

**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. EC(D)-69/SWD/16/139.

Dated: 09/10/2024.

**IN THE MATTER OF :**

1. **Smt. Indra W/o Sh. Narender Kumar (Mother of Deceased)**
2. **Sh. Narender Kumar S/o Sh. Budh Ram (Father of Deceased)**  
Permanent R/o. Quarter No. 20, Naulakha Sadar Bazar,  
Agra, Uttar Pradesh-

**Versus**

1. **M/s Gladiator H.R. Service Pvt. Ltd.**  
3111, Sector-A, Pocket-B&C, Vasant Kunj,  
New Delhi-

**ALSO AT:** D-803, Sector-66, Park Prime,  
Gurgaon, Haryana-

2. **M/s Omaxe Celibration Ltd.**  
Mall Subhash Chowk, Sohana Road,  
Sector-48, Gurgaon, Haryana-  
(As per order dated 24.09.2018, R-2 deleted from the array of parties as it is name of a mall)

3. **M/s Omaxe Limited**  
Real Estate Builder & Construction Company  
Omaxe House 7 LSC, Kalkaji Post Office,  
New Delhi-

4. **M/s Shanvi Estate Management Service Pvt. Ltd.**  
At:- Omax Square Basement, 1, Jasola,  
New Delhi-110025

**ORDER**

1. Vide this order, I will dispose of claim application dated 19.12.2016 filed on 22.12.2016 before this Authority under section 22 of Employees Compensation Act, 1923 for seeking death compensation.



2. In the claim petition it is stated by the petitioner (mother of deceased) that her deceased son namely Rohit Kumar was employed as a Security Guard with respondent no. 1. He was on duty with respondent no. 2 as Security Guard. On 18.09.2016 while deceased Rohit Kumar was on duty at the gate, he met with an accident at about 08:30 PM. The accident took place at Omaxe Calibration Mall, Subhash Chowk, Sohana Road, Sector-48, Gurgaon, Haryana which was owned by respondent no. 3. She further stated that her deceased son Rohit Kumar was died due to injuries sustained in the accident. She further stated that her deceased son was unmarried at the time of accident and deceased was aged about 21 years at the time of accident and his last drawn salary was Rs. 10,000/-per month. Claimant has further stated that a sum of Rs. 50,000/- (Fifty Thousand Only) was spent on his treatment and the deceased used to contribute his entire income to the petitioners for the maintenance and house hold expenses of the petitioner who was fully dependent upon deceased Rohit Kumar. Claimant further stated that an FIR bearing no. 1144/2016 dated 16.10.2016 under section 301-A IPC was lodged and post mortem of the deceased was conducted in Safdarjung Hospital, New Delhi-110029. It is further contended that despite having notice of accident the respondents did not pay any compensation to the petitioners.
3. Summons were issued to the respondents with direction to file reply/defense in this case.
4. In response to summon issued to Respondents Sh. Pavan Agrawal, AR for Respondent No. 2 & 3 has filed reply alongwith Board Resolution passed by the Board of Directors of the Respondent No. 3. He further stated that there is/was no entity by name of M/s Omaxe Celebration Ltd. which has been impleaded as Respondent No. 2 and requested to delete Respondent No. 2 from array of parties. It is further stated that there is "Omaxe Celebration Mall" which is the name of a Commercial Complex developed by the Respondent No. 3. It is further stated that Respondent No. 3 has outsourced the maintenance services of the aforesaid commercial complex namely "Omaxe Celebration Mall" including the security services to M/s Shanvi Estate Management Services Pvt. Ltd. which is a body corporate incorporated under the Indian Companies Act and the said company M/s Shanvi Estate Management Services Pvt. Ltd. is liable to provide all the required maintenance and security services in the said Mall and also submit the agreement executed between the Respondent No. 1 and M/s Shanvi Estate Management Services Pvt. Ltd. It is further stated by AR of Respondent No. 2 & 3 that as per the information received from Respondent No. 1, the deceased was an "Insured Person" under the ESIC Act, 1948 and being an Insured Person with ESIC, the ESIC or the Respondent No. 1 are liable to pay the compensation and on this ground respondents





prayed that since deceased was insured person with ESIC hence claim of petitioner is not maintainable under EC Act, 1923 and same is deserve for the dismissal.

