

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

+ **FAO No.503/2016**

% **4th May, 2017**

ITD CEMENTATIONS LTD. Appellant

Through: Mr. Rajiv Shukla, Advocate
with Mr. Shubham S. Saxena,
Advocate.

versus

COMMISSIONER EMPLOYEE'S COMPENSATION & ORS.

..... Respondents

Through: Mr. Rama Nand, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') is filed by the appellant impugning the judgment of Employee's Compensation Commissioner dated 9.5.2016 allowing the claim petition filed by the respondent no.2 herein, claimant in the claim petition, thereby awarding compensation of Rs.8,79,800/- besides interest as per Section 4A of the Act. It may be noted that originally the claim petition was filed by the injured Sh. Sujit Biswas, employee of the present appellant, but during the pendency of the proceedings he expired on

21.11.2013, and therefore, his father being the present respondent no.2 was impleaded as a claimant in the claim petition.

2. The facts of the case as alleged by the respondent no.2 and the deceased Sh. Sujit Biswas were that the deceased Sh. Sujit Biswas was an employee of the present appellant, respondent no.3 in the court of Employee's Compensation Commissioner. On 6.9.2013 the deceased Sh. Sujit Biswas was on night duty at the site of the appellant at outer ring road near Kali Mata Mandir, Pitam Pura, Delhi. At about 7.30 A.M. a tripod ladders machine used by the laborers of the appellant fell down on the head of the deceased who was injured. An FIR No.548/2013 was registered with the police station Mangolpuri on 6.9.2013. It was further pleaded that since the accident arose out of and in the course of employment, therefore the claim petition was entitled to be allowed and compensation granted to the respondent no.2 herein.

3. The appellant contested the claim and denied the factum of any accident happening at the site and also of any tripod ladders machine falling as was the pleading of the respondent no.2. The appellant therefore denied that any accident took place during the course of and while in the employment, and that in fact whatever

accident happened, happened one kilometer away from the place where the deceased was posted.

4. The Employee's Compensation Commissioner has allowed the claim petition by observing as under:-

“6. Evidences by way of affidavits were filed by both the parties and cross examine the evidences of each other which were taken on records and closed. Written arguments were also filed by both the parties which were taken on record. After going through the claim petition, written statement, documentary evidence, cross examinations, it is admitted fact that Sh. Sujit Biswas was the employee of respondent no.3. It is also revealed from the available documents and circumstances that Sh. Sujit Biswas injured and died during and out of course of employment of respondent no.3 which is liable to pay the compensation amount to the petitioner as per age and wage of the deceased

$$\frac{\text{Rs. } 8000 \times 219.95 \times 50}{100} = \text{Rs. } 879800$$

7. The claimant is also entitled for interest as per Section 4A at the rate of 12% from the date of accident till the realization of the death compensation amount.

8. The above named respondent no.3 is therefore, directed to deposit the above amount of compensation, interest etc. with this court within 30 days from the date of this order. In case the amount is not paid by the respondent within 30 days from this order, the same shall be recovered as arrears of land revenue.

Given under my hand and seal of this court on the day on 9th May, 2016

(Pawan Kumar)

COMMISSIONER, EMPLOYEE'S COMPENSATION”

5. A reference to the aforesaid para 6 of the impugned judgment of the Employee's Compensation Commissioner shows that the impugned judgment is a completely non-speaking judgment. The impugned judgment does not show as to how it is proved that the deceased died at the work site of the appellant/employer and that how the deceased was injured because of falling of the tripod ladders

machine, and how the accident can be said to have occurred during the course of employment. Therefore I completely agree with the counsel for the appellant that in the impugned judgment there is no discussion of any evidence and nor any reasoning has been given for the conclusions which are arrived at and para 6 of the impugned judgment only contains conclusions which actually ought to have been supported by the necessary discussion and reasoning with reference to the documentary evidence which was led.

6. Learned counsel for the appellant has taken me through the FIR Ex.CW1/1 and in which FIR there is absolutely no mention of the deceased being injured on account of falling of any tripod ladders machine, much less at the site of the appellant/employer. Also, learned counsel for the appellant rightly argues that no evidence of any eye witness has been led that the deceased employee died on account of injuries because of falling of tripod ladders machine at the site of the appellant/employer. I am therefore forced to conclude that no evidence whatsoever, which the Court would call as credible evidence, has been led on behalf of the respondent no.2 to prove that the deceased died on account of injuries because of falling of the tripod ladders machine and the deceased died on account of an accident arising out and in the course of employment.

