



BEFORE SH. AMARDEEP, COMMISSIONER
(EMPLOYEE'S COMPENSATION ACT, 1923)
GOVT. OF NCT OF DELHI, LABOUR DEPARTMENT
(SHAHDARA & NORTH EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

No. F. CEC-D/NE/12/2019/49/2019 / 1302-03

Dated: 17.04.23

In the matter of: -

Smt. Promila W/o Late Sh. Bindalal
Village Badoi, P.S. Malipur,
District Ambedkarnagar, U.P.

... Claimant

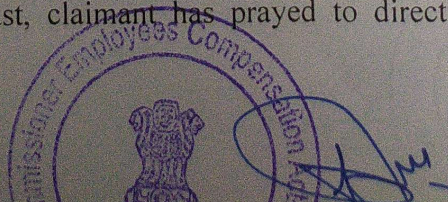
V/s

Smt. Jamuna Devi W/o Late Sh. Hari Om
Sh. Kartik Verma S/o Late Sh. Hari Om
Sh. Kishitz S/o Late Sh. Hari Om
H.No. B-2/855, Gali No. 32
Harsh Vihar, Delhi-110093

..... Respondents

Order

1. Vide this order, I shall dispose of the claim application dated 29.03.2019 by the claimant under Employee's Compensation Act, 1923 (hereinafter referred to as an 'Act') claiming death compensation from the respondents.
2. The claimant has stated that the deceased Sh. Bindalal was employed to carry out the work of whitewash in the house of respondent. He was very hard working and honest and never gave any chance of complaint during his service. The respondent did not provide any safety equipment for carrying out whitewash work. The workman has informed to the respondent that Jhoola might break, as it is very old but the respondent did not pay any heed to it. On 12.09.2017 while Sh. Bindalal was doing whitewash work, the Jhoolawhich was provided to him for whitewash, broke down resulting which he fell down and died on spot. A FIR No.0379/2017 dated 12.09.2017 was registered in P.S. Harsh Vihar wherein it is mentioned that one worker namely Sh. Bindalal fell down from 11nd floor while performing white wash work in the House which was in gali no.31in east direction due to break down of Jhoola or lack of safety measurements/equipments and Sh. Bindalal died on spot.Sh. Bindalal died due to negligence of respondent while performing his duty. Respondent gave fake assurance to the wife of the deceased to pay death compensation but he did not pay any compensation till date. Claimant sent a demand notice dated 29.10.2018 to the respondent which was not replied by him. In the last, claimant has prayed to direct the respondent to pay death



compensation amounting to Rs.17,06,040/- along with 50% penalty and interest and Rs. 30,000/- as funeral charges.

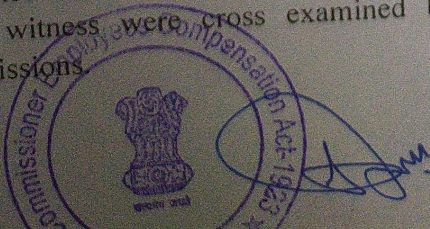
3. Summon was issued to respondent, respondent appeared and filed his written statement wherein he has stated that the Employees Compensation Act applies on employees working in factories, mines, docks, construction establishments, plantations, oilfields and other establishments listed in Schedule II of the Act. It applies to persons recruited for working abroad and who is employed outside India as in Schedule II of the Act. That the deceased does not fall into any of the above category hence not entitled to file a suit under Employees Compensation Act, 1923. That the respondent is neither an employer nor was in any contract with the deceased. That the deceased was neither employed in capacity of an employee nor the respondent was getting the work done for his businesses or trade. The respondent was getting his house white washed in his individual capacity, not as an employer and the deceased was also engaged for a casual work which the deceased accepted in his own capacity as an individual not as an employee. That the deceased was neither an employee of the respondent nor was engaged to do any odd job for his trade or business. The deceased accepted the casual work at his own capacity & will. Hence, the deceased suit to file a claim under Employees Compensation Act, 1923 is wrongly initiated to forcefully extract money from the respondent. That the deceased himself got the "Jhula" for doing the white wash. In spite of asking him to ensure the stability & durability of the "Jhula" he continued to do the work at his own risk. Hence, the respondent is not responsible for any carelessness on part of the deceased. The claimant filed rejoinder wherein she denied the contentions of the respondent.

