

**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.CEC/D/03/ND/2022 /469.

Date: 19/02/2024.

IN THE MATTER OF:

1. **Smt. Kamla W/o Sh. Kanta Prasad**

R/o House No. – 467, Sector – A-5,  
Pocket – 14, Narela, Delhi – 110040

2. **Smt. Sarita W/o Late Surjeet,**

R/o H.No. 457, Pocket – 14, Sector – A-5,  
DDA Flats, Narela, Delhi - 110040

..Applicant/Claimant

V/s

1. **M/s Chetan Electronics**

**Through Prop./Owner Sh. Brij Lal Saini**

Shop No – 421-425, Pocket 3-4,  
Sector – 8, Rohini, Delhi - 110085

**ALSO AT –**

House No.- 133, Tope Singh Wali Gali,  
Kaushik Hiranki, Delhi - 110036

2. **Mrs. Rajni Vij W/o Sh. Sunil Kumar**

R/o A-2/420, Sector – 8, Rohini, Delhi – 110085

**ALSO AT -**

R/o A-2/437, 438, Sector – 8, Rohini, Delhi – 110085

3. **Sh. Arvind Kumar S/o Radhey Shyam Chourasiya**

R/o A-2/420, Sector – 8, Rohini, Delhi – 110085

**ALSO AT -**

FP-19B, Pitampura, Delhi – 110034

..Respondents

**ORDER**

1. By this order, I will dispose of claim application dated 11/06/2020 filed by the claimant for seeking death compensation under the Employees Compensation Act, 1923



2. Claimant in the claim application submitted that her son was permanent employee of management no.1 and Management No.1 is running a business of electrician/electrical goods sales and purchase in the name and style of Chetan Electronics and her deceased son was permanent employee of Management No.1 for last 12 yrs and was drawing salary of Rs. 15000/- per month lastly. That on 29.05.2018 the deceased received a call of his owner for electric work but due to feeling uneasy the deceased requested that he is not ready for work as he is not in well position, but despite of this respondents compelled/ forced deceased and said that if you will not go there then I have to terminate you, thereafter the deceased has to go there for work. That the tenant of Management No. 2 Arvind met the deceased on the spot and showed him a water motor wire which was not in proper way and in the process of finding the defect of motor electric shock was passed in body of the deceased and deceased fell on the ground and thereafter wife and daughter of Management No. 2 came out but they did not took proper care and nobody tried to carry the deceased to Hospital and when the deceased was taken to the hospital there doctor declared the deceased brought dead. It is further mentioned that just after electric shock, the management No. 2 called Management No. 1, the management No. 2 had not taken the deceased to a private hospital and for only saving the medical bills and due to this the deceased died. That the said accident was occurred due to negligence of management No. 1 and 2 and in this regard an FIR was lodged in P.S. North Rohini, Delhi U/s 288/304A IPC in FIR No. 198/18 on dated 15.07.2018. That they have also sent a legal demand notice dated 28-2-20 to the managements, but despite of the same the managements have failed to pay the compensation. That the said notice has been duly served upon the respondents but the respondents did not reply of the same. In the last petitioner prayed that since accident of deceased employee occurred out of and in the course of employment with managements resulting in death hence respondent is liable to pay compensation amount to Rs. 25,00,000/- along with interest @ 18% per annum or pass any order or direction as may deem fit and proper in the facts and circumstances of the case.
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 claimant had no locus standi to move this Court, as neither the answering respondent nor the deceased fit into the definition of employer-employee as contemplated under 'The Employee's Compensation Act, 1923' (hereinafter referred to as 'Act'). Therefore, the petition of the Claimant was liable to be dismissed at the threshold. That there was no relationship of employer-employee between the answering respondent and the deceased. The Police Clearance Certificate (PCC), clearly reflects that the deceased used to work with 'Om Shiv House Keeping'. Therefore, the claim under the Act is not maintainable. That the deceased besides being an employee of the above mentioned organization was also a self-employed electrician. That the deceased, frequently, used to buy electrical-goods from the shop of the answering respondent and also used to solicit work from answering respondent. There were business relations between the deceased and the answering respondent, as the answering respondent used to transfer electrical/electronic complaints from customers to the deceased and in return the deceased used to purchase the goods (that were required to resolve the complaints of the customers) from the shop of the answering respondent. That in other words, the relation of the deceased





and the answering respondent was one of "you scratch my back and I will scratch yours" rather than employer-employee. Therefore, the instant claim petition is deceptive and an afterthought. That the answering respondent has no first-hand knowledge of the unfortunate happening, therefore after getting the news of the deceased collapsing due to electrocution by one Arvind, the answering respondent rushed to the spot and within no time took the deceased to the hospital (Dr. Baba Saheb Ambedkar Hospital). That in the claim petition it is alleged that nobody took the deceased to the hospital in time and whereas, the post-mortem report shows the time of the incident (01:00pm) and the time when the deceased was brought to the hospital (01:15 pm). This fact clearly renders the version of the Claimant untenable. That it is true that an FIR had been registered against the answering respondent. In the last the answering respondent further denied rest of the contents in toto and prayed that the claim petition of the applicant's be dismissed with exemplary cost.

