

**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/NE/39/2018/ 151.

Dated: 29/10/2024.

IN THE MATTER OF :

1. Smt. Mamta Devi (Wife of Deceased)
2. Rajan Kumar (Minor Son of Deceased)
3. Raju Kumar (Minor Son of Deceased)
4. Raunak Kumar (Minor Son of Deceased)

All R/o. 7, Rana Bigha, Town/Village Rana Bigha,
Anchal – Barh, District - Patna, Bihar - 803214

.....Applicants/Claimants

Versus

1. M/s Tuli Motor Petrol Pump/Indian Oil Petrol Pump
Through Its Proprietor

RT Ring Road, Near Raja Garden Flyover,
Opp. West Gate Mall, Raja Garden, New Delhi-

2. M/s National Insurance Co. Ltd.

New Delhi Division 111,
Jeewan Vikas Building,
30-31A, Asaf Ali Road, New Delhi-110002

(Respondent No. 2 was deleted on 15.06.2023)

..... Respondents

ORDER

1. Vide this order, I will dispose of claim application dated 06.06.2016 filed on 12.08.2016 before this Authority under section 22 of Employees Compensation Act, 1923 for seeking death compensation against Respondent No. 1. **Hereinafter, now Employees Compensation Act, 1923 is referred as the Act.**
2. In the claim petition claimant stated that her husband deceased Amerika Mahto S/o Lakhan Mahto was employed by the respondent as a Labourer at his Indian Oil Petrol Pump his duty was on rotation basis i.e. 15 days at night shift and 15 days in morning shift and he was working with honesty and sincerity since long. It is further stated that



on 03.04.2016 the deceased Amerika Mahto was on duty at night shift, claimant stated that before late night hours the deceased had his meal and then after the meal suddenly he had episodes of vomiting and diarrhea, then in the morning of next day i.e. 04.04.2016 the deceased was found unconscious at his work place and brought to casualty of DDU Hospital vide MLC No. 2533 and the deceased was declared brought dead by the doctors of the said Hospital and the post mortem of the deceased was conducted at DDU Hospital vide PMR No. 496/2016 dated 04.04.2016. It is further stated that the deceased Ameriko Mahto died out of during and in the course of his employment with the respondent. Claimant stated that in this regard a D.D. No. 10A dated 04.04.2016 was registered with P.S. – Rajouri Garden, District – West, Delhi. It is further stated that the deceased was drawing wages at the rate of Rs. 8000/- per month at the time of death and he was aged about 38 years at the time of his death. Claimant further stated that the respondent is having the notice of incident/accident since the day of its occurrence. In the claim petition claimant stated and prayed that the deceased was working and died arising out of an incident out of during and in the course of his employment under respondent and the petitioners are entitled to receive death compensation as per Employees Compensation Act, 1923 and they are also entitled to interest at the rate of 12 % P.A. from the respondents till realization and penalty to the extent of 50 % of the principal amount. Claimant filed copy of DD Entry No. 10A dated 04.04.2016 Police Station Rajouri Garden, Delhi, Copy of of Post Mortem Report vide PM No. 496/2016 dated 04.04.2016 issued by Deen Dayal Hospital, Hari Nagar, New Delhi – 110064, Copy of Voter Identity Card of Claimant No. 1 i.e. Mamta Devi W/o Sh. Amarika Mahato, Copy of Voter Identity Card of Deceased Amerika Mahto S/o Sh. Lakhan Mahto. In the last claimant prayed that directions to be issued to Respondents to pay death compensation as per provisions of the EC Act, 1923.

3. Summon were issued to respondents to file reply/defense in this case.
4. Respondent i.e. M/s Tuli Motor Petrol Pump/Indian Oil Petrol Pump filed reply/defense through Sh. Sukhbir Singh, Partner in the Firm. It is stated that the claim of the claimants is not maintainable on the ground that deceased Amerika Mahto was never in the employment of the respondent at any point of time. It is further stated that there was no relationship of employee and employer between the deceased Amerika Mahto and the respondent at any point of time and the claim of claimant is highly ill conceived and misconceived and is liable to be dismissed on this ground. It is further stated that claimants have not served upon the respondent the mandatory notice under section 10 of the Employees Compensation Act, 1923 therefore, claim of claimants merits no consideration on account of the non service of the mandatory notice. It is further stated that the claim of the claimants is not



maintainable on the ground that the claim of the claimants is based upon falsehood, false averments and baseless documents, the claimants have been misguided and they have not approached this Authority with clean hands and hence the claim petition of the claimant is liable to be dismissed. In the last respondent denied all the contents of the claim application/petition of the claimants. Rest of other contents of claim petition has been denied in toto.