4. On completion of pleadings following issues are framed:

- (i) Whether employee-employer relationship existed between the deceased Sh. Bindalal and the respondent Sh. Hari Om and if so, whether the deceased expired during and out of course of employment with respondent ?
- (ii) And if so, to what amount of compensation is entitled to ?
- (iii) Any other relief?
- (iv) What directions are necessary in this respect?

5. The claimant moved an application that the respondent Sh. Hariom has expired and in his place his legal heirs i.e Smt. Jamuna Devi W/o Sh. Hariom, Sh. Kartik Verma S/o Late Sh. Hariom, Sh. Kishitz Verma S/o Late Sh. Hariom to be impleaded as respondents. The application of the claimant was allowed.

6. The Claimant filed her evidence by way of affidavit along with the documents. The claimant also filed evidence Sh. Ramdhani@Raju, Sh. Sushil Gaur, Sh. Rohit Kumar Gaur and Sh. Khushiram Gaur as witnesses. The claimant as well as the witnesses were cross examined by the respondent. The Respondents Smt. Jamuna Devi, Sh. Kartik and Sh. Kishitz filed their evidence and also filed evidence of Sh. Purshottam Das as witness. The respondents and their witness were cross examined by the claimant. The parties filed their written submissions.



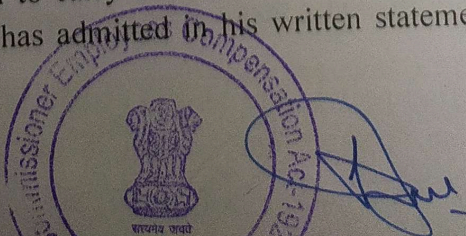
7. I have gone through the claims, replies and documents filed by the parties and my findings are as under:-

Issue No.1

The claimant in her claim has stated that Sh. Bindalal was employed with the respondent as a labour for doing whitewash. On 12.09.2017 while he was doing whitewash, the Jhula broke down due to which he fell down and died on spot. The respondent in his written statement has stated that the Employees Compensation Act applies to the entities mentioned in Schedule to the Act and the deceased does not fall under any of the categories, therefore, the claim under Employees Compensation Act is not maintainable. Deceased Sh. Bindalal was casual worker and he was not hired to do any work related to trade or business of the respondent. The Jhula which was used by him was brought by the deceased and it was his responsibility, he continue to work, for his carelessness respondent is not liable. The claimant filed her evidence and examined herself as CW1/A. The claimant in her evidence has filed copy of FIR as Ex.CW1/1, copy of the receipt of the dead body as Ex.CW1/2, copy of demand notice as Ex.CW1/3, copy of postal receipt as Ex.CW1/4, copy of the proof of residence as Ex.CW1/5, copy of aadhar card of deceased as Ex.CW1/6, copy of voter Id of deceased as Ex.CW1/7, post mortem report as Ex.CW1/8 and copy of aadhar card of claimant as Ex.CW1/9. The claimant also produced Sh. Ramdhani as a witness who has examined as CW1/B and in his deposition he has stated that he was also employed at the same place for the work of painting/whitewash and Sh. Bindalal was also employed for painting, on 12.09.2017 suddenly the Jhula broke down due to which Sh. Bindalal fell down and died. Sh. Sushil Kumar Gaur, Sh. Khushiram Gaur and Sh. Rohit Gaur, the co-workers were produced as witness by the claimant and all of them in their deposition have stated that they were also working at the work place of respondent along with Sh. Bindalal, on 12.09.2017, while doing the whitewash, suddenly the Jhula broke down due to which Sh. Bindalal fell down and died.

