

**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

ECD/100/NW/2018 / 414.

Date: 14/12/2023.

**In the matter of :-**

**Smt. Pooja W/o Late Sh. Mukesh,**  
R/o Bilaiya, Rouna, Mathan,  
Sitapur, Misrikh, Uttar Pradesh

.....Applicants/Claimants

Versus

**1. M/s Shree Balaji Mould Plastic,**  
Through, Smt. Ritu Malhotra,  
R/o E- 112, DSIIDC, Sector – 5, Bawana, Delhi - 110039

**2. Smt. Ritu Malhotra,**  
R/o Plot No. 155, Pocket N,  
Sector 05, DSIIDC, Bawana, North West District, Delhi – 110039

.....Respondents

**ORDER**

1. Vide this order I will dispose of the application of the applicant/ claimant seeking death compensation dated 12.09.2018.
2. That the case of the petitioner is this, that petitioner is a law abiding and peace loving citizen of India. It was stated in the claim application that the husband of the petitioner namely Late Sh. Mukesh was working with the respondent/management as Mechanic and he died on 12.04.2018 in an accident and at the time of accident he was aged about 35 years. At the time of the said accident the husband of the petitioner was under the employment of the respondent/management and was getting salary of Rs. 9,700/- p.m. and he joined his duty with the respondent/management from last one year. That the husband of the petitioner was working with respondent/management efficiently and diligently and never gave chance of his complaint to the respondent/management during the tenure of his service period. That the respondent/management compelled the husband of the petitioner on a faulted/defective machine and unfortunately on 12.04.2018, the husband of the petitioner met with an accident in the factory of the respondent/management and due to the said accident the husband of the petitioner got head injury and was taken to a private doctor by the respondent/management



and thereafter the respondent/management left him at the house. That after the said accident the respondent/management assured to the petitioner that the respondent/management will bear all the expenses incurred upon the treatment due to the said injury and the respondent/management further assured to the petitioner to pay the satisfactory compensation amount but on the next day, the husband of the petitioner died and MLC No. 5058 prepared by BSA Hospital. Vide FIR No. 208/18, P.S. Shahbad Diary was also lodged. That thereafter the respondent/management failed to comply on his words and it is the petitioner and her relatives who were incurring the expenses of the injury. That since the husband of the petitioner was working with respondent/management and the accident was occurred at the factory premises during his job work, hence the petitioner is entitled for compensation of Rs. 30,00,000/- for the death of her husband which caused due to the sole negligence of the respondent/management. That the petitioner/claimant requested to the respondent/management to pay the compensation but the management/respondent/management did not pay the compensation on one pretext or the another. That the claimant/petitioner sent a legal notice dated 05.06.2018 through her counsel by Regd. A.D. and Speed Post to the respondent/management but the respondent/management neither replied the said notice nor paid the compensation to the petitioner till date. That the above said acts and actions of the respondent/management are absolutely illegal, unlawful and without due process of law. It was prayed that the claimants are entitled to death compensation and the respondent/management may kindly be directed to pay the Rs. 30,00,000/- (Rupees Thirty Lakhs Only) as compensation plus 50% amount as penalty along with pendent elite and future interest at @ 18% p.a. from the date of filling the petition till realization of the amount in the interest of justice. Cost along with other relief which this Hon'ble Court may deem fit and proper may be granted in favour of the petitioner/claimant and against the respondent/management in the interest of justice.

3. Summon were sent to the respondent with direction to appear before this Authority to file reply in the matter.
4. Respondent filed its reply and wherein respondent denied the factum of employment. Further it has been stated that the petition is not maintainable as it is not in proper format as prescribed, being filed against wrong person, the accident caused due to the negligence of the deceased, as on the 12/04/2018 deceased Lt. Mukesh was not on duty and was in influence of intoxication situation of liquor and absent from his duty and fallen down from the stage where he was residing in the accommodation provided by the firm to him and his family. F.I.R. registered sustainment of injuries after falling from the stairs. On merit it has been stated that the deceased was working as a helper and not as mechanic as stated in the claim application. Further respondent submitted that the applicant has not filed any documents in support of his claim. The petitioner himself was absent and due to him being habitual drunker he fell down from stairs by virtue of his own wrongs and negligence. In the last respondent submitted that on these grounds the claim is liable to be dismissed.





