

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/218/NW/17/ 463.

Dated: 09/02/2024.

IN THE MATTER OF:

Sh. Jagannath & Ors

R/o Mahavan, Raisinga, Nauranga,
Madem, Mathura, Uttar Pradesh – 281204

C/o Azad Hind Mazdoor Union (Regd.)
L-256, J.J Colony, Wazirpur, Delhi - 110052

...Applicant/Claimant

V/s

Sh. Jitender – Manager

M/s Gavyamrit
E-9, Kapil Vihar, Near Metro Station, Delhi – 110034

.....Respondent No. 1

M/s Gavyamrit

Parthvimedha Panchgavy Utpad (P) Ltd.
170, Kapil Vihar, Pitampura, New Delhi – 110034

Also at:

75-76, Saket Mall, Gandhi Nagar,
Bye-Pass Road, Agra U.P - 282001

.....Respondent No. 2

ORDER

1. By this order, I will dispose of claim application filed by the claimant on 08/08/2017 for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that his son was appointed to the post of Delivery Man / Supplier under the aforesaid manager with a monthly salary of Rs. 10,000/- for the last 2 years and was working honestly in this period of his service, neither did he give any reason for complaint nor any allegation was made against his son. That the manager always asked his son to go out day and night on every day and get the goods supplied and had given him a place to stay at the work place itself because of that his son



always used to stay at the work place and took care of the warehouse. The manager also ran a hotel above the warehouse. Where sometimes the deceased used to work and his food and accommodation was provided by the manager. That at the time of demonetization, the respondent gave Rs 5,00,000/- for deposit, to its manager Jitendra and out of which the amount was deposited in the deceased employee's account without any permission from the deceased, as he was a servant and by forcing the deceased, the respondent started withdrawing small amounts of money from the deceased account. The respondent even made and took a check of Rs. 60,000/- from the deceased, which was later credited in respondent's account. The respondent also gave a statement to the police that the deceased gave Rs. 1.5 lakh to them. It is further submitted by the claimant that for this reason the respondent started withholding the salary of the deceased from January 2017 and due to which the condition of the deceased worsened and due to so much pressure was put on the deceased, the deceased started living in depression and due to stress he died on the night of 3-6-2017 at 11:00 PM in the factory. It is further submitted that it was respondent who is responsible for the death of his son as respondent used to harass his son again and again and forced the deceased which put the deceased under stress. Therefore the respondent is responsible to pay accident compensation. That in the presented accident, post mortem was conducted by Government to find out the reason for the death of the deceased and M.L.C was done in Babu Jagjeevan Ram Hospital but till now not a single penny of the compensation has been paid. Even after the DD entry, FIR was not allowed to be registered in collusion with the police and no investigation has been done. Neither did the claimant's statement was taken. That the said manager assured the applicant/claimant that he will give Rs. 3,00,000/- so that he can open a shop, but the same was not been complied with and whereas the total compensation comes around Rs. 11,00,000/- because the age of the deceased was 22 years at the time of the accident. 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 along with 12% interest and 50% penalty to the petitioners/claimants being the legal heirs of the deceased/ employee.

3. Summon was sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent no. 1 filed its reply and submitted that the above suit has been filed by the applicants against the opposition number 1 under the Workmen's Compensation Act, 1923, saying that he is the manager of Gavyamrit E-9. Kapil Vihar, Near Metro Station, Delhi - 110034, which is a completely false statement and not worth considering. That Gavyamrit's company is Parthvimedha Panchgavy Utpad (P) Ltd. whose registered office is 170, Kapil Vihar, Pitampura, New Delhi-110032 and the answering respondent / Opposition No. 1 has no connection whatsoever with the said Parthvimedha and they had been illegally made a party to the above suit. That the deceased Mr. Vishnu used to work in Parthvimedha Panchgavy Utpad (P) Ltd. and as a result of leaving the job in the month of



