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

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Date of Decision: 28th May, 2021

+ W.P. (C) 8883/2019 & CM APPLs.36650/2019 & 36651/2019

OM PRAKASH AND ANR.

..... Petitioners

Through: Mr. Vinod K. Singh,
Advocate

versus

COMMISSIONER, EMPLOYEE
COMPENSATION AND ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The petitioners have challenged the order dated 23rd December, 2013 passed by the Commissioner, Employees' Compensation and the recovery proceedings initiated in pursuance thereto.

2. This case relates to the accident dated 14th October, 2012. The petitioners were constructing a tin shed/godown at property bearing Kh No. 361, Pipeline Road, Near Tata Dharam Kanta, Alipur, Delhi through a contractor. During the course of the construction, the wall collapsed which resulted in death of two labourers, namely, Pintoo and Shravan and injury to one named Mithilesh Kumar. This accident was reported in Dainik Jagran and Punjab Kesari

newspapers on 15th October, 2012. The Commissioner, Employees' Compensation received a letter dated 22nd April, 2013 from National Human Rights Commission with respect to the above accident whereupon he issued notice dated 31st May 2013 under Section 10A of the Employees Compensation Act to the petitioners.

3. The petitioners appeared before the Commissioner, Employees' Compensation and submitted the reply in which they stated that respondent No.2 is the owner of the subject property and he authorized the contractor Suresh to construct the tin shed/godown in their property; the contractor engaged the labourers and agreed to bear the liability of any mis-happening during the construction work; and the contractor gave an affidavit dated 23rd May, 2012 to the petitioners in this regard. The Commissioner, Employees' Compensation issued the notice to the contractor, Suresh, who appeared on 18th December, 2013 and submitted the reply in which he stated that he was working as a *Mistri* with petitioner No.2 and he did not give any signed document to the petitioner.

4. The Commissioner, Employees' Compensation in the impugned order dated 23rd December, 2013 noted that respondent No.2 admitted in his reply that he is the owner of the subject property and he was carrying on the construction of godown and a wall fell down which resulted in the death of two labourers, Pintoo and Shravan and injury to third labourer, Mithilesh Kumar. With respect to the defence raised by petitioner No.2 that the contractor alone was liable, the Commissioner, Employees' Compensation noted that Section 12(1) of the Employee's Compensation Act fixes

the primary responsibility in the first instance to pay the compensation on the owner of the property.

5. The Commissioner, Employees' Compensation rejected the defence of the petitioners that the contractor alone is liable to pay the compensation. The Commissioner, Employees' Compensation awarded compensation of Rs.7,88,902/- each to the legal representatives of Pintoo and Shravan. The Commissioner directed the petitioners to deposit Rs.15,77,804/- towards compensation in both the cases along with simple interest @ 12% per annum from the date of accident within 30 days.

6. The petitioners have challenged the impugned order on the grounds that the petitioners were not afforded any opportunity to defend the case and no issues were framed.

7. The Commissioner, Employees' Compensation issued the notice dated 22nd October, 2012 to respondents No.1 and 2 who appeared before the Commissioner, Employees' Compensation. The respondent No.2 admitted to be the owner of property in question and he submitted that he had authorized the contractor namely respondent No.3 to construct the tin shed/godown. Respondent No.2 claimed that respondent No.3 being the contractor alone is liable to pay the compensation. Respondent No.3 also appeared before the Commissioner, Employees' Compensation and submitted that he was working as *Mistry* with respondent No.2 and he denied any liability to pay the compensation.

8. The Commissioner, Employees' Compensation held that respondent No.2 liable to pay the compensation. The Commissioner,

Employees' Compensation awarded compensation of Rs.7,88,902/- along with interest @ 12% per annum from the date of accident to the legal representatives of Pintoo as well as Shravan.

9. This Court is of the view that this writ petition is not maintainable in view of the remedy of appeal available to the petitioner under Section 30 of the Employees' Compensation Act.

10. Notwithstanding the non-maintainability of the writ petition, this Court is satisfied that in view of the admission of the petitioners before the Commissioner, Employees' Compensation that Pintu and Shravan were employed through the contractor, they are liable for the compensation for death of Pintoo and Shravan during the course of employment on 14th October, 2012. For the aforesaid reasons, the writ petition is dismissed.

11. The petitioner has deposited Rs.15,80,000/- with the Registrar General of this Court. The Registrar General is directed to transfer the said amount along with interest accrued thereon to DSLSA within three weeks.

12. Learned counsel for the petitioners submits that the petitioners be granted recovery rights to recover the award amount from the contractor. The petitioner is at liberty to initiate separate proceedings to recover the award amount from the contractor in accordance with law.

13. DSLSA shall verify the status of the legal representatives of Pintoo and Shravan and thereafter, the compensation amount be released to them in a phased manner according to their financial condition.

14. Copy of this judgment be sent to DSLSA.

J.R. MIDHA, J.

MAY 28, 2021

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