

**Court No. - 7**

**Case :-** WRIT - C No. - 5837 of 2024

**Petitioner :-** Smt. Bitto Devi

**Respondent :-** State Of U.P. Thru. Prin. Secy. Revenue Lko.  
And 2 Others

**Counsel for Petitioner :-** Pratyush Rawat,Aishwarya Mathur  
(Amicus Quaria,Rajan Mishra

**Counsel for Respondent :-** C.S.C.,Shambhunath Misra

**Hon'ble Alok Mathur,J.**

1. Heard Shri Rajan Mishra, learned counsel for petitioner, Ms. Aishwarya Mathur, learned amicus curiae appointed by the Court, Shri Rahul Shukla, learned Additional Chief Standing Counsel for respondent nos. 1 & 2, Shri Shambhu Nath Mishra, learned counsel for respondent no. 3 and perused the material available on record.

2. By means of the present writ petition, the petitioner has challenged the order dated 30.04.2024 passed by the learned Commissioner, Workmen Compensation/Additional Labour Commissioner, Hardoi wherein he has passed the award in favour of the petitioner along with all consequential benefits.

3. Brief facts of the case are that the son of the petitioner was in employment of respondent no. 3 and while on duty on 18.10.2017 at 8:00 a.m. met with an unfortunate accident, where a portion of building of respondent no. 3 fell on her son Ram Veer, who received serious injuries and subsequently succumbed to the same.

4. The petitioner made several applications and met the employer i.e., respondent no. 3 seeking damages and compensation on the ground of death of her son but she did not

receive any compensation and accordingly, moved an application before the Employees Compensation Commissioner for seeking the same. Her application was duly registered as Case No. WC 02/2018 and notices were sent to the employer i.e., respondent no. 3. The respondent no. 3 despite being served notices did not appear before the Employees Compensation Commissioner and accordingly, by means of order dated 15.02.2019, the proceedings had proceeded ex-parte against him. The petitioner adduced evidence before the Employees Compensation Commissioner with regard to the employment of her son with respondent no. 3 and also that he had met with an accident during the course of the employment in which he died to the injuries sustained therein.

5. In the latter part of the proceedings, respondent no. 3 put in appearance before the Employees Compensation Commissioner. The respondent no. 3 was also given opportunity to cross-examine the witnesses, who had adduced the evidence before the Employees Compensation Commissioner but respondent no. 3 never availed of the opportunity and same was closed on 16.06.2022 and again proceedings were held ex-parte. The Employees Compensation Commissioner after due consideration allowed the claim directing the respondent no. 3 to pay compensation of Rs.10,28,430/- along with interest at the rate of 6%. The order of the Employees Compensation Commissioner was passed on 23.08.2022. The respondent no. 3 thereafter had moved an application for recall on 11.01.2024, which was rejected on 30.04.2024. While rejecting the application for recall, a finding has been returned that respondent no. 3 despite notice has failed to appear before the Employees Compensation Commissioner and also that several opportunities were given to him during the proceedings and he had only sought to seek time to delay the

proceedings and hence his application was rejected.

6. Surprisingly, instead of respondent no. 3 assailing the order of the Employees Compensation Commissioner dated 23.08.2022 and 30.04.2024, it is the petitioner, who is the claimant and on whose behest, the proceedings were initiated by the Employees Compensation Commissioner, had approached this Court seeking a direction to set aside the order dated 30.04.2024.

7. The present writ petition has been filed on the ground that after passing of the order of the Employees Compensation Commissioner dated 23.08.2022, the petitioner and respondent no. 3 had entered into an agreement on 08.01.2024 agreeing to settle the differences and the petitioner has also undertaken not to initiate any legal proceedings against the respondent no. 3 in pursuance of the order of the Employees Compensation Commissioner. It is on the basis of the said agreement dated 08.01.2024 when the present writ petition has been filed and also a prayer has been made for setting aside the order of the Employees Compensation Commissioner.

8. It is in the aforesaid circumstances and especially finding that a claimant in whose favour the order of award has been passed by the Employees Compensation Commissioner has been challenged, this Court had directed the parties to be present in person before this Court. It is when the parties approaches the Court, it was found that the present writ petition has in fact been sponsored by respondent no. 3, who has given a small plot of land to the petitioner and also given her some money and on the pressure made by the villagers, an agreement was entered into between the petitioner and respondent no. 3 wherein they have purportedly agreed to settle the differences and the petitioner had undertaken not to initiated any legal proceedings

for recovery against respondent no. 3.

