



BEFORE SH. K.M. SINGH, COMMISSIONER
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)
DISTRICT EAST AND NORTH-EAST
VISHWAKARMA NAGAR, JHILMIL COLONY, SHAHDARA, DELHI-110095

Case No. CEC-D/ED/24/2020/2641-2644
CEC-D/ED/11/2021 /

Dated: 08/07/22

In the matter of:-

Smt. Nanhi Devi (W/o deceased Sh. Dharmendra)
R/o Post Nagariya Khanu, Raipura,
Budaun, UP-203635Claimant

Ms. Oindrila Sen, Advocate
576, Masjid Road, Bhogal, Jangpura,
New Delhi-110014Counsel for Claimant

VERSUS

M/s DS Transport Corporation
R/o 9/16, Shyam Block, Gandhi Nagar,
Delhi-110031Respondent No.1

Sh. Irshad S/o Sh. Shahzade
R/o Hasanpur Village, Badaun,
U.P.-243601Respondent No.2

ORDER

1. Vide this order, I shall dispose off the claim application received in this office on 07.12.2020 registered as case No. CEC-D/ED/24/2020 under Employee's Compensation Act, 1923 (hereinafter referred as an "Act") and thereafter Employees Accident Report dated 07.02.2021 filed on 12.02.2021 by ASI Sh. Rakesh Kumar from Police Station

Page 1 of 14



Gandhi Nagar, Delhi and registered as case no. CEC-D/ED/11/2021 in respect of deceased Sh. Dharmendra as both the cases are same and has been clubbed together.

2. That the claimant has stated in the application that her husband had been working with Respondent No. 1 since last ten years as regular employee and was illegally shown as employed through the contractor Sh. Irshad (Respondent No.2) to camouflage the employer-employee relationship between R-1 and her husband. It has also been stated in the claim by the claimant that the nature of duties performed by her husband consisted of loading and unloading of heavy boxes of textiles and he was paid Rs.10,000/- per month for his duties much below the minimum wages of Delhi. It has further been mentioned in the claim application by the claimant that she was informed by her brother and brother-in-law who received a call from R-2 that at around 3:00-3:30 A.M. on 03.11.2020 when her husband was on duty with other workmen engaged in loading and unloading the boxes of textile, one box weighing about 80 to 90 kgs fell directly on his neck and back. The claimant has further stated that she was told that her husband was taken to Singhal Nursing Home, Gandhi Nagar, Delhi at 5:00 -6:00 A.M. by Sh. Jalaluddin (brother of R-2) and the nursing home refused to treat her husband so they brought her husband to the office and tried to tend her husband's injuries themselves between 6:00-8:00 A.M. and since the condition of her husband deteriorated so they (Jalaluddin and Kaushal) took her husband to Jag Parvesh Hospital, Delhi between 8:00-10:00 A.M. It has further been stated that the doctor referred her husband to Safdarjung Hospital, Delhi

Page 2 of 14



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where he finally received treatment but was left unattended in the hospital by both the respondents and the condition of her husband became worse as he was not treated properly and ultimately succumbed to death on the next date i.e. 4.11.2020. A post-mortem was conducted on 05.11.2020 and the cause of death in PMR NO. 2500/2020 dated 05.11.2020 is stated to be **"death due to cervical spine damage consequent to blunt force impact to the head and neck region"**. FIR No. 378/2020 was registered on 04.11.2020 at Police Station Gandhi Nagar. It has also stated by the claimant that Sh. Ramavtar, her brother-in-law was called by one Sh. Siddiq Miya, maternal uncle of R-2 on 16-17, November, 2020 and was told that he had spoken to the owner of R-1 and R-1 has assured that an amount would be given as compensation to her. The claimant has further stated that she was told by R-1 and R-2 that no compensation would be paid to her as R-1 shifted the responsibility on R-2 and R-2 told that she will not be entitled to any compensation because her husband has consumed alcohol on the day of accident therefore she has filed the present claim requesting to direct the respondent to pay compensation amount of Rs.14,59,800/- with 12% interest.

3. That notice was issued to both the respondents. Respondent No.1 vide its written reply has submitted that claimant has no locus standi to file the claim against them as the deceased never worked with them as employee or in any other capacity and therefore the claim is not maintainable as there was no relationship of workman and management between the deceased and them. Respondent No.1 has further stated

Page 3 of 14



that they are unnecessary party as the claimant herself has filed the statement dated 05.11.2020 of R-2 where R-2 has specifically admitted that the deceased was working with him and was getting wages at the Rs.10,000 per month and prayed to dismiss the claim.