5. Claimant filed rejoinder in response to reply filed by Respondent No. 2 & 3 wherein claimant denied all the contents of reply filed by Respondent No. 2 & 3 and reiterated contents of claim application.
6. Respondent No. 4 also filed reply wherein it is stated that there was no employee employer relationship between deceased employee Sh. Rohit Kumar and Respondent No. 4. Deceased employee Sh. Rohit Kumar was employed by Respondent No.1. Further Respondent submitted that since the deceased employee Sh. Rohit Kumar was insured person under ESIC Act, hence section 53 read with section 61 of ESIC Act, claim of petitioner is not maintainable under EC Act, 1923. Rest of other contents of claim application has been denied in toto. Respondent No. 4 further stated that without any cause he was impleaded as a Respondent No.4 in this case, on this ground Respondent No.4 prayed for dismissal of the claim.
7. Claimant also filed rejoinder in response to reply of Respondent No.4 and denied all the contents of the reply and reiterated contents of her claim.
8. On 27.11.2018 following issues were framed for adjudication:
  - i. Whether the deceased Rohit Kumar is employee of Respondent No. 1 (M/s Gladiator HR Services) on 18.09.2016 as immediate employer and whether Respondent No.2 (M/s Omaxe Ltd.) & 3 (M/s Shanvi Estate) are the principal employer, Respondent No.3 as the principal employer for Respondent No.1 and Respondent No.2 (M/s Omaxe Ltd) being the person owing the estate where the deceased was made to work... OPP
  - ii. Whether the deceased suffered death in the course of and out of his employment with Respondents on 18.09.2016. – OPP
  - iii. Whether the deceased was beneficiary of ESIC Scheme. – OPD
  - iv. Whether the claimant is entitled to compensation for the death of deceased Rohit Kumar and if so amount of compensation.- OPD
  - v. Whether Respondents are liable to pay penalty u/s 4(A)(3) of the Act for not paying the amount of compensation within 30 days from the date of accident. – OPD
  - vi. Any other relief if any?



9. On the basis of pleadings and documents available on record, I am giving my findings on the issues framed in this case as under:-

**Issue No. 1 & 2.**

The case of claimant is this that her deceased son Rohit Kumar was employed as a Security Guard with Respondent No. 1 and deployed at the premises of Respondent No.3 at M/s Omaxe Celebration Mall, Subhash Chowk, Sohana Road, Sector – 48, Gurgaon, Haryana (site of work). Claimant has further filed this case against the respondents that her son was on duty with respondent no. 2 as Security Guard. On 18.09.2016 while deceased Rohit Kumar was on duty at the gate, he met with an accident at about 08:30 PM due to fallen of gate. The accident took place at Omaxe Calibration Mall, Subhash Chowk, Sohana Road, Sector-48, Gurgaon, Haryana which was owned by respondent no. 3. She further stated that her deceased son Rohit Kumar was died due to injuries sustained in the accident. At the time of death of her son he was 21 years and was drawing wages Rs. 10,000/- per month from respondent No. 1.

Claimant examined herself Exhibit PW1/A and filed documents exhibit PW1/1 to PW1/7 i.e. Aadhaar card of claimant, Aadhaar card of Narender Kumar, Aadhaar Card of deceased Rohit Kumar, Identity Card of Deceased Rohit Kumar issued by Respondent No. 1 i.e. M/s Gladiator H.R. Service Pvt. Ltd., FIR bearing no. 1144/2016, Admission Slip of Safdarjung Hospital, Documents of Sports Injury Centre VMM College and Safdarjung Hospital, New Delhi-110029, Medical Bill (Colly 22 pages). The contents of affidavit are corroborative those claim petition. Her statement was also recorded on 14.07.2022 before this Authority. She was also cross examined by Counsel for Respondent No. 3 & 4.

Respondent No. 1 proceeded as Ex-Parte vide proceeding dated 12.11.2018 and further did not appear in the proceedings at any stage.

Respondent No. 3 i.e. M/s Omaxe Limited has denied employee employer relationship with respondent on the ground that respondent no. 3 has outsourced the maintenance service of the Commercial Complex namely Omaxe Celebration Mall including the security services to M/s Shanvi Estate Management Service Pvt. Ltd. i.e. Respondent No. 4 who was liable to provide all the required maintenance and security service at Omaxe Celebration Mall. An agreement for security services was executed between Respondent No. 1 and Respondent No. 4 on 15.09.2016 Exhibit R3,W-1/3. As per condition of agreement 1a Respondent no. 4 had contract with Respondent No. 1 to provide the said services to first parte i.e. Respondent No. 4 at Omaxe Celebration Mall, Gurgaon project for the period from 20.08.2016 to 31.07.2017 as such respondent no. 3 is not liable for any liability under the EC Act, 1923 as there was no employee employer relationship





with deceased employee and respondent no. 3. Further Respondent No. 3 has taken ground that deceased was insured person under ESIC Act, 1948 as such section 53 applicable here and thus claimant is not entitled for compensation under EC Act, 1923.

For Respondent No. 3 i.e. M/s Omaxe Limited Sh. Pavan Agrawal Exhibit R-3W1/1 has examined by way of filing affidavit. The contents of affidavit are corroborative those reply. He was also cross examined by the counsel for claimant. In cross examination Respondent No. 3 witness exhibit R3W1/1 admitted that deceased Rohit Kumar on duty at Omaxe Celebration Mall which was constructed by Respondent No. 3 and as per agreement clause no. 14, 15 & 16 respondent no. 3 is jointly liable with the other respondents.

