

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-D/NE/03/2017/293.

Dated: 31/08/2023.

IN THE MATTER OF:

Sh. Hasan Haider & Ors

R/o House No. 237/2A,

Buland Masjid, Shastri Park, Delhi- 110053

.....Applicant/Claimant

V/s

Sh. Naushad C/o Dharmender

R/o A-249/4, Buland Masjid,

Shashtri Park, Delhi - 110053

Also At:

A-191/27, Buland Masjid,

Shashtri Park, Delhi - 110053

.....Respondent No.1

Sh. Ayub S/o Sh. Liyakat Ali,

D-558, Buland Masjid,

Shashtri Park, Delhi - 110053

.....Respondent No.2

ORDER

1. By this order, I will dispose of claim application filed by the claimant on 11/01/2016 for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that the deceased Wasim Haider was working with one Naushad. The said respondent Naushad had different kind of contractual work including sending the workmen to different places for performing work. The claimant further submitted that the said respondent Naushad was also at the relevant point of time taking up the work of setting up the bore well including submersible at the instruction of different clients. It is further submitted by the claimant that the deceased Wasim Haider was working with Naushad for a long time. The said respondent Naushad used to pay him different amount ranging from Rs. 5,000/- to Rs. 7,000/- depending upon the work being taken from the deceased. It is further



submitted by the claimant that on 27/06/2015 the deceased went to do the work of bore well at the instruction of the said Naushad and there were other labours namely Parvesh and Jachinder. That the respondent Naushad do not took any safety measures nor kept any arrangement for first aid. That the respondent Naushad on 27/06/2015 had taken the job of setting of bore well at the place of one Ayub S/o Liyakat Ali R/o H.No. D-558, Buland Masjid, Shastri Park, Delhi and instructed the workmen to go at the said address for the work of setting up of bore well. That while the work was being carried on the deceased Wasim Haider sustained electrocution at the site and expired. That no effort was taken by any of the said two respondents to take the deceased to the hospital for treatment. That it is not out of place to mention that one buffalo also sustained electrocution and expired. In the last petitioner prayed that since accident of deceased employee occurred out of and in the course of employment with respondents resulting in death hence respondents are liable to pay compensation amounting Rs. 13,19,700/- along with 18% interest to the petitioners/claimants being the legal heirs of the deceased/ employee.

3. Summon was sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent No. 1 filed its reply and submitted that he is a poor labour class person and works under different persons including the deceased Wasim Haider on daily basis. That on 25/06/2015, the deceased Wasim Haider engaged him through one Jitender who was also working at the spot, for the work of setting up of bore well in the house of respondent no 2. That on 27/06/2015 the deceased Wasim Haider, Parvez and him (answering respondent no. 1 Naushad) sustained electrocution while they and one Jitender were carrying out the work as no safety measures were taken by the respondent no 2 or the contractor Sh. Wasim Haider (deceased) it is further submitted that on being electrocuted the said Wasim Haider expired but one Parvez and him (answering respondent no. 1 Naushad) only sustained injuries from the said electrocution. It is further submitted by the respondent no 1 that he is being trapped in the matter to support the respondent no 2 by making him the employer of the deceased Wasim Haider. 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. Respondent No. 2 filed its reply and submitted that he has given work of installation of submersible on contract basis to respondent no. 1 Sh. Naushad and it was his sole responsibility to do the given work on his own level and that is why the answering respondent had no relationship with the appointment of the employee done by the respondent no 1 for completing the said work. It is further submitted by the answering respondent that he had no knowledge that how the submersible work is to be done and that is why he gave contract to respondent no 1 for only doing the work of submersible and there was no work of electricity in it. That there was no any need of electricity in the work performed by the respondent no 1, that there is no confirmation of any electric current nor from the BSES and there is no any inspection report. It is further submitted by the answering respondent that he was not present at the time of incident



nor he was giving any kind of instructions to anyone for doing the work, it was solely the respondent no 1 who was doing the work and giving the instructions. 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.

6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. On 28/08/2017 following issues were framed for adjudication:
 1. Whether the deceased Wasim Haider died due to the injury sustained by him during the course and out of his employment under the respondent no 1 or respondent no. 2 and if so, to what amount claimants are entitled and from R-1 or R-2 under Employees Compensation Act?
 2. Relief, if any?
8. Matter was fixed for the evidence of the claimant. Claimant filed his statement by way of affidavit Ex. CW1/A (Father of deceased Lt. Wasim Haider). The contents of affidavit are corroborative to those claim petition. The claimant also filed documents Ex.CW1/1 to CW1/5 i.e. Copy of ID card of deponent, the deceased and the mother, Copy of Guarantee document in the handwriting of Naushad, copy of FIR, Copy of medical/autopsy record dated 28/06/2015, copy of death certificate of the deceased. His statement was also recorded and was also cross examined by counsel of respondent on 15/11/2017 and completed on 03/01/2018.

