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

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Judgment delivered on: 08.05.2018

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FAO 111/2018, C.M.No.11972/2018

M/S DURGA CABLE NETWORK Appellant

Through: Mr. A.K. Mishra, Advocate.

Versus

SUNITA

..... Respondent

Through: Mr. Vikram Singh, Advocate.
(Mob.-9716105055)

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal is against the compensation order dated 12.01.2018 passed by the Commissioner, Employees' Compensation awarding Rs.8,61,120/- alongwith interest @ of 12% per annum, with effect from 29.06.2016, on account of death of one Mr. Prakash Bhura – the workman. The brief facts of the case are that on 29.06.2016, the deceased, son of the respondent met with an accident while he had gone for connecting a cable wire on the third floor of the property bearing E- 57/A157, Sunder Nagari, Delhi. A newspaper report was published on 30.06.2016 stating that the deceased worked in some shop situated in Sunder Nagri, Delhi, but the appellant claims that it did not have any shop in the said area. In the registered First Information Report, the name of the appellant/employer was mentioned. Apropos the death of the deceased, a complaint was lodged by the Centre for Human Rights on 16.10.2016. On 24.10.2016, summons

were issued against the police officials for filing of the Employees Accident Report (EAR) and for compliance of the judgment dated 28.10.2015 passed in FAO No. 385 of 2013. The date for the same was fixed for 09.11.2016. Neither any EAR nor any charge sheet was filed against the appellant-employer on the said date. Summons were issued to the appellant-employer by the Commissioner, Employees Compensation on 27.12.2016. In his reply, the appellant-employer stated that: i) the deceased was not working as his employee and that there was never any employer-employee relationship between them; ii) that the appellant was not situated in the Sunder Nagri area where the unfortunate incident had taken place; iii) that since the appellant's name is neither mentioned in the FIR nor in the newspaper publication, and since none of the legal heirs of the deceased approached a court of law apropos the accident or under any claim for medical treatment or compensation, it clearly proved no employer-employee relationship ever existed between them.

2. On the issue of whether the deceased-Prakash died due to injury sustained by him during the course and out of employment with the respondent?, the impugned order reasoned as under:-

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(i) On receipt of information through News Paper and FIR registered P.S. Nand Nagri vide No. 0557/16 dated 29.6.2016 under section 288/337/304A/427. Summons were sent to I.O. through S.H.O., P.S. Nand Nagri and through DCP (NE) but EAR has not been filed by the I.O. Dasti summon was sent to respondent, to appear and file written statement. As per the information received through above mentioned means, deceased Prakash was employed with M/s Durga Cable Network. Accordingly respondent was directed to file written statement.

The same was filed by the respondent and rejoinder was filed by the claimant. Evidence by way of affidavit has been filed by the claimant stating therein that her son Prakash was working with M/s Durga Cable Network w.e.f. January, 2016 and he was paid Rs. 18,000/- P.M. as salary by respondent. No appointment letter was issued to deceased and he was not provided facilities under the labour laws. She has therefore prayed that she should be paid compensation under the Employees Compensation Act on account of death of her son in the course and out of his employment with the respondent. She has also filed evidence by way of affidavit. Another witness Ms Angoori D/o Md. Zuber has also appeared as witness on behalf of the claimant. Both of them were cross examined by the counsel of the respondent but nothing adverse was extracted.

(ii) Respondent filed evidence by way of affidavit she was cross examined by the counsel of the claimant. During cross examination she stated that she can tell only after seeing the records that Whether M/s Durga Cable Network is registered in any government department or not and under the Delhi Shops and Establishment Act 1954. She stated that she used to undertake all the business activities of M/s Durga Cable Network and is aware about the customers of M/s Durga Cable Network. She further stated that she can not tell the number of customers right now.

