

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/130/NW/2019/ 425.

Dated: 28/12/23.

IN THE MATTER OF:

Smt. Bachi & Ors.

A-430, Pucca Shahbad Dairy,
North West Delhi – 110042

...Applicant/Claimant

V/s

Ms. Nitu & Sh. Vinod

H. No. 9, Pocket – B-8, Sector – 111,
Rohini, Delhi - 110085

.....Respondent No. 1

Sh. Sunny Kumar (Contractor)

R/o One Room Set, A-63/1,
Block – A, Khasra No – 11/14 & 15/1,
Lakhi Ram Park, Kirari,
Suleman Nagar, Delhi – 110086

.....Respondent No. 2

ORDER

1. Vide this order I will dispose of the application dated 10.12.2018 of the applicant/ claimant seeking death compensation.
2. That the case of the petitioner is this that the deceased employee Mahatam was employed by the respondents as mason (Raj Mistri) on his house for construction work. That the deceased was doing the consecution work on the top floor of house no. 43, pocket – 5, sector – 24, Rohini, Delhi since past some time and on 02/10/2018 at about 01:30 PM when the deceased was doing the construction work as per the directions of the respondents on the top floor of the said house he was coming down from the top floor through lift, he fell down inside the lift from top of said house and as a result he got grievous injuries all over his body. That immediately after the accident Mahatam (now deceased) was moved to Brahm Shakti Hospital, Pooth Kalan, Delhi where the doctors declared him brought dead. That the post-



mortem examination of deceased Mahatam was conducted by the doctors of Baba Saheb Ambedkar Hospital, Rohini, Delhi. That the matter was duly reported to P.S. Begumpur, Distt. Rohini, Delhi and FIR No. 0518 dated 02/10/18 u/s 288/304-A of IPC was registered on 02/10/2018. It is further submitted by the petitioner that the deceased Mahtam was aged about 53 years at the time of accident and was drawing wages @Rs. 600/- per day and Rs. 18000/- per month from respondent. That the accident was very much in the knowledge of respondents from the day of accident. 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 along with 12% interest and penalty to the extent of 50% to the petitioners/claimants 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.
4. The claimant in the claim petition has made Sh. Neelu and Sh. Vinod as respondent no. 1. Further Sh. Vinod Kumar appeared on 29/01/2020 and stated that he does not know about Sh. Neelu and he is the property owner in question.
5. Further Sh. Vinod- Respondent no. 1 filed his reply and denied employee-employer relationship as deceased Mahatam was never employed by him as a employee and he has filed this claim just to harass the respondent and to extort undue amount from the respondent, hence the application u/s 22 of the EC Act, 1923 is not maintainable as per the provision of law. Further submitted that the answering respondent never knew the deceased Mahatam and never engaged him as Mason (Raj Mistri) for construction work on the top floor H.No.43, Pkt – 5, Sector – 24, Rohini, Delhi. That the answering respondent did not reside at working place in which the said accident was occurred. That the answering respondent did not provide any type of wages or salary to the deceased/applicant. That the applicant did not file any proof of salary nor filed any proof of employment before this Hon'ble Court. That the answering respondent engaged Sunny Kumar as a contractor for carrying out an assignment/project and the contract agreement was made between the answering respondent and Sunny Kumar as a contractor on 27/04/2018. In the last the answering respondent further denied rest of the contents in toto and prayed that the application may kindly be dismissed with heavy cost.
6. Respondent no. 2 filed its reply and submitted that he does work of stone cutting and grinding. Further he submitted that neither he knew Sh. Mahatam deceased person, nor he worked with him. That the day of death of deceased was 2nd October – Gandhi Jayanti and was a Govt. Holiday and no labour had come to the site and all the work was closed. Further he submitted that on the day of incident he was sleeping inside the construction site, when he heard a noise from the road outside, only then he woke up and came out. And saw an old man who was moaning and someone told that some other person was learning to drive car on empty road and hit the deceased and he ran away. That out of humanity and to save the life of the



