

**BEFORE SH. S. C. YADAV, COMMISSIONER
(UNDER EMPLOYEE'S COMPENSATION ACT, 1923)
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI
5 - SHAM NATH MARG, DELHI-110054**

No. ECD/103/NW/19/ 170.

Dated: 05/12/2024.

IN THE MATTER OF :

1. Sh. Ram Puneet Yadav S/o Sh. Nathuni Yadav (Father of Deceased)
2. Smt. Meena Devi W/o Sh. Ram Puneet Yadav (Mother of Deceased)
3. Miss. Suneeta Kumari D/o Sh. Ram Puneet Yadav (Minor Sister of Deceased)

All Resident of :

Village/Post – Kalayanpur,

Thana – Vibhutipur,

District – Samastipur, Bihar - 848211

.....Applicants/Claimants

Versus

1. Sh. Abhay Jain
R/o. A-16, Satyawati Colony,
Ashok Vihar, New Delhi-110052
2. Sh. Ajit Jain
R/o. A-16, Satyawati Colony,
Ashok Vihar, New Delhi-110052

..... Respondents

ORDER

1. Vide this order, I will dispose of claim application dated 18.09.2019 filed on 24.09.2019 before this Authority under section 22 of Employees Compensation Act, 1923 for seeking death compensation.
2. In the claim petition claimant stated that the deceased Sh. Mahesh Kumar S/o Sh. Ram Puneet Yadav was employed as machine operator with respondent and on 05.06.2019, he met with an incident (an accident with meaning of the 'Act') arising out of and during the course of his employment resulting thereby he died. On 05.06.2019 deceased employee Mahesh Kumar went to the factory at Bawana, Sector-1 on 08:30 AM and he worked all the day. He did not come back home in night, his roommate Subodh (Cousin of Deceased) and Sanja took it that Mahesh Kumar might be on night duty, that's why he missed to come to room. The room



was situated at the floor of factory where Sanjay was working and all three used to stay in the same room but were working in different factories. On 06.06.2019 in morning, Sanjay thought that the deceased Mahesh Kumar might be on double duty and might be coming at Lunch Time (afternoon) and on the same day at about 02:30 PM – 03:00 PM two co-employees of deceased Mahesh Kumar came to factory of Sanjay where deceased Mahesh was residing and asked Sanjay – about Mahesh, why did not he come on duty? In reply Sanjay told them that he did not return that night. Thereafter those co-employees of deceased Mahesh Kumar told Sanjay that Mahesh Kumar was dropped by the biker Sh. Govind Sharma (Bittoo) another co-employee of the deceased near the Gas Agency which is situated near the residence of Mahesh Kumar. Then Sanjay, Subodh and Dinesh went to deceased Mahesh's factory to further enquire about Mahesh. It was a great shock to them as to how the gate of the factory (where deceased worked) did open in absence of Mahesh Kumar as they key of locks of the factory were always kept in the custody of deceased Mahesh Kumar. They called the owner of the factory and co-owner of the factory Ajit Jain who told them that yes he worked and he had been dropped by Govind Sharma (Bittoo) on his bike. They asked the owner for lodging an FIR for missing Mahesh Kumar but owner said "JO HONE THA SO HO GYA, CHAI PIYO AAJ AUR DEKHTE HAI, KAL REPORT LIKHWAYENGE". Then Sanjay, Subodh and Dinesh gave a call to the elder brother and uncle (residing in Ghaziabad) of the deceased to tell them that Mahesh Kumar is missing and the elder brother and uncle of the deceased Mahesh Kumar rushed and reached Bawana thereafter the brother of deceased alongwith three other persons reached Police Station – Bawana and requested for lodging of complaint / FIR. The four workers of the factory of Mahesh Kumar were already there at Police Station – Bawana and they were carrying some files, thereafter the police officials asked for photograph of the deceased employee and the police official informed them that he is dead and his dead body is kept in mortuary at Baba Saheb Ambedkar Hospital, Delhi. Thereafter the Investigating Officer Mr. Vijay took them in his chamber and asked them about the details of deceased Mahesh Kumar and the brother of the deceased narrated all the story to the I.O. Thereafter, the I.O. asked them to reach on the following day at Baba Saheb Ambedkar Hospital and assured he would show the dead body of the deceased for confirmation. On the following day the brother of the deceased along with his well wishers reached Hospital as per diorection of I.O. , made sure and confirmed that the dead body was that of deceased Mahesh Kumar. After Post Mortem the dead body was handed over to them. At the same time Sh. Ajit Jain, Co-owner of respondent factory came to Hospital. They took the dead body and hired an ambulance. Ajit Jain the co-owner paid a sum of Rs. 25,000/- for ambulance charges and another Rs. 20,000/- for cremation and he further said that he will provide further help. Thereafter the dead body of the deceased Mahesh Kumar was taken to his native place and got cremated there on 08.06.2019. A complaint in this regard was given to the Police Station - Bawana, Delhi. Claimant further stated that the applicants/claimants are dependents of the deceased Mahesh Kumar