On the other side Respondent No. 4 i.e. M/s Shanvi Estate Management Service Pvt. Ltd. has also denied employee employer relationship with deceased Rohit Kumar on the ground that deceased was employed by Respondent No. 1 and as per agreement dated 15.09.2016 Respondent No. 1 was engaged to provide maintenance and security work at the premises of owned by Respondent No. 3. Further Respondent No. 4 taken ground that deceased was insured person under ESIC Act, 1948. As such her claim is not maintainable under EC Act, 1923.

For respondent no. 4 i.e. M/s Shanvi Estate Management Services Pvt. Ltd. Sh. Vipin Singh, Authorized Representative for R-4 filed his statement by way of affidavit exhibit R4W1/A. The contents of affidavit are corroborative those reply. His statement was also recorded on 04.07.2023 before this Authority and was also cross examined by counsel for petitioner.

Claimant, Respondent no. 3 and Respondent no. 4 filed written submissions.

I have gone through the pleadings and available materials on record and evidence lead in the matter. After that I reached the conclusion that Respondent No. 2 outsourced for providing maintenance and security service at the premises of Respondent No. 1 and further Respondent No. 4 hire Respondent no. 1 as per agreement dated 15.09.2016 executed between Respondent No. 1 and Respondent No. 4 and as per Identity Card Exhibit PW1/4 deceased was deployed at the accident place by Respondent No. 1 and as per the reply of Respondent No. 2 & 4 and admission of claimant in cross examination, it is proved that deceased Rohit Kumar was the employee of Respondent No. 1 as a immediate employer and Respondent No. 3 i.e. Omaxe Limited is the principal employer where the respondent no. 1 had deployed services of deceased employee Rohit Kumar where he met with an accident resulting into death and the Respondent No. 3 i.e. M/s Shanvi Estate Management Service Pvt. Ltd. is the sub contractor of respondent no. 3. Further it is proved that deceased Rohit Kumar had met with an accident resulting into death out of and in the course of his employment at the place of Respondent No. 3 i.e.



Omaxe Limited. As per pleadings and FIR and post mortem report. Respondent No.1 despite given sufficient opportunities neither appeared nor lead any evidence to prove his case. In view of this Issue No. 1 & 2 are decided in favor of claimant and against the respondent.

**Issue No. 3.**

Since no documents have been placed on record by any one of the parties to prove that deceased Rohit Kumar was insured person under ESIC Act, 1948 as such the statement of the respondents are not considerable.

**Issue No. 4, 5 & 6.**

Since case of claimant has been proved as per discussion made in Issue No. 1 & 2, hence the claimant is entitled to receive death compensation from Respondent No. 1 and Respondent No. 3 jointly and severally. In this case deceased employee was directly working under the supervision and control of Respondent No. 3 as such being the principal employer it was the responsibility of the Respondent No. 3 to provide safety and security at the work place to avoid any unwanted situation for which Respondent No. 3 failed as such accident was occurred resulting thereby Sh. Rohit Kumar, deceased employee met with an accident resulting he died. As such it is fit case to impose legal responsibility upon Respondent No. 3 to pay compensation to the dependents of the deceased employee/petitioner. Respondent No. 3 would be at liberty to recover the ordered amount by adopting due process of law. For calculation of compensation age of deceased employee Sh. Rohit Kumar has been taken as a 21 years on the basis of DOB i.e. 01.09.1995 (as mentioned in Identity Card issued by Respondent No. 1) on the day of accident i.e. 18.09.2016 and relevant factor 222.71 and 50 % of wages of Rs. 8000/- as restricted under the Act. Accordingly compensation is calculated on the basis of following factors, as under:

Age -21 years

50 % wages of Rs. 8000/- = Rs. 4000/-

Relevant factory – 222.71

**Rs. 4000 x 222.71 - Factor = Rs. 8,90,840/-**

In view of above calculation claimant is entitled to receive **Rs. 8,90,840/- (Eight Lakhs Ninty Thousand Eight Hundred Forty Rupees Only)** as a compensation alongwith 12 % interest from the date of accident till its realization from the Respondent No. 1 and 3 jointly or severally since Respondent No. 3 is the principal employer hence he is directed to pay awarded compensation to the claimant with a liberty to recover ordered amount with Respondent No. 1 after adopting due procedure of law. In view of this, I direct





Respondent No. 3 i.e. **M/s Omaxe Limited**, Real Estate Builder & Construction Company, Omaxe House 7 LSC, Kalkaji Post Office, New Delhi to deposit **Rs. 8,90,840/- (Eight Lakhs Ninty Thousand Eight Hundred Forty Rupees Only)** alongwith 12 % interest P.A. from the date of accident till its realization and 25 % penalty of Rs. 8,90,840/- which comes **Rs. 2,22,710/- (Two Lakhs Twenty Two Thousand Seven Hundred Ten Rupees Only)** in favor of Commissioner Employees Compensation by way of Demand Draft/Cheque within 30 days from the date of order. Failing which ordered amount shall be recovered as land revenue under section 31 of the Act.

10. Given under my hand and seal of this Authority on this 9<sup>th</sup> day of October, 2024.

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