5. Respondent no. 2 filed its reply and submitted that the present application/ Claim petition as filed by the applicant against the answering Respondent No.2 is the abuse of the process of law and such liable to be dismissed with exemplary cost. That the present claim petition has been filed with the ulterior motives against the answering respondent No.2 as there is no cause of action has been arising out against the answering Respondent. That the present claim petition is liable to be dismissed as there was no relationship of employee and employer exist between the parties/deceased. It is further submitted that the deceased was not a employee of the answering respondent no.2 and hence the deceased is not included in the definition of workman/ employee under the act. It is respectfully submitted that at the time of the alleged accident the answering respondent No.2 was not present at site. That the answering respondent even not residing at the accident site and is residing in some other house. That the applicant is not covered under the definition of "dependant" as provided in the act hence the present claim petition is liable to be dismissed. It is further submitted that the present petition is liable to be dismissed qua to answering respondent No.2 in terms of section 3 of the Act as there was no relationship of employee and employer between the answering respondent. It is further submitted that there was also no relationship between the respondent No. 1 and answering respondent no. 2. That the present application as filed by the applicant is barred under the provisions of Order 1 Rule 1 read with order 2 Rule 3 CPC for non joinder and mis - joinder of the parties, and that the applicant has not made the party who was residing there on rent. It is further submitted that it is correct that the respondent No.1 is running a electrical shop in the name and style of M/s Chetan Electronics and the deceased person is working with him. In the last the answering respondent further denied rest of the contents in toto and prayed that the claim petition of the applicant's be dismissed.
6. Respondent No. 3 did not come after service of summons as such he was proceeded ex-parte on 29/04/2022 by the then Ld. Commissioner.
7. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.



8. On 29/04/2022 following issues were framed for adjudication:

1. Whether employee-employer relationship existed between the deceased Sh. Surjeet and Respondent?
  2. Whether accident resulting into death of deceased is caused out of and during the course of employment and if so to what amount of death compensation the dependants of deceased are entitled to?
  3. Relief, if any?
  4. Whether the respondent are liable for penalty and if so to what extent and what amount?
9. Matter was fixed for the evidence of the claimants. Claimant No. 1 filed her statement by way of affidavit Ex.CW1/A (Mother of deceased Lt. Surjeet). The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. PW1/1 to PW1/3 and Mark as PW1/4 to PW1/6 i.e. copy of Aadhar Card of deponent, Original Legal Notice dated 28/02/2020, Original Postal receipt, copy of voter I card of deceased Sh. Surjeet, copy of charge-sheet (colly 112 pages), copy of death certificate. Her statement was also recorded on 04/08/2022 and was also cross examined by counsel of respondent No. 1 & 2 on 09/09/2022.

Claimant No. 2 filed her statement by way of affidavit Ex.CW2/A (Wife of deceased Lt. Surjeet). The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. CW2/1 i.e. copy of Aadhar Card of deponent. Her statement was also recorded and was also cross examined by counsel of respondent No. 1 on 09/09/2022. Further respondent no. 2 was provided opportunity to cross examine the claimant, but resp. No. 2 failed to do so, hence on 20/11/2023 opportunity of resp. No. 2 to cross examine the claimant was closed.

10. For respondent No. 1 Sh. Brij Lal Saini – filed his evidence by way of affidavit Ex. DW1/A. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimants no. 1 & 2 on 29/08/2023.
11. Respondent no. 2 despite given opportunities failed to lead evidence in the matter. Hence on 18/12/2023 the right of respondent no. 2 to lead evidence was closed.
12. 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.
13. 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**

14. The case of the petitioner is this that her son was permanent employee of management no.1 and Management No.1 is running a business of electrician/electrical goods sales and purchase in the name and style of Chetan Electronics and her deceased son was permanent employee of





