

IN THE HIGH COURT OF DELHI

FAO.No.230/2007

M/s Sir Sobha Singh & Sons Pvt.Ltd. Appellant
! through: Mr.P.S.Bindra, Adv.

VERSUS

\$ Smt.Sunita & Ors. Respondent
^ through: Mr.Sunil Dutt, Adv.

FAO.No.231/2007

M/s Sir Sobha Singh & Sons Pvt.Ltd. Appellant
! through: Mr.P.S.Bindra, Adv.

VERSUS

\$ Smt.Rajwati & Ors. Respondent
^ through: Mr.Sunil Dutt, Adv.

% DATE OF DECISION: 25.02.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. Ram Singh, husband of respondent No.1 in FAO.No.230/2007 and father of respondents 2 to 5 and Ram Kumar, husband of respondent No.1 in FAO.No.231/2007 and father of respondents 2 to 5 in said appeal were admittedly

employees of the appellant. The two were scavengers and used to perform the duties of sweeping and cleaning the properties of the appellant.

2. 10.6.2002 was an unfortunate date in their lives. A sewer line belonging to NDMC but servicing the apartments owned by the appellant got choked. The service line had to be flushed for the reason domestic sewage including human excreta was not being flushed from the toilets in the buildings owned by the appellants or if flushed, was overflowing within the precincts of the complex.

3. Ram Kumar and Ram Singh were made to clear and clean the sewer line. Without proper gear and tools or safety equipment, when the two entered the sewer line for flushing the same to remove the obstruction, both died inside the sewer line due to toxic gases having accumulated inside the sewer line. The two inhaled the toxic gases. They were brought dead at RML Hospital.

4. Their wife and children filed claim petitions before the Commissioner Workmen Compensation. The employment under the appellant was not in dispute. Their age was not in dispute. Their wages were not in dispute. Only issue raised by the appellants was that both the workmen had consumed alcohol and they were not supposed to consume alcohol

when on duty. It was urged that had they not consumed alcohol, the two would not have lost consciousness when they encountered the toxic gases.

5. By and under the two identically worded orders dated 21.5.2007 and 22.5.2007 the Commissioner Workmen Compensation allowed the claim petitions.

6. The defense of the workmen having consumed alcohol has been repelled on the ground that the management ought not to have allowed the workmen to have performed duties if both were drunk.

7. It is urged by the learned counsel for the appellant that it is not in the control of the management if workers are drunk. With reference to the postmortem report it is urged that the same reflects alcohol in the blood of the workmen.

8. The contention has to be repelled for the reason, firstly, there is no evidence that the level of intoxication of the workmen was so high that the two could not have realized that they were inhaling toxic gases. But I have more fundamental reasons to repel the plea.

9. Scavengers who clean sewer lines are persons belonging to the most under privileged strata of the society.

10. Judicial experience of this court (as a citizen) reveals that sewer line cleaners work in sub human condition without

any protective gear; with bare bodies, just a loin cloth wrapped around the loins, these humble persons perform the dirty job of removing the muck from choked sewer lines with their bare hands.

11. Even to a lay man it is evident that toxic gases do accumulate in sewer line. Indeed, as per law, sewer lines have ventilating chimnies to enable toxic gases to escape.

12. Methane gas being produced by human excreta is a scientific reality. That methane gas is toxic and is odourless is also a scientific reality. Thus, the management of the appellant ought to have kept ready a methane gas detector. There is no evidence that the management of the appellant did so.

13. On the plea of the deceased workmen being intoxicated, I wonder whether a person who has not consumed alcohol can at all bear the the stench of filth and excreta in a choked sewer line?

14. The appellant is clearly guilty of dereliction of duty resulting in the death of the two innocent workmen.

15. Thus, I find no merits in the first plea urged by the learned counsel for the appellant.

16. A second plea urged is that till compensation is determined, question of the same being deposited does not

arise and hence directions in the impugned orders to pay interest @ 12% per annum from the date of claim petition till realisation is liable to be set aside.

17. Learned counsel for the parties cite decision dated 1.2.2007 of the Hon'ble Supreme Court disposing of Civil Appeal No.5623/2006, National Insurance Company Vs. Mubasir Ahmad & Ors.

18. The said decision is clearly distinguishable. It related to injuries sustained to the workmen. It was debatable on the facts of the said case as to what was the percentage disability. In said context Hon'ble Supreme Court opined that till, based on the percentage disability, compensation was assessed, question of paying the same did not arise and hence interest was made payable with effect from the date compensation was computed. In my opinion, both the cases stand on an entirely different footing for the reason in case of both, percentage disability determination is not required. Based on the wages and the age of the deceased workmen, applying the schedule, compensation has to be paid. Determination of the compensation is by applying a predetermined formula.

19. I find no merits in the appeals.

20. Pursuant to order dated 8.6.2007 appellant was

directed to deposit 75% of the principle amount with the Registrar General of this court. The said amount is directed to be remitted to the Commissioner Workmen Compensation by the Registrar of this court. Interest, if any, which has accrued on the amount be also remitted.

21. Needless to state, the Commissioner Workmen Compensation shall disburse the said amount as also would recover further amount payable by the appellant and disburse the same to the respondents.

22. Since the respondents have chosen not to contest the instant appeals, there shall be no order as to costs.

February 25, 2008
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(PRADEEP NANDRAJOG)
JUDGE