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

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Judgment delivered on: 17.05.2018

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FAO 128/2016 & C.M.Nos.10578/2016, 20172/2018

DELHI TOURISM & TRANSPORTATION DEVELOPMENT
CORPORATION & ANR. Appellants

Through: Mr. Sanjay Kumar Jha, Advocate.

Versus

SURAJ MUKHI & ANR. Respondents

Through: Mr. Hari Kishan, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellants have impugned an order dated 30.11.2015 passed by the Commissioner, Employees' Compensation granting compensation of an amount of Rs.4,86,024/- with interest @ 12% *per annum* from 14.11.2010 till the actual payment thereof, on account of death of Mr. Rakesh. The order also notes that the appellants would be liable for penalty under section 4-A of the Employees' Compensation Act, 1923 since they had not deposited the compensation amount within the statutory period.

2. The brief facts of the case are that the husband of respondent No.1 – Mr. Rakesh was employed as a liquor seller/salesman at the appellants' retail liquor shop on a monthly wage of Rs.10,000/-. He was 28 years old.

During the course of his duties i.e. sale of liquor from the liquor vend, some prospective customers took offence of the fact that the liquor of their choice was not being made available to them. So, they threatened him with dire consequences and left the place. The other two persons i.e. Mr. Bimlesh son of Mr. Pyare Lal and Mr. Munesh son of Mr. Mahavir worked in the shop alongwith the deceased Rakesh. Mr. Bimlesh had filed a First Information Report (FIR) on 14.11.2010 at 8.30 p.m., to the effect that:

“...while they were selling liquor at Desi Liquor shop, two boys Guddu and Sanjeev, who live in Indra Colony Jhuggi and known to me before this, came to the liquor shop and asked the deceased Rakesh for Gulab Desi Liquor but Rakesh was selling Narangi Liquor that time and Gulab Liquor was inside the Godown and he refused to give Gulab Liquor and said he has no spare time yet due to crowd and asked them to buy Narangi Liquor, at this the two boys Guddu and Sanjeev said, they need Gulab Liquor and said come outside we see you and left from there. Yesterday night about 10:00 PM when both Desi & English Liquor shops got closed then we three started walking towards Metro Station P. Bagh. Me and Munesh were talking and walking ahead however, Rakesh was coming behind us. At 10:00 PM we were at road side before P. Bagh metro station and in front of Metro Pillar No.86, then those two boys Guddu and Sanjeev who were already standing there, started hitting Rakesh, we both reached there to save Rakesh then Sanjeev hit some Rod to my head and Guddu punched Munesh at below to his left eye. After getting injured my head got stunned and I run towards liquor shop by fear and seeing me running Munesh also run behind me, meanwhile Sanjeev and Guddu keep hitting Rakesh. After reaching at liquor shop I called my wife by the phone of Gunman of the liquorshop and told her about the instance and my wife told this to cousin

brother of Rakesh namely Hariwansh @ Tiku. Who then reached to liquor shop by auto rickshaw and called No. 100 and meanwhile we were searching Rakesh but we could not find Rakesh and after your calling we reached Post office Indra Colony Jhuggi where Rakesh was lying dead having injury at his head where there was blood. Rakesh was killed by Guddu and Sanjeev and his dead body was kept hidden in forest. Legal action be taken against them. This is my true and correct statement.”

3. The appellants deny the employment of deceased Rakesh at the shop, however, they are silent about the employment of Mr. Bimlesh and Mr. Munesh. However, if neither of them were employed, the appellants should have produced evidence to this effect, such as its Attendance Register of Employees and the Ledger of payments of salaries and wages. Since it is a liquor vend licensed shop by the Government of NCT of Delhi, therefore, it is all the more required to and expected to maintain records of its employees and to pay them at least minimum wages, as per the eponymous statute. No such evidence was produced by the appellants despite ample opportunities having been granted to them in the compensation proceedings.

4. The impugned order has noted that:-

“5. The matter was fixed for evidence by the parties. On behalf of applicants, the police record was filed by the concerned police official. They have filed F.I.R. and other criminal documents. On behalf of respondent, an official of the respondent came and filed his affidavit. He was cross examined by the A.R. of the applicant.

6. In this case, the applicants have stated that her husband was employed with the respondents and he was murdered due to felonious act. The felony rooted in the employment. Death is proved. Criminal documents such as F.I.R. No. 339 dtd. 15.11.10 of P.S. Punjabi Bagh and other reports prepared by the concerned Police Station gives clear proof that the death was caused due to the incident which was caused in an acrimony caused with the wrong doers, when the deceased was on duty because of exigency of his duty. Applicant/claimant has relied on:- Mackinnon Mackenzie and Co. (P) Ltd. Versus Ibrahim Mahmmmed Issak - 1969(2) S.C.C. 607. The relevant portion of the judgment is reproduced as under:-

" 6. In the case of death caused by accident the burden of proof rests upon the course of employment. But this does not mean that a workman who comes to Court must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference, it is of course impossible to lay down any rule as to the degree of proof sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead L. C. in Lancaster vs. Blackwell Colliery Co. Ltd., observed:-

"If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, 'where there is ground

for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contents, than the Arbitrator is justified in drawing an inference in his favour."

5. Therefore, the impugned order concluded that the appellant/employer had been unable to show that the deceased and the other two witnesses were not employed by them. Consequently, the logical inference was that they were employees of the appellants and the death was caused out of and during the course of employment. It relied upon the judgment of the ***Chiman Surakhia vs. Ahmed Musa Ustad and Ors.- cited at LLN in F.A. 872 OF 1985, Gujarat (161) (ACJ 1987)***. Accordingly, the compensation amount was computed and was awarded.

6. The Court would note that the contents of the FIR were neither refuted nor sought to be dislodged by the appellants, in any manner whatsoever. The appellants contend that the deceased Rakesh was never employed by them. However, the question to consider would be whether Mr. Bimlesh and Mr. Munesh, who were mentioned in the FIR as witnesses to the altercation by the prospective customers and the murderous assault by them on the deceased, pursuant to the said altercation - i.e. as a carry forward of the slight felt by the accused in the FIR, was on account of the duties being discharged by them. If Mr. Bimlesh and Mr. Munesh were not the appellants' employees, then they should have presented their employees' Attendance Register and Ledger of payments made to their employees. Instead of doing so, they contended that the FIR is not a sufficient proof of the deceased Rakesh's employment with the management. Since no

evidence was led by the appellants except for an affidavit in evidence but without any supporting documents, the Attendance Register of Employees or Statement of payments to the employees at the liquor vend. Hence, the appellant's affidavit was not sufficient to dislodge or controvert the averments in the claim, which were supported by affidavits and the contents of the FIR. The claim was rightly allowed.

7. In view of the above facts, this Court finds no reason to interfere with the impugned order. The appeal is without merits. Accordingly, the appeal alongwith pending application, is dismissed.

MAY 17, 2018

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NAJMI WAZIRI, J.



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