

**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. WCD/168/NW/2017/ 224,

Date: 21/06/2023.

IN THE MATTER OF:

**Smt. Rekha & Ors.**

H.No. J-229, Swami Dayanand Colony,  
Sarai Rohilla, Delhi – 110007

.....Applicant/Claimant

V/s

**Sh. Sanjay Gandhi, Prop.**

**M/s Symex Company & M/s Indo Gold,**  
L-120, Sector-3, DSIDC,  
Bawana, New Delhi – 110039

.....Respondent

ORDER

1. By this order, I will dispose of claim application dated 29/05/2017 filed by the claimant for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that her husband had been in the continues employment of the management since February, 2009 at the post of electrician and his last drawn wages were @ Rs. 17,000/- per month. It is further submitted that the management is working under the name and style of M/s Symex Company as well as M/s Indo Gold. However the owner of both the said firms/establishments is Sh. Sanjay Gandhi. It is further submitted by the claimant that the premises of both the management is same, the products/business is same, the machinery and equipments are same and the deceased workman was engaged in the work of the M/s Symex Company as well as M/s Indo Gold indiscriminately. It is further submitted by the claimant that on 03/03/2017 the deceased workman was on duty. On that day he was not feeling well. After the duty hours when the deceased workman was leaving for his residence, the management forced him to perform night duty in continuation of his day duty already performed by him. It is further submitted by the claimant that the deceased workman requested the management that since he was not feeling well therefore he will not be able to perform the night duty in continuation of duty already performed, but the management did not pay any heed to the genuine and bona fide constraint of the deceased workman and threatened him to either



perform the said night duty otherwise he will be removed from job. It is further submitted that having left with no option, the deceased workman was compelled to perform night duty in continuation of the day duty already performed on 03/03/2017. It is further submitted by the claimant that in the morning of 04/03/2017, after performing the night duty in continuation of the day duty already performed by the deceased workman on 03/03/2017, the deceased workman went to his house. Further it is submitted by the claimant that as condition of deceased workman was deteriorating, he was taken to Maharishi Balmiki Hospital, Pooth Khurd, Delhi for proper treatment. It is further submitted that the deceased workman was not provided timely treatment and rather he was forcibly retained by the management in the night duty in continuation of the day duty already performed on 03/03/2017, the deceased workman could not survive and passed away in the Maharishi Balmiki Hospital, Pooth Khurd, Delhi on 05/03/2017. 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 to the petitioner/claimant being the legal heirs of the deceased/ employee.

3. Summon were sent to the respondent with direction to appear before this Authority to file reply in the matter. Respondent appeared and filed reply on record.
4. It is to state that the respondent was proceeded ex-parte on 08/09/2017 and the statement of claimant was also recorded on 08/09/2017 and further a detailed order dated 28/03/2018 was passed by the then Ld. Commissioner Employees Compensation.

The respondent filed an application dated 27/08/2018 for setting aside order/judgment dated 28/03/2018 and ex-parte order. The claimant/petitioner filed reply in response to the application of respondent. The then Ld. Commissioner Employees Compensation decided the application vide order dated 12/12/2018 and vide this order the authority set-aside the order dated 28/03/2018 subject to payment of Rs. 15,000/- as cost in the interest of justice to both the parties.

5. Further respondent filed its reply and submitted that the claim filed by the petitioner/claimant is not maintainable against the answering management as the management does not fall within the definition of "employer" as defined in section 2(e) of the EC Act, 1923. It is further submitted by the answering respondent that in this case neither the deceased husband of the claimant no. 1 was employed by the respondent nor Lt. Sh. Joshi Muddin ever worked for the respondent in any capacity whatsoever. In the last the respondent further denied





rest of the contents in toto and in the last prayed that application in question is liable to be dismissed with exemplary cost.

6. Petitioner rebutted all the contents of Respondents as stated in the reply and reiterated contents of the claim petition in his rejoinder.
7. On 06/09/2019 following issues were framed for adjudication:
  1. Whether employee – employer relationship existed between the deceased Md. Joshi Muddin and the respondent on the date on the date i.e. 4/13/17? And if so.
  2. Whether the death occurred due to stress and strain during and in course of employment and if?
  3. To what amount of compensation the claimants are entitled to?
  4. Any other relief?
8. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex. CW-1/A (Wife of deceased Md. Joshi Muddin). The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. CW1/1 to CW1/7 i.e. Copy of demand notice dated 17/05/2017, Copy of postal receipt, copy of the courier receipt, copy of tracking report of speed post, copy of Aadhar Card of deceased workman, copy of death certificate dated 09/05/2017, copy of receipt issued by Kabristan. Her statement was also recorded and was also cross examined by counsel of respondent on 12/12/2019.

Further claimant examined another witness Smt. Priyanka Sharma (a co-worker) by way of affidavit Ex. CW2/A and further tendered her evidence and was also cross examined by counsel of respondent on 12/03/2020.
9. For respondent Sh. Sanjay Gandhi filed his evidence by way of affidavit vide Ex. RW-1/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 22/12/2021 and further completed on 14/09/2022.
10. The matter was fixed for arguments. Arguments were filed by the respondent and the claimant and oral submission adduced by the parties were heard.



