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

% *Judgment delivered on: 15.05.2019*

+ **FAO 250/2017 & CM No. 20881/2017**

M/S MATA RAM RAKHI MANDIR (TRUST/SAMITI).... Appellant
Through: Mr. Amulya Dhingra & Mr. Diwakar
Singh, Advs.

versus

SMT. SANIA NISHA & ORS.Respondents
Through: Mr. Hari Kishan, Adv. for R- 1 to 4.

+ **FAO 356/2017 & CM Nos. 31419-20/2017**

M/S MATA RAM RAKHI MANDIR (TRUST/SAMITI).... Appellant
Through: Mr. Amulya Dhingra & Mr. Diwakar
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CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. These petitions impugn orders dated 06.04.2017 and 21.07.2017 passed by the Commissioner, Employees' Compensation whereby it was held that the deceased was an employee of the appellant and that he suffered death out of and in course of employment and the appellant was directed to pay compensation of Rs. 8, 86, 329/- along with interest @ 12 p.a. w.e.f. 31.03.2017 to respondent no.1 with penalty of Rs. 1, 53, 090/- to be

deposited with “Commissioner Employee’s Compensation, District North-West”.

2. Brief facts according to the learned counsel for the appellant are that the appellant entered into a contract of renovation/ construction work with respondent no.5. ; that being an independent contractor, it was only respondent no.5 who was responsible and liable for the work and consequences as the work was directly under the supervision of the of respondent no.5; that respondent no.5 hired some labourers on daily basis, including the deceased(i.e. husband of respondent no.1) independently without any knowledge or interference from the appellant and that as under the contract the appellant was having only one obligation which was to make contracted payments. He further submits that the unfortunate incident took place on 01.08.2013 and the husband of respondent no.1 died on 10.08.2013. Subsequently, an FIR was lodged at Police Station Model Town against respondent no.5 only but later the name of Sh. Manohar Lal Kumar (trustee of the appellant) was also added. He also submits that the appellant made an ex-gratia payment of Rs. 30, 000/- for meeting the expenses of treatment and medication on humanitarian grounds.

3. The appellant argues that the impugned order has erred in holding that the appellant was the employer of the deceased; that respondent no.5 is an independent contractor who was not engaged in relation to trade or business of the appellant; that there is no oral evidence or any cogent document to show that the age of the deceased was 50 years old; that respondent no 5 never entered the witness box and has never denied the execution of the agreement; that the learned Commissioner wrongly interpreted the deposition of the appellant; that respondent no.5 is to be held

responsible for any accident or injury as he was the one who employed the deceased in his individual capacity; that the respondent approached the court after the limitation period had expired for claiming the compensation cannot be held liable to pay the compensation as the deceased was employed and supervised by respondent no. 5. .

4. The appellant contends that it relies upon a decision of the Delhi High Court in ***Bhasin Petrol Pump/ Service Station v. Mughla Khatoon*** 2009 SCC OnLine Del 3464 which held:

“.... 24. As already stated above, as per claimant's own case on the date of accident, deceased was under the employment, supervision and control of respondent No. 2 and it was respondent No. 2, who was entrusted with the installation job of steel structure work at the Petrol Pump of appellant. The deceased while performing his duty being under the employment of respondent No. 2, sustained fatal injuries after falling from a pole at the Petrol Pump owned by the appellant. Thus, there was no privity of contract between the appellant and deceased. By no stretch of imagination, it can be said that the deceased was employed with the appellant or there was any relationship of employer and employee, between the deceased and the appellant....”

5. He also relies upon a decision of the Madras High Court in ***The Dean, Agricultural College and Research Institute, Vallanad v. S. Sakilabanu & Others*** (2003) 4 LLN 869

“22. In this case also, the construction put up by the Dean is not for his business and it is only an educational institution. However, construction has been entrusted to a building contractor through PWD and therefore it is the PWD contractor, who is the principal employer

under whom the workman was engaged and therefore it is the contractor, if at all, who is liable as the principal-employer, and the sub-contractor under the immediate employer may also be proceeded. Considering the pronouncement of the Supreme Court to proceed against the Dean of the College it has to be pointed out that the Dean may not fall within the four corners of the Workmen's Compensation Act and to bring it within the four corners the workman has to proceed only against the principal-employer, namely, the PWD contractor and the immediate employer, the fourth respondent herein as the case may be. The view taken by the Commissioner for Workmen's Compensation holding that the Dean is the principal-employer and against him a claim under the Act is maintainable cannot be sustained at all and it has to therefore be set aside. The Supreme Court in the said pronouncement held thus, in Paras. 224, at page 71:

“2. The respondents are the daughter and wife of the deceased Ramu who was engaged by the appellant to paint the house. While he was doing this work, he unfortunately fell down and died. The claim for compensation under the Workmen's Compensation Act was denied, but on a writ petition being filed the High Court has allowed the same claim.