Respondent stated that 08 employees are working with them since last five to ten years and aware of the names of all the employees. No appointment letter was issued to any employees working with them. She also admitted that there is no stamp on the copies of attendance register which have been filed by them (exhibit RW1/2). She has also admitted that there is no signature of the respondent on the same. She further admitted that original attendance register bears the stamp and signature of the respondent. As per exhibit CW02 receipt of dead body of Prakash by Servesh Kumar- who has been admitted to be employee of respondent. Also the exhibit CW4 filed by the claimant which is undertaking by Sh. Nanhe who stated to be manager of respondent who has given undertaking that he will bear all the expenses of marriages of all the three daughters of the claimant. The respondent has filed copies of attendance register from the

month January 2015 to January, 2017 has not been signed and stamped by the respondent. Whereas the original register produced and seen on 06.02.2017 by the Commissioner Employee's Compensation which was nowhere signed and stamped by the respondent. However, the first page of the said register was signed later on and copy of the same was filed by the respondent on 07.04.2017. Respondent also admitted that no police verification was carried out in respect of employees at the time of appointment. In view of document CW02 and document Exbt. CW04 and stated that of witness Ms. Angoori, also the attendance register product and copies of the same filed at later stage. Which was in different shape, the contention of the respondent that deceased Prakash was not its employee, is not tenable.

7. In view of the above examination, I feel compelled to hold that deceased Prakash @ Bhura died due to the injuries sustained by him out of his employment under the respondent”.

3. In the context of the said reasoning and appreciation of the evidence, the appellant has not been able to show any error in the impugned order apropos the conclusion of: i) employer-employee relationship, ii) the fatal injury suffered by the deceased during discharge of his duties in the employment, iii) his age, iv) the taking over of the body of the deceased by Sarvesh Kumar another employee of the appellant, v) the unshaken testimony of Ms. Angoori that the deceased used to attend to the cable connection faults on behalf of the appellant, vi) the undertaking of Nanhe, the appellant's Manager, that he will bear all expenses of the marriage of the three daughters of deceased-Prakash, and vii) the attendance register and its copies.

4. Therefore, the impugned order rightly concluded that the appellant had employed the deceased and the latter died in the course of discharge of duties of employment.

5. The learned counsel for the appellant submits that an endeavour was made to settle the claim amount @ Rs. 4 lacs. An application was also moved seeking to compromise and settle the claim at Rs. 4 lacs, but the application was rejected by the Court on the previous date, i.e. on 03.05.2018. Resultantly, the awarded amount shall be paid to the respondent. No ground is made out to interfere with the impugned order. The appeal is dismissed.

6. Since the appellant has not paid the compensation amount within the statutory period of 30 days, it is liable to pay penalty under Section 4A of the Employees Compensation Act. This maximum 50% would be Rs. 4,30,560/-. However, since the imposition of penalty is not disputed by the appellant, it is fixed at Rs. 2 lacs with interest @ 12% from 29.07.2016, instead of the maximum amount; which if left to contest for the maximum amount would entail more litigation and delay. The need of the claimants is immediate and succour must be provided to them as soon as possible. The counsel for the claimants raises no objection to the fixation of penalty at Rs. 2 lacs.

7. The entire compensation and penalty amount of Rs. 8,61,120/- and Rs. 2 lacs, along with interest thereon @ 12% from 29.06.2016 and 29.07.2016 respectively, shall be deposited in UCO Bank, Delhi High Court Branch and shall be kept in an interest bearing FDR to enure to the benefit of the claimant. The deceased has left behind his mother-Ms. Sunita and sister-Ms. Jyoti. Accordingly, the awarded amount shall be shared by them in the ratio of 60:40. Upon deposit of the said amount, Rs. 1 lac each shall be released to the claimants from their respective aforesaid apportioned

ratio. The remaining amounts shall be kept in a separate interest bearing FDRs of Rs. 75,000/- each, to mature every successive year. Upon maturity, the principal amount as well as interest shall be released directly to them in their respective bank accounts maintained in a bank near their place of residence. The details of their bank accounts shall be furnished to the Manager, UCO Bank, Delhi High Court. A copy of the same shall be filed simultaneously in the Court. The said Manager shall retain the original FDRs till they all mature. In the event of any exigency, the parties shall be at liberty to approach the Court.

8. The appeal is disposed-off in the above terms.

MAY 08, 2018/rw

NAJMI WAZIRI, J

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