

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. ECD/125/ND/22/227.

Date: 30/06/2023.

IN THE MATTER OF:

Smt. Rakhi Harijan W/o Lt. Pappu Harijan
G-557, Jahangirpuri,
Delhi - 110033

.....Applicant/Claimant

V/s

Sh. Sanjeev Agarwal
A-233, Main Road, Majlis Park,
Near Meerut Sweet Shop,
Adarsh Nagar, Delhi - 110033

.....Respondent

ORDER

1. This order shall dispose of a claim application dated 29/07/2019 filed by the Applicant Smt. Rakhi Harijan W/o Late Sh. Pappu Harijan under EC Act. As per the application, the deceased husband of the Applicant was employed as Chowkidar for 24 hours in the under construction building of the Respondent. As per the Applicant her husband also used to do helper job (beldar) besides job of Chowkidar for the Respondent but no payment used to be made for the same. In five story building, provision was left for installing the lift from the 5th storey building to 8 feet below the ground level. The Applicant along with her husband and children used to live in said building.
2. On 03/06/2019 when the Applicant's husband Sh. Pappu Harijan was coming down from the 4th floor carrying sack of Malwa, all of sudden his foot slipped and consequently he had fallen down in the pit of lift as there was no safety arrangements made by the respondent. After falling down from the hole in the basement of the lift, he expired. On making noise by the Applicant, neighbors gathered and informed the PCR. The police came and found husband of the Applicant dead. Thereafter, FIR No. 128 dated 03/06/2019 got registered at police station at Adarsh Nagar, Delhi. It is further submitted by the Applicant that after the death of the husband, she and her family members have become helpless because they were dependent on earnings of her husband. She sent demand notice claiming compensation but no payment was made by the respondent. Her husband aged about 36 years at the time of the death so she is entitled for sum of Rs. 13,80,160/- as accident compensation from the Respondent which may be awarded to her along with interest @ 12% along with 50% penalty.



3. Summons 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. Respondent filed its reply stating therein that there existed no relationship of employer and employee between the Respondent and the deceased at any point of time hence the question of any accident occurring during the course of employment and / or arising out of employment does not arise. A legal objection was also taken by the Respondent to the effect that the EC Act does not apply to residential houses. The Legislature enacted the legislation of EC Act for the purpose of granting relief to persons involved in Industrial accidents only which is apparently clear from reading its statement of objects and reasons which explains the intention of legislature while framing and enacting a particular law. Its preamble is also very specific which declares that it is an Act to provide for the payment by certain classes of employers to their employees of compensation for injury by accident. From the above, it is prima facie clear that owner of a Pvt. residential house does not fall in phrase "certain class of employers" so far as EC Act is concerned. The Respondent further submitted that the Respondent never engaged Sh. Pappu Harijan or any other person as Chowkidar in his building. It is not possible for any person to work 24 hours. The residential house was got constructed with the help of contractor and it was his responsibility to arrange workforce including labour and mason so there was no occasion to direct any one directly to do labour job. It is further submitted by the Respondent that no one was allowed to live in the building in the under construction building. The Respondent denied that the applicant, her husband and her children used to live in the building. The Respondent denied that the husband of Applicant was unloading debris from 4th floor in a sack on instructions of Respondent, slipped and fallen down in the hole of lift and consequently expired. It is also denied that the Applicant informed the neighbor and they further informed PCR. The Respondent also submitted that it is a matter of record that Pappu a person named in the FIR was found dead but the Respondent does not have any knowledge regarding any facts as to how and why he was found dead in the vacant space left for lift. The deceased was a stranger to Respondent and house was under construction so lying opened and it was very easy for any person to enter in it for so many reasons but it is certain that the Respondent never engaged him as his employee for any work of any nature. How and why, he entered in the premises of building under construction is beyond the comprehension of Respondent. The Respondent also submitted that he is not liable for the death of Applicant's husband although it is very unfortunate. Presence of a dead body in a house under construction does not lead to presumption that the deceased was employed there. As per Post Mortem report he was 45 years old. However, the Respondent is not liable to pay any compensation on account of death of Applicant's husband. The Respondent never assured Applicant for payment of any compensation. Even otherwise, the Respondent is not liable to pay any compensation.
5. Petitioner rebutted all the contents of Respondent as stated in the reply and reiterated contents of the claim petition in his rejoinder.