4. That R-2 by its written reply has submitted that the claimant has no locus standi to file the claim against them as the deceased never worked as employee or in any other capacity and there was no relationship of workman and management between deceased and them and all the responsibilities regarding present matter is only on Respondent No.1. It has further been stated by Respondent No.2 that the claimant has not filed any documentary proof to prove the contents made in her claim application and the deceased was working with Respondent No. 1 and getting wages of Rs.8,000 to Rs.10,000 per month. It has also been denied by Respondent No. 2 that he is the contractor of Respondent No.1 but has admitted that the Respondent No.1 paid monthly total wages amount into his account for the purpose of distribution of salary because other employees has not been operating any saving banks accounts and therefore he equally distributed the amount to all the employees in equal ratio i.e. approximately Rs.8,000-10,000 per month each as per their attendance record. The respondent no.2 has also submitted that he was not present at the time of incident at about 3:00-3:30 A.M. on 03.11.2020 and has no knowledge about any such incident. The respondent no.2 has submitted that others employees have made several efforts to save the life of deceased as he was taken to Singhal Nursing Home, Gandhi Nagar for initial treatment from where he was referred to

Page 4 of 14



Jagparvesh Hospital and thereafter again referred to Safdarjung Hospital. R-2 has also submitted that police officials of Police Station Gandhi Nagar has lodged false report against him and has taken signatures on some blank papers and has prayed to dismiss the claim of claimant.

5. That the claimant filed rejoinder to the reply filed by R-1 and R-2 denying the contents of reply filed by them and reiterating the contents of claim application.
6. That on pleadings of both the parties following issues were framed as agreed by all the parties:
 - (i) *Whether employer-employee relationship existed between the deceased Late. Sh. Dharmendra Singh and any of the respondents and if so whether the deceased expired during the course of employment with any of the respondents?*
 - (ii) *And if so, whether the dependants/claimant is entitled for compensation as per provisions of Employees Compensation Act, 1923?*
 - (iii) *And if so, what amount of compensation and what other relief is she entitled to?*
7. That A.R. of Claimant filed evidence of the claimant by way of affidavit date 03.03.2021 duly attested by notary public exhibit CW1/A, evidence of Sh. Ramavtar by way of affidavit dated 03.03.2021 duly attested by notary public exhibit CW1/W1, evidence of Sh. Jagpal by way of affidavit dated 03.03.2021 duly attested by notary public exhibit CW1/W2, evidence of Sh. Naresh Pal by way of affidavit 03.03.2021 duly attested by notary public exhibit CW1/W3 along with other documents i.e. exhibits WW1/1 i.e. Copy of Aadhar Card and mark A, B and C i.e. copy of statement



S. T.

of Sh. Irshad, Vakil & Nijamuddin made before police officials and copy of post mortem report of deceased Sh. Dharmendra. The contents of the affidavit are corroborative with the contents of claim. The claimant and witnesses were crossed by R-1 and R-2. During the cross, nothing adverse has come out from the statement of claimant and witnesses as the statements are almost similar and no contradiction is found in the statement of claimant and witnesses.

8. That respondent no. 1 filed evidence by way of affidavit dated 17.03.2021 duly attested by Oath Commissioner exhibit RW1/A along with documents exhibit RW1/1 i.e. details of bank account of M/s D.S. Transport and the contents of the affidavit are similar as that of reply filed by them. During the cross by A.R of claimant, respondent no.1 has stated that *"I know Sh. Irshad (R-2) from the past 07 to 08 years. R-2 works as a loading and unloading contractor and arranges labourers for the same purpose depending on the work required. I would pay the money to Sh. Irshad (R-2) who would then disburse or hand over the money to the labourers working at DS Transport, Gandhi Nagar office. Vol. The labours work under the supervision of Sh. Irshad (R-2). I do not know when R-2 had brought the deceased workman to work at DS Transport at Gandhi Nagar. I do not know the year in which the deceased workman started working at Gandhi Nagar. I do not know how heavy the bundle was that fell on Dharmendra the deceased workman's neck and back due to which Dharmendra passed away as I was not present at the spot. My munim Mr. Danesh @ Appy informed me some time in 2020 at about 10.30 a.m. about the incident that had taken*