3. No reasons have been given by the High Court for coming to the conclusion that this was a case which fell within the domain of the Workmen's Compensation Act.

4. There was apparently a contract between the appellant and Ramu whereby Ramu had undertaken the work of painting the house. Whether the action of the appellant by engaging a person in this manner makes him employee or a workman of the appellant was a question to be decided. The case did not fall within the four corners of the said Act and, therefore, the decision of the High Court was incorrect. We, therefore, allow the appeal and set aside the decision of the High Court.”

All other pronouncements need not be considered and it is clear that so far as the Dean, the appellant herein, no proceedings could be initiated under the Workmen's Compensation Act. In so far as the Dean of the college is concerned, the claim will not fall within the Act as construction activity is not part of his business. (emphasis supplied). Hence, the order of the Commissioner for Workmen's Compensation is set aside in so far as the appellant, namely, the Dean of the Agricultural College is concerned and consequently the claim against the Dean of the Agricultural College is rejected as not maintainable.”

6. By order dated 06.04.2017, the learned Commissioner observed that the appellant falsely stated in his Written Statement that the FIR was filed against respondent no.5 only; when in fact the appellant admitted in his cross-examination that the case had been registered against him and that he had been granted bail in the said case; that the appellant admitted that the Trust through its office bearers had given a contract for renovation/ construction work to respondent no.5 on written contract basis; that from the perusal of the contract, no terms could be found that limited the responsibility of the appellant to pay monies only for contractual work; that no documentary evidence was placed on record to the effect that the deceased was working under respondent no.5 and respondent no.5 was the one who was paying salary to the deceased and the others. Interestingly, the appellant also gave a sum of Rs. 30, 000/- to the claimant though the same was stated to be on humanitarian ground.

7. The appellant also contended that he never received any demand letter for compensation or damages from the claimant, nor did the claimant adduce any postal receipt or acknowledgement showing that such demand letter was

sent to the appellant. It is argued that said letter now being relied upon by the claimant was created subsequently only to make out a case howsoever. Apropos these objections the impugned order has observed that issuance of a notice or demand letter by a claimant to the employer is not necessary, therefore, the claim petition could not have been dismissed or declined only on this ground.

8. The impugned order has apparently referred to evidence of Mr. Manohar Lal Kumar (RW1/A), who examined himself as a witness on behalf of the appellant. His deposition is as under:

“... I am the trustee of Mata Ram Rakhi Mandir Sanatan Dharam Mandir. There are about 25-30 other trustees. I do not know whether any accident took place in the Mandir on 1.08.2013 while shuttering was being opened. I do not have any copy of FIR but there would a FIR against me about the accident on 01.08.2013. I had received summons from Rohini Court but that day judge was on leave. Room number also do not number. It is correct that court had issued warrants against me and I got it cancelled. I have not executed agreement mark RW1/A. It is correct hat it is not an agreement but a receipt of payment. It is correct that written statement Ex CW1/A2 and affidavit with written statement Ex. CS1/A3 bears my signature at point ‘A’ and ‘B’ and I have filed the same. I have not executed any contract with Mahipal and I have stated so false in Para no. 6-7 falsely. I do not know about the shuttering being done on 01.08.2013, nor do I know about the Sakoor Ahmed or his accident and his spot of death and it is incorrect to suggest that I am deposing falsely as above. It is wrong to suggest that I have filed a false affidavit Ex. CW1/A in the court. I have personal knowledge of the facts about in my affidavit and it is wrong to suggest that I am deposing on hearsay....”

9. Quite clearly, the said trustee had declined that he had executed the contract (Ex. RW1/A) and in any case the said document was not in

agreement with the receipt of payment. He further stated that he had not executed any contract with Mahipal, the independent contractor. Since the appellant's case was entirely based upon the contract with the independent contractor, but no contract has been proven, indeed the appellant had himself stated that there was no agreement and the document relied upon was not agreement but a receipt, therefore, the contention of the appellant that there was a written agreement between it and respondent no.5- the independent contractor, is untenable.

10. The learned counsel for the appellant also argues that the learned Commissioner wrongly interpreted section 4(a) of the Employee Compensation Act; that the case of the appellant was of the nature which required computation and adjudication as the age, wage of the deceased and the relevant factor under schedule IV of the Act were unknown to the appellant; that the respondent no.1/claimant failed to serve notice under section 10 of the Employees Compensation Act.

11. The learned counsel for the respondent contends that mere non service of notice cannot be a ground to disentitle the respondent to claim the compensation; that the appellant herein did not disclose that an FIR was registered against him until he was cross examined where he admitted the same; that the appellant is the one who is liable to pay the compensation as held by the learned Commissioner and not respondent no.5 as argued by the appellant. It is further argued that no documentary evidence has been placed on record to show that the deceased was employed under respondent no.5 and the appellant had no role to play in the employment of deceased; that the appellant paid Rs. 30,000/- to the respondent no.1/claimant but later on it was stated that the said payment was made in humanitarian grounds. Lastly, he

submits that the deceased was an employee of the appellant and suffered death out of and in course of the employment.

