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

% Judgment delivered on: 28.01.2022

+ FAO 20/2022 & CM. APPLS. 4856-57/2022, 4972/2022

ANIL BHARDWAJ AND ANR Appellants

versus

VIMLA DEVI AND ORS. Respondents

Advocates who appeared in this case:

For the Appellants: Mr. Vikas Sharma, Advocate.

For the Respondents: Mr. Surya Prakash Mishra, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Appellants impugn award dated 11.11.2021, whereby the claim petition filed by respondents under the Employee's Compensation Act, 1923 has been allowed and compensation awarded.
3. The claim petition was filed by the wife, children and mother of the deceased contending that the deceased was working as an electrician in the appellant farmhouse for about 15 years and was



earning about Rs.36,000/- per month. Claimants contended that the appellant had even provided residential accommodation to the deceased and the claimants and they were residing in the farmhouse.

4. As per the claim petition, on 11.09.2017 at about 11 A.M., one Mr. Yograj, Manager of the farmhouse directed the deceased and another person, Mr. Pramod to cut a Pipal tree.

5. The deceased and Mr. Pramod inspected the location, where high-tension wires were going upon the tree and above the farms house. It is contended that the deceased denied to cut the tree but the Manager forced him to cut the tree.

6. When the deceased was cutting the tree, he got electrocuted on account of high-tension electric cables which were going above the farmhouse and received grievous injuries due electric shock.

7. The defence taken by the appellants in the written statement was that there was no relationship of employer and employee between the deceased and the appellants and that he was never employed by them. It was also contended that there was no proof of salary of Rs.36,000/- per month filed by the claimants.

8. The Commissioner held that there was relationship of employer and employee that the death occurred during the course of employment and accordingly allowed the claim petition.



9. Learned counsel for the appellants contends that the deceased was not working for the appellants, but he was working on contract basis with various contractors, who would hire the farmhouse for hosting parties and marriage functions.

10. It is further contended that the deceased was not residing in the farmhouse and the alleged Aadhaar Card relied on by the claimants was prepared later and the deceased was a permanent resident of Rai Bareilly, Uttar Pradesh.

11. The Commissioner, on the issue of relationship, has noticed that the claimants had produced on record the Aadhaar Card of the deceased (Ex.PW-1/A), bank passbook of the deceased (Ex.PW-1/B) and the birth certificates (Ex. PW-1/C) of the minor children of the deceased. All the documents bear the address of Bhartiyaam Farmhouse, i.e. the appellant.

12. The Commissioner has noticed that all these documents have been issued by different departments mentioning the same address of the appellants' farmhouse.

13. Perusal of the bank passbook shows that the account was opened sometime in the year 2011, whereas the accident had taken place on 11.09.2017.

14. Commissioner has held that the documents i.e., MLC, FIR,



death certificate, post-mortem report, status report filed by the Investigating Officer before the Metropolitan Magistrate, Aadhaar Card, bank passbook and birth certificates of the children of the deceased clearly established that the deceased was employed with the appellants and this established the relationship of employer and employee.

15. Though the ages of the minor children are not mentioned in the claim petition, however from the photographs annexed with the claim petition it appears that they must have been about 7 to 9 years old, which would show that they had been living in the said farm house for several years.

16. There is no explanation on the part of the appellant as to how the deceased and his family were living in the farm house for several years, if there is no relationship of employer and employee.

17. The plea raised by learned counsel for appellant that the deceased was employed on contract basis by various contractors, who were hiring the farm house for hosting parties and marriage functions was neither taken in the written statement filed before the commissioner nor in the grounds of appeal before this Court.

18. Further, no evidence has been produced by the appellants to show as to who the contractors who used to hire the premises were and who were employing the deceased. Apart from not leading any



evidence on the said point, the contractors have not even been named.

19. The fact that the deceased was provided accommodation in the farmhouse and he and his family lived in the farmhouse for several years shows that he was employed by the appellants and the commissioner has rightly returned a finding of existence of relationship of employer and employee between the deceased and the appellants.

20. With regard to the contentions of learned counsel for the appellants that the claimants have failed to prove that the deceased was drawing a salary of Rs. 36,000/- per month, the Commissioner has also held that nothing has been produced to establish the income of the deceased.

21. The Commissioner has thereafter, noticing that deceased was an electrician, computed the compensation by taking the minimum wage of a skilled worker as on the date of the accident, which was Rs.12,166/- per month.

22. Thereafter, the Commissioner has applied the notification of the Central Government dated 31.05.2010, which restricted the wages to Rs. 8,000/- for the purposes of computation of compensation and further restricted it to 50% of the monthly wage.

23. Clearly the Commissioner has correctly applied the law and no



error has been committed by the Commissioner at the time of computation of compensation.

24. I find no infirmity in the impugned order holding that the deceased was employed with the appellants and in the computation of the compensation.

25. In view of the above, I find no merit in the appeal. The appeal is accordingly dismissed.

26. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

JANUARY 28, 2022
NA

SANJEEV SACHDEVA, J.

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