9. It is in the aforesaid circumstances, this Court was of the view that interest of the petitioner cannot be served in the present petition in case it is continued to be proceeded and prosecuted in the manner in which it is, accordingly, had appointed Ms. Aishwarya Mathur a practicing lawyer of this Court to assist this Court as *amicus curiae*. The *amicus curiae* was in contact with the petitioner, who informed her that respondent no. 3 has given her Rs.50,000/- in cash and he had proposed to transfer two biswa of land in her favour. At that stage, only money had been paid in cash to the petitioner but the land had not legally been transferred in her favour.

10. It is in the aforesaid circumstances that proceedings were continued and respondent no. 3 was asked to pay the amount to the petitioner as directed by the Employees Compensation Commissioner and during the pendency of proceedings, the petitioner has started constructing a small house on the land given by respondent no. 3 and sum of Rs.1,80,000/- has been given to the petitioner. The payment of Rs.1,00,000/- has been deposited in Account No. 025110100014674 in Aryavart Bank on 14.08.2024. The amount of Rs.20,000/- has been deposited in the same account on 09.09.2024 and Rs.9,999/- on 17.09.2024 through online mode and therefore on totaling of sum, Rs.1,80,000/- has been transferred to the account of the petitioner. It is also noticed that even if, it is admitted that amount of Rs.1,80,000/- has been transferred by respondent no. 3 to the account of the petitioner still the said amount is about 20% of the amount awarded in favour of the petitioner.

11. Learned *amicus curiae* has submitted that the agreement dated 08.01.2024 entered into between the petitioner and respondent no. 3 itself is illegal and arbitrary and *dehors* the

expressed provisions contained in Section 17 of the Employees Compensation Act, 1923. It has been submitted that Section 17 provides for a clear injunction of any agreement being entered into between the employer and the employee, which has the effect of removing or reducing the liability of any person to pay compensation under the said Act.

12. For the sake of convenience, Section 17 of the Employees Compensation Act, 1923 is being quoted below:-

***17. Contracting out.**—Any contract or agreement whether made before or after the commencement of this Act, whereby a 2[employee] relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.*

13. From the aforesaid, it is noticed that the agreement dated 08.01.2024 is clearly hit by the provisions of Section 17 of the Act of 1923, inasmuch as by the said agreement the entire liability of respondent no. 3 has been removed. According to the agreement, the petitioner has undertaken not to initiate any legal proceedings to recover the outstanding amount as directed by the Employees Compensation Commissioner. In the teeth of provisions of Section 17 such an agreement is clearly illegal and arbitrary and deserves to be declared null and void.

14. Accordingly, agreement dated 08.01.2024 is declared to be null and void and in-operational. The Act of 1923 was made to give protection to the employees, who received injuries or died due to such injuries received during course of employment.

15. This Court in the case of ***M/s Vasu Infrastructure Private Limited Vs. State of U.P. and others in Writ C No. 26540 of 2019*** by means of order dated 23.09.2019 has held as under:-

*11. The objects of the E.C.Act, 1923 came up for consideration in the case of Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Ors.4, and after taking notice of the statutory provisions contained therein it was held that the Act is a beneficial legislation in so far as it provides for payment of*

*compensation to workmen employed by the employers and accordingly the provisions therein are to be liberally construed keeping in mind the legislative intent with a view to give effect to its objects.*

*12. The E.C. Act, 1923 being thus a piece of social security and welfare legislation with its dominant purpose to protect the employees, the provisions of the Act have to be interpreted so as to subserve the object of the legislation which is to make the employer responsible for the loss caused to the employee by injuries or death arising out of and in the course of employment.*

*13. The provisions under the Act provide for necessary measures to protect the employees and their dependents from the hardships arising from the accidents occurring during the course of employment and with this object in mind the rights of the employees are to be generously treated while applying the statutory provisions so as to ensure a speedy and efficient mechanism for determination and payment of compensation as per the provisions of the Act.*

