

IN THE COURT OF 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.CEC-D/ED/32/18 **277**

Date: **14/08/2023**

IN THE MATTER OF:

Smt. Aarti Kumari

R/o. H.No. – 211, 3rd Floor,
Gali No. 1, New Lohar Colony, Delhi - 110031

..... Claimant

V/s

M/s Shirish Cargo Services Pvt. Ltd.

122, P.N. Kothari Industrial Estate,
L.B.S. Marg, Bhandup, West Mumbai - 78

Branch Office at:

K-8A, Measuring, 160, SQYDS,
Out of Khasra No. 17/9, Sarup Nagar,
Delhi-110042

.....Respondent

ORDER

1. By this order, I will dispose of claim application filed by the claimant on 17/09/2018 for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that the deceased Lt Sh. Ramesh Kumar Mishra @ Ramesh Mishra was working with the respondent/management as a Operation Delhi / Field worker and was getting salary of Rs. 12,000/- per month. The claimant further stated that her deceased husband told her that the respondent has not paid salary for the month of January, February, March, April – 2018. It is further stated by the claimant that the respondent used to make phone call at any time to the deceased and used to send him for any work, further the respondent used to call the deceased at night and used to send him to drop goods to different places after taking from Nizammuddin Station. It is further submitted by the claimant that on 20/04/2018 at 04:30 AM the deceased received a call from the respondent and got the instructions to go to Nizammuddin Station and pick up the goods and leave for Meerut and after receiving the



instruction from the respondent the deceased left from home and was waiting for the bus at Ramesh Park, Pusta Road and a car came from the wrong side and hit the deceased and he fell unconscious and some unknown person called the police and the police took the deceased to Lal Bahadur Hospital, Khichdipur, Delhi – 110091 and got him admitted and during the course of treatment the deceased died. Further Sh. Devanand Mishra, father of deceased informed regarding the incident to 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. 8,06,640/- along with 12% interest and penalty to the extent of 50% to the petitioner/claimant being the legal heirs of the deceased/ employee.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply/defence in the matter.
4. Respondent filed its reply and submitted that the husband of the claimant namely Sh. Ramesh Kumar Mishra did not work in their firm. The deceased was not paid the alleged monthly salary Rs. 12,000/- and to prove the same the complainant did not produce the testimonials like bank transaction details, mode of monthly salary. It is further submitted by the respondent that the deceased was not in their trade and business as casual nature collection agent from 2015 onwards up to his demise continuously not even a single day he performed as casual collection agent related with their trade and business and there is no salary due to be given to the deceased. In the last the answering respondent further denied employer employee relationship with deceased Ramesh Kumar h/o claimant and accordingly denied rest of the other contents of claim in toto and prayed that the application may kindly be dismissed as per law.
5. Claimant filed rejoinder by which he denied contents of reply filed by respondent and reiterated the contents of her claim application.
6. On 22/10/2019 following issues were framed for adjudication:
 1. Whether employee-employer relationship existed between the petitioner and respondent?
 2. Whether the claimant is entitled for death compensation from the respondent management?
 3. Whether the claimant is also entitled for interest and penalty under section 4A?
 4. Any other relief?



7. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex. WW-1/1A (wife of deceased Lt. Ramesh Kumar Mishra @ Ramesh Mishra). The contents of affidavit are corroborative to those claim petition. The claimant also filed documents Ex. WW1/1 to WW1/12 i.e. Copy of Aadhar Card of Smt. Aarti Kumari, copy of ID Card of Sh. Ramesh Kumar Mishra deceased, issued by the M/s Shirish Cargo Services Pvt. Ltd., copy of Aadhar card of the deceased, copy of legal demand notice, copy of postal receipt, Copy of Aadhar card of father of deceased, copy of Aadhar card of mother of deceased, copy of FIR, Copy of hospital documents, copy of Post-Mortem report, copy of death certificate. Her statement was also recorded and was also cross examined by counsel of respondent on 14/12/2020 and further completed on 21/12/2020. Further claimant examined another witness Sh. Kamlesh Mishra (brother of deceased) by way of affidavit Ex. WW2/A and also filed documents Ex. WW2/1 to WW2/2 i.e. copy of Aadhar Card, copy of Bank pass book, further tendered his evidence and was also cross examined by counsel of respondent on 16/11/2020.
8. Further despite given sufficient opportunities to the respondent, respondent failed to lead evidence in the matter, hence the right of respondent to lead evidence in the matter was closed on 22/02/2023.
9. The matter was fixed for arguments. The claimant adduced oral argument in the matter and the respondent filed written argument.
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 & 2