Further claimant examined another 03 witnesses i.e. Smt. Naseema by way of affidavit Ex. CW2/A, Sh. Akil by way of affidavit Ex. CW3/A and Sh. Tajudeen by way of affidavit Ex. CW4/A and further tendered their evidence and were also cross examined by counsel of respondent on 22/2/2018, 28/5/2018 and 28/5/2018 respectively. Witness Ex. CW3/A and CW4/A statement is not considerable as they were not a co-worker in this case and was not present on the spot of accident when deceased Lt. Wasim Haider met with accident.
9. For respondent no 1 Sh. Naushad – filed his evidence by way of affidavit. The contents of affidavit are corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 11/12/2018.

Further respondent No. 1 examined another witness i.e. Sh. Javed S/o Mohd. Rehman and further tendered the evidence and was also cross examined by counsel of claimant on 11/12/2018 and completed on 24/07/2019.
10. For respondent no 2 Sh. Ayub – filed his evidence by way of affidavit. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 21/11/2022, 14/2/2023 and completed on 29/03/2023.



Further respondent No. 2 examined another witness i.e. Sh. Jitender S/o Naphe Singh and further tendered the evidence and was also cross examined by counsel of claimant on 31/05/2023.

11. The matter was fixed for arguments. Written arguments were filed by the parties.
12. 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

13. The case of claimant is this that the deceased Wasim Haider was working with one Naushad. The said respondent Naushad had different kind of contractual work including sending the workmen to different places for performing work. The claimant further submitted that the said respondent Naushad was also at the relevant point of time taking up the work of setting up the bore well including submersible at the instruction of different clients. It is further submitted by the claimant that the deceased Wasim Haider was working with Naushad for a long time. The said respondent Naushad used to pay him different amount ranging from Rs. 5,000/- to Rs. 7,000/- depending upon the work being taken from the deceased. It is further submitted by the claimant that on 27/06/2015 the deceased went to do the work of bore well at the instruction of the said Naushad and there were other labours namely Parvesh and Jachinder. That the respondent Naushad do not took any safety measures nor kept any arrangement for first aid. That the respondent Naushad on 27/06/2015 had taken the job of setting of bore well at the place of one Ayub S/o Liyakat Ali R/o H.No. D-558, Buland Masjid, Shastri Park, Delhi and instructed the workmen to go at the said address for the work of setting up of bore well. That while the work was being carried on the deceased Wasim Haider sustained electrocution at the site and expired. That no effort was taken by any of the said two respondents to take the deceased to the hospital for treatment. That it is not out of place to mention that one buffalo also sustained electrocution and expired. After considering all the facts of this case it is established that deceased Wasim Haider was hired by respondent no 1 to execute work of installation of borewell / submersible at home of respondent no 2. Further from the FIR as well as witness produced by respondent no 2 RW/2/1 one Sh. Jitender who was working with deceased Wasim Haider on the day of accident who given the witness on oath that on the day of working there was a heavy sparking in electricity wires which were fitted or set by respondent no. 1/Naushad contractor. In this regard he pointed out defect many times to the contractor Naushad- resp. no. 1 regarding the sparking in the electricity wires but he did not pay any attention to stop the sparking problem and forced the workers to work on same condition otherwise he will hire other labours for working on the site. The incident was occurred due to sole negligence of respondent no 1. This witness is eyewitness whose statement is considerable as such it is proved that deceased Waseem Haider was engaged by respondent no 1 for the work and it was the duty respondent no 1 to provide the safety equipments to the workers and also provide safe working condition to avoid any untoward situation but the respondent no 1 failed to discharge his



responsibility. As such deceased Wasim Haider met with an accident out of and in the course of his employment with respondent no 1, as such claimants are entitled to receive death compensation from respondent no 1.

Issue No.2

14. 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 23 years as per age mentioned in PMR No. 560/15 and relevant factor as per age 219.95 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

| | | |
|-------------------|---|----------------|
| 50% of Rs. 8000/- | : | 4000/- |
| Relevant factor | : | 219.95 |
| 4000 * 219.95 | : | Rs. 8,79,800/- |

In view of this calculation claimant is entitled to receive Rs. 8,79,800/- 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.

Regarding the issue of penalty a Show Cause notice dated 06/04/2018 was issued to the respondent No. 1 with direction to file the reply as to why penalty be not imposed upon them, reply filed by the respondent no 1 found not satisfactory as such keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent.

15. In view of above discussion, I direct respondent No. 1 to **deposit Rs. 8,79,800/- as compensation along with 12% interest w.e.f. 26/07/2018 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. Rs. 2,19,950/- 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.

16. Given under my hand and seal of this Authority on this 31st day of August, 2023.

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