being his parents and minor sister and the deceased Mahesh Kumar was unmarried. It is further stated that the deceased employee was drawing wages at the rate of Rs. 15,000/- per month and the deceased was aged about 21 years at the time of incident/accident. It is further stated that the respondent is having the notice of accident since the day of its occurrence. Thereafter the applicants approached the respondent for compensation on account of death of the employee which was caused out of and during the course of employment and the respondent assured them to consider the matter, but no compensation was paid to them nor deposited in the Court of Commissioner Employee's Compensation and respondent delayed the matter on one pretext or another and later on bluntly refused to pay any compensation. Claimant further stated that the respondent is having the notice of accident since the day of its occurrence, even otherwise, a notice under section 10 of the E.C. Act, 1923 has been served upon the respondent and prayed that the deceased was an employee and died out of and during the course of his employment, the applicants/claimants are entitled to receive the compensation as per Employee's Compensation Act, 1923 and they are also entitled to interest @ 12 % p.a. from the date of accident till realization and penalty to the extent of 50 % of the principal amount. Alongwith claim petition claimant filed copy of Post Mortem Report vide no. 513/2019 dated 07.06.2019, copy of brief facts of case written by Sub-Inspector/I.O. Sh. Vijay Kumar, Police Station – Bawana vide DD No. 14 A dated 06.06.2019.

3. Summon were issued to respondents to file reply/defense in this case.
4. Respondent filed reply in his defense and denied all the contents of the claim petition, but respondent advocate to be extend that the co-owner of the respondent factory hired an Ambulance for dead body and paid a total sum of Rs. 45,000/- for cementation charges and ambulance charges on account of humanitarian ground. Rest of other contents of the claim have been denied.
5. Claimant filed rejoinder by which he denied all the contents of reply of Respondent and reiterated contents of his claim application.
6. On 28.01.2021 the following issues were framed for adjudication:-
 - i. Whether there accident leading to death of deceased Sh. Mahesh Kumar occurred in the course out of his employment with respondent ? and if so?
 - ii. Whether the claimants are entitled for compensation and if so to what amount alongwith any other relief?
 - iii. Whether the respondent are liable for penalty under section 4A of the Act, and if so to what extent and what amount?



7. Matter was fixed for the evidence of the parties. Claimant filed his evidence by way of affidavit exhibit AW1/A. The contents of the affidavit are corroborative of those claim petition. Claimant also filed documents exhibit AW1/1 (Colly 05 Pages) to AW1/8 i.e. copy of RTI Reply by Police, copy of statements recorded by the Police, MLC of Deceased Employee prepared at Maharishi Valmiki Hospital, Delhi, copy of GD No. 014A dated 06.06.2019 registered under P.S. – Bawana, Delhi, copy of dead body handing over receipt, copy of death certificate of deceased, copy of certificate issued by village head dated 25.07.2019, copy of Aadhaar card of claimant, copy of brief facts prepared by the Police, copy of PMR of the deceased employee and copy of complaint addressed to the Police. His statement was also recorded on 01.10.2021 and was also cross examine by the AR of the respondent.

Claimant also examine 02 witnesses to prove his case. 01 is Sh. Rajnish Kumar exhibit AW2/A (Brother of the deceased employee) who on oath stated that deceased Mahesh Kumar was his real brother and was employed as a machine operator with respondents at Pooth Khurd in the Factory of Sh. Abhay Jain etc. Further he narrated about the circumstances death of deceased Mahesh Kumar that how he received information on his mobile no. 7840871880 at about 01:30 PM on 16.06.2019 regarding whereabouts of deceased are not known and after tracing a lot deceased could not be traced. Further he stated that after local inquiry he went to the Police Station – Bawana and he was informed and shown the photographs of deceased Mahesh Kumar and recognized that it was Mahesh Kumar. Further he stated about all the incident took place in this case. He was also cross examine by the AR of the respondent no. 1 and 2. In cross examination nothing adverse come out. But exhibit AW2/A stated in cross examination that he had visited the factory where deceased Mahesh Kumar was employed the factory is single story and narrated surrounding conditions of the factory where it was situated.