Page 6 of 14



place with regard to the incident. My munim Appy informed me from the hospital that the incident had taken place and that workman (now deceased) was first taken to hospital nearby and then referred to another hospital for further treatment. Sh. Appy also inform me that the workman Dharmendra had met with tragic death, I do not remember the time or the date when I received the call from Appy. I also received the call from Sh. Irshad (R-2) through the phone of Appy regarding the death of Dharmendra, I do not remember the exact date or the time when I received the call. I do not remember the date of death of workman. I do not know how the deceased workman died. I received a call from one person approx. 10 to 12 days after the death of the Dharmendra (Deceased workman), I do not who, regarding compensation after the death of the deceased workman. I answered him that I have no concern with the deceased and told him that he was working with R-2." During the cross by A/R of R-2, R-1 has stated as under "It is correct that Sh. Irshad is working in my Gandhi Nagar Office partly till today. It is correct that I used to pay money to Irshad through my bank as per work done by Irshad. It is correct that I get insured my vehicles as it is compulsory to get insured every vehicle. I have no responsibility to get insured the labours as the said labours are not my employees".

9. That the respondent no. 2 filed evidence by way of affidavit dated 19.03.21 duly attested by Oath Commissioner exhibit RW2/A along with documents exhibit RW1/1. The contents of the affidavit are similar as that of reply filed by respondent no.2. Respondent no.2 was crossed by A/R of

Page 7 of 14



S. J.

claimant and A/R of R-1, during the cross R-2 has stated that it is correct to suggest that the deceased workman Dharmendra worked at DS Transport, Gandhi Nagar and was injured while performing his duties of loading and unloading as assigned by DS Transport. R-2 has also stated that *"My salary is paid by Sh. Jaswinder Singh, Owner of DS Transport, Gandhi Nagar. Salaries of those workmen who did not have their own bank accounts were deposited in my account by DS Transport. I then gave the same to the other workmen in cash. I gave Rs.10,000/- p.m. in cash to the deceased workman as his salary. Vol. The salary amount paid to the labourers working at DS Transport, Gandhi Nagar was paid as per the direction of DS Transport. The salary of Rs. 10,000/- which was paid in cash to the deceased workman Dharmender was paid by DS Transport."*

10. That a show cause notice dated 04.08.2021 was also issued to both the respondents to show cause as to why penalty at the rate of 50% should not be imposed on them and both the respondent has again taken the same stand as mentioned in their reply to the main application.
11. That from the statements made by both R-1 and R-2 during the cross, it is clear that the incident/accident has taken place. R-1 has stated in his cross that his munim Mr. Danesh @ Appy informed him sometime in 2020 at about 10:30 a.m. that incident had taken place and the workman was first taken to nearby hospital and then referred to another hospital for treatment. R-1 has also stated that his munim has informed him that the workman Sh. Dharmendra had met with tragic death. R-1 has also stated that he received



the call from R-2 regarding death of deceased Sh. Dharmendra. During the cross R-2 has stated that it is correct to suggest that the deceased workman Dharmendra worked at DS Transport, Gandhi Nagar and was injured while performing his duties of loading and unloading as assigned by DS Transport. On perusal of the contents of FIR No. 0378 dated 04.11.20 registered in PS Gandhi Nagar reveals that the incident has taken place at DS Transport Corporation 09/16, Shyam Block, Kailash Nagar, Gandhi Nagar, Delhi. The statements made by Sh. Vakil, Sh. Irshad, Sh. Noorhasan and Sh. Nizamuddin before police officials also confirms that the deceased was working at M/s DS Transport Corporation and got injured during the course of employment resulting into death. From the discussion made above it is clear that the deceased Sh. Dharmendra expired during the course of employment with respondents. As far as liability of compensation on the respondents is concerned R-1 has stated that R-2 works as loading and unloading contract and arranges labourers for the same purpose depending on the work required. R-1 has also stated that he would pay the money to R-2 who would then disburse or hand over to the labourers working at DS Transport, Gandhi Nagar Office. In this regard, R-2 has stated that he himself is a workman and his salary has paid by owner of R-1. R-2 has also stated that salary of those workmen who did not have their own bank account were deposited in his account and he further used to disburse the same to other workman. That the document RW1/1 filed by R-1 and also relied by R-2 which is the bank statement of DS Transport Corporation shows the transactions of Rs.1789.58 on 18.04.2020.



