

**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/25/NW/2019/360.

Date: 23/10/2023.

IN THE MATTER OF:

**Sh. Imamuddin Miya S/o Vakil Miya**  
R/o Pilkhi, Pakri, Saran, Bihar - 841417

.....Applicant/Claimant

V/s

**Sh. Devender Dabas S/o Lt. Rajender Dabas**  
R/o H. No. - 047, Village Barwala, Delhi - 110039

**Also at: -**

Plot No. 154/1/3, Firni Road, Pooth Khurd, Delhi - 110039

.....Respondent

**ORDER**

1. Vide this order, I will dispose of the application dated 28/02/2019 filed by the applicant/claimant for seeking death compensation.
2. Claimant in the claim application submitted that his son deceased Mainuddin had been working with the management as helper/labour and he lastly was drawing salary of Rs. 15,000/- per month from the management. It is further submitted by the claimant that his deceased son was working at his workplace as per the order / instructions of the management. That on 24/08/2018 following the instructions of the management his deceased son was on his job/work when the panel plate fell on him due to which he got burdened / loaded with the said panel plate and he was taken to the Mangalam Hospital, Pooth Khurd, Delhi, but the doctors declared him as brought dead. It is further submitted by the claimant that it was requested to the management several times by his deceased son and other labourers as well to provide the safety measurements and if the same would have been repaired this incident would have been averted and the life of his son could have been saved. That in this regard an FIR has also been lodged vide No. 0356/18 u/s 287/304-A IPC at PS-Bawana, Delhi. It is further submitted by the claimant that after death of his son the management on a paper have admitted about the liability and have only paid Rs. 50,000/- to claimant towards bearing the expenses of the cremation and other last performing. However it was mentioned in the said written paper/document that



all compensation in this matter will be given by the management to claimant later on, but the management have not paid even a single penny to claimant till date. 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. 30,00,000/- to the petitioners/claimants 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 in the matter.
4. Respondent filed its reply and submitted that the present application of the claimant is liable to be dismissed as the applicant has suppressed the true material facts before this Hon'ble Authority/court. That the deceased was neither the employee nor does have any relation with respondent as employee and employer. That the respondent does not have any control either supervisory or anything else, hence the present claim petition is liable to be dismissed. It is further submitted by the answering respondent that the deceased has come at the spot to meet someone and it is not in the knowledge of the respondent that to whom that the deceased had come to meet, the death of the deceased occurred due to untoward accident, hence the present petition is not maintainable at all, hence the same is liable to be dismissed. That the respondent does not know the deceased nor does have any business relation with the deceased. That the claimant has filed the present claim petition just to extort money from the respondent. That it is specifically denied that after death of claimant's son the management on a paper have admitted about the liability and have only paid Rs. 50,000/- to the claimant towards bearing the expenses of the cremation and other last performing. In the last the answering respondent has denied employee employer relationship with deceased Mainuddin and accordingly further denied rest of the contents in toto and in the last prayed that the application may kindly be dismissed with cost.
5. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
6. On 17/01/2020 following issues were framed for adjudication:
  1. Whether employee-employer relationship exist between the parties?
  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 penalty is imposable u/s 4-A(3) and if so the quantum thereof?





7. Matter was fixed for the evidence of the claimant. Claimant filed his statement by way of affidavit Ex.PW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex.PW1/1 to Ex. PW1/7 i.e. Copy of aadhar card of claimant, copy of FIR, copy of legal notice, copy of postal receipt, copy of letter / agreement regarding payment of money for the cremation by respondent, copy of MLC, copy of post-mortem report. His statement was also recorded and was also cross examined by counsel of respondent on 22/09/2021.

Further claimant summoned 02 other witnesses 1. SI from PS- Bawana, Delhi and 2. Sh. Sashi Verma S/o Hans Nath, but despite issuing of summons neither IO nor the witness Sh. Sashi Verma appeared in proceedings, hence the ARC further didn't wished to press upon their witnesses. Hence claimant evidence was closed and the matter was fixed for respondent evidence.

8. For respondent Sh. Devender Dabas – filed his evidence by way of affidavit Ex.RW1/1. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 22/08/2022 and completed on 07/08/2023.