Claimant also examine another witness Sh. Sudin Ray exhibit AW3/A. who also supported claim of the claimant by way of stating that deceased was employed as a machine operator with the respondents at Pooth Khurd in factory of Sh. Abhay Jain etc. who also narrated circumstances in which deceased Mahesh Kumar was died from Hospital to Handing over dead body after Post Mortem to the family members. He also stated that the employer told on 05.06.2019 the deceased was taken on the two wheeler to a place by Sh. Bittoo another employee, where later on dead body of deceased Mahesh Kumar was found on the same place. The Bittoo was employed by respondents in the same factory where the deceased Mahesh Kumar was working. He was also cross examine by AR of the Respondent No. 1 and 2 but nothing has come out against claim of the claimant.

Claimant had also summon Sh. Govind Shamar alias Bittoo S/o Sh. Saroti Sharma R/o A-16, Saraswati Colony, Ashok Vihar, New Delhi with a request to serve summon through Respondents being his employee. Summon dated 22.12.2023



was sent which was returned back with postal remarks "No Such Person" and again summon dated 22.05.2024 was sent to Sh. Govind Sharma alias Bittoo S/o Sh. Saroti Lal Sharma R/o House No. RZ-91, Nihal Vihar, Nangloi, Delhi-110041 through SHO Police Station – Nihal Vihar. Police report states that Summon in question was served upon wife of Govind Sharma with a direction to appear before this Court on 10.06.2024 at 10:30 AM as a witness but he did not present and again summon dated 18.07.2024 was sent to P.S. – Nihal Vihar with the direction to serve summon upon Govind Sharma alias Bittoo S/o Sh. Saroti Lal Sharma with the direction for appearance before this Court on 13.08.2024 at 10:30 AM again report has been filed by the Sandeep, HC, P.S. Nihal Vihar by way of appearance in person before this Court who stated that the said summon has been upon witness Govind Sharma but witness Govind Sharma was not present in the witness box in this Court.

Despite given sufficient opportunities to respondents to prove their case though AR of respondents Ms. Kavita Tiwari was present on 17.09.2024 and on her request 26.09.2024 was fixed for leading evidence but thereafter no one present on behalf of respondents as such respondents failed to lead evidence as such right of respondent to lead evidence was closed on 30.09.2024 and the matter was fixed for the arguments.

Claimant filed written submission on records but respondents did not file any written submission on records.

On the basis of pleadings of the parties and documents available on record I am giving my finding on the issues framed in the matter for adjudication as under:-

ISSUE NO. 1 & 2

The case of claimant is this that deceased Sh. Mahesh Kumar S/o Sh. Ram Puneet Yadav was employed as a machine operator with respondents and on 05.06.2019 he met with an incident (Accident with the meaning of the Act) arising out of and in the course of his employment thereby he died. It is also the case of claimant that on 05.06.2019 deceased employee Mahesh Kumar went to the factory at Bawana, Sector – 1 on 08:30 AM. He worked all the day. He did not come back home in the night. His roommate Subodh (his cousin) and Sanja took it that Mahesh might be on the night duty, that's why he missed to come to the room. The room was situated at the floor of the factory where Sanjay was working and all three used to stay in the same room but were working in different factories. On 06.06.2019 in morning Sanjay thought that the deceased Mahesh Kumar might be on double duty and might be coming at launch time. On the same day at about 02:30 PM – 03:00 PM 02 co-employees of deceased Mahesh Kumar came to factory of Sanjay where deceased was residing and asked Sanjay about Mahesh Kumar. He did not come on duty. Then Sanjay told that he did not returned at night. Thereafter these



co-employees of deceased told Sanjay that Mahesh was dropped by the biker Sh. Govind Sharma (Bittoo) another co-employee of deceased near the Gas Agency which is situated near the residence of Mahesh Kumar then Sanjay, Subodh and Dinesh went to deceased Mahesh's factory to further inquire about him. It was also great shock to them as to how the gate of the factory where deceased worked did open in the absence of the Mahesh Kumar as the keys of locks of factory were always kept in the custody of deceased Mahesh Kumar. They called the owner of the factory and co-owner of the factory Ajit Jain who told them that yes he worked and he had been dropped by Govind Sharma (Bittoo) on his bike. Thereafter as per alleged case deceased body was recovered by the Police and thereafter post mortem and handing over body to the family was completed by the Police. In nutcell claimant alleged that death of deceased was out of and in the course of his employment so that respondents are liable to pay compensation. To prove case claimant examined herself and 02 other witnesses exhibit AW2/A and AW3/A who supported case of claimant. Nothing was come out from cross examination of claimant as well as the witnesses. Further respondent did not lead any evidence to prove their case on merit despite given sufficient opportunities. Even respondent did not file any written submission in support of his case.