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Rs.255192.08 on 05.06.20, Rs.177465.55 on 17.07.20.
Rs.49306.55 on 24.07.20, Rs.64348.55 on 10.08.20.
Rs.76360.55 on 26.08.20, Rs.122881.55 on 09.09.20.
Rs.53303.36 on 28.09.20, Rs.301209.36 on 07.10.20.
Rs.89158.33 on 22.10.20, Rs.74032.43 on 08.12.20.
Rs.188523.43 on 18.12.20, Rs.307021.61 on 02.01.21.
Rs.435494.17 on 11.11.20, Rs.33359.96 on 18.01.21.
Rs.232104.77 on 03.02.21, Rs.138795.08 on 23.02.21.
Rs.72,787.14 on 10.02.2021 indicates the transactions of
different amounts paid by R-1 to R-2 and from the perusal
of these transactions of different amounts an inference is
drawn that the said amount cannot be of salary and there
exists some kind of contract between R-1 and R-2 which is
not revealed by both the respondents.

12. Section 12 of Employee's Compensation Act, 1923 states
as under:

- (i) *"Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any (employee) employed in the execution of the work any compensation which he would have been liable to pay if that (employee) had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be*

Page 10 of 14



- calculated with reference to the wages of the (employee) under the employer by whom he is immediately employed.*
- (ii) *Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor [or any other person from whom the (employee) could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation or a contractor from whom the (employee) could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.*
- (iii) *Nothing in this section shall be construed as preventing a [an employee] from recovering compensation from the contractor instead of the principal.*
- (iv) *This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management."*
13. In view of Section 12 of the Act, it is held that R-1 is responsible for payment of compensation to the claimant and liberty is given to R-1 to recover it from R-2 as R-1 has been considered as principal employer and R-2 as contractor. That in the claim application age of deceased has not been mentioned and in the statement of Sh. Irshad, Nurhasan and Nizamuddin made before police officials age of deceased has been mentioned as 40 years and in the PMR



No. 2500/2020 dated 05.11.2020 of Vardhman Mahavir Medical College and Safdarjung Hospital the age of deceased has been mentioned as 40 years. The claimant has filed the family details/parivar register where the date of birth of deceased Sh. Dharmendra has been mentioned as 01.01.1984 which is being considered and accordingly the age of the deceased comes to 36 years. Therefore, the same has been taken on record for the purpose of calculation of compensation. As far as the last drawn wages of the deceased is concerned, it is mentioned that the deceased was drawing wages @ Rs. 10,000/- per month at the time of accident. As such, for the purpose of calculation of amount of compensation, the last drawn wages of deceased is taken as Rs.15,000/- which is the limit of wages fixed for the purpose of calculation of compensation under the provision of law.

14. That in view of the above facts and circumstances and on the basis of 36 years of age the relevant applicable factor i.e. 194.64 and Rs.15,000/- per monthly wages, the amount of compensation to which petitioners are entitled is calculated as under:-


(i) Relevant factor of 36 years of age	= 194.64
(ii) 50% of last drawn salary @ R 15,000 p.m.	= 7,500
(iii) Amount of Compensation	= <u>194.64 X 7,500</u>
	= Rs.14,59,800/-

15. That in view of above facts and circumstances and the documents placed on record, it is held that the petitioners are entitled to receive an amount of Rs.14,59,800 /- as death



compensation plus Rs.5,000/- as funeral expenses in respect of death of deceased from the respondents.

16. That as per the provisions of the Act, the respondents should have make the payment of compensation within one month from the date it fell due i.e. 03.12.2020, but the respondents fail 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 compensation i.e. Rs.14,59,800/- w.e.f. 03.12.2020 till the date of realization of the compensation amount by the respondents.
17. That as far as imposing penalty upon respondents is concerned, after going through the reply filed by both the respondents, this authority is of the considered view that since, it is a social legislature; therefore, the payment should have been made to the claimants well within the time. In view of above, this authority holds that an amount to the extent of 25% of the awarded compensation is liable to be paid by the Respondent No-1 to the dependents of the deceased on account of penalty u/s 4A of the Act.
18. That as decided above, the Respondent No-1 M/s DS Transport Corporation **is hereby directed to deposit the above amount of Rs. 14,59,800/- alongwith simple interest @ 12% per annum w.e.f. 03.12.2020 till the date of payment of the same plus Rs.5,000 as funeral charges and Respondent No-1 is also directed to deposit Rs.3,64,950/- on account of penalty @ 25% of principal amount) by way of Demand Draft / Pay Order in favour of "Commissioner Employees Compensation, East District"**



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 of this court on 08th Day of July, 2022.

 (K.M. SINGH)
Commissioner of Employees Compensation