*14. Applying the rule of beneficent construction, the provisions of the E.C. Act, 1972 are to be interpreted so as to give them a wide meaning rather a restrictive meaning which may negate the very object of the enactment. A beneficial legislation, it is well settled, is to be construed in its correct perspective so as to fructify the legislative intent underlying its enactment.*

*15. In construing a remedial statute courts are to give it the widest amplitude which its language would permit. The principle of applying a liberal construction to a remedial legislation has been emphasised in the Construction of Statutes by Crawford<sup>5</sup> pp. 492-493 in the following terms:-*

*"...Remedial statutes, that is, those which supply defects, and abridge superfluities, in the former law, should be given a liberal construction, in order to effectuate the purposes of the legislature, or to advance the remedy intended, or to accomplish the object sought, and all matters fairly within the scope of such a statute be included, even though outside the letter, if within its spirit or reason."*

*16. To a similar effect is the observation made by Blackstone in Construction and Interpretation of Laws<sup>6</sup>, by stating as under:-*

*"It may also be stated generally that the courts are more disposed to relax the severity of this rule (which is really a rule of strict construction) in the case of statutes obviously remedial in their nature or designed to effect a beneficent purpose."*

*17. In the context of beneficial construction as a principle of interpretation, it has been observed in Maxwell on The Interpretation of Statutes<sup>7</sup> as follows:-*

*"...where they are faced with a choice between a wide meaning which carries out what appears to have been the object of the legislature more fully, and a narrow meaning which carries it out less fully or not at all, they will often choose the former. Beneficial construction is a tendency,*

rather than a rule."

18. Further, in the same treatise, in the context of industrial legislation, it has been stated as follows:-

"Industrial legislation provides a fruitful field for the application of the tendency towards beneficial construction..."

19. The principle of applying a liberal construction to a labour welfare legislation was emphasised in the case of **The Workmen of M/s Firestone Tyre & Rubber Company of India Pvt. Ltd. Vs. The Management & Ors** where in the context of the provisions of the Industrial Disputes Act, 1947, it was observed as follows:-

"35. ...We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred..."

20. The mode of interpretation of a social welfare legislation, in the context of the provisions of the Industrial Employment (Standing Orders) Act, 1946, came up for consideration in the case of **B.D. Shetty & Ors. Vs. CEAT Ltd. & Anr.**, and it was held as follows:-

"12. ...a beneficial piece of legislation has to be understood and construed in its proper and correct perspective so as to advance the legislative intention underlying its enactment rather than abolish it. Assuming two views are possible, the one, which is in tune with the legislative intention and furthers the same, should be preferred to the one which would frustrate it."

21. The principle of applying a liberal construction to a beneficial legislation having a social welfare purpose was reiterated in the context of the Payment of Gratuity Act, 1972 in the case of **Allahabad Bank & Anr. Vs. All India Allahabad Bank Retired Employees Association**, and it was observed as follows:-

"16. ...Remedial statutes, in contradistinction to penal statutes, are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the directive principles of State policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country."

22. A similar view was taken with regard to adopting the beneficial rule of construction in respect of social welfare legislation, in the case of **Jeewanlal Ltd. & Ors. Vs. Appellate Authority under the Payment of**

**Gratuity Act & Ors.**, wherein it was stated as follows:-

"11. In construing a social welfare legislation, the court should adopt a beneficent rule of construction ; and if a section is capable of two constructions, that construction should be preferred which fulfills the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed..."

23. Reference may also be had to the case of **Bharat Singh Vs. Management Of New Delhi Tuberculosis Centre, New Delhi & Ors.** where purposive interpretation safeguarding the rights of have-nots was preferred to a literal construction in interpreting a welfare legislation, and it was held as follows:-

"11....the court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the court's duty to discern the intention in the context of the background in which a particular Section is enacted. Once such an intention is ascertained the courts have necessarily to give the statute a purposeful or a functional interpretation. Now, it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have-nots and the underdog and which would lead to injustice should always be avoided..."

