of employee under the Act. It is further stated that the case of claimant in the present case is that the deceased Sh. Prem @ Sachin was engaged for loading and unloading of house hold items of the respondent in the course of shifting of his house/residential accommodation from Jain Nagar, Gali No. 2 to House No. 1322, Gali No. 4, Jain Nagar, Begumpur, Delhi-110081. It is further stated that the said capacity/engagement of the said deceased do not fall in any of the items/capacities/employments specified under Schedule II of the Act. As such, claim of the claimant, beyond doubt, suffers from inherent lack of jurisdiction / without jurisdiction and all proceedings emanating therefrom including the final order dated 29.08.2023 are void ab- initio and nullity. In view of this claimant, in ordered to avail any benefit under the Act, was to clearly and unambiguously plead before this Authority as to under which category/capacity enumerated under Schedule II of the EC Act, 1923 the deceased falls and was further required to prove the same. But the said fundamental/foundational base is completely non-existing in the present case. Further respondent has taken ground that this Authority has not invited to rule 23-26 of the Workmen Compensation Rules, 1924 before summoning the respondent, to make inquiry about the said foundational aspect of the matter and only after due satisfaction thereof was to proceed with the claim of the claimant.

Further respondent stated therein that after due ascertainment and satisfaction of the Authority qua the said elementary facts of the present case was warranted before saddling any liability under the Act upon the applicant respondent. Legal maxim "ACTUT CURIAE NEMINEM GRAVAVIT", which means that an act of Court shall prejudice no one, squarely applies to the facts of the present case and therefore, warrants rectification of said error by this Authority by recalling its final order dated 29.08.2023. In this regard respondent relies upon the judgment of Hon'ble Supreme Court in the case titled as Jang Singh V/s Brij Lal reported as 1964 (2) SCR 145

"6... there is no higher principle for the guidance of the court then the one that no act of courts should harm a litigant and it is the bounden duty of courts to see that if a person is harmed by a mistake of the court he should be restored to the position



he would have occupied but for that mistake. This is aptly summed up in the maxim: 'actus curiae neminem gravabit'.

7... There was thus an error committed by the court which the court must undo and which cannot be undone by shifting the blame on Jang Singh. To dismiss the suit because Jang Singh was also partly negligent does not exonerate the court from its responsibility for the mistake.....

8... In our opinion the decision of the Ld. Single Judge of the High Court must be set-aside. The mistake committed by the court must be set right."

Further respondent relied upon the judgment of Hon'ble Supreme Court in case of Indian Bank v/s Satyam Fibers (India) Pvt. Ltd. (Manu – SC/0567/1996) held "**similarly where the court is misled by a party are the court itself commits a mistake which prejudice a party, the court has the inherent power to recalled its order**". It is further submitted that the earlier counsel of the respondent was not much conversant with the applicable statutory provisions and as per settled law, no party can be made to suffer due to folly of his counsel. In view of these submissions respondent prayed that the judgment dated 29.08.2023 be recalled and the issues/aspects submitted herein above be considered and answered.

4. On the basis of application moved by respondent summon was sent to the opposite parties to file reply in the matter. Petitioner present through his counsel and filed reply in response to application of respondent. Wherein it is submitted that respondent has not come to the Hon'ble Forum with clean hands and has suppressed the material facts and the application under reply has been filed on false and frivolous grounds as such the same is liable to be dismissed. Further claimant has taken ground that application is time bond as such the same is not maintainable and on this ground the application is to be reserved for dismissal. On this grounds rest of other contents of application is denied in to to.
5. Matter was fixed for the arguments / oral submissions for the parties. On 07.02.2024 Ld. Counsel for respondent argued on 07.02.2024 on his application that there was no employee employer relationship with the deceased and the respondent, since deceased employee was free lancer as such he cannot be termed as a employee. Further free lancer is not confined to one employer but he is free to work for many employers in a day and relied judgment of Hon'ble Supreme Court of India in Civil Appeal No. 687/1962 titled as Jang Singh Vs Brij Lal and Ors. and Appeal (Civil) 7421/2001 titled as Roshan Deen Vs Preeti Lal and another judgment of Hon'ble High Court of Punjab and Haryana at Chandigarh First Appeal Forum order No. 169 of 1965 titled as Malwa Suger Factory Dhuri Vs MST Bhawan Kaur and Ors., Hon'ble High Court of Delhi WP (C) 11631/2018 titled as Kaushal Kishore Singh Vs M/s Sita Kuoni World Travel India Ltd.