Management No.1 for last 12 yrs and was drawing salary of Rs. 15000/- per month lastly. That on 29.05.2018 the deceased received a call of his owner for electric work but due to feeling uneasy the deceased requested that he is not ready for work as he is not in well position, but despite of this respondents compelled/ forced deceased and said that if you will not go there then I have to terminate you, thereafter the deceased has to go there for work. That the tenant of Management No. 2 Arvind met the deceased on the spot and showed him a water motor wire which was not in proper way and in the process of finding the defect of motor electric shock was passed in body of the deceased and deceased fell on the ground and thereafter wife and daughter of Management No. 2 came out but they did not took proper care and nobody tried to carry the deceased to Hospital and when the deceased was taken to the hospital there doctor declared the deceased brought dead. It is further mentioned that just after electric shock, the management No. 2 called Management No. 1, the management No. 2 had not taken the deceased to a private hospital and for only saving the medical bills and due to this the deceased died. That the said accident was occurred due to negligence of management No. 1 and 2 and in this regard an FIR was lodged in P.S. North Rohini, Delhi U/s 288/304A IPC in FIR No. 198/18 on dated 15.07.2018. That they have also sent a legal demand notice dated 28-2-20 to the managements, but despite of the same the managements have failed to pay the compensation. That the said notice has been duly served upon the respondents but the respondents did not reply of the same. The respondent no. 1 denied employee-employer relationship on the ground that deceased employee was the freelancer. It is further submitted that deceased employee was working for others also. On the day of accident respondent no. 1 had received a complaint regarding the repair of a defective water motor and the complaint was transferred telephonically to get repair at the address of respondent no. 2 i.e. A-2/420, sector - 8, Rohini Delhi, where deceased employee Surjeet electrocuted and resulting thereby he died before reaching the hospital. Further respondent had taken objection that he did not know the person where deceased employee went to repair the defective water motor. After receiving information resp. no. 2 had rushed immediately and was taking the deceased employee for treatment to Dr. Bheem Rao Ambedkar Hospital where doctor declared brought dead. During the cross examination resp. no. 1 admitted to the extent that on the day of accident complaint was transferred to the deceased employee which was received telephonically to repair the water motor. Further resp. no. 1 has taken objection that claimant has not filed any documentary evidence to establish employee-employer relationship with resp. no. 1 except these contents rest of other contents has been denied by the resp. no. 1.

On the other side resp. no. 2 has also denied their liability towards payment of compensation to the petitioners on the ground that there was no employee employer relationship with the resp. no. 2 and the deceased employee. Further it is stated that at the address of incident resp. no. 2 is not living on the day of incident. The premises have been rented out as such there is no relation with incident and the respondents. The resp. no. 3 tenant who was living at the address of the incident at that time was made a array of the party in this case on the request of resp. no. 2 and accordingly summon was sent to the resp. no. 3 for the witness in this case, but he did not turn up. In this case FIR bearing no. 198/18 dated 15/07/2018 has been lodged with PS North Rohini Delhi u/s 288/304A IPC and also Post mortem was conducted bearing no. 600/2018 dated 30/05/2018.

I have gone through the contents of the application and pleading of the parties. Respondents denied there liabilities towards payment of compensation to the claimants on the ground as discussed above. I have gone through the witness statement from both the sides and has come to this conclusion that on the day of accident of the deceased Surjeet there was some



connection between the incident and the respondents. Respondent no. 1 himself stated in his reply and in evidence that the complaint was received from the address of resp. no. 2 to repair the defective water motor and the same was transferred telephonically to the deceased employee with instruction to get repair the same. From this it is clear that the deceased employee Surjeet had gone at the place of peril only when the resp. no. 1 had instructed through telephonically in regard complaint received to repair the defective water motor, otherwise, deceased employee could remain safe in his house. Further, for the claiming compensation under the Act two factors are necessary 1. Employee-Employer relationship and 2. There must be some casual connection between employment and the incident, only then claim of the employee under the Act for compensation is maintainable. In this case these factors are available on the ground that on the day of incident resulting in death of deceased Surjeet there was employee-employer relationship with resp. no. 1 and the deceased and also there was casual connection between the incident resulting thereby deceased died out of and in the course of his employment. The objection of the resp. no. 2 is considerable that he was not living on the day of incident at the premises in question same was rented out as such resp. no. 2 cannot be considered their involvement in the accident and also not considered that they have not provided any safety measures at the place of incident. Further it is also important that after the incident deceased employee was taken hospital too late as per the allegation of the petitioners by the resp. no. 1 as the deceased life could not be saved, if immediate deceased employee was able to get help to reach the hospital for the treatment might he be saved. In this matter negligence has been seen on the part of the respondents. As such I hold that there was employee employer relationship between the deceased employee and the resp. no. 1 as such claimants are entitled to receive death compensation from the resp. no. 1. Since accident was occurred out of and in the course of employment with resp. no. 1. Accordingly issues no. 1 & 2 are decided in favour of petitioners and against the respondents.

#### **Issue No. 3 & 4**

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 27 years as per age in Post Mortem Report No. 600/2018 dated 30/05/2018 of the deceased and relevant factor as per age 213.57 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

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

Relevant factor : 213.57

4000 \* 213.57 : Rs. 8,54,280/-

In view of this calculation claimant is entitled to receive Rs. 8,54,280/- as compensation from the respondent No. 1. 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.





16. In view of above discussion, I direct respondent No. 1 to deposit Rs. 8,54,280/- as compensation along with 12% interest w.e.f. 02/07/2017 till its realization and the respondent No. 1 is also directed to deposit 25% penalty of awarded amount i.e. Rs. 2,13,570/- 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.

17. Given under my hand and seal of this Authority on this 19<sup>th</sup> day of February, 2024.

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

