

**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/38/NW/2020/ 382 .

Date: 29/11/2023 .

IN THE MATTER OF:

1. **Smt. Rani Devi W/o Lt. Basant Jha**
2. **Anchal D/o Lt. Basant Jha**
3. **Anurag S/o Lt. Basant Jha**
4. **Chander S/o Lt. Basant Jha**
5. **Smt. Manjula Devi W/o Lt. Kailu Jha**  
A-378, Inder Enclave, Phase-2, Kirari Suleman Nagar,  
Sultanpuri, Delhi – 110086

..Applicant/Claimant

V/s

**Sh. Sanjeev Kumar S/o Sh. Ganesh Prasad**  
R/o A-767, Inder Enclave Phase-2,  
Kirari Suleman Nagar, Delhi – 110086

.....Respondents

ORDER

1. By this order, I will dispose of claim application dated 16/03/2020 filed by the claimant for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that the deceased Lt. Basant Jha was employed under the respondent for last 3<sup>1/2</sup> years on the monthly wages and at the time of death on 11/08/2017 the deceased was getting monthly wages of Rs. 15,000/-. That the deceased was aged about 38 years at the time of death. It is further submitted by the claimant that the respondent used to run an AC workshop and for which purpose he used to keep commercial gas cylinders. It is further submitted by the claimant that on 28/07/2017 her husband told her after coming home from duty that the gas cylinders in the shop were leaking gas and the respondent was not taking any remedial step and that there was danger to the life of the workers in the factory. That on 01/08/2017, at about 11 AM the inevitable happened and the gas cylinders burst as a result of which the deceased suffered burn and receive multiple injuries on the vital portions of the body. That the head and face of the deceased were badly damaged. It is further submitted by the claimant that the incident was informed to the



respondent and police and the injured was taken to the Sanjay Gandhi Hospital, Mangolpuri Delhi and the same day was transferred to Safdarjung Hospital and thereafter on 11/08/2017 her husband died at 09:30 AM in Safdarjung Hospital, Delhi. That an FIR bearing No. 897/2017, u/s 287/337 was registered at PS Aman Vihar and during investigation 304(A) was added by the concerned PS. It is further submitted that the respondent / management was using commercial gas cylinders without adopting the safety norms required under law, act of the respondent was not adopting the remedial measures against the gas cylinders despite verbal complaints of the deceased and not keeping in place safety measures in accordance with safety norms laid down by law. 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. 16,00,000/- along with 12% interest 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 claim filed by the applicants is baseless and fabricated and is an abuse to the process of law, hence is liable to be dismissed. That the present claim is highly time barred and the applicants have not come to the court with neat and clean hands and suppressed the true facts as such the claim is not maintainable. Respondent further submitted that the deceased Basant Jha was a freelance casual welder who provides his services as welder at so many shops. The respondent also used to avail the services of the deceased as a casual welder on the basis of daily wages @ Rs. 2000 per ton cylinder whenever the respondent need for occasional/casual welder. It is submitted by the respondent that the amount was always paid by the respondent to the deceased on same day when he used to avail the services of deceased and as such there is no relationship of employer and employee between respondent and deceased. That the answering respondent is small manufacturer of deep freezer having 2 casual employees who were working on casual basis. It is further submitted by the claimant that even the compressor of AC freezer was blast and the deceased received injuries but as per post mortem report the cause of death of deceased was due to kidney related disease and not due to gas burn. That the deceased has already taken Rs. 40,000/- advance from the respondent for his treatment of kidney problem and had promised to return the same but did not return. That the applicants have already been received Rs. 2,50,000/- from the government against the compensation. It is further submitted by the respondent that after the death of Basant Jha, the family members of the deceased came to the respondent with the dead body of deceased and abused and mercilessly beaten the respondent against the respondent called police control room. In the last the answering respondent further denied rest of the contents in toto and in the last prayed that the application may kindly be dismissed.
5. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.