Further, the respondents Smt. Jamuna Devi and Sh. Kshitiz during their cross examination has admitted that Sh. Bindalal was doing painting work at their residence and the Jhula broke down due to which he fell down and died. The respondents also examined Sh. Purshotam Das Gupta as their witness who deposed as MW1/A. In his deposition he has stated that the respondent was getting the job of painting at his house and some accident took place due to which the workman died.

All the three legal heirs of Late Sh. Hariom who are now respondent in their evidence affidavit has stated that they given Sh. Bindalal contract for whitewash but in the written statement the respondent has stated that Sh. Bindalal was employed as casual labour. The respondents have not placed any document on record to show that they executed any contract with Sh. Bindalal to carry out the work of whitewash. Moreover, the respondent cannot go back, what he has admitted in his written statement, which shall prejudice the claimant.



The evidence led by the claimant i.e. Ex.CW1/1(copy of FIR) shows that the deceased Sh. Bindal fell down from Jhula while doing whitewash at House No. B-2/855, Gali No.32, Harsh Vihar, Delhi, due to which he died. Further, the deposition of claimant's witnesses also show that Sh. Bindal was employed by the respondent and he fell down from Jhula while working and due to which he died. The occurrence of the accident has been admitted by the respondent's witness Sh. Purshotum Das Gupta. Even, the respondent themselves have admitted that Sh. Bindal was employed at their residence for the work of whitewash and on 12.09.2017 while he was working, the Jhula broke down due to which he fell down and died.

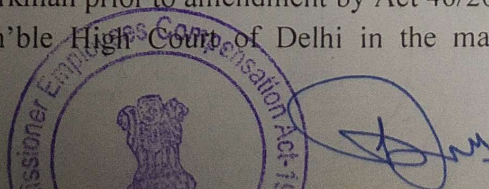
The respondent in his written statement has stated that Sh. Bindal was employed as a casual worker for whitewash and he was not employed to do the work related to the trade or business carried out by the respondent, therefore, Sh. Bindal is not workman as defined under Employees Compensation Act, hence respondent is not liable.

*Section 2(e) of the Act defines Employer- "employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a *[employee] are temporarily lent or let on hire to another person by the person with whom the *[employee] has entered into a contract of service or apprenticeship, means such other person while the *[employee] is working for him;*

Section 2(dd) defines Employee- "employee" means a person, who is-- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or (ii) (a) a master, seaman or other members of the crew of a ship, (b) a captain or other member of the crew of an aircraft, (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependents or any of them;]

The definition of workman under Section 2(n) as it stood before amendment by the Act 46 of 2000- Workman means any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of employer, trade or business.

The definition of the workman prior to amendment by Act 46/2000 and after amendment has been discussed by Hon'ble High Court of Delhi in the matter of Govind Goenka Vs



Dayawati & Ors. FAO 81/2010 wherein the court has held- So far as the definition of workman envisaged in Section 2(n) of the said Act is concerned, there has been a drastic change in the definition of the "workman" as it stood prior to the amendment and after the amendment. Prior to the amendment, certainly the workman whose employment was of a casual 2012:DHC:2002 FAO 81/2010 Page 11 of 17 nature and who was employed otherwise than for the purpose of trade or business of the employer would not fall in the said definition. However, after the amendment of the said definition through the Amending Act 46 of 2000, the Parliament had removed the said mischief which was then prevailing and coming in the way of such casual workmen who met with an accident during the course of the employment unconnected with the employer's trade or business. With the amendment of the said definition, now certainly the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business would also be covered within the definition of workman.