deceased he and the landlord took the deceased to the hospital in their car and there the doctor asked my name and wrote accordingly in the hospital record. That in the meantime the deceased also died and when the police was called, they unnecessarily added my name and the landlord's name and I was harassed a lot. That later the relatives of the deceased also reached the hospital and a leader of a labour union also reached there and it was he who tricked the family members of the deceased and put pressure on me and the landlord to make false allegations and extort money and then he started talking of settlement of lakhs of rupees and gave threats. The answering respondent no. 2 further submitted that on his site every kind of responsibility and accountability was his and due to it, being a holiday all labourers were on leave and work was closed and the road accident is being imposed upon him unnecessarily. In the last the answering respondent submitted that his only mistake was that to take the deceased to the hospital to save his life while he was lying on the road.

7. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
8. On 04/07/2022 following issues were framed for adjudication:
 1. Whether employee-employer relationship existed between the deceased Sh. Mahatam and the respondent?
 2. If so whether deceased died out of and in the course of his employment due to injury caused?
 3. If so, whether dependants/claimants of deceased are entitled for compensation from respondent under the Act?
 4. If so what relief and directions are necessary in this regard?
 5. Whether penalty can be imposed upon respondents u/s 4A?
9. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex.PW1/A (Wife of deceased Lt. Mahatam). The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex.PW1/1, PW1/2 and PW1/5 and Marked PW1/3, PW1/4, PW1/B and PW1/C i.e. Copy of Aadhar card of deceased, copy of Aadhar card of deponent, Copy of FIR bearing No. 0518 dated 02/10/2018 of PS Begumpur, Distt. Rohini, copy of Medical documents Photographs of deceased, Copy of Aadhar Card of claimants and was also cross examined by counsel of respondent No.1 on 31/01/2023. Further despite opportunity provided to respondent no. 2 – Contractor, the respondent no. 2 failed to cross examine the claimant hence the right of resp. No. 2 to cross examine the claimant was closed on 28/02/2023.
10. For respondent No. 1 Sh. Vinod Garg – filed his evidence by way of affidavit Ex. RW1. The contents of affidavits are corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 04/07/2023.



11. Further respondent no. 2 appeared in person on 14/09/2023 and gave his statement that he is relying on his reply and does not want to lead any evidence, hence respondent no. 2 evidence was closed.
12. The matter was fixed for arguments. Written argument were filed by the respondent no. 1 and claimant.
13. 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 & 3

14. That the case of the petitioner is this that the deceased employee Mahatam was employed by the respondents as mason (Raj Mistri) on his house for construction work. That the deceased was doing the consecution work on the top floor of house no. 43, pocket – 5, sector – 24, Rohini, Delhi since past some time on last drawn wages @Rs. 600/- per day and Rs. 18000/- per month from respondent and on 02/10/2018 at about 01:30 PM when the deceased was doing the construction work as per the directions of the respondents on the top floor of the said house he was coming down from the top floor through lift, he fell down inside the lift from top of said house and as a result he got grievous injuries all over his body. That immediately after the accident Mahatam (now deceased) was moved to Brahm Shakti Hospital, Pooth Kalan, Delhi where the doctors declared him brought dead. That the post-mortem examination of deceased Mahatam was conducted by the doctors of Baba Saheb Ambedkar Hospital, Rohini, Delhi. That the matter was duly reported to P.S. Begumpur, Distt. Rohini, Delhi and FIR No. 0518 dated 02/10/18 u/s 288/304-A of IPC was registered on 02/10/2018. It is further submitted by the petitioner that the deceased Mahtam was aged about 53 years at the time of accident. That the accident was very much in the knowledge of respondents from the day of accident, but the respondent did not pay any compensation amount to the petitioners.

On the other hand respondent no. 1 denied employee-employer relationship on the ground that deceased has never worked with him and as such he does not know deceased Sh. Mahatam and he has never engaged the deceased as a mason (Raj mistri) for construction work on the top floor at the property in question. The petitioner has not filed any documents regarding employment of the respondent with the respondent no. 1. Further respondent has taken ground that on 27/04/2018 he has entered in a agreement with respondent no. 2 Sunny (Contractor) for carrying out an assignment. Respondent relied upon the agreement arrived between them on 27/04/2018. In view of this agreement respondent no. 2 is responsible for any untoward situation comes during the construction activities and accordingly Resp. no. 2 is liable to pay compensation to the applicant in any manner whatsoever. Accordingly, resp. no. 1 denied his liability towards any payment of compensation to the claimant.