Further Ld. Counsel argued that free lancer do not falls within the domain of employee as envisaged under section 2 (dd) of the Act and Schedule II of the Act. It is further argued that the case of claimant in the present case is that the deceased Sh. Prem @ Sachin was engaged for loading and unloading of house hold items of the respondent in the course of shifting of his house/residential accommodation from Jain Nagar, Gali No. 2 to House No. 1322, Gali No. 4, Jain Nagar, Begumpur, Delhi-110081. The said



capacity/engagement of the said deceased do not fall in any of the items/capacities/employments specified under Schedule II of the Act. As such, the claim of claimant, suffers from inherent lack of jurisdiction/without jurisdiction and is void ab – initio/nullity. It is further argued that claimant herself stated in claim that deceased Prem @ Sachin was a free lancer (who as per the claim petition was picked from the divider road of Rohini, Section 20 – 21 for shifting the house hold items) and this fact alone makes the entire claim of the claimant without jurisdiction and non – est. As such the case of claimant squarely the deceased within the domain of free lancer and as such, neither there was any occasion/question for existence of relationship of employee and employer between the deceased and the respondent nor the respondent is liable to pay any compensation to the claimant under the Act. It is also argued that the deceased was not engaged in the course of or for the purpose of trade or business of the respondent. Moreover, the shifting of house hold items in course of shifting of residential accommodation of the respondent cannot be termed as execution of any work under a contractor which is ordinary part of the trade or business of the respondent as principal employer as such section 12 of the EC Act, 1923 does not apply in this case.

Despite given sufficient opportunities to the claimant to adduced argument in support of her claim and any judgment of any Courts to prove that free lancer is a employee as defined under section 2 (dd) of the EC Act, 1923 and it falls category under Schedule II of the Act but claimant did not plead any arguments nor placed any judgment of Hon'ble Apex Courts.

6. I have gone through the pleadings of the parties and documents available on records. Accordingly I am deciding first issue as was framed in the matter i.e. Whether employee employer relationship was existed between the deceased Sh. Prem @ Sachin and respondent. In this regard claimant did not file any documents regarding service of his employment with respondent only relied upon the documents which filed on record i.e. copy of Aadhaar card of claimant, Sanyam, Kusum, death certificate of deceased and copy of FIR in his support. Even no other documents has been placed on record to prove his case against the respondent. From the claim of the claimant it is admittedly established that deceased Prem @ Sachin was a free lancer (who was picked from the divider road of Rohini, Sector 20-21 for shifting of the household items of respondent). As such there was no employee employer relationship proved between the deceased and the respondent. For claiming compensation regarding injury or death occurred out of and in the course of employment with respondent is must condition and further who claims compensation must be proved employee only thereafter claim for compensation is maintainable against the employer. Section 2 (dd) of the Act define employee as under:

- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or
- (ii)
 - (a) a master, seaman or other members of the crew of a ship,
 - (b) a captain or other member of the crew of an aircraft,



- (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
- (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or
- (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependents or any of them;

And the employer has define under Section 3 of the Act is as under :

Employer's liability for compensation – (1) If personal injury is caused to [an employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable –

- (a) in respect of any injury which does not result in the total or partial disablement of the [employee] for a period exceeding [three] days;
- (b) in respect of any [injury, not resulting in death[or permanent total disablement] caused by] an accident which is directly attributable to –
 - (i) the [employee] having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the [employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of [employees], or
 - (iii) the wilful removal or disregard by the [employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of [employee],.

Further for claim to compensation under the Act engagement of the claimant to be come under in any of the items specified under Schedule II of the Act. Since deceased was the free lancer as per the claim so engagement of his do not fall in any of the items specified in Schedule II of the Act. Further Section 12 of the Act is also not applicable in this case as per Section 12 (1) of the Act. Section 12 (1) is as under :

Where any person (hereinafter in the section referred to as the principal) in the course of or for the purpose of his trade or business, contracts with any other persons (hereinafter in the section referred to as the contractor) for execution by or under the contractor of the whole or any part of any work which is ordinary part of the trade or business of the principal, the principal shall be liable to pay to any (employee) employed in the execution of the work any compensation which he would have been liable to pay if that employee



had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if reference to the principal were substituted for reference to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

7. In view of above provision of the Law, deceased Prem @ Sachin does not fall under the definition of employee as per section 2 (dd) of the Act being the free lancer and work in which deceased was engaged (for shifting the household items of the respondent) do not fall in any of the items specified in Schedule II of the Act. Further deceased employee Prem @ Sachin also does not fall under section 12 (1) of the Act in connection of any trade or business of the respondent.
8. Further as the respondent has relies upon judgment of Hon'ble High Court of Punjab and Haryana in case of Malwa Suger Factory, Dhuri versus Bhagwan Kaur and Ors (1971) 03 Punjab & Haryana CK 0027, judgment of Hon'ble Delhi High Court in WP © No. 11631/2018 titled as Kaushal Kishore Singh versus M/s Sita Kuoni World Travel India Ltd. and Hon'ble High Court of Punjab and Haryana judgment Ganesh Foundary Works versus Bhagwati and Ors (1985-1LLJ-95) are completely applicable in this case. Where in Hon'ble Courts held that free lancers does not fall under the definition of employee under section 2 (dd) of the Act.
9. Moreover, onus is upon the claimant to prove her case beyond doubts. Further claimant did not file any judgment of Apex Court to prove her case despite given sufficient opportunities and has relied only on the pleadings of the case. As such the claimant failed to establish employee employer relationship with deceased Prem @ Sachin and the respondent. In view of above discussion I hold that the claimant failed to prove his case as discussed above, hence First Issue i.e. Employee employer relationship is decided against the claimant. Rest issues framed in this case are not required for any answer further.
10. Given under my hand and seal of this Authority on this 12th day of September, 2024.

(S.C. Yadav)
Commissioner

Employee's Compensation Act, 1923