As held by the Hon'ble High Court of Delhi in the aforesaid matter the casual worker employed for work other than the work relating to trade or business of the employer would fall within the definition of workman. Para 12 of the said order reads as under:

The said interpretation given by the Division Bench also finds support from the amendment brought by the Parliament in the definition of Section 2(1)(n) of the Act omitting the words "Casual workman" and a workman who is employed other than for the purposes of employer's trade or business. Reverting back to the facts of the present case, here also the deceased workman was employed by the contractor and although for carrying out repair job it might not be the principal activity of the appellant but yet the appellant cannot escape its liability keeping in view the object of the said beneficial piece of legislation.

Therefore, in view of the amended definition of the workman as it stands after amendment by Act of 46/2000 Sh. Bindalal though employed as a casual worker to carry out not related to the trade or business of the respondent he would still fall under the definition of workman under Employees Compensation Act.

In view of above, it is held that Sh. Bindalal was employed by the respondent to carry out whitewash work and he sustained fatal injuries out of and during the course of employment.

Issue No.2 & 4

Section 3 of the Act provides, if personal injuries caused to an employee by accident arising out of and in the course of his employment, his employer is liable to pay compensation in accordance with the provisions of this chapter. Since, at issue no.1 above it has been held that Sh. Bindalal (workman) was employed by the respondent and he sustained fatal injuries out of and during the course of employment with the respondent. Therefore, it is held that the claimants are entitled to compensation which is calculated as under:

As far as wages of the deceased is concerned, the claimants have stated that the deceased was getting Rs.15,000/- per month. However, as provided under Section 4(1-B) of the



Actthe wages for the calculation is being considered as Rs.8,000/- which is the maximum limit of wages to be considered as per notified rate of wages and accordingly the compensation is calculated as under-

Age of the deceased-46 years as per Aadhar Card


(i) Relevant factor of 46 years of age = 166.29

(ii) 50% of last drawn salary @ Rs 8,000 p.m. = 4,000/-

(iii) Amount of Compensation = 166.29 X 4,000 = Rs.6,65,160/-

8. In view of above facts and circumstances and the documents placed on record, it is held that the claimants are entitled to receive an amount of Rs. 6,65,160/- as death compensation plus Rs.5,000/- as funeral expenses as provided U/s 4(4) in respect of death of deceased from the respondent.
9. That as per the provisions of the Act, the respondent should have made the payment of compensation within one month from the date it fell due i.e. 12.09.2017, but the respondent failed to do so. Therefore, as per the provisions of Clause (a) of Sub Section (3) of Section-4A of the Act, the claimant is also entitled for simple interest @ 12% p.a. on the amount of death compensation i.e. Rs.6,65,160/- w.e.f. 12.09.2017 till the date of realization of the compensation amount by the Respondent.
10. A show cause notice under section 4(A)(3)(b) for imposition of penalty was issued to both the respondent. Respondent has not shown any reasonable ground for not making payment of compensation to the claimants. Therefore, the claimants are also held entitled to Rs.1,33,032/- i.e. 20% of the awarded amount as penalty
11. Now, therefore, the respondents i.e. Smt. Jamuna Devi W/o Late Sh. Hari Om, Sh. Kartik Verma S/o Late Sh. Hari Om, Sh. Kishitz S/o Late Sh. Hari Om R/o H.No. B-2/855, Gali No. 32 Harsh Vihar, Delhi-110093 are hereby directed to deposit Rs.6,65,160/- (Rupees Six Lac Sixty Five Thousand One Hundred Sixty Only) along with simple interest @ 12% per annum w.e.f. the date of accident i.e.12.09.2017 till the date of payment plus Rs. 5,000/- as funeral charges and Rs.1,33,032 (Rupees One Lac Thirty Three Thousand Thirty Two Only) as penalty by way of Demand Draft / Pay Order in favour of **"Commissioner Employees Compensation, District North East"** within 30 days from today, failing which proceedings to recover the amount of compensation as well as the interest, as an arrear of land revenue, shall be initiated as per the provisions of Section 31 of the Act.

Given under my hand and seal on this 17th day of April, 2023


(AMARDEEP)
COMMISSIONER, EMPLOYEES COMPENSATION