6. On 10/09/2020 following issues were framed for adjudication:
1. Whether ECA 1923 is applicable on Pvt. Residential home?
 2. Whether employee-employer relationship existed between the Respondent & deceased employee Sh. Pappu?
 3. If so, death of deceased Sh. Pappu was caused out of and during in the course of his employment with respondent?
 4. If so to what relief and what directions are necessary in this regard?
7. Matter was fixed for the evidence of the applicant. The Applicant filed her evidence by way of affidavit Ex. CW1/A. The contents of affidavit are corroborative to those claim petition. The applicant also filed documents Ex. CW1/1 to CW1/8 i.e. Certified Copy of the charge-sheet, copy of demand notice, copy of postal receipt, copy of post mortem examination report dated 04/05/2019, copy of receipt of dead body Handing over, copy of Aadhar Card of deceased, copy of Aadhar card of claimant, copy of death certificate. Her statement was recorded and she was also cross examined by counsel of respondent on 04/04/2022.
- Further, no other witness was examined by the applicant. The Applicant made statement on 04/04/2022 that she will not lead any further evidence so the evidence of the Applicant was closed.
8. For Respondent Sh. Sanjeev Aggarwal filed his affidavit in evidence Ex. RW-1/A and he was cross examined on 29/08/2022 and 21/12/2022. The Respondent evidence was closed as no other witness was examined on his behalf.
9. Written Arguments were filed by both the parties and opportunity was provided to both the parties to advance oral argument, which were also heard and matter reserved for order.
10. I have gone through the pleadings, evidence, documents and written arguments/ final submission filed by both the parties and after considering all the above in detail and minutely, my findings on issues are as under:

ISSUE No. 1 & 2

11. This issue has already been adjudicated upon by the Hon'ble HIGH COURT OF DELHI in FAO 81/2010 between Govind Goenka Vs. Dayawati and Ors. By Mr. Justice Kailash Gambhir, reported in 2012 LLR 675. The ratio decendi of the above judgment reflects that construction activity of Pvt. Residential houses are covered under the EC Act -1923 so it is binding on this Authority.
12. The Respondent has denied the relationship of employer and employee between him and deceased. It is noted here that Respondent is serving as a teacher in school which is running under control and supervision of GNCT of Delhi, copy of ID card of Respondent is enclosed as EX: RW1/1. The co-owner Sh. Sandeep Aggarwal who is brother of Respondent is also a GNCT of Delhi employee who is working in health department. Copy



of his ID card is enclosed as EX: RW1/2. From the above, it can be concluded that the Respondent is neither doing any commercial or industrial or any business activity.

13. The initial burden of proof to prove the relationship of employer and employee is upon the Claimant and the Claimant has neither produced any documentary evidence nor produced any other oral witness to support the existence of employer and employee relationship in this case whereas her daughter, her son and her daughter in law were the best evidence which she could produce to prove her case. The Claimant was aware about the factum of denial of relationship by Respondent and as per the respondent, the deceased was a stranger so it was imperative for her to produce other family member in evidence to fortify her contention of employment of deceased with the respondent. But none of the family member came to tender their evidence more particularly as per the deposition, her daughter was also the eye witness.
14. The Respondent has cited the following judgment on point of employer and employee relation which has been decided by the superior court and this Authority is in agreement with the same :
- a) The Hon'ble Madhya Pradesh High Court in Dhyani Singh Vs Raman Lal reported in 2001 LLR 148 held in an appeal filed under Workmen Compensation Act-1923 as under:-

To prove a contract of employment, there has to be a direct evidence to show some nexus between the claimants and respondent. This can be of any kind such as appointment letter, monthly pay slip, deduction of PF, Payment of any dues which would show that he was in the employment and correspondence wherein the respondent has admitted that claimant was in the employment. In substance, the court are in favour of documentary evidence to record a definite finding on such type of issue. They are the best piece of evidence for coming to a conclusion one way or other.

- b) The Hon'ble Karnataka High Court in T.S.Prabhu & Others Vs Bhavani Poojary [Smt.] & Others reported in 2002-[LB4]-GJX-1083 held in an appeal filed under Workmen Compensation Act-1923 as under:-

The claimant must file some acceptable evidence for a claim under section 3 of the Act..... The findings must be given on the basis of some material on record.

- c) The Hon'ble High court of Bombay in Kamla Bai Vs Sohan Lal reported in 2004-[LB4]-GJX-0738 held in an appeal filed under Workmen Compensation Act-1923 as under:-

It is the burden of the claimant to prove the basic contention of existence of relationship of employer and employee to claim compensation under the Act.