9. The matter was fixed for arguments. Written arguments were filed by the parties.

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**

11. The case of claimant is this that his son deceased Mainuddin had been working with the management as helper/labour and he lastly was drawing salary of Rs. 15,000/- per month from the management. It is further submitted by the claimant that his deceased son was working at his workplace as per the order / instructions of the management. That on 24/08/2018 following the instructions of the management his deceased son was on his job/work when the panel plate fell on him due to which he got burdened / loaded with the said panel plate and he was taken to the Mangalam Hospital, Pooth Khurd, Delhi, but the doctors declared him as brought dead. It is further submitted by the claimant that it was requested to the management several times by his deceased son and other labourers as well to provide the safety measurements and if the same would have been repaired this incident would have been averted and the life of his son could have been saved. That in this regard an FIR has also been lodged vide No. 0356/18 u/s 287/304-A IPC at PS- Bawana, Delhi. It is further submitted by the claimant that after death of his son the management on a paper have admitted about the liability and have only paid Rs. 50,000/- to claimant towards bearing the expenses of the cremation and other last performing. However it was mentioned in the said written paper/document that all compensation in



this matter will be given by the management to claimant later on, but the management have not paid even a single penny to claimant till date.

On the other side respondent denied employee-employer relationship with the deceased employee Mainuddin on the ground that the deceased was never employed with the respondent at any point of time, on the day of accident deceased Mainuddin had come at the spot to meet someone and the incident was occurred but it is not in knowledge of respondent but to whom the deceased had come to meet, the death of the deceased occurred due to untoward accident hence claim is not maintainable and liable to be dismissed. The claimant has filed the present claim just to extort money from the respondent. Further respondent has taken plea that claimant has not filed any documents regarding the employment of deceased Mainuddin such as appointment letter, wage slip, I-card etc. Respondent also relied upon the judgment of Hon'ble High Court of Delhi dated 20/09/2016 titled as Vishwanath Pandey vs Madan Gopal Keshav Chand, wherein Hon'ble Court has made very clear that to prove employee employer relationship burden lies upon the applicant by way of producing cogent service proof / documents. But the claimant failed to produce any such documents on record as such claimant is not entitled for any compensation under the Act. Further respondent in his cross examination on 07/08/2023 conducted by counsel or claimant submitted on Ex. PW1/5 that respondent on paper i.e. Ex. PW1/5 has admitted about the liability and have only paid Rs. 50,000/- to the claimant towards bearing the expenses of funeral and other rites. On the same it has written that management will give all the compensation to the claimant later on but nothing has been paid, the respondent has denied the same and stated that the police had taken his signature on blank paper on the pretext that this is just a formality and nothing would be harm by this paper to the respondent. But later on Police has written regarding the assurance and payment of Rs. 50,000/- to the claimant and also objected on the ground that document Ex. R1/PW-Y (statement of Shashi Verma S/o Sh. Hans Nath Verma u/s 161 Cr.P.C taken by Sh. Puneet Tushir – SI PS Bawana Delhi dated 24/08/2018) does not bears the signature of Shashi Verma as such same cannot be reliable statement of Shashi Verma since Police has recorded at his own. Further respondent stated that he is not an accused in the FIR.

To prove the case the claimant summoned Shashi Verma and SI from PS- Bawana, Delhi as a witness in this case. Summons were issued to both the witnesses but despite various summons they did not appeared to give the witness in this case. During the proceedings on 23/11/2022 the counsel for the petitioner had given the statement before the then Ld. Commissioner that he does not wish to pursue upon the summoning of their witnesses. Hence eon the request of counsel for the petitioner right of claimant to further summoning witness was closed.

I have gone through the pleadings of the parties and considered available documents on record in detail and also heard oral submission of the Ld. Counsels appearing for the parties and has come to this conclusion that onus was upon the climant to prove employee employer relationship with deceased Mainuddin with the respondent





by way of producing cogent documents pertaining to their employment like appointment letter, ICard, wage slip etc. but the claimant failed to produce such a documents. It was onus upon the claimant to prove the same if respondent denied employee employer relationship. Further the claimant relied upon Ex. R1/PW-X that though this documents bears his signature but police has taken the same keeping him dark on the pretext that this is just a formality nothing will be used against the respondent and accordingly taken signature on 4-5 blank papers of the respondent. In cross examination respondent has also objected Ex. R1/PW-X, thus accordingly onus have been shifted upon the claimant to summon the concerned SI from PS Bawana for the witness to authenticate such a document, but at the stage claimant did not pursue the summoning to the witnesses SI from PS-Bawana and also claimant did not pursue the witness for appearing in witness box to prove EX R1/PW-Y of Sh. Shashi Verma s/o Hans Nath Verma who was the prime witness in this case. Since police has mentioned statement of the Shashi Verma in Ex R1/PW-Z. As such I have not found any ground in this case to consider the claim of the claimants. In view of this claimant failed to prove employee-employer relationship with respondent as such issue No. 1 is decided against the claimant.

12. In view of discussion made in issue no.1 remaining issues are not required any adjudication as such same is answered accordingly.

13. Given under my hand and seal of this Authority on this 23<sup>rd</sup> day of October, 2023.

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