August 2016, he demanded some amount of money as advance from the answering respondent no. 1 so that he could do his own small business. That a total amount of approximately Rs. 90,000/- was given to the deceased by the answering respondent No. 1 from time to time on humanitarian grounds considering his condition, as a result of which he started selling some goods of Parthvimedha Panchgavy Utpad (P) Ltd. by setting up his own counter. It is further submitted by respondent no. 1 that the deceased Shri Vishnu was never employed by them under him and he has no relation with the deceased as an employer or a worker. That out of the advance taken by the deceased Shri Vishnu, a total amount of Rs. 60,000/- was returned and the remaining amount is still payable by the deceased Shri Vishnu to the answering respondent No. 1 even today. It is further submitted by the answering respondent no. 1 that the deceased himself committed suicide due to his family circumstances and his death has no bearing on the answering respondent. At the time of the said incident, respondent No. 1 was not in Delhi due to the illness of his son. That the presented case is not hearable under the Workmen's Compensation Act 1923 because the deceased does not fall in the category of a worker under Section 2(1) (8) of the said, therefore, the present suit deserves to be dismissed. In the last the answering respondent further denied rest of the contents in toto and prayed that the deceased did not die due to any accident, but he committed suicide due to pressure and due to his family circumstances. Thus, the answering respondent no. 1 is not liable in any way under Section 3 of the Workmen's Compensation Act and on this basis the suit presented by the claimant/applicant deserves to be dismissed.

5. Further on 30/05/2018 despite service of summons the Resp. No. 2 failed to appear and not filed any written statement in the matter, hence the respondent no.2 was proceeded ex-parte.
6. Claimant filed rejoinder by which he denied contents of reply filed by respondent No. 1 and reiterated the contents of his claim application.
7. On 13/06/2018 following issues were framed for adjudication:
 1. Whether there exists employee-employer relationship between the Respondent no. 1, 2 and the deceased employee/workman?
 2. Whether accident / circumstances leading to death /suicide happened during and in the course of employment? if so?
 3. What amount of death compensation is/are the dependant of deceased entitled to? Relief, if any?
 4. Which of the respondent is liable for imposition of penalty u/s 4(A) to what extent?



8. Matter was fixed for the evidence of the claimant. Claimant filed his statement by way of affidavit Ex.WW1/A (Father of deceased Lt. Vishnu). The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. WW1/1 to WW1/8 i.e. Original Pamphlet of the company, reply of demand notice given to management dated 14/09/2017 vide advocate Anand Kumar, Original Postal receipt, Delivery report of postal deptt., copy of pass book of deceased (colly 6 pages), copy of DD no. 55A dated 03/06/2017 dead body receiving, copy of certificate of Gram Pradhan, Copy of post-mortem report. His statement was also recorded on 17/09/2018 and was also cross examined by counsel of respondent No. 1 on 08/10/2018.
9. For respondent No. 1 Sh. Jitender – filed his evidence by way of affidavit Ex. R1W1/A. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 18/04/2023.
10. The matter was fixed for arguments. Written arguments were filed by the claimant and respondent no. 1 and oral argument was also heard in detail.
11. 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 & 2

12. That the case of the petitioner is this that his son was appointed to the post of Delivery Man / Supplier under the aforesaid manager with a monthly salary of Rs. 10,000/- for the last 2 years and was working honestly in this period of his service, neither did he give any reason for complaint nor any allegation was made against his son. That the manager always asked his son to go out day and night on every day and get the goods supplied and had given him a place to stay at the work place itself because of that his son always used to stay at the work place and took care of the warehouse. The manager also ran a hotel above the warehouse. Where sometimes the deceased used to work and his food and accommodation was provided by the manager. That at the time of demonetization, the respondent gave Rs 5,00,000/- for deposit, to its manager Jitendra and out of which the amount was deposited in the deceased employee's account without any permission from the deceased, as he was a servant and by forcing the deceased, the respondent started withdrawing small amounts of money from the deceased account. The respondent even made and took a check of Rs. 60,000/- from the deceased, which was later credited in respondent's account. The respondent also gave a statement to the police that the deceased gave Rs. 1.5 lakh to them. It is further submitted by the claimant that for this reason the respondent started withholding the salary of the deceased from January 2017 and due to which the condition of the deceased worsened and due to so much pressure was put on the deceased, the deceased started living in depression and due to stress he died on the night of