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**

Claimant in the claim application submitted that her husband had been in the continues employment of the management since February, 2009 at the post of electrician and his last drawn wages were @ Rs. 17,000/- per month. It is further submitted that the management is working under the name and style of M/s Symex Company as well as M/s Indo Gold. However the owner of both the said firms/establishments is Sh. Sanjay Gandhi. It is further submitted by the claimant that the premises of both the management is same, the products/business is same, the machinery and equipments are same and the deceased workman was engaged in the work of the M/s Symex Company as well as M/s Indo Gold indiscriminately. It is further submitted by the claimant that on 03/03/2017 the deceased workman was on duty. On that day he was not feeling well. After the duty hours when the deceased workman was leaving for his residence, the management forced him to perform night duty in continuation of his day duty already performed by him. It is further submitted by the claimant that the deceased workman requested the management that since he was not feeling well therefore he will not be able to perform the night duty in continuation of duty already performed, but the management did not pay any heed to the genuine and bona fide constraint of the deceased workman and threatened him to either perform the said night duty otherwise he will be removed from job. It is further submitted that having left with no option, the deceased workman was compelled to perform night duty in continuation of the day duty already performed on 03/03/2017. It is further submitted by the claimant that in the morning of 04/03/2017, after performing the night duty in continuation of the day duty already performed by the deceased workman on 03/03/2017, the deceased workman went to his house. Further it is submitted by the claimant that as condition of deceased workman was deteriorating, he was taken to Maharishi Balmiki Hospital, Pooth Khurd, Delhi for proper treatment. It is further submitted that the deceased workman was not provided timely treatment and rather he was forcibly retained by the management in the night duty in continuation of the day duty already performed on 03/03/2017, the deceased workman could not survive and passed away in the Maharishi Balmiki Hospital, Pooth Khurd, Delhi on 05/03/2017. In reply respondent denied employee-employer relationship with the deceased employee resulting into death as alleged by the claimant in her claim application. Further respondent denied that M/s Symex company and M/s Indo Gold are the same company and Sh. Sanjay Gandhi is the proprietor of both the companies. To prove her case claimant examined herself Ex. CW1/A and a co-worker Ex. CW2/A. Co-worker Ms. Priyanka Sharma Ex. CW2/A has stated in





her statement that she was working with the deceased employee and deceased employee was on his duty on 03/03/2017 with her and was not feeling well and after the duty hours when the deceased workman was leaving for his residence the management forced him to perform night duty in continuation of his day duty already performed by him. Deceased employee was not feeling well, therefore he requested the management as he will not be able to perform the night duty in continuation of the duty already performed but on the pressure and threat of the respondent he has left no option only to perform/carried out the direction of the respondent. Since deceased workman was unwell and the management kept him engaged in one after the other work and did not permit him to take any rest. Even the management did not paid to provide proper medication to the deceased workman resulting thereby his condition of deteriorating as such he was taken to Maharishi Valmiki Hospital, Puth Khurd where he passed away on 05/03/2017 during the treatment. In cross examination CW2/A reiterated the above stated statement. Further CW2/A has stated in her cross examination that since respondent was not providing any legal documents for service as such she could not produce any documents regarding her employment. Further respondent could not produce any relevant witnesses against the CW2/A and the claimant those prove that statement of claimant is incorrect. Further respondent has placed the certain documents on record those pertains to some other company M/s PAMSS Electronics on which respondent relied that name of the claimant is not appeared on the records. Respondent also produced ESIC records from January 2015 to December 2017 and salary register from January 2015 to December 2017 in his favour. The documents which are placed on record by the respondent are the photo copy of the register which are not exhibited by the respondent. Further the counsel for the petitioner had summoned documents / records pertaining to M/s Symex company and M/s Indo Gold then it is not understandable then why the respondent placed records of the other company, why he has not simply denied the same. In these circumstances I am of the view that why the 1 person or victims may file wrong claim against the respondent. For a moment if I consider the evidence of the respondent that the respondent company as mentioned in the claim does not belong to the proprietor Sh. Sanjay Gandhi, Sh. Sanjay Gandhi is the proprietor of M/s PAMSS electronics where in 04 names K.S Josh, Sanjeet Kumar, Sanjay Bhargava and Vikas Rana, then why these workmen were not called in the witness box to prove his case. On these observation I am of the view that the deceased was the employee of the respondent/company and being the proprietor of the company Sh. Sanjay Gandhi being the employer is responsible to pay compensation to the claimants since the death of the deceased employee was occurred out of and in the course of his employment due to carelessness attitude of the respondent. As such issue No. 1 & 2 are decided in favour of claimant and against the respondent.



12. In view of above discussion made. I hold that claimants are 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 46 years as per D.O.B i.e. 01/01/1970 mentioned in Driving Licence No. 9484/10 and relevant factor as per age 166.29 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

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

Relevant factor : 166.29

$4000 * 166.29$  : Rs. 6,65,160/-

In view of this calculation claimant is entitled to receive Rs. 6,65,160/- 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. 6,65,160/- as compensation along with 12% interest w.e.f. 18/09/2016 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. Rs. 1,66,290/- 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 21<sup>st</sup> day of June, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