5. Claimant filed rejoinder by which she denied all the contents of reply of Respondent and reiterated contents of her claim application.
6. On 01.12.2016 the following issues were framed for adjudication:-
 - i. Whether there was employee employer relationship exists between the deceased and respondent ?
 - ii. Whether the accident occurred out of and in course of employment with the respondent ?
 - iii. Any other relief ?
7. Matter was fixed for the evidence of the claimant. Claimant filed her evidence by way of affidavit exhibit PW1/A. Her statement was also recorded on 05.12.2023. The contents of affidavit are corroborative those claim petition. Counsel for respondent cross examined to claimant.
8. Respondent examined Sh. Sukhbir Singh as a witness exhibit RW1/A. His statement was also recorded on 07.08.2024 before this Authority. The contents of affidavit are corroborative those reply. Exhibit RW1/A also filed documents exhibit RW1/2 (Colly) which pertains to Return of Contribution – Form 5, ESIC period from April-2011 to March, 2017. He was also cross examined by counsel for petitioner on 29.08.2024.
9. Both the parties have filed written submission on record and oral submission has also heard.
10. On the basis of pleadings of the parties and documents available on record I am giving my findings on the issues framed in the matter as under:

ISSUE NO. 1

The case of claimant is this that her deceased husband Sh. Amerika Mahto S/o Lakhan Mahto was employed by the respondent as a Labourer at his Indian Oil Petrol



Pump his duty was on rotation basis i.e. 15 days at night shift and 15 days in morning shift and he was working with honesty and sincerity since long. It is further stated that on 03.04.2016 the deceased Amerika Mahto was on duty at night shift, claimant stated that before late night hours the deceased had his meal and then after the meal suddenly he had episodes of vomiting and diarrhea, then in the morning of next day i.e. 04.04.2016 the deceased was found unconscious at his work place and brought to casualty of DDU Hospital vide MLC No. 2533 and the deceased was declared brought dead by the doctors of the said Hospital and the post mortem of the deceased was conducted at DDU Hospital vide PMR No. 496/2016 dated 04.04.2016

Respondent denied employee employer relationship with deceased Amerika Mahto on the ground that deceased Amerika Mahto was never in the employment of the respondent at any point of time thus there was no relationship of employee and employer between deceased Amerika Mahto and respondent on this ground claim is reserved for dismissal.

To prove her case claimant filed her evidence by way of affidavit exhibit PW1/A. The contents of affidavit are corroborative those claim petition. Respondent examined as a witness to Sh. Sukhbir Singh Exhibit RW1/A. The contents of affidavit of RW1/A is corroborative those reply.

Claimant filed written submission on record and oral submission had been also heard in the line of claim petition, counsel for claimant also relied upon judgment in the matter titled as Bimla Devi and Ors. V/s Himanchal Road Transport Corporation and Ors. II(2009) ACC 444(HC) - In this case Hon'ble Apex Court has observed that for the purpose of determining the case the Court was required to apply the principal under line burden of proof in terms of the provisions of section 106 of the Indian Evidence Act as to whether a dead body rapped in a blanket had been found at the spot at such and early hour, which was required to be proved by the Respondent No. 2 and 3. Another judgment on which claimant relied is Punjab and Haryana High Court matter titled as Devender Singh & Ors. V/s Rambha Devi and Ors. FA from order no. 5978 of 2002 decided on 24.12.2008 - In this matter the Court observed - Motor Vehicle Act, 1988 - Section 15 and 149 (2) - Liability of insurer - Driving License - Validity - Driving License Expired on 16.05.1996 - Accident took placed on 23.02.1997 - Tribunal Exonerated Insurer from liability - Driving and Owner of Vehicle burden with award - Award upheld in appeal - owner and driver held on entitled to be indemnify by the insurer. Result appeal dismissed. Another judgment filed by claimant is North East Karnataka Road Transport Corporation V/s Sujata, Hon'ble Supreme Court of India CA No. 7470 of 2009 - In this case the Hon'ble Court held interest @ 12 % is payable from the date of accident. Another judgment is



Mohd. Anis Mohd. Elya Khan V/s Litiza and Company and another FA No. 1060 of 1998 decided on 02.09.1999 wherein Hon'ble Court has decided liability of owner of the truck to pay compensation to the cleaner of the truck, as driver was authorized agent of owner to employ a cleaner. Claimant also relied upon a letter Annexure-A written by Sh. Rajesh dated 04.04.2016 wherein Mr. Rajesh has given statement that he was residing at 71, Jeevan Park, Uttam Nagar, Delhi about 16 years with family on rented house and was working in M/s Tuli Motors Petrol Pump, Raja Garden who stated that on 03.04.2016 he was on duty and all of sudden Amerika Mahto's condition was become very ill suddenly and due to that he was expired.