12. The impugned order found it odd that the appellant did not even doubt or put even a suggestion to the claimant that the deceased was engaged by Mahipal in his capacity as a contractor. As per the terms of contract between Mahipal and the appellant, Mahipal would be only held responsible for accident or employment injury to any of the workers. In view of the above, the impugned order has rightly concluded that the deceased was an employee of the appellant and suffered the fatal injury during the course of employment. Therefore, the claim petition was allowed. This Court finds no error in the aforesaid reasoning or conclusion. However, subsequent to the direction to the appellant to deposit an amount of Rs. 8,86,329/-, along with further simple interest, at the rate of 12% w.e.f. 01.08.2013 till its realization, the money was promptly deposited by the appellant, but a corollary proceeding under Section 4A(3) of the Act was initiated to show cause as to why the penalty may not be imposed for default in making compensation under the Act within one month from the date it fell due. The appellant had argued that it had promptly deposited the money after receipt of the order on 06.04.2017 and there has been no delay at all in making the payment. The appellant argues that other issues apropos age and wage of the deceased and the relevant factor under Section 6 of the Act were unknown to it, therefore, the monies could not be paid earlier. It is also argued that Section 4A of the Act will be applicable only when three situation arises: (i) that the employer accept the liability and did not pay the money; (ii) that the employer accept part liability; and (iii) when the liability still needs to be computed. In support of this contention, the appellant relies upon judgment

of Delhi High Court dated 18.03.2008 passed in ***Gian Singh v. Central Ordinance Depot & Anr*** FAO 352 of 2006, ***New India Assurance Co. Ltd. v. Momina Khatum and Others*** 2008 SCC OnLine Del 386 and ***Pratap Narain Singh Deo v. Srinivas Sabata and Another*** (1976) 1 SCC 289, to contend that there was no ground for payment of the penalty equal to 25% of the amount of compensation. The impugned order, however, referred to the judgments of the Supreme Court in ***Pratap Narain Singh Deo v. Srinivas Sabata & Anr*** 1976 AIR 222, ***Oriental Insurance Co. V. Mohd. Nasir & Anr.*** Civil Appeal No. 3486/2009 Supreme Court of India, ***Saberabibi Yakubbbhai Shaikh & Ors v. National Ins. Co. Ltd. & Ors*** Civil Appeal No. 8/2014 Supreme Court of India, and found the appellant liable for payment of penalty amount. It had reasoned as under:

“...8. Thus in view of the judgments in the case of ***Pratap Narain Singh Deo vs Srinivas Sabata & Anr. and Saberabibi Yakubbbhai Shaikh & Ors. Vs National Ins. Co. Ltd. & Ors.*** The amount of compensation falls due from the date of accident and the judgment relied upon by the Respondent have been passed relying upon the judgment in the case of ***Oriental Insurance Co. vs Mohd. Nasir & Anr.*** which has already been superseded in the case of ***Saberabibi Yakubbbhai Shaikh & Ors. Vs National Ins.Co.Ltd. & Ors.,*** Civil appeal No. 8 of 2014 Supreme Court of India decided on 2 January, 2014.

9. I find that had the Respondent being the principal employer and not the immediate employer he would have escaped from payment of penalty. However, M/s Mata Ram Rakhi mandir Trust Samiti had not been able to prove that Sh. Mahipal S/o Sh. Budh Pal was the contractor engaged by him as a principal employer and so in the award I have treated the ‘Trust’ as the immediate employer and the Trust is liable to pay penalty also to the Claimant....”

13. What emerges from the preceding discussions is that, in the first instance the appellant had denied all liability whatsoever; it is only after the adjudication of the claim petition for compensation and liability, it had deposited the money. Section 4A of the Act requires payment of compensation as soon as it falls due. In *Pratap Narain Singh* (supra) the Supreme Court has held that the compensation became due as soon as the injury was caused to the claimant and there could be no justification for argument to the contrary. In the present case, even the provisional payment was not made to the claimants because there was absolute denial of liability. The person against whom the claim is made would ultimately makes himself liable to and also runs the risk of such orders as may be passed in the claim proceedings, unless mitigating, ameliorative and prudent steps are taken to deposit requisite monies before the Tribunal. The law requires for the money to be paid immediately when it became due. The law will presume that the present appellant knew fully well that the deceased was under its own direct employment. Therefore, it ought to have paid the monies much earlier in time. In these circumstances, there is no reason for interfering with the impugned order of penalty of 25% either.

14. The petitions are without merit and are, accordingly, dismissed.

NAJMI WAZIRI, J

MAY 15, 2019