5. During the proceedings on 23/05/2022 claimant filed application under order 1 Rule 10 CPC to implead array of the party to Ritu Malhotra as a respondent no 2 in the claim application being the proprietor of the firm M/s Shree Balaji Mould Plastic. In view of this claimant moved the application dated 21/05/2022 under order 6 Rule 17 read with order 1 Rule 5 and order 1 Rule 7 of the Code of Civil Procedure to array her as a necessary party as resp. no. 2 in the memo of the parties. Accordingly Smt. Ritu Malhotra was impleaded as a necessary party in the claim application as a respondent No. 2 and she filed her written statement. In the written statement filed by the said respondent it has been stated that the application is not in proper format and the deceased Sh. Mukesh was working with them as labourer in the Firm of the respondent. It is further stated that the death of deceased Sh. Mukesh has been caused due to his own negligence and own wrongs as he himself fell down from the stairs where he was residing in the accommodation provided by the firm to him and his family members. On the day of accident i.e. 12/04/2018 he was not on duty and was under influence of intoxications situation of liquor. An FIR was lodged bearing No. 208 in this matter. In the last it was prayed that the claim application is liable to be dismissed.
6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of her claim application.
7. On 29/08/2022 following issues were framed for adjudication:
- Whether Mukesh employee was died out of and in the course of employment with respondents?
  - If so, what relief and what directions in this regard?
  - Whether respondents are liable to pay penalty u/s 4A or Not?
8. Matter was fixed for the evidence of the claimant. Claimant on 14/03/2023 during the course of the proceedings submitted that in this case the employee-employer relationship and the accident occurred out of and in the course of employment of the deceased employee with respondent are not disputed and further the respondent has raised only one issue that the accident has taken place due to the negligence of the claimant at his residence which was provided by the company in the firm, deceased was under the influence of intoxication of the liquor, which is to be proven by the respondent. Hence, the matter was further fixed for the respondent evidence.
9. Further despite sufficient opportunities provided to the respondent/management. Respondent failed to lead any evidence in the matter, hence on 08/08/2023 the right of respondent to lead evidence was closed.
10. The matter was fixed for arguments. The applicant filed his written arguments and written arguments on behalf of the respondent were also filed. Oral submission were also heard.



11. On the basis of pleading of the parties, evidence adduced on their behalf and the documents placed on record and arguments addressed, I have to give my findings as under:

**Issue No. 1**

12. The case of the applicant that her husband was working with the respondent. He met with an accident while being at work. Respondent responded that the deceased was himself negligent and the death has been caused due to his own fault and there is no negligence on their part. At the time of accident deceased employee was under influence of liquor. From the pleadings and proved facts, there is no dispute about the death of the deceased. The death was caused in the premises of the respondent. Respondent has stated that the deceased was alcoholic and was working with the respondent as a helper. But the death was caused due to his own negligence. The counsel for applicant argued that the issue of negligence does not come in the way in granting compensation under the Act.

Further, Learned counsel for the claimants has argued that the issue of negligence is no more available with the respondent in death case. In this regards, he has drawn my attention towards Section 3 of the Act. The said provisions is read as under:-

*“ 3. Employer’s liability for compensation-(1) If personal injury is caused to a workman 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 workman 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 workman having been at the time thereof under the influence of drink or drugs, or*
  - (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or*
  - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen”*

13. From the reading of the above, it is clear that Section 3 Proviso I (b) makes it clear that the issue of negligence in the case of death or total disablement is not available to the employer. In the cases of an accident not being death or total disablement the onus is on the employer to prove the negligence of the employee. Further in Post mortem report bearing number





402/2018 dated 14/04/2018 no clear cut opinion has been found regarding on any alcoholic point. He has further placed his reliance on the following judgments –

Jaya Biswal v. Branch Manager, Iffco-Tokio General Ins. Co. Ltd. -  
By the Hon'ble Supreme Court of India – cited at 721 ACJ, April 15, 2016