- d) The Hon'ble Supreme Court of India in Mackinnon Mackenzie & Co. Pvt. Ltd. Vs Ibrahim Mahommad Issak reported in AIR 1970 SC 1906 held in an appeal filed under Workmen Compensation Act-1923 as under:-

In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose out of and in the course of employment rest upon the applicant, these essentials may be inferred when the facts proved justify the inference. On the other hand, the commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn but the evidence must be such as would induce a reasonable man to draw it.

- e) The Hon'ble Delhi High Court in Zulfikar Ali Vs. Commissioner Under EC Act [MANU/DE/2150/2014] & New India Assurance Co. Ltd. Vs. Babbu Miyan [MANU/DE/2149/2014] wherein it was held that –

“self-serving affidavit is not sufficient to establish relationship of employer-employee. The claimant is required to prove the same by way of some documentary piece of evidence”.

15. On weighing the evidence in present matter on the above scale, the Applicant has failed to prove the relationship of employer and employee between the Respondent and her deceased husband so this issue is decided against the Applicant / Claimant and in favour of Respondent.

ISSUE NO.:3 &4

16. When the issue of employer and employee relationship adjudicated against the Applicant and in favour of the Respondent then the question as to the accident whether occurred during the course of employment and arising out of employment becomes irrelevant. Apart from above, even the circumstantial evidence do not support the story put forward by the claimant. There are many glaring contradictions which exist in the case which makes story of the accident during the course of employment and arising out of employment unbelievable. The following Glaring contradictions have been noticed:-

- a) As per the Claimant's affidavit (para-2 and para-4), the entire family of deceased was residing in under construction building. The claim application and evidence reflects that all the family members were present in under constructed building on the day of accident.

During cross-examination she deposed as under:

My family consist of two sons, one daughter & one daughter in law and myself. It is wrong to suggest that my entire family was living in the premises where the accident



occurred. Vol.1 my husband me and my daughter used to live there however other family members used to come there for having all the three meals. They used to come around 9 A.M. for their breakfast and at around 10 P.M. for their dinner. They occasionally come to take their lunch. My entire family was present for dinner on 02 May, 2019 and left at around 10:30 P.M. after having the dinner.

- b) In the claim application and affidavit, the Claimant deposed that on 03/05/2019 Sh. Pappu Harijan had gone to fourth floor of the said building for collecting the debris/malba. While Sh. Pappu Harijan was coming down the said floor with a bag (Bori) filled with debris, his foot slipped and he fell down to basement floor from the uncovered and unprotected hole/vacant space kept by the Respondent for installation of lift in the said building. That seeing the mishap, the deponent made hue and cry. Some neighbours gathered there and went to the basement floor where Sh. Pappu Harijan was lying dead due to falling from upper floor. The information to the police was given and PCR van arrived at the spot. The PCR officials found Sh. Pappu Harijan lying dead. An FIR bearing no. 128 dated 03/05/2019 was registered at PS Adarsh Nagar in this regard.
- c) The above deposition of Claimant got completely shattered during the cross-examination because on perusal of FIR, it is noticed it was registered at 10:21A.M. The Claimant who claims to be eye witness deposed the time of accident at 5:00 A.M. There is a big gap of more than 5 hours at the time of accident and lodging of FIR. After deposing the accident on 03/05/2019 at around 5:00 A.M when her husband bringing down debris from the terrace, she deposed that she does not remember the exact time when deceased slipped from the terrace and met with an accident. There can be slightly variation at time of accident when an eye witness is deposing after 3 years of the accident but a difference of 5 hours is not possible.
- d) She deposed during the cross-examination that at the time of accident she was present at terrace, she shouted immediately after the accident and the local neighbours got assembled at the spot. She could not remember the exact time of assembled of neighbours. She further deposed that neighbours contacted PCR but she does not know the exact time when the neighbour contacted PCR. She also does not remember when the PCR came at the spot of the accident. She also deposed that after the happening of an accident her both son and daughter in law arrived in 15 to 20 minutes.

