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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 05th October, 2016

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FAO 213/2013 and CM No.5279/2015 & 9492/2015

N K VERMA

..... Appellant

Through: Mr. H.K. Chaturvedi, Advocate

versus

BABITA & ORS.

..... Respondents

Through: Mr. R.K. Tarun and Mr.
Deepak Kumar, Advocates for
respondent No.1
Mr. K.P. Mavi, Advocate for
respondent No.4.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order of Commissioner, Employees' Compensation whereby compensation of Rs.3,98,800/- has been awarded to respondents No.1 to 3.
2. On 31st May, 2007, Ram Rattan suffered an accident resulting in 100% burn injuries during the course of his employment with M/s Pieco International Engineering Company. Ram Rattan was taken to G.T.B. Hospital where he remained for five days. Ram Rattan succumbed to the burn injuries on 04th June, 2007. Ram Rattan was survived by his widow and two minor children who filed the application for compensation before Commissioner, Employees'

Compensation.

3. M/s Pieco International Engineering Company, contested the claim petition mainly on the ground that the deceased was covered under ESI Act vide Insurance No.11638310.

4. Learned counsel for the appellant urged at the time of hearing that the Commissioner, Employees' Compensation has not dealt with the appellant's objection in the impugned order dated 18th February, 2013.

5. Vide order dated 15th April, 2015, this Court impleaded ESI Corporation as respondent No.4 and directed them to produce the relevant record and confirm whether the deceased was covered under the ESI Act.

6. ESI Corporation have filed an affidavit dated 15th March, 2016 in which they have taken the stand that deceased Ram Rattan was not covered under the ESI Act.

7. Learned counsel for the appellant disputes the averments made by ESI Corporation in the affidavit dated 15th March, 2016.

8. This Court is of the *prima facie* view that the issue as to whether the deceased Ram Rattan was covered under the ESI Act or not warrants adjudication after recording of the evidence.

9. In the facts and circumstances of this case, following issue is framed for adjudication of Commissioner, Employees' Compensation:-

(a) Whether the deceased Ram Rattan was covered under the ESI

Act on the date of the accident as alleged by the appellant? If so, its effect.

10. The case is remanded back to the Commissioner, Employees' Compensation for adjudication of the aforesaid issue.

11. The appellant has already deposited Rs.7,70,995/- (Rs.6,78,000/- + Rs.92,995/-) in terms of the award of the Commissioner, Employees' Compensation and the said amount is lying in fixed deposit with UCO Bank, Delhi High Court Branch.

12. UCO Bank, Delhi High Court Branch is directed to release 25% of the amount to respondent No.1 by transferring the same to her individual savings bank account. The balance amount be kept in three FDRs of 25% each, in the following manner:-

- (i) FDR in respect of 25% amount in the name of respondent No.1 for a period of 1 year.
- (ii) FDR in respect of 25% amount in the name of respondent No.2 till she attains majority.
- (iii) FDR in respect of 25% amount in the name of respondent No.3 till she attains majority.

13. At the time of maturity, the fixed deposit amount shall be credited in the individual savings bank accounts of the beneficiaries/respondents.

14. Monthly interest on the FDRs of respondents shall be credited in the individual savings bank account of respondent No.1.

15. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be

provided to the claimants/respondents.

16. No cheque book or debit card be issued to the claimants/respondents without permission of this Court.

17. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

18. The claimants/respondents shall approach the UCO Bank, Delhi High Court Branch for completing the formalities for the disbursement of the award amount in terms of this order.

19. UCO Bank, Delhi High Court Branch shall ensure that the savings bank accounts of respondents are individual accounts and not joint accounts.

20. The claimants/respondents are at liberty to approach this Court for release of further amount in case of any financial exigency.

21. In the event of appellant succeeding in the issue framed by this Court, the appellant shall be entitled to claim the aforesaid amount from ESI Corporation.

22. List before Commissioner, Employees' Compensation on 28th November, 2016 when the Commissioner shall fix the case for the appellant's evidence on the issue framed. ESI Corporation shall file the copy of the affidavit dated 15th March, 2016 along with the documents before Commissioner, Employees' Compensation on the date fixed. The aforesaid affidavit shall be considered as pleadings of ESI Corporation on the issue and the appellant shall file the reply thereto within a period of three weeks thereafter. The appellant shall

first lead the evidence and thereafter, Commissioner, Employees' Compensation shall afford an opportunity of evidence to ESI Corporation.

23. All pending applications are disposed of.

24. Copy of this judgment be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

OCTOBER 04, 2016

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