6. On 18/03/2021, 12/07/2021 & 23/12/2021 following issues were framed for adjudication:
1. Whether employee-employer relationship existed between the deceased Sh. Basant Jha and the respondent?
  2. To what amount of compensation on account of death of deceased Sh. Basant Jha the claimants are entitled too?
  3. Any other relief?
  4. Whether the respondent are liable for penalty u/s 4A of the Act and if so to what extent and what amount?
7. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex.PW1/A (Wife of deceased Lt. Basant Jha). The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex.PW1/1 to Ex. PW1/5 i.e. Copy of Death certificate, copy of legal notice dated 24/01/2020 alongwith its postal receipt, copy of Aadhar card of applicant, copy of FIR bearing No. 897/2017, copy of MLC bearing No. 12794/17. Her statement was also recorded on 12/07/2021 and was also cross examined by counsel of respondent on 24/03/2022.
8. For respondent Sh. Sanjeev Kumar – filed his evidence by way of affidavit Ex. MW1/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 30/05/2022.
- Further respondent examined another witness i.e. Sh. Ram Babu - Driver and further tendered the evidence and was also cross examined by counsel of claimant on 29/07/2022.
9. The matter was fixed for arguments. Written argument was filed by the respondent.
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. Basant Jha her husband was employed under the respondent for last 3<sup>1/2</sup> years on the monthly wages and at the time of death on 11/08/2017 the deceased was getting monthly wages of Rs. 15,000/-. That the deceased was aged about 38 years at the time of death. It is further submitted by the claimant that the respondent used to run an AC workshop and for which purpose he used to keep commercial gas cylinders. It is further submitted by the claimant that on 28/07/2017 her husband told her after coming home from duty that the gas cylinders in the shop were leaking gas and the respondent was not taking any remedial step and that there was danger to the life of the workers in the factory. That on 01/08/2017, at about 11 AM the inevitable happened and the gas cylinders burst as a result of which the deceased suffered burn and receive multiple



injuries on the vital portions of the body. That the head and face of the deceased were badly damaged. After the accident he was taken to the Sanjay Gandhi Hospital, Mangolpuri Delhi for treatment and the same day was transferred to Safdarjung Hospital and thereafter on 11/08/2017 her husband died at 09:30 AM in Safdarjung Hospital, Delhi. That an FIR bearing No. 897/2017, u/s 287/337 was registered at PS Aman Vihar and during investigation 304(A) was added by the concerned PS. It is further submitted that the respondent / management was using commercial gas cylinders without adopting the safety norms required under law, act of the respondent was not adopting the remedial measures against the gas cylinders despite verbal complaints of the deceased and not keeping in place safety measures in accordance with safety norms laid down by law. Further in reply the respondent denied employee-employer relationship on the ground that deceased Basant Jha was freelancer, casual welder who provides his service of welding to so many other shops and was doing same work for other employers also. In reply respondent has admitted that he also used to avail services of deceased as a casual welder on Rs. 2000/- per ton cylinder whenever he need for occasional / casual welder. This is not a dispute that the compressor of AC freezer was not blast and the deceased had not received any injuries. Further respondent has taken stands that as per post mortem report deceased was died due to kidney related disease and not due to gas burn. Further as per submission of the respondent. Deceased already taken Rs. 40,000/- advance from the respondent for his treatment of kidney problem on return basis. The FIR lodged in this matter also establish that on 01/08/2017 compressor of AC freezer was blast in Inder enclave, wherein deceased Basant Jha had received serious burn injuries due to that he died during his treatment in Safdarjung Hospital. Claimant examined herself to prove her case and during the cross examination of the claimant the facts has been established that deceased Basant Jha had received serious injuries on 01/08/2017. Further witness Sh. Ram Babu examined by the respondent has also in his cross examination established that deceased Basant Jha was a welder in respondent company. At the time of accident he was driving vehicle No. DL-1LU-1088, whenever he visits the company he used to see Basant Jha working in the company. After considering the facts of this case and evidence it is proved that Basant Jha was the employee of respondent as a gas welder and he met with an accident out of and in the course of his employment due to AC gas freezer blast. Respondent could not produce any solid evidence to prove that claimant was freelancer/casual welder. From the statement and evidence of the respondent, it is proved that when the AC gas freezer blast deceased Basant Jha was in his employment with respondent. As such it is proved that employee-employer relationship was existed on the day of accident between employer and deceased employee Basant Jha and accident had occurred out of and in the course of his employment. As such 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 40 years as per age in election I card No. BR/13/073/636171 of the deceased and relevant factor as per age 184.17 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/-	:	4000/-
Relevant factor	:	184.17
4000 * 184.17	:	Rs. 7,36,680/-

In view of this calculation claimant is entitled to receive Rs. 7,36,680/- 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.

13. Further during the proceedings the Commissioner Employee's Compensation vide order dated 18/03/2021 directed the respondent to show cause as to why penalty should not be imposed upon them, but the respondent failed to file any justification regarding as to why penalty be not imposed upon them. Hence, I have left no option except to keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent.

14. In view of above discussion, I direct respondent to **deposit Rs. 7,36,680/- as compensation along with 12% interest w.e.f. 01/09/2017 till its realization and 25% penalty of awarded amount i.e. Rs. 1,84,170- 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.

15. Given under my hand and seal of this Authority on this 29<sup>th</sup> day of November, 2023.

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

