

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. EAR-07/CEC-D/NE/30/18/ 195.

Dated: 31/05/2023.

IN THE MATTER OF:

Ms. Rehana w/o Mashuk

(Legal Heir/Mother of deceased workman Sh. Faizan)

Magai Tala, P.S. Kotwali, Shahjanpur, UP – 242007

...Applicant/Claimant

V/s

1. Md Shahid S/o Sh. Shahdat Ali

D-461, Gali No. 1, Buland Masjid,
Shastri Park, Delhi - 110053

2. Sh Kishore Pahalwan

R/o. 9/2490, Gali No. 18-A,
Kailash Nagar, Delhi – 110031

.....Respondents

ORDER

1. By this order, I will dispose of EAR report filed on 25/07/2018 by P.S. Gandhi Nagar, New Delhi, in compliance of order of Hon'ble High Court of Delhi in the matter of M/s New India Assurance Co. Ltd. v/s Puran Lal & Ors.
2. As per the EAR report on 22/04/2018 at about 11:52 PM a PCR call vide DD. No 41A was received at P.S. Gandhi Nagar stating that a fire took place at H.No. 9/2490, Gali No. 18, Kailash Nagar and after reaching the spot PCR saw that a fire has taken place in the 1st floor of the said building and found two Sh. Faizan & Sh. Sahamat lying on the floor in burnt condition and the body could not be recognized due to fire. On this FIR u/s 111/18 dated 23/04/2018 u/s 285/304A/34 IPC was registered. The victims were taken to the hospital by the SDM concerned. In this accident both namely Sh. Faizan & Sh. Shahmat had died. Copy of FIR, copy of DD No. 41A dated 22/04/2018, Map of the spot, report of FSL dated 03/05/2018 bearing No. FSL 2018/B-3756, FSL laboratory report dated 03/05/2018, letter dated 22/05/2018 from SK Tomar Divisional Officer (F) Delhi fire services to SHO PS Gandhi Nagar Delhi, Fire details dated 18/05/2018, documents from SDN Hospital Dilshad Garden and Post-mortem report bearing No. 611/18 dated 24/04/2018, Aadhar Card of Md. Shahid Ali and Sh. Faizan has



been placed on record. On the basis of EAR report Commissioner Compensation has taken cognizance as per the provision of EC Act, 1923 and respondents were summoned before Commissioner Employee's Compensation.

3. On the basis of EAR report Commissioner Compensation has taken cognizance as per the provision of EC Act, 1923 and respondents were summoned before Commissioner Employee's Compensation.
4. On 25/07/2018 respondents appeared before the Commissioner Employee's Compensation and filed their reply and respondent no 1 in its reply submitted that the answering respondent denies all the averments and allegations as levelled in the EAR. It is further submitted by the respondent no 1 in their workshop, which was situated at the first floor of house, job work of stitching of cloth was being carried out and the working hours were from 10:00 AM to 06:00 PM and the workers were not allowed to stay in the workshop. It is further submitted by the answering respondent that the deceased were not their employees, infact they were employee of second floor tenant namely Shri Radhey Shyam, who was also carrying out stitching work from the second floor premises. It is further submitted by the answering respondent that the DD entry bearing DD. No. 41A dated 20/04/2018 regarding catching fire in the workshop was in respect to 2nd floor portion of the house in question and also the dead bodies of the deceased workers were recovered from the second floor portion, which was under the tenancy of tenant Radhey Shyam. It is further submitted by the answering respondent that since he is a local resident and was easily available to the police, as such the police with a view to work out the case has shown the deceased as his workers and has given clean chit to 2nd floor tenant Radhey Shyam as he is the resident of Fatehabad, Agra, UP. In the last the respondent further denied rest of the contents in toto and in the last prayed that the EAR filed by the Police may kindly be dismissed.
5. Respondent No. 2 filed its reply and submitted that the answering respondent is the owner of the said property bearing No. IX/2490, Gali No. 18-A, Kailash Nagar, Delhi. The answering respondent no 2 further submitted that the first floor of the said property was given on rent to Mohd. Shahid and second floor of the property was given on rent to one Sh. Radhey Shyam. The answering respondent no 2 further submitted that the fire in the workshop took place due to negligence on the part of the employees of second floor tenant Sh. Radhey Shyam for which the matter was reported to the police. It is further submitted by the answering respondent that the second floor tenant Radhay Shyam is the resident of Fatehabad, Agra, UP and after the accident took place, he never turned up to visit his workshop. In the end the answering respondent stated that he was not at fault



as the fire took place at the second floor portion due to negligence of the employees, who were staying there and there was no electric short circuit/fault.