11. The case of claimant is this that the deceased Lt Sh. Ramesh Kumar Mishra @ Ramesh Mishra was working with the respondent/management as a Operation Delhi / Field worker and was getting salary of Rs. 12,000/- per month. The main allegation of the claimant against the respondent is this that the respondent has not paid salary for the month of January, February, March, April – 2018. It is further stated by the claimant that the respondent used to make phone call at any time to the deceased and used to send him for any work, further the respondent used to call the deceased at night and used to send him to drop goods to different places after taking from Nizammuddin Station. It is further submitted by the claimant that on 20/04/2018 at 04:30 AM the deceased received a call from the respondent and got the instructions to go to Nizammuddin Station and pick up the goods and leave for Meerut and after receiving the instruction from the respondent the deceased left from home and was waiting for the bus at Ramesh Park, Pusta Road and a



car came from the wrong side and hit the deceased and he fell unconscious and some unknown person called the police and the police took the deceased to Lal Bahadur Hospital, Khichdipur, Delhi – 110091 and got him admitted and during the course of treatment the deceased died. Further Sh. Devanand Mishra, father of deceased informed regarding the incident to the respondent. On the other side respondent denied employer employee relationship with the deceased Sh. Ramesh Kumar Mishra husband of claimant on this ground respondent denied his liability under the Act towards payment of compensation. To prove the case claimant examined herself Ex. WW-1/1A and another co-worker as a witness Ex. WW2/A. Both the witnesses were cross examined by the counsel for the respondent. The claimant placed reliance to prove the case on the basis of documents Ex. WW1/2 i.e. identity card duly signed by the issuing Authority bearing STF No. 128 which bears signature of deceased Ramesh and on FIR which was lodged against the respondent bearing No.0166/2018 with PS Sakarpur, East Delhi and Medical treatment papers of the deceased employee Ex. WW1/9 to WW1/10 and PMR placed on record. From the facts of this case as narrated in claim that claimant started his journey from the place to reaching to professional place where he had to complied instruction of the company to take goods from Nizammuddin Station which was to be delivered at Merut and during this journey before reaching the professional place he met with an accident resulting thereby during the treatment he died. Here notional theory applies. The witnesses Ex. WW2/A Sh. Kamlesh Kumar categorically stated that deceased Sh. Ramesh Kumar was employed with the respondent and on the day of accident he was in the employment of the respondent. Respondent had issued an identity card to the deceased Sh. Ramesh Kumar. During the cross examination counsel for respondent did not put any question regarding the identity card Ex. WW1/2 issued by the respondent. During the cross examination nothing has come which goes against the claim petition. Respondent had taken the objection in reply regarding Ex. WW1/2 that original documents was not produced by the claimant. The objection taken by the respondent is not considerable as the Ex. WW1/2 bears the STF No. 128 and signature of issuing Authority and also bears the signature of receiver i.e. deceased Sh. Rakesh Kumar.

This prima-facie proves that deceased Ramesh Kumar was employed with the respondent and on the day of accident he was in the employment as such employee-employer relationship was existed between the employer and the deceased employee Ramesh Kumar on the day of accident. Further as per notional theory as discussed above accident of the deceased Sh. Ramesh Kumar is to be considered out of and in the course of his employment. Since respondent did not lead any evidence to prove the contents of claim application despite given sufficient opportunities to the respondent. The onus was lies upon the respondent to prove his case on merit by leading evidence but same has not



been done as such objection taken by the respondent is not considerable. In view of this issue No. 1 & 2 are decided in favour of claimant and against the respondent.

Issue No.3 & 4

12. 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 33 years as per D.O.B - 14/02/1985 age mentioned in ID Card - STF No. 128 and relevant factor as per age 201.66 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

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

Relevant factor : 201.66

4000 * 201.66 : Rs. 8,06,640/-

In view of this calculation claimant is entitled to receive Rs. 8,06,640/- 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.

13. In view of above discussion, I direct respondent to deposit Rs. 8,06,640/- as compensation along with 12% interest w.e.f. 19/05/2018 till its realization as per section 12(1) of the EC Act, 1923 and the respondent is also directed to deposit 25% penalty of awarded amount i.e. 2,01,660/- 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.

14. Given under my hand and seal of this Authority on this 14th day of August, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