Respondent also argued that as per submission of claimant her deceased husband Sh. Amerika Mahto was in the employment of the respondent firm on 03.04.2016 the deceased was on duty at night shift and at late night hours on 03.04.2016 deceased had his food and thereafter the meal suddenly he had episodes of vomiting and diarrhea in the morning on next day on 04.04.2016 the deceased was found unconscious at his workplace and taken to casualty of DDU Hospital and the deceased was declared brought dead but respondent has denied employee employer relationship and accident caused out of and in the course of employment with respondent because deceased was never in the employment of respondent at any point of time and has denied all the submission of claimant in toto. Further **respondent argued and filed available its 6 monthly ESIC returns exhibit RW1/2 for the year 2011 upto 2017 wherein the name of deceased Amerika Mahto does not figure. In this context respondent relies upon a judgment of Hon'ble Delhi High Court 2008 LLR 952 Delhi Transport Corporation V/s Jagat Singh. "Documentary vis – Oral evidence, It is rudimentary principal of jurisprudence that documentary proof will always get preponderance over oral – it is well know axiom of Law- that man may tell lies but documents can not - under the circumstances, Oral statements by the witness supporting case of workman pale into insignificant – documentary evidence adduced before the inquiry officer puts the oral evidence into shade.** It is further argued that representatives of the workman did not speak a single word about the authenticity of the documents filed by the respondents and marked as Exhibit RW1/2 (Colly), ESIC Returns of the respondents firm for the year 2011 to 2017. Further argued on the statement of Rajesh filed by claimant as Annexure – A, no doubt Rajesh Gupta was in the employment of respondent firm but on what circumstances he was made to give statement to the Police. The Police did not persue the case nor filed any FIR against the respondent firm, no IO was examined by the claimant demonstrate defect that the entire investigation of the police was filmsy and far from the truth and without any basis. In this regard respondent relied upon on the judgment of Hon'ble Delhi High Court 2013 LLR 726, the management of RR Foundation Engineer Pvt. Ltd. V/s Pappu and Anr.



“When a document placed on the court file is not proved by the concerned party in accordance with the Law, that document would be of no help to the party concern. Further Respondent witness exhibit RW1/A Sh. Sukhbir Singh appeared as a witness of the respondent firm and categorically denied that deceased was not in the employment of respondent firm at any point of time and statement of Sukhbir Singh was in the line of Written statement and affidavit filed in evidence. During his cross examination, no dent was made and the claimant could not extract anything contrary. The onus to prove employee employer relationship between deceased Amerika Mahto and respondent was lies upon the claimant, but claimant failed to established the same by such documents like Appointment letter, payment of salaries, ESIC Card or payment of PF Fund deposit etc. etc. As such claim of the claimant is not maintainable against the respondent. Respondent also relied upon another judgment titled as Bimla Devi and Ors. V/s Himanchal Road Transport Corporation and Ors. 2009 (II) ACC 444 SC, North East Karnataka Road Transport Corporation V/s Sujata 2019 ACJ 29 SC, Mohd. Anes, Mohd. Elya Khan V/s Litiza Company 2001 ACJ page 2057.

Further Respondent relied upon the judgment of Hon'ble Delhi High Court WP (C) 218/2001 dated 25.09.2020 titled as Krishan Kumar Sharma V/s PO Labour Court No. 8 and Anr. wherein, Hon'ble Court held that in absence of appointment letter, termination letter, payment of salaries, ESIC Card or payment of provident funds deposit etc. It is not acceptable that workman was an employee of management. Further in this case Hon'ble Court held that when the management had not issued any appointment or salary slips or ESIC Card or maintained EPF record, the workman can proof his relationship with the management by getting recorded evidence of his co-workers. Well settled principal of Law is that the person who sets up a plea of existence of relationship of employer – employee, the burden would be upon him to establish employer - employee relationship. In the same line and facts in the case of Neelu Kumari and Ors. V/s Om and Anr. (Bajaj) Alliance General Insurance Co. Ltd. FAO 56/2016 and CM Appeal 11273/2019 decided on 21.11.2023 Hon'ble Court held that initial burden of proving employer-employee relationship is upon the appellants/claimants.

I have gone through the pleadings of the parties and documents available on record and arguments adduced by both the Ld. Counsels for the parties in detail and have come to this conclusion that claimant has failed to prove his case against the respondent by any documents / evidence that deceased Amerika Mahto was employee of the respondent and has expired out of and in the course of his employment due to any injury. The judgment on which Ld. Counsel for claimant is relied does not cover the case of the claimant. Further claimant has also not examined



any co-worker of the respondent firm as a witness to prove her case that deceased Amerika Mahto was employee of the respondent and has died due to injury during his employment. Even claimant did not examine Sh. Rajesh Singh – Annexure A on which claimant relied the statement of Sh. Rajesh. The onus was lies upon the claimant to prove her case by way of documentary evidence such as appointment letter, salary slips, ESIC Card, Identity Card etc. to prove relationship of employee-employer with respondent. In this regard Hon'ble Delhi High Court in the matter of Management RR Foundation Engineer Pvt. Ltd. V/s Pappu and Anr. decided on 14.05.2013 held that when a document placed in the court file is not proved by the concerned party in accordance with Law, that document would be of no help to the party concerned. In this circumstances alleged statement of claimant against the respondent is no considerable. On the other side respondent relied the judgment cited above are fully covered the version of respondent.

In view of this, I hold that claimant failed to prove her case as discussed above. As such claim of claimant is not maintainable against the respondent under the Act and accordingly Issue No. 1 is decided against the claimant.

ISSUE NO. 2 & 3

In view of discussion made in Issue No. 1, further Issue No. 2 & 3 are not required further any answer.

11. Given under my hand and seal of this Authority on this 29th day of October, 2024.

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

o/c.

