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

+ **FAO 99/2010 & CM Nos.4769/2010, 4770/2010 & 7571/2015**

Date of Decision : 02th July, 2015

SUDHIR BANSAL Appellant

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

versus

SHYAMA DEVI & ORS Respondents

Through: **Mr. S.C. Juneja and Ms. Asha Hans,
Advocates with respondent no.1 & 4.
Mr. O.P. Saxena, APP for State.**

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT(ORAL)

1. The appellant has challenged the order dated 15th December, 2009 where the Commissioner, Workmen's Compensation has awarded compensation of Rs.3,06,180/- to the respondents.
2. Respondent no.1 is the widow and respondents no.2 to 4 are the children of Late Gaend Lal who was working as a mason under the appellant at Rashtrapati Bhawan and on 24th December, 2004, he fell down from a height resulting in head injuries. Gaend Lal was taken by the petitioner to Dr. RML Hospital where he succumbed to the injuries on 26th December, 2004. The police initially registered FIR No.339/04 under Section 337 IPC and subsequently Section 304-A, IPC was also added in the said FIR.
3. The respondents filed an application for compensation under the Workmen's Compensation Act against the appellant who contested the respondents' claim on the ground that there was no employee-employer

relationship between the parties. The appellant pleaded in the written statement that he was working as a Contractor at Rashtrapati Bhawan and he used to engage the deceased for welding work but on 24th December, 2004, there was no welding work. At about 04.00 P.M. at that day, the deceased came to the site of Rashtrapati Bhawan under the influence of liquor to meet his friend and was unable to control his movement while talking to the labourer and fell down resulting in fatal injuries.

4. The appellant filed the written statement before the Commissioner, Workmen's Compensation but stopped appearing thereafter and was proceeded *ex-parte*. The respondents led evidence of respondent no.1 in which she proved the MLC and Post-mortem report as Ex.PW1/1 and Ex.PW1/2. Respondent no.1 proved the entry register gate pass dated 24th December, 2004 as Ex.PW1/3. She proved the copy of FIR as Ex.PW1/4. She proved the legal notice dated 24th January, 2005 as Ex.PW1/5 and registered AD receipt as Ex.Pw1/6. Ex.PW1/3, the entry pass of the deceased in the Rashtrapati Bhawan records that the deceased entered the Rashtrapati Bhawan at 8.43 A.M on 24th December, 2004.

5. Learned counsel for the respondents submit that the respondents also placed on record the permission letter dated 30th November, 2004 of the appellant seeking permission from the Rashtrapati Bhawan to permit the entry of 12 persons including the deceased for the month commencing 01st December, 2004 to 31st December, 2004. The respondents also placed the attendance card of the deceased.

6. Vide order dated 24th April, 2015, this Court requisitioned the record of the criminal case relating to FIR No.339/04 as well as the record of the police station which have been received. Mr. O.P. Saxena, learned APP for State has submits that the site plan in the criminal case shows the site of the accident inside the Rashtrapati Bhawan. The photographs of the site are also

available in the criminal case. Learned APP for State further submits that the statement of the co-worker recorded by the police under Section 161 Cr.P.C. records that the deceased was on duty under the appellant at the time of the accident.

7. Mr. A.K. Mishra, learned counsel for the appellant submits that there was no employee-employer relationship between the parties and the deceased came to the Rashtrapati Bhawan at 04.00 P.M. on 24th December, 2004. Learned counsel for the appellant however admits that the appellant has not led any evidence before the Commissioner, Workmen's Compensation and the testimony of respondent no.1 remained unrebutted. Learned counsel for the appellant also does not dispute that the appellant had taken the deceased to Dr. RML Hospital but submits that he had done so on humanitarian grounds.

8. This Court is of the view that no question of law is involved in this appeal. That apart, this court finds no infirmity in the order passes by the learned Commissioner, Workmen's Compensation. Since the appellant choose not to lead any evidence before the Trial Court and also did not cross examine the respondents' witness, there is no infirmity on the findings of the learned Commissioner, Workmen's Compensation with respect to relationship of employer-employee as well as with respect to the accident during the course of the employment which resulted in the death of Gaend Lal. The presumptions drawn by the learned Commissioner, Workmen's Compensation are supported by the entry pass, Ex.PW1/3 as well as the permission letter sought by the appellant for entry of the workers into the Rashtrapati Bhawan which includes the name of the deceased.

9. There is no merit in the appeal which is hereby dismissed. Pending applications are disposed of.

10. The appellant has deposited Rs.6,18,166/- (Rs.3,06,180/- + Rs.3,11,986/-) with the Registrar General of this Court in terms of orders dated 24th April, 2015 and 07th May, 2015. The Registrar General is directed to transfer the entire amount of Rs.6,18,166/- along with interest accrued thereon to UCO Bank, Delhi High Court branch by means of a cheque drawn in the name of UCO Bank A/c Shyama Devi. The UCO Bank Delhi High Court Branch shall keep Rs.5,00,000/- in fixed deposits in the following manner:

- (i) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of six months.
- (ii) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of one year.
- (iii) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of 1½ years.
- (iv) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of two years.
- (v) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of 2½ years.
- (vi) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of 3 years.
- (vii) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of 3½ years.
- (viii) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of four years.
- (ix) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of 4½ years.
- (x) Fixed deposit for Rs.50,000/- in the name of respondent No.1, Shyama Devi for a period of 5 years.

11. The UCO Bank, Delhi High Court Branch shall make payment of the balance amount, after making fixed deposits of Rs.5,00,000/-, to Respondent no 1 to 4 in the following proportion:

- (i) Shyama Devi (Respondent no.1) - 30%,
- (ii) Rajesh Kumar (Respondent no.2) - 20%,
- (iii) Kumari Soni (Respondent no.3) - 30%,
- (iv) Raj Kumar (Respondent no. 4) - 20%.

12. The interest on all the fixed deposits shall be paid monthly by transferring the same in the savings bank account no. 21170100069719 of respondent no.1 with Bank of Baroda, Sultanpur Mazra, New Delhi.

13. The original fixed deposit receipts shall be retained by UCO Bank. However, the photocopies of the FDRs shall be given to the respondent no.1.

14. On maturity, the UCO Bank shall automatically credit the maturity amount in the savings bank account of the respondent no.1.

15. No loan, advance or premature discharge of the FDRs shall be permitted without the permission of this Court.

16. Copy of this order be given dasti to counsels for both the parties as well as UCO Bank, Delhi High Court Branch under the signatures of the Court Master.

J.R. MIDHA, J.

JULY 02, 2015
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