6. Petitioner rebutted all the contents of Respondent as stated in the reply and reiterated contents of the EAR in his rejoinder.
7. On 29/09/2022 following issues were framed for adjudication:
 1. Whether Employee-employer relationship existed between the parties/deceased and the respondents?
 2. If so whether death of deceased occurred out of and in the course of his employment?
 3. If so what relief and necessary directions in this regard?
8. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex. WW-1/A (Mother of deceased Sh. Faizan). The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. WW1/1 to WW1/4 i.e. Copy of her Aadhar Card, copy of Police FIR No. 0111 dated 23/04/2018, copy of Charge sheet filed by Sh. Beer Pal Singh, SI, Copy of Aadhar Card of deceased Faizan.
9. Further despite given sufficient opportunities to the respondents, respondents failed to cross examine the claimant and also further respondents failed to lead evidence in the matter, hence the right of respondents to cross examine the claimant and to lead evidence in the matter was closed on 27/02/2023.
10. The matter was fixed for arguments. Argument was filed by the claimant and the respondent failed to lead/file written arguments hence the right of respondent to lead/file written arguments was closed on 19/4/2023.
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

12. In the matter as per the EAR report on 22/04/2018 at about 11:52 PM a PCR call vide DD. No 41A was received at P.S. Gandhi Nagar stating that a fire took place at H.No. 9/2490, Gali No. 18, Kailash Nagar and after reaching the spot PCR saw that a fire has taken place in the 1st floor of the said building and found two Sh. Faizan & Sh. Shahmat lying on the floor in burnt condition and the body could not be recognized due to fire. On this FIR u/s 111/18 dated 23/04/2018 u/s 285/304A/34 IPC was registered. The victims were taken to the hospital by the



SDM concerned. In this accident both namely Sh. Faizan & Sh. Shahmat had died. The respondent no. 1 had stated in his written statement that the deceased workman were not his employees, infact they were employee of second floor tenant namely Shri Radhey Shyam, but in support of his written statement the said respondent no. 1 neither appear in the matter nor lead any evidence in the matter in his support to prove his case on merit. Further the respondent no 1 has filed one rent agreement to show that he took only 1st floor on rent from the respondent no 2, but the same rent agreement is not duly notarized nor proves during the proceedings before this Authority. After filing the reply respondent no 1 did not appear in the proceedings, onus was upon the respondent to prove his case by way of leading evidence, but respondent failed. In these circumstances taking the cognizance of EAR report I held that in fire accident occurred on 22/04/2018 resulting therein Sh. Faizan deceased employee died. As such I consider respondent no 1 as the employer since he failed to prove his case before this Authority on merit he is liable to pay death compensation to the dependants of the deceased Sh. Faizan as per the provision of EC Act 1923. The case of other claimant namely Sh. Shahmat has already been decided in other case bearing No EAR-8/CEC-D/NE/31/18 by the then Authority as such I am not commenting anything in respect of deceased employee Sh. Shahmat. Accordingly issue no. 1 & 2 is decided in favour of the claimant and against the respondents.

ISSUE No. 3

13. In view of above discussion made. I hold that claimants are entitled to receive death compensation under the EC Act 1923 from respondent No. 1 Md. Shahid. For considering the case of claimant for compensation I am taking age of deceased as 22 years as per mentioned in Post-Mortem report No. 611/18 dated 24/04/2018 and relevant factor as per age 221.37 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/-	:	4000/-
Relevant factor	:	221.37
4000 * 221.37	:	Rs. 8,85,480/-

In view of this calculation claimant is entitled to receive Rs. 8,85,480/- as compensation from the respondent No. 1. 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.



14. In view of above discussion, I direct respondent No. 1 Md Shahid to **deposit Rs. 8,85,480/- as compensation along with 12% interest w.e.f. 21/05/2018 till its realization** as per section 12(1) of the EC Act, 1923 and the respondent No. 1 is also directed to **deposit 25% penalty of awarded amount i.e. 2,21,370/- 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 31st day of May, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