Resp. no. 2 contractor also filed his reply and denied employee-employer relationship with deceased Mahatam on the ground that he has only helped the deceased Mahatam to move the



hospital for the treatment when he was met with an road accident by someone unknown learner car driver.

Claimant examined herself to prove her case Ex.PW1/A, she was cross examined by counsel for respondent. Respondent no. 1 also lead his evidence and was also cross examined by counsel of the claimant. Resp. no. 2 neither lead any evidence nor cross examined to the witnesses of claimant as well resp. no. 1.

After hearing both the parties in detail and considering the material available on record. Accordingly on the basis of FIR lodged in PS – Begumpur bearing FIR No. 518/18 on 2/10/2018 and the final from report u/s 173 CrPC submitted by the IO. Final report and chargesheet and SHO concerned PS, in the court of Ms Ekta Gauba – MM, Rohini Courts Delhi, it has come out that head constable Rajesh No2695/RD had investigated the matter and had found that cause of death of deceased Mahatam was falling in lift while he was working on the roof at the property No. 43, Pkt-5, Sector-24, Rohini, Delhi. further he has also made enquiry around near the property in question and found that deceased was working on the top floor for making farsh he was thrashing the gravel and died due to fallen from top floor in lift and he died. He had prepared the crime scene and map of the incident site. Further this report also indicate that during the enquiry in PS contractor resp. no. 2 Sunny and Sachin S/o Jai Prakash had told that deceased Mahatam was died during his working time thereafter son of deceased Vikas was also called for enquiry by the police, he also confirmed that on the day of accident he had gone to provide the food to his father on the top floor of the property in question where his father was working, and who fallen when he was carrying out with tasla from the ladders towards down at that time his father was slipped and fallen in open pit of the lift and accordingly he shouted and at that time contractor and other persons came there and after that his father was taken to the Brahm Shakti Hospital, where his father was died during the treatment.

From these facts of the case it is proved that on the day of accident deceased Mahatam was working at the premises of resp. no. 1 and in an incident he died as discussed above thus employee employer relationship has been proved. Merely executing the agreement respondents cannot escape from there liabilities. Though the agreement dated 27/04/2018 was arrived between respondent no. 1 & 2 which is notarized and responsibility has been fixed on the respondent no. 2 contractor, if any mis-happening happened. But this agreement does not disclose anything about the safety of the workers at the work place meaning thereby that who will be responsible for providing safe working condition to the workers. From the evidence examined by the respondent nothing has come adverse which goes against the claimant. In view of this from the above narration it is proved that there was employee-employer relationship between Mahatam and the respondent no. 1, since work was going on of respondent no. 1. The agreement dated 27/04/2018 arrived between rep. No. 1 & 2 is not in complete agreement which disclose sole responsibility of respondent no. 2 contractor regarding other conditions like safety payment etc. As such I am holding respondent no. 1 as a employer under this Act in respect of deceased employee u/s 3, hence death of deceased occurred out of and in the course of his employment with resp. no. 1, hence respondent no. 1 is liable to pay compensation under the Act to the claimant. Accordingly issue no. 1, 2 and 3 are decided in favour of claimant and against the respondent.



Issue No. 4 & 5

15. 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 53 years as per Date of Birth mentioned in Aadhar card No. 409673995256 of the deceased and relevant factor as per age 142.68 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/-	:	4000/-
Relevant factor	:	142.68
4000 * 142.68	:	Rs. 5,70,720/-

In view of this calculation claimant is entitled to receive Rs. 5,70,720/- 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.

16. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent.

17. In view of above discussion, I direct respondent No. 1 to deposit Rs. 5,70,720/- as compensation along with 12% interest w.e.f. 01/11/2018 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. 1,42,680/- 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.

18. Given under my hand and seal of this Authority on this 28th day of December, 2023.

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