3-6-2017 at 11:00 PM in the factory. It is further submitted that it was respondent who is responsible for the death of his son as respondent used to harass his son again and again and forced the deceased which put the deceased under stress. Therefore the respondent is responsible to pay accident compensation. That in the presented accident, post mortem was conducted by Government to find out the reason for the death of the deceased and M.L.C was done in Babu Jagjeevan Ram Hospital but till now not a single penny of the compensation has been paid. Even after the DD entry, FIR was not allowed to be registered in collusion with the police and no investigation has been done. Neither did the claimant's statement was taken. That the said manager assured the applicant/claimant that he will give Rs. 3,00,000/- so that he can open a shop, but the same was not been complied with and whereas the total compensation comes around Rs. 11,00,000/- because the age of the deceased was 22 years at the time of the accident.

On the other side respondent No. 1 filed reply wherein he has stated that deceased was not working with him as such deceased was not his employee, but deceased was working with respondent no. 2. In cross examination also resp. no. 1 submitted that salary was deposited by respondent no. 2. Respondent denied that death of deceased was occurred out of and in the course of his employment. I have gone through the Post-mortem report. Doctor has given his opinion about the death that, "death is due to asphyxia consequent to ant mortem hanging. However visra has been preserved to rule out any intoxication at the time of death". Claimant has also stated in his claim that at the time of demonetization, the respondent gave Rs 5,00,000/- for deposit, to its manager Jitendra and out of which the amount was deposited in the deceased employee's account without any permission from the deceased, as he was a servant and by forcing the deceased, the respondent started withdrawing small amounts of money from the deceased account. The respondent even made and took a check of Rs. 60,000/- from the deceased, which was later credited in respondent's account. The respondent also gave a statement to the police that the deceased gave Rs. 1.5 lakh to them. It is further submitted by the claimant that for this reason the respondent started withholding the salary of the deceased from January 2017 and due to which the condition of the deceased worsened and due to so much pressure was put on the deceased, the deceased started living in depression and due to stress he would have taken this type of last step of life. As such I consider it the case of stress and strain and accordingly the death of deceased is considered out of and in the course of his employment. Since, respondent no. 1 in his statement stated that deceased was the employee of respondent no. 2, as such respondent no. 2 is liable to pay compensation to the claimants under the Act. Accordingly issue number 1 & 2 are decided in favour of claimant and against the respondents.



Issue No. 3 & 4

13. In view of above discussion made. I hold that claimant is entitled to receive death compensation under the EC Act 1923 from respondent. For considering the case of claimant for compensation I am taking age of deceased as 22 years as per age in Post Mortem Report No. 382/2017 dated 05/06/2017 of the deceased and relevant factor as per age 221.37 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/- : 4000/-

Relevant factor : 221.37

4000 * 221.37 : Rs. 8,85,480/-

In view of this calculation claimant is entitled to receive Rs. 8,85,480/- as compensation from the respondent. The applicant/claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent.

14. In view of above discussion, I direct **respondent No. 2 to deposit Rs. 8,85,480/- as compensation along with 12% interest w.e.f. 02/07/2017 till its realization** as per section 12(1) of the EC Act, 1923 and the respondent No. 2 is also directed to **deposit 25% penalty of awarded amount i.e. Rs. 2,21,370/- within 30 days** from the date of order by way of Demand draft in favour of "Commissioner Employees Compensation", failing, which same shall be recovered as per provision of the Act.

15. Given under my hand and seal of this Authority on this 09th day of February, 2024.

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