*"Section 3 (1), proviso (b)-Employee-Negligence-Driver of truck was on his way to deliver goods and en route parked the truck and he and cleaner slept there- Next morning driver tried to start the truck but it did not start-Driver got down to check battery and removed wooden log piece kept for obstructing the wheel, truck moved to run down, driver tried to climb onto the truck, fell down and sustained fatal injuries-Dependants of the deceased filed claim and employer contended that deceased tried to get into a moving truck, he died due to his own negligence and claimants are not entitled to any compensation-Section 3 does not create any exception of this kind which permits the employer to avoid his liability if there was any negligence of the employee-Held: no; he was merely trying to stop the truck from moving unmanned; even if there was any negligence it would not disentitle the claimants from claiming compensation."*

**Judgment in - Supreme Stone Industries v Chunni Bai .....Rajasthan 922 ACJ April 2017**

*"Section 3 (1) – Arising out of and in the course of employment – Death of a labourer and Commissioner found that labourer died during the course of and out of employment and awarded compensation – Contention that employee was entrusted with duties of loading of gitti in dumper and was not entrusted with any duty concerning the crusher machine and therefore accident occurred due to his own negligence and unauthorized act – Employer failed to prove nature of duties entrusted to the employee and it is difficult to comprehend of crusher – Whether the death of employee arose out of and in the course of employment and dependants are entitled to compensation – Held yes. "*

**Judgment in - National Insurance Co. vs. Sinitha &Ors. -2012 (1) TAC 234 wherein it was held :**

*"Under Employee's Compensation Act no defense of negligence; even on own negligence of the employee does not fail the claim."*

14. Given the above discussions, it is established that the death has been caused, It has been caused when the employee was within the respondent's premises. Further in FIR also it establish that body of the deceased was found on the roof of the firm. The respondent could not prove on merit that the deceased employee was under alcoholic influence, despite given



sufficient opportunities by way of leading any evidence. In written submission respondent has only reiterated contents of their reply but not produced any evidence or citation of any courts to prove their version. Therefore considering the all the facts of this case, it is proved that the death has been caused out of and during the course of his employment. The said issue is decided in favour of the claimants and against the respondents.

### **Issue No. 2**

15. 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 35 years as per age in PMR Report No. 402/2018 dated 14/04/2018 of the deceased and relevant factor as per age 197.06 and 50% of Rs. 8000/- as restricted under the Act.

16. In view of the given age and wage the applicant is entitled to compensation as under:

- |      |                              |   |            |
|------|------------------------------|---|------------|
| i)   | Relevant factor of 35 years  | : | 197.06     |
| ii)  | 50% of wages @ Rs. 8000/- pm | : | Rs. 4000/- |
| iii) | Amount of compensation       |   |            |

$$\frac{197.06 \times 8000 \times 50}{100 \times 100} : \text{Rs. 7,88,240/-}$$

17. In the given situation as per Section 4A(3)(a) of the Act the applicant is also held entitled to interest @ 12% p.a. from the date of accident ( one month thereafter ) i.e. 13.05.2018 till the date of payment.

### **ISSUE No. 3**

18. The applicant has claimed that she is also entitled to penalty to the extent of 50% of the arrears of compensation and interest thereon as has been provided under Section 4-A (3) (b) of the Workmen's Compensation Act now Employee's Compensation Act. The respondent was issued show cause notice dated 29/08/2022 as to why penalty be not imposed against them. But no reply has been filed by the respondent. The accident took place on 12.04.2018 but till date the applicant/dependant has not received even a single penny. Nothing has been done by the respondent. In the given situation, I feel this is a fit case for imposing penalty and the penalty as per statute deserves to be imposed on the respondent. The penalty to the extent of 50% as provided under Section 4A (3)(b) of the E.C. Act is imposed upon the respondent on the arrears of death compensation along with interest thereon.



19. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent to deposit **Rs. 7,88,240/- (Rupees Seven Lakh Eighty Eight Thousand Two Hundred and Forty Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 13.05.2018 till its realization and the respondent is further directed to **deposit 50% penalty of awarded amount i.e. Rs. 3,94,120/- within 30 days** through pay order in favour of **"Commissioner Employee's Compensation"** within a period of 30 days from pronouncement of the order before this Authority.

20. Given under my hand and seal of this Authority on this 14<sup>th</sup> day of December, 2023.

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

