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

Date of Decision: October 20, 2016

\+ **FAO 297/2016 & C.M. 24349/2016**

NEW DELHI MUNICIPAL COUNCIL ..... Appellant
Through: Mr. Anil Grover, Standing Counsel with Ms. Kanika Singh, Advocate

Versus

ASHA DEVI & ORS. .....Respondents
Through: Mr. Jatinder Kamra, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

Impugned order of 29th February, 2016, grants compensation of ₹10 lacs odd, to the legal heirs of the deceased.

Sole contention raised by learned Standing Counsel for appellant is that the amount of ₹1 lac deposited by appellant has not been set off. It is submitted by learned Standing Counsel for appellant that *ex gratia* payment of ₹1 lac was promptly made to the legal heirs of the deceased in order to meet the funeral expenses etc. and infact, the said payment was an interim compensation, which is required to be paid in such a situation and so, the amount of ₹1 lac paid *ex gratia* has to be treated as interim compensation and needs to be adjusted against the compensation awarded.

To support the impugned order, learned counsel for respondents relies upon a Division Bench decision of this Court in W.P.(C) 4897/2007 *Union of India Vs. Hira Rani*, rendered on 16th August, 2010 to submit that an *ex gratia* payment is not to be adjusted and it has been so clarified by the Ministry of Finance in the case of *Smt. R. Vijaykumari*, as referred to in *Hira Rani (Supra)*. Attention of this Court is drawn to appellant's Communication of 21st July, 2014 to point out that it was not an interim compensation and in view of decision in *Hira Rani (Supra)*, the *ex gratia* payment of ₹1 lac is not required to be adjusted against the compensation awarded.

In rebuttal, learned Standing Counsel for appellant draws the attention of this Court to paragraph No.11 of the impugned order to point out that the observations made in the aforesaid paragraph needs to be expunged as immediate expenses in case of unfortunate death of an employee are required to be disbursed in form of *ex gratia* payment.

What has been said by learned Commissioner in paragraph No. 11 the impugned order needs to be taken note of. It reads as under:-

> *"Thus, in view of the Section 8(1) any payment made by the employer for the death of the deceased employee except depositing the same with Commissioner, Employees Compensation shall not be treated as the amount of compensation under the Employee's Compensation Act, 1923 and only the amount deposited with the Commissioner shall be treated as amount paid towards compensation."*

Upon hearing and on perusal of the impugned order, the material on record and the decision cited, I find that what has been said in paragraph No.11 of the impugned order cannot hold good as an absolute proposition because if any interim compensation is paid by an employer in a case of death of an employee, the same has to be adjusted against the ultimate compensation granted under the *Employee's Compensation Act, 1923*. However, in view of decision in *Hira Rani (Supra)*, the *ex gratia* payment is not required to be adjusted. It is clarified that if any interim compensation is paid by the employer, then the same would not come within the ambit of *ex gratia* payment and would be treated as an interim compensation, which of course is required to be adjusted while granting compensation under the *Employee's Compensation Act, 1923*. Since the *ex gratia* payment is not in form of interim compensation and so in the facts of instant case, impugned order is not being interfered with.

With aforesaid clarification, interim order of 13th July, 2016 is vacated. Records be remitted back forthwith.

This appeal and application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 20, 2016
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