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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th November, 2020
+ **FAO 197/2020 & CM APPLs. 27497-99/2020**
M/S FIVE S MANPOWER SERVICES PVT. LTD..... Appellant

Through: Mr. Siju Thomas, Mr. Vivek Paul,
Mr. Saurav Bhargavan, Advocates
(M:7838184828)

versus

COMMISSIONER, UNDER EMPLOYEES COMPENSATION
ACT, 1923 & ORS. Respondents

Through: Mr. Satyakam, ASC for GNCTD for
R-1 and R-4.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done by video conferencing.

CM APPL. 27499/2020(for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CM APPL. 27498/2020(for condonation of delay)

3. This is an application for condonation of delay in filing the appeal *qua* impugned order dated 4th August, 2020. The delay of 17 days is condoned. Application is disposed of.

FAO 197/2020 & CM APPL. 27497/2020(for stay)

4. The present appeal challenges two orders dated 4th August, 2020 bearing F.No.Misc/EE/01/ND/2020/740 and 24th August, 2020 bearing F.No.Misc/EE/01/ND/2020/824 and letter dated 29th September, 2020 bearing F.No.Misc/EE/02/ND/2020/1078 passed by the Commissioner under the Employees Compensation Act, 1923 (*hereinafter*, "Act"). Vide the impugned orders, the Commissioner has directed payment of a sum of

Rs.12,93,900/- as compensation due to the death of Respondent No.3, i.e. the deceased workman, to his legal heirs/dependents.

5. The submission of Id. counsel appearing for the Appellant is that the Appellant was merely a contractor at the site and the compensation amount has already been deposited by the principal employer. Despite this fact being in the knowledge of the Commissioner, the same appears to have not been considered by the Commissioner. Mr. Satyakam, Id. counsel appearing for Respondent No's 1 and 4 submits that the Id. Commissioner, on a reading of the impugned orders, appears to have over-looked the said issue.

6. Heard counsels for the parties. The contention of the Appellant is that since the principal employer is liable in case of any death to pay the compensation, the liability could not have been fastened on the contractor. A perusal of the definition of 'employer' under Section 2(e) of the Act as also Section 12, shows that the liability to pay compensation would be on the principal employer. In fact, this is also evident from the note of the Labour Welfare Inspector who notes that if the contractor fails to pay the compensation amount, the principal employer will deposit the same. The extract of the said note reads as under:

"Principal employer may kindly be requested to direct the contractor to deposit the compensation amount on or before 23/07/2020, failing which the Principal Employer will deposit the same with penalty and penal interest."

It is not in dispute that the Principal employer has deposited the compensation amount. The Commissioner could not have directed the deposit of the amount twice over, once by the Principal employer and secondly by the contractor. Thus, the Commissioner is clearly in error.

7. Further, under the provisions of the Act, it is the settled legal position that the primary responsibility of paying the compensation is upon the principal employer. The inter-se arrangements between the principal employer and the contractor would not affect the liability *qua* the deceased or his/her family. This is settled in several judicial pronouncements. In ***Shri Krishan v. Jasoda Devi & Ors. [FAO 135/2016, decided on 27th September, 2017]*** a Id. Single Judge of this Court has reiterated and summarised the various principles governing Section 12 of the Act as under:

“Liability of the principal under Section 12 of the Employee's Compensation Act

8. Section 12 of the Employee's Compensation Act imposes the liability of payment of compensation on the principal with right to recover the same from the contractor in respect of work being carried out by the contractor. Section 12 of the Employee's Compensation Act is reproduced hereunder: ...

43. Summary of Principles

43. – 43.4

43.5. *The intention of the Legislature in enacting Section 12 provision*

appears to be that the injured employee or the dependent of a deceased employee who has been awarded compensation by the Commissioner, should not be put to any difficulty in realising such amount of compensation on account of any recalcitrance of the employer or on account of the vicissitudes of his (the employer's) financial position.

43.6. *Section 12 of the Act has, in effect, stretched the contours of the word "employer" wider as to include the person contracting with another person for carrying out the work of the former. In such*

cases, the provision enjoins that the principal shall stand substituted as the employer. This is achieved by the words "where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer". The principal may have a claim for indemnity from his contractor or delegatee but the victim or his dependents are not to be involved in such disputes.

43.7. Section 12 will apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. The agreement or contract between the principal and the contractor shall govern only their inter-se rights and liabilities, and cannot affect the right of the employee or the dependants of the employee, to get the compensation from the principal or from the contractor at their option.

43.8. Section 12 shall apply even in cases of several tiers of employers or petty contractors. It is a matter of common knowledge that contractors in turn employ other petty contractors working under their direction and an employee may be actually employed by one of these aforesaid persons and in such a case, there may be no direct privity of contract between the principal and the employee in the last analysis. The employee has, for all practical purposes to deal with an immediate employer but when it comes to lodging a legal claim for compensation on account of an accident, he is concerned with the principal employer and not the immediate employer qua the employee.

43.9. In case of the multiplicity of immediate and indirect or remote employers/contractors, Section 12 relieves an employee of the difficulty of ascertaining with precision as to who should be

deemed to be the actual employer liable for compensation under the Act. The purport of Section 12 is to create a deemed employer-employee relationship between the principal employer and the employee of the immediate employer who is brought in by the principal employer as his contractor.

43.10. *Section 12 secures compensation to the employee who cannot fight out his battle for compensation by a speedy process. A person who employs others to advance his own interest is expected to provide a surer basis for payment of the injured employee than the intermediary, who may often turn out to be a man of straw, from whom compensation may not be available. This is the purpose for which the claimant is given the option under section 12(3) of the Act to claim the compensation either from the principal or from the contractor.*

43.11. *The contractor may not be a man of means or he may be merely a man of straw or it may be that wittingly or unwittingly he may possibly be part of an arrangement conceived by the principal to avoid confrontation directly with the employee engaged in the execution of the work. In either case, the interests of the employee need to be protected and that is what the provision secures to the employee. The principal can seek indemnification from the contractor if he has been made answerable for the payment of compensation. The right of the principal to be indemnified has thus been incorporated under Section 12(2), who has entrusted the work to the contractor stipulating the right of indemnification under the Act.*

43.12. *Section 12 of the Act gives protection to the employee in case of an accident and secures compensation from the persons who can pay, so that such employee will not be dependent upon a petty contractor(s) who may themselves not be able to pay*

*compensation on account of their financial inability.
43.13. Section 12 is an enabling provision for the benefit of the employee(s) and enacted with the clear objective that the employee(s) should not be hampered by technicalities or practical difficulties of deciphering the correct employers. A pragmatic method has thus been devised for fixing the liability of the principal employer and thereby affording speedy relief to the employee for payment of compensation on account of the accident, though the principal has been invested with the right of indemnifying himself from the contractor who may have employed the employee and may have been responsible for immediately taking work from him....”*

8. In view of the above settled legal position, this Court is of the opinion that the matter requires re-consideration by the Commissioner. Accordingly, the impugned orders are set aside in the light of the above provisions and the note of the Labour Commissioner. The Commissioner shall take a fresh look at the entire matter and after hearing the Appellant shall pass a speaking order in accordance with the law as set out above in ***Jasoda Devi (supra)***.

9. The Commissioner shall ensure that since the compensation is lying deposited, all efforts are made to trace out the legal heirs of the workman so that the compensation is duly disbursed to them without further delay. The Commissioner shall dispose of the matter on or before 31st January, 2021.

10. With these observations, the appeal and all pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 4, 2020
dj/T