24. The aforementioned position of law has been discussed in recent judgments of this Court in **U.P.S.R.T.C. Thru Its R.M. Vikasnagar Kanpur Vs. State Of U.P. And 3 Others** and **Nagar Nigam Gorakhpur Thru Nagar Ayukt Vs. Suresh Pandey And 2 Others.**

25. In the case at hand the facts as reflected from the order dated 28.7.2017 indicate that the Employees Compensation Commissioner has duly taken note that before filing of the claim petition the requisite notice of claim under Section 10 had been duly served upon the petitioner-employer and upon registration of the claim also a registered notice dated 8.1.2016 had been sent to the petitioner and only thereafter the order dated 5.8.2016 was passed directing the case to proceed exparte. It was subsequent thereto that the Employees Compensation Commissioner upon taking into consideration the facts of the case and the evidence on record had proceeded to allow the claim petition of the claimant respondent.

26. The order dated 29.3.2019 passed upon the recall application filed by the petitioner also takes note of the fact that prior to filing of the claim petition the claimant had served a registered notice under Section 10 upon the petitioner-employer and in response to the same a reply had also been

submitted by the employer admitting the factum of employment of the claimant with the petitioner. The order also records that after filing of the claim petition and despite issuance of notice the petitioner did not appear and allowed the case to proceed *ex parte* and only after passing of the order dated 28.7.2017 awarding compensation and upon issuance of a show cause notice dated 9.12.2017 pursuant thereto the petitioner-employer filed the recall application. The Employees Compensation Commissioner has accordingly drawn an inference that the petitioner deliberately wanted to linger the proceedings and in the facts of the case where the claimant had suffered 100% disability and was not in a position to contest the proceedings further, taking into considering the larger interest of justice the recall application has been rejected.

27. The aforementioned order passed by the Employees Compensation Commissioner can also not be faulted with for the reason that E.C.Act, 1923 is a piece of social security legislation providing for a speedy and efficient machinery for determination and payment of compensation to the employees. It may also be taken note of that as per the provisions under Section 4A compensation is to be paid as soon as it falls due. In this regard reference may be had to the judgment in the case of **Pratap Narain Singh Deo Vs. Srinivas Sabata and Ors.**, wherein it was held that compensation becomes payable on the date of the accident and not on the date of determination of the amount thereof. The relevant observations made in the judgment are as follows:-

"7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section, provides that the employer shall be liable to pay compensation if "personal injury is caused to a workmen by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under Sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore become liable to pay the compensation as soon as the aforesaid personal injury was caused to the workmen by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the commissioner's order dated May 6, 1968 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the commissioner.

8. It was the duty of the appellant, under Section 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent.."

16. Applying the aforesaid principle to the facts of the present writ petition, this Court is of the considered view in absence of the said agreement, the recovery should have been proceeded

against the respondent no. 3 and the award, awarded by the Employees Compensation Commissioner deserves to be handed over to the petitioner to which she is legally entitled.

17. This Court is also of the considered view that once the agreement dated 08.01.2024 has been declared null & void, no benefit of the same would accrue to respondent no. 3, who shall continue to be liable for payment of the award dated 23.08.2022 passed by the Employees Compensation Commissioner in favour of the petitioner.

18. During these proceedings, respondent no. 3 had also appeared before this Court and he had also promised to handover a portion of his land in favour of the petitioner. There were certain doubts with regard to the ownership of the land, and to verify as to whether the said piece of land is infact owned by the respondent no. 3, this Court had called upon the concerned revenue authorities to be present in Court and to verify the title of the said land.

19. In this regard, an affidavit has been filed by learned Additional Chief Standing Counsel,. which has been sworn by Shri Ajai Kumar, Tehsildar, Tehsil Shahabad, District Hardoi. In the said affidavit it has been submitted that to verify the ownership and title of the said land, a revenue team was constituted which they duly inspected the Gata No. 185 and also prepared the spot memo and all the stake holders were present when the proceedings were conducted.

20. Paragraph nos. 9 and 10 of the counter affidavit filed by the State, reads as under:-

*"9. That the perusal of the report dated 04.09.2023, spot memo dated 04.09.2024 and the site map dated 04.09.2024 reveal the following:-*

*a) That the original khatauni landowners of Gata No. 185 are in possession of the land on the basis of the Vahami Batwara (oral understading between the co-holders) and on the basis of the possession*

on the land in question the site map was prepared.

b) That according to the aforesaid site-map the portion identified and marked as 'ABCD' is the land on which the house of the petitioner Bitto Devi is being constructed which is of 35 square meter (3.5 X 10 sq. meter) and in front of which the land shown and marked as 'CDEF' measuring 60 sq. meter (6 X 10 sq. meter) is the 'sahan land'. The 'sahan land' is covered from both sides with pillars and is also in possession of the petitioner. Thus, a total area of 95 sq. meters has been given to the petitioner.

