

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 108/2014**

% **16<sup>th</sup> April, 2014**

**SUBRATO CHAUDHARY** .....Appellant  
Through: **Mr. Soumitra Chatterjee and Ms.  
Sriparna Chatterjee, Advocates.**

**VERSUS**

**DINESH KUMAR (SINCE DECD. REPRESENTED BY HIS WIFE  
HIRAMATI) AND ANR.** ..... Respondents  
Through:

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**CM No. 6546/2014(delay in filing)**

For the reasons stated in the application, delay in filing is condoned  
subject to just exceptions.

**FAO 108/2014& CM Nos. 6544/2014 (stay)**

1. This first appeal is filed under Section 30 of the Employee's  
Compensation Act, 1923 impugning the judgment of the Commissioner  
dated 31.10.2013, by which the Commissioner has allowed the claim  
petition filed by the respondent no.1 herein. Respondent no.1 is the widow

of late Sh. Dinesh Kumar, and who died in an accident at the time of doing repairs/construction in the building which was owned by the appellant (respondent no.2 before the Commissioner).

2. The facts of the case are that the Sh. Dinesh Kumar was employed as a mason (Raj Mistri) by respondent no.2 herein/contractor (respondent no.1 before the Commissioner). The contractor-respondent no.2 was appointed by the appellant herein for making repairs/construction to the building of the appellant situated at A-5B/150, Shanti Kunj Apartment, Paschim Vihar, Delhi. On 9.5.2011 at about 4.00 PM when the deceased Dinesh Kumar was working on the building, the scaffolding on which the deceased Dinesh Kumar was working collapsed /broke, and Dinesh Kumar fell down from the third floor. Sh. Dinesh Kumar consequently suffered grievous injuries. An FIR was registered with the police station being FIR No. 198/2011 on 1.7.2011. Though Dinesh Kumar was discharged from the hospital on 6.6.2011, however, ultimately Dinesh Kumar died as a result of injuries suffered on account of the accident.

3. The Commissioner has allowed the claim petition by making the following observations:-

“8. The case of the appellants is that the deceased Shri Dinesh Kumar was working as a mason with Respondent No.1 and his services were let on hire for the work to be conducted on the

property of Respondent No.2 and while working he fell down due to which he sustained injury. The said injury proved fatal and he died. The fact of injury and consequential death is not hotly contended by the parties. Respondent No.1 has denied any relationship. Respondent No.2 has said that it was Respondent No.1 who had engaged the deceased for conduction the repair on the property owner Respondent No.1. The relationship of employer and employee if any was between the deceased and Respondent No.1. the said Respondent i.e. Respondent No.2 has further stated that he arranged Rs.5,000/- and the said was handed over to Respondent No.1 on humanitarian ground. Respondent No.1 in his cross examination has admitted the fact of injury. He had stated that he came to know about the injury and he facilitated the injured to the hospital. But it was out of sheer sympathy and not any employment obligation. In the given premises nothing remained to be proved that the injury had been caused to the deceased at the stated place while working on the property of Respondent No.2. Even otherwise it is an admitted fact by Respondent No.2. Respondent No.2 has not filed any document to show that there was any contract between him and Respondent No.1. Certainly there is nothing is on record and also in the evidence to show the contract whatsoever. No witness was brought in this regard by Respondent No.2. This obligation which was solely on Respondent No. 2 has not been discharged by him by bringing any sort of evidence. Hence the liability could not be bridged from Respondent No. 2 to Respondent No. 1. Even otherwise as per section 12 of the Employee's Compensation Act, 1923 this option is available with the claimants. In view of above discussion, facts and circumstances that employee-employer relationship existed between the deceased employee and the Respondents and accordingly further, I hold in view of above that the injury to the deceased was caused out of and during the caused of employment with Respondent No. 2. As such, Issue No. I & II are decided in favour of the claimant and against Respondent No.2.

Next question as to what amount of compensation the applicant is entitled to. In the claim application, it has been stated that the

deceased was drawing wages at the rate of Rs. 9000/- per month @Rs. 300/- per day. Respondent No. 1 did not accept the factum of employment hence they were not to tell any amount of wages and accordingly same tract was taken by Respondent No.2. In the given situation we have to fall back on the minimum rates of wages prevalent in Delhi at that point of time. The minimum rates of wages for un-skilled working at the time were Rs. 6422/- Per month. Hence his wages are accordingly @ Rs. 6422/- per month. In the claim application the age of the applicant is shown 40 and the medical documents his age is shown 42 years and the election identity card shows the age in the year 2010 to be 40 years meaning thereby the deceased was aged 42 years at the time of occurrence of accident. His age is taken 42 years. And the relevant factor is 178.49. In view of above made discussion, the Appellant is entitled to get death compensation from Respondents jointly or severally.

In the given wages, age the applicant is entitled to death compensation as under:-

$$178.49 \times 3211 = \text{Rs. } 5,73,131/-$$

#### RELIEF

9. As such, in view of above Appellant is entitled to get Rs. 5,73,131/- as death compensation from Respondents along with simple interest @ 12% per annum as Respondent has not discharged his responsibility under section 4A(1) of the Employee's Compensation Act, 1923. Therefore, Respondent No. 2 being the principal employer is liable to indemnify to the Appellant as per section 12 of the Employee's Compensation Act, 1923 with liberty to recover the awarded amount from Respondent No. 1 i.e. Shri Krishna Gupta son of Shri Gunni Lal, Contractor, Resident of B-254, Balbir Vihar, Near Sonia Public School, Kirari, Suleman Nagar, Delhi – 110086.

4. A reading of the aforesaid paras show that the Commissioner has applied Section 12 of the Act and as per which provision an owner of a building who

appoints a contractor is made liable for any injuries caused in an accident to an employee of the contractor, of course with the simultaneous right to the employer to seek indemnification from the contractor. In the present case, since the appellant was the owner of the building, he would be a principal as per Section 12 of the Act, and the contractor who was appointed by the appellant i.e respondent no.2 herein, would be liable to indemnify the appellant once the appellant pays the amount to the respondent no.1 in terms of the impugned judgment. I do not agree with the counsel for the appellant that the appellant is not liable as per Section 12 of the Act.

5. An appeal under Section 30 of the Act lies only if there is a substantial question of law. In my opinion, provision of Section 12 of the Act squarely applies and therefore no substantial question of law arises in the present appeal.

6. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

**APRIL 16, 2014**  
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**VALMIKI J. MEHTA, J.**