Counsel for claimant filed written submission on record and argued in line of such submission and on the basis of documents placed on record as discussed above in evidence of claimant. Claimant's counsel also relied judgment of Hon'ble Supreme Court of India titled as Mackinnon Mackenzie and Company Pvt. Ltd. Vs Rita Farnendes cited at 1969 ACJ 419 wherein Hon'ble Court held that under section 3 (1) of the EC Act, 1923 as per well settled law under this section that there must be some casual connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employment but if the employment is a contributory cause of his accelerated the death or if the death was due not only to the disease but disease coupled with the employment, then it could be said that the death arose out of the employment and the employer would be liable. Another judgment on which claimant make his relies is Shajahan and Anr. Vs Shri Ram General Insurance Co. Ltd. cited at 2021 SCC, wherein Hon'ble High Court held as under :

"Para 8 - Apart from the said fact, we find that the owner has taken a plea that the deceased was not engaged as a driver, but that remained only a plea, unsupported by any evidence on record. It is the owner who had the best evidence to depose whether the deceased was engaged by him or not. In the absence of the best evidence, the findings recorded by the Commissioner could not have been interfered with by the High Court.



Para 9 – Constituently, we find that the order of the High Court suffers from patent illegality. Therefore, the same is set aside and the order passed by the Commissioner on 16.11.2016 is restored. The amount of compensation alongwith interest be paid within 02 months.

Another judgment of the Apex Court in a case titled as Tebha Bi and Ors. Vs Rajkumar K Swami and Ors. Cited at 20187 SCC 705 wherein the Hon'ble Court has considered the Sworn testimony of appellant no. 1 wife of the deceased that her husband was in the employment of Late Mangu Ram Keswani father of Respondent No. 13 that he was being paid monthly salary of Rs. 2000/- per month and that he died while driving the offending vehicle deserves to be accepted as in our opinion there is neither any contradiction in her examination in chief or in her examination. Her evidence is throughout consistent. We also find that the policy (Exhibit P1) issued by the Insurance Company was in force at the time of accident and the claim of claimant was allowed.

In view of above discussed position it is proved that death of deceased was occurred out of and in the course of his employment as the respondent did not lead any evidence to prove his case as such considering the facts of the case, evidence produced by claimant and argument lead by counsel for claimant and judgment cited therein accordingly I am holding that death of deceased was occurred out of and in the course of his employment with respondents are jointly or severally liable to pay death compensation to the claimants.

In view of above for calculation of compensation age of deceased Mahesh Kumar is taken 21 years on the basis of Post Mortem Report No. 513/2019 dated 07.06.2019 and relevant factor is 222.71 and 50 % of wages of Rs. 8000/- as restricted under the Act. Accordingly calculation is made as under:

Relevant factor – 222.71 x Rs. 4000 = Rs. 8,90,840/-

In view of above calculation claimants are entitled to received Rs. 8,90,840/- (Rupees Eight Lakhs Ninty Thousand Eight Hundred Forty) as a compensation from the respondents alongwith 12 % interest from the date of accident i.e. 05.06.2019 till its realization.

ISSUE NO. 3

Since as per order dated 07.12.2020 during the proceedings of the then CEC, Respondents did not file any reply to Show Cause as to why penalty be not imposed upon them under section 4 (A) of the Act, as such respondents are also liable to pay 50 % penalty of the awarded amount which comes to Rs. 4,45,420/- (Rupees Four Lakhs Forty Five Thousand Four Hundred Twenty).



In view of above respondents are directed to deposit **Rs. Rs. 8,90,840/- (Rupees Eight Lakhs Ninty Thousand Eight Hundred Forty)** alongwith 12 % interest from the date of accident i.e. 05.06.2019 till its realization alongwith 50 % penalty of the awarded amount which comes to **Rs. 4,45,420/- (Rupees Four Lakhs Forty Five Thousand Four Hundred Twenty)** with Commissioner Employees Compensation by way of demand draft/cheque within 30 days from the date of order failing which same shall be recovered as per provision of the Act.

8. Given under my hand and seal of this Authority on this 5th day of December, 2024.

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