She finally deposed as under:

"I do not remember the exact time when my husband met with an accident, when I made hue and cry, when neighbours came, when they called the PCR, when my entire family came on spot of accident and when PCR came. When I contacted my son after the accident, he was at his residence situated at Jahangirpuri, Delhi. I asked the local neighbours to contact my son. I do not remember the exact time when the neighbours contacted my son"



- e) The above deposition is completely contradictory from the statement given to police under section 161 Cr.P.C.. The charge sheet which Claimant has exhibited shows that she is living on rent at address G – 557, Jhangirpuri, Delhi along with her family members. Further it is mentioned therein that she came along with her husband at the under construction house at 7:00 P.M. on 2/5/2019 and her husband was directed by the Respondent to bring down Rodi/Badarpur in morning. When in morning at 5:30 a.m. her husband was bringing Badarpur/Rodi to the ground floor he slipped in the vacant space left for installing the lift. She further stated that she came out shouting and after taking phone from a person on road called her son Rahul who went to Sonipat for work and he told her that he is coming after sometime. His son Rahul came at spot at 9:00 - 9:30 A.M.
- f) It may be noted that her statement and deposition before this court and her statement to the police has been found to be at much variance. The statement in present case regarding her residing along with her family at site of accident completely contradict her statement to police regarding her residing along with her family member at rent in Jahangirpuri. The statement in the present case that all the family members took dinner together at 10:00 P.M. on 02/05/2019 which is completely contradict of her statement which was given to the police that she and her husband came to an accident site at 7:00 P.M. on 02/05/2019.
- g) The deposition before this court that when she contacted her son after the accident, he was at his residence situated at Jahangirpuri and she asked the local neighbor to contact her son. She further deposed that after the happening of accident, her both son and daughter in law arrived in 15-20 minute and Statement under section 161 of Cr.P.C. shows that her son went to Sonepat to work and he came at spot at 9:00 - 9:30 A.M. If accident took place in morning at 5 .00 or 5.30 AM then her son would have reached at the sport of accident by 6 A.M. If neighbors assembled after the accident at 5 .00 or 5.30 AM and they called the police then PCR would have come immediately but as per FIR call was made at 10.21 A.M. and FIR shows the Mobile number : 9711808009 through which information was given that a person is lying unconscious and the said mobile belongs to Respondent. It means call was made by Respondent Sanjeev Aggarwal at 10.21.AM then who [neighbor] gathered in morning and called the police. If neighbors gathered in morning between 5.00 AM and 5.30A.M then why claimant or neighbors did not call Respondent who was residing just 50 meters away from spot of accident. If son of claimant reached at the spot within 15-20 minutes then it must be around 6A.M. on 03.09.2023 but as per charge sheet he reached at 9.30 A.M. then why he did not call police after his arrival.
- h) Respondent was living just 50 meters away from the place where the incident occurred. The respondent would be the first person to arrive at 05:30 am at the place of occurrence, if the claimant had made any hue and cry after happening of that incident at 5.00 or 5.30 AM. Why the claimant remained silent for so long? What stopped the claimant to inform the respondent about the happening of such incident? Why claimant son did not informed the police despite knowing that his father is no more? These entire questions raise serious doubts on the story of the claimant.



- i) Most important the police did not find any eye witness when they reached the accident spot as mentioned in the FIR whereas claimant is deposing that all her family members were present at the site.
- j) Throughout pleadings and evidence , the claimant maintained that it was her husband who was working for the Respondent but a complete U turn is taken by claimant when the Respondent has been suggested on 29.08.22 and also on 21.12.2022 in cross examination that Pappu Harijan and Rakhi Harijan both were working at the said premises and were also residing there. It has also been noticed that the claimant exhibited certified copies of the charge sheet filed by the police as Ex: CW-1/1 before the court of MM. There is a document of Delhi Police Control room which contradicts all stories of claimant. It is mentioned therein as under:-

"Moka par Pappu S/O Munna Lal aged 45 years R/O Chhatarpur MP ka rahne wala h. Jo apne bete Rahul ke pass karib 10 baje milne aaye tha jo lift banana ke 3/4 foot gadde Me pada Hua MilaAbove Makan A-233, Majlis Park, Jo Sh. Sanjeev Agarwal ka hai . Jo under construction h. Jisme Rahul naam ka chowkidar rahta hai. Uske father the....."

17. In view of my finding on issue no.-2 and 3 above, I hold that the claimant is not entitled for any compensation from the Respondent as she failed to prove relationship of employer and employee between deceased and Respondent either by way of documentary evidence or circumstantial evidence therefore the claim filed by Rakhi Harijan Claimant against the Respondent is hereby dismissed.

18. 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