7. The aforesaid conclusions of this Court of the deceased not suffering injuries on account of accident happening out of and in the course of employment also becomes clear from two important aspects. The first aspect is that the respondent no.2 had filed a complaint with the police and which complaint in fact shows that the deceased suffered injuries on account of fight between the deceased and certain laborers. This is found in paras 3 and 5 of the complaint dated 16.9.2013 filed by the respondent no.2 with the Commissioner of Police and which complaint is filed by the respondent no.2 himself before the Employee's Compensation Commissioner. For the sake of convenience, this complaint dated 16.9.2013 is reproduced as under:-

“To

The Commissioner of Police

Police Head Quarters

MSO Building, New Delhi

APPLICATION FOR ISSUING THE DIRECTION TO THE SHO/IO
CASE FIR NO.548/2013 U/S279/337 IPC, P.S. MANGOL PURI, NEW
DELHI FOR CONDUCTING INVESTIGATION FAIRLY TO BRING
THE ACTUAL CULPRITS ON RECORD.

Sir,

The applicant most respectfully submits as under:-

1. That the applicant is a poor man and he is the resident of West Bengal.
2. That the applicant's son namely Surjit Biswas was working with ITD company under the supervision of Sameeran as labourer near Kali Mata Mandir, New Delhi.
3. That my son Surjit Biswas is the **victim in the hands of the said Sameeran or the other labourers who caused serious injuries at head to my said son Surjit Biawas on or about 06.09.2013.** My son was got admitted by some persons or their associates in a private hospital on the false pretext that my son met to a road accident.
4. That when one of my relative tried to ask the above said Sameeran about the number of the vehicles with which my son met to an

accident, the said Sameeran is not to intend to disclose the number of the offending vehicle.

5. **That the above said Sameeran along with his associates directly involved to cause serious injuries to my son with the intention to kill him.**

6. That to meet the ends of justice a fair investigation is required in the above said FIR so that the actual culprits may come on record.

7. That it is also pertinent to mention here that to hide the offence committed by the above said Sameeran and his associates they got admitted to my son in a private Hospital even though I am unable to meet the expenses of the said hospital. The life of my son is in danger as he is fighting since the day of incident, between life and death.

8. That I have no option except to move to your good office with the request for issuing the direction for fair investigation in the above said FIR.

It is therefore, requested that necessary direction may kindly be issued to the SHO/IO of P.S. Mangol Puri, in case of FIR No.548/2013 dated 06.09.2013 U/S 279/337 IPC for bringing the actual culprits on record and punish them according to law.

It is prayed accordingly.

New Delhi

Date: 16.09.2013

Yours faithfully,
(Subol Biswas)

S/o Late Sh. Kumar Biswas
R/o Village Maharajpur,
P.O. Mohat Pur, P.S. Chapra,
Distt. Naudia, West Bengal-741164
Presently at: 6/3
Haiderpur, Delhi

Copy to:

1. The D.C.P., Outer Dist. Kanjhawala, Delhi
2. The SHO, P.S. Mangol Puri, New Delhi"

(emphasis added)

8. In my opinion therefore the complaint dated 16.9.2013, and especially paras 3 and 5 thereof, clearly show that the deceased died on account of some disputes of the deceased with labourers Sameeran and others and not because of an accident happening while the deceased was acting out of and in the course of employment and on account of falling of the tripod ladders machine.

9. Learned counsel for the appellant is also justified in arguing that a legal notice was sent by the respondent no.2 prior to filing of the claim petition, and in this legal notice Ex.CW1/8 dated 16.9.2013, once again there is no averment that the deceased employee Sh. Sujit Biswas suffered injuries on account of falling of the tripod ladders machine.

10. In view of the above discussion, the impugned judgment of the Employee's Compensation Commissioner is wholly illegal. The judgment is an apology for a judgment because paras 6 and 7 of the impugned judgment only contain conclusions without any discussion and reasoning, and thus arriving at the conclusions without any discussion or reasoning thereof by cross reference to the evidence led before the Employee's Compensation Commissioner, and thus appellant has raised a substantial question of law that the impugned judgment is completely illegal and perverse. This appeal is therefore allowed. Impugned judgment of the Employee's Compensation Commissioner dated 9.5.2016 is set aside. The claim petition of the respondent no.2 will stand dismissed. Parties are left to bear their own costs. The amount deposited by the appellant, before this Court be released to the appellant along with accrued interest thereon, if any.

MAY 04, 2017/ Ne

VALMIKI J. MEHTA, J