

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/SD/D/130/2017/226.

Date: 30/06/2023.

IN THE MATTER OF:

Sh. Om Prakash and Anr

R/o K-1/83/D,

Sangam Vihar, New Delhi - 110080

...Applicant/Claimant

V/s

M/s GKB High Tech Lenses Pvt. Ltd.

C-76/1, Okhla Industrial Area, Ph- II,

New Delhi - 110020

.....Respondent No. 1

Sh. Shivaji Tare S/o Sh. Bhiku

R/o K-89, Kalkaji,

New Delhi - 110019

.....Respondent No. 2

ORDER

1. By this order, I will dispose of claim application dated 17/05/2017 filed by the claimant for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimants in the claim application submitted that on 11/05/2015 the deceased Suresh Kumar @ Rinku went to the company/firm GKB High Tech Lenses Pvt. Ltd. at E-41/4, Okhla Phase-II, New Delhi for repairing the water tank on receiving complaint on 10/05/2015 from mobile no. 9312437573. It is further submitted by the claimants that the father of the deceased workman made a phone call to the deceased and found that the phone was switch off., thereafter 10 minutes the phone call was received from the company that the deceased became unconscious and told them to see the deceased in Masjeeda Hospital and thereafter the petitioner went to Masjeeda Hospital and found that Suresh Kumar @ Rinku was dead. It is further submitted by the claimants that the deceased died due to the negligence on the part of the respondents, who did not care the employee/workman during his work with the said company, hence the FIR was registered with PS Okhla Industrial Area u/s 304A IPC against the respondent no 2. It is further submitted by the claimants that the deceased was earning Rs. 20,000/- per month from his work, that the respondent has been informed by the said incident and was requested verbally many times to pay the compensation to the petitioners but the respondents did not make any payment 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 of sum of



Rs. 25,00,000/- along with interest and penalty to the petitioner/claimant being the legal heirs of the deceased/ employee.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter. Respondent appeared and filed reply on record.
4. Respondent No. 1 filed its response in form of a application seeking dismissal of claim of claimants and stated therein that this Hon'ble Court has no jurisdiction to try the present claim preferred on behalf of the deceased. That the definition of 'employee' under section 2(1)(dd) read with section 12 of the EC Act, 1923 makes it extensively clear that the deceased i.e. Sh. Suresh Kumar was never an employee of the respondent no. 1 and hence the claimants are not eligible to file an application for compensation under the said Act. The present claim is baseless, misplaced and deserves to be dismissed on this ground alone. It is further submitted by the respondent that the deceased never drew any salary nor was he ever appointed as an employee vide any appointment letter or contract thereof. Further respondent submitted that deceased was an electrician/plumber and was an independent freelancer/contractor who visited the premises of the respondents only once for repairing a water tank. The said piece of work has no relation whatsoever to the trade and business carried out by the respondents which related to manufacture of optical lense. Therefore, the present claim is devoid of merit and is liable to be dismissed. It is further submitted by the answering respondent that the claimants had filed a complaint that resulted in the registration of FIR no. 368/2015 dated 11/05/2015 against the respondents which culminated into a criminal case bearing no. 39057 of 2015 u/s 304A of the Indian penal Code, 1860 and it is pertinent to note that the same was decided by the Ld. MM vide order dated 20/01/2017, thereby discharging the respondents of all false charges made thereon. 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.
5. Petitioner rebutted all the contents of Respondent No. 1 as stated in the reply and reiterated contents of the claim petition in his rejoinder.
6. On 11/06/2019 following issues were framed for adjudication:
 1. Whether there was employee-employer relationship between the deceased and the respondents?
 2. Whether the deceased died in the course of employment with the respondents?
 3. If yes, what relief and what directions?
7. Matter was fixed for the evidence of the claimant. Claimant filed his statement by way of affidavit Ex. AW-1/A (Father of deceased Sh. Suresh Kumar @ Rinku). The contents of affidavit are corroborative to those claim petition. His statement was also recorded and was also cross examined by counsel of respondent on 23/12/2019.
8. For respondent No. 1 Sh. Ram Chandra Thakur – Authorized signatory 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 on 03/08/2022 and was also cross examined by counsel of claimant on 19/09/2022.

9. The matter was fixed for arguments. Arguments were filed by the respondent No. 1 and the claimant.
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 on 11/05/2015 the deceased Suresh Kumar @ Rinku went to the respondent/company/firm GKB High Tech Lenses Pvt. Ltd. at E-41/4, Okhla Phase-II, New Delhi for repairing the water tank on receiving complaint on 10/05/2015 from mobile no. 9312437573 and on 11/05/2015 his son Suresh Kumar @ Rinku died due to electrocutions while he was repairing the water tank and during the work he received electric shock and he became unconscious. After the incident deceased was taken to the Masjeeda Hospital. Thereafter he had received a call that his son has become unconscious and he came to hospital to see his son and when he reached the hospital he found his son dead. An FIR was registered with PS Okhla Industrial Area u/s 304A IPC and post mortem was also conducted.

On the other side respondent denied employee-employer relationship on the ground that deceased was never employed as a employee on the ground that deceased was a freelancer and on the day of the incident he was called for repair of the tank, as such claim is not maintainable under the EC Act, 1923. Claimant examined himself to prove his case and for respondent Sh. Ram Chandra Thakur Ex. RW1/A appeared in the witness box and gave his evidence to prove his case. During the cross examination of the claimant nothing has come on record which goes against the claim, on the other side respondent could not prove on record that the deceased was a freelancer, but however it is admitted position on this case deceased Sh. Suresh Kumar @ Rinku was hired by the respondent for repairing of the water tank on the day of incident and therefore during the repair of the water tank he had received electrocutions resulting thereby he died. The EC Act 1923 is the welfare legislation enacted by the parliament for the welfare of the workers. Thus, the responsibility has been casted upon the respondent to provide safe working condition to their workers whether he is regular, temporary, casual or freelancers. Once the employee entered in the premises of the respondent for doing any kind of work then the responsibility for providing safe and security conditions arises upon the respondent. Here the safety provisions has been not provided properly to deceased employee due to that he received electrocution and died out of and in the course of his employment. Further as per section 2(dd)(III) – any person employed in any such capacity is specified in schedule II (ii) “(ii) employed, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such



manufacturing process or with the article made whether or not employment in any such work is within such premises or precincts, and steam, water or other mechanical power or electrical power is used". Further if any employee is hired for a day, for a piece work he is deemed to be employee of the employer for the particular period/ time. As such objection of the respondent is not comfortable that deceased was a freelancer and was only called for a short time thus he does not comes under the purview of the EC Act, 1923. In view of this discussion I am holding that there was a employee employer relationship existed between the deceased Suresh Kumar @ Rinku and the respondent and the death of deceased 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 respondents.

ISSUE No. 3

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 21 years as per Post mortem report No. 513-15 and relevant factor as per age 222.71 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/-	:	4000/-
Relevant factor	:	222.71
4000 * 222.71	:	Rs. 8,90,840/-

In view of this calculation claimant is entitled to receive Rs. 8,90,840/- 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 No. 1 **to deposit Rs. 8,90,840/- as compensation along with 12% interest w.e.f. 10/06/2015 till its realization** as per section 12(1) of the EC Act, 1923 and further the respondent No. 1 is also directed to **deposit 25% penalty of awarded amount i.e. Rs. 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 30th day of June, 2023.

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