c) That the perusal of the site map clarifies the fact that the house in question of the petitioner is being constructed on the Gata No. 185 on the portion on which there is possession of Om Prakash and Munni Devi wife of Om Prakash. Om Prakash is the real cousin brother of the opposite party no. 3 Ganesh Chandra. Om Prakash and Munni Devi have agreed and permitted to give the 95 sq. meters [35 square meter (3.5 X 10 sq. meter) marked as ABCD in the site map for construction of the house and in front of the constructed house the land shown and marked as 'CDEF' measuring 60 sq. meter (6 X 10 sq. meter) as the 'sahan land'] to the petitioner. The opposite party no. 3 Ganesh Chandra, Om Prakash and Munni Devi have also given an affidavit to give effect to this agreement. The copy of the agreement on affidavit dated 09.09.2024 by the opposite party no. 3 Ganesh Chandra, Om Prakash and Munni Devi giving an area of 95 sq. meters to the petitioner is annexed as **Annexure No. A-8** to this affidavit.

10. That thus on the basis of the averments as submitted herein the aforesaid land identified and marked as 'ABCD' in the site map is the land on which the house of the petitioner Bitto Devi is being constructed which is of 35 square meter (3.5 X 10 sq. meter) and in front of which the land shown and marked as 'CDEF' measuring 60 sq. meter (6 X 10 sq. meter) is the 'sahan land'. The 'sahan land' is covered from both sides with pillars and is also in possession of the petitioner. Thus, a total area of 95 sq. meters has been given to the petitioner and an agreement on affidavit by the owners of the land who are in possession of the same namely Opposite party no. 3 Ganesh Chandra, Om Prakash and Munni Devi has also been executed on 09.09.2024."

21. A copy of the agreement, which has been entered into between the respondent no. 3 and all his brothers, who are joint owner of the land in question has also been recorded when they all jointly transferred the said piece of land in favour of the petitioner and accordingly, the said land stands transferred in favour of petitioner.

22. Accordingly, the ownership of the piece of land situated in Gata No. 185 measuring 95 square meters is now beyond pale

of any doubt or would be subject matter of any litigation after the compromise has been entered into between all the stake holders including the petitioner, respondent no. 3 and his relatives Om Prakash and Munni Devi and according to the map land situated at 'ABEF' has been transferred in favour of the petitioner.

23. It is open for the petitioner to move an appropriate application for mutation and once the said application is moved, the revenue authorities are directed to pass an order for mutation expeditiously within a period of one month in favour of the petitioner without considering that the same land is under attachment in pursuance to the order of the Employees Compensation Commissioner and also duly considering the agreement which has entered into between the parties on 09.09.2024.

24. The petition was entertained only to the extent that this Court wanted to ensure compliance of the order of the Employees Compensation Commissioner and considering the fact that the petitioner is a poor and illiterate lady, who has been forced to enter into between an illegal agreement and an effort was made to deny her claim to which she was legally entitled as per the order of the Employees Compensation Commissioner. It is anyway the bounden duty of the Superior Courts to do complete justice.

25. In light of the above, considering the fact that the challenge to the order of Employees Compensation Commissioner was made on account of subsequent agreement entered between the parties, and the said agreement has been held to be null & void and there is no other ground remains for the challenging the impugned order of Employees Compensation Commissioner. The writ petition must fail and accordingly it is dismissed.

26. The authorities, who are executing the order of the Employees Compensation Commissioner dated 23.08.2022 are directed to continue to recover the outstanding amount but while recovering the said amount they shall take into account the fact that Rs.1,80,000/- has already been paid to the petitioner and they shall also deduct the value of the land transferred in favour of the petitioner as per the prevailing circle rate.

27. This Court also appreciates the work of Ms. Aishwarya Mathur, learned amicus curiae, who has assisted this Court in arriving the aforesaid judgment. The Legal Services Authority is directed to pay remuneration to her within two weeks from the date of copy of the order is produced before him in accordance with the relevant rules.

28. With the aforesaid observations/directions, this petition is dismissed.

**(Alok Mathur, J.)**

**Order Date :- 18.9.2024**

Virendra