



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

+ **FAO 16/2022, CM. APPL. Nos. 3484 & 3486/2022**

Date of Decision: 23.09.2022

IN THE MATTER OF:

B4 EXPRESS SERVICE (P) LTD. Appellant
Through: None.

Versus

MANSA RAM & ANR. Respondents
Through: Mr. R.K. Nain, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. Present none for the appellant.
2. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the '*EC Act*') read with Order XLI CPC, the appellant has sought setting aside of order dated 11.11.2020/17.11.2020 passed by the learned Commissioner, Employees' Compensation in Claim No. EC(D)-11/SWD/2019/1906-08, whereby the appellant has been held liable to pay compensation of Rs.8,79,800/- to the respondents/claimants alongwith interest @ 12% p.a. from 05.03.2019 till realization, as well as a penalty of Rs.4,39,900/-.
3. A perusal of the appeal would show that the appellant has assailed the impugned order by contending that the claimants, i.e. family members of the



deceased, failed to establish employer-employee relationship between the deceased and the appellant. It is also averred that the deceased was employed only on *ad hoc* basis and thus, the appellant is not liable to pay any compensation.

4. Brief facts of the case, as set out in the impugned order, are as follows:-

“1. Vide this order, I shall dispose of the claim filed on 16.04.2019 by the claimants seeking death compensation under Employee's Compensation Act, 1923.

2. The claimants, in the claim application, have stated that deceased Sh. Atul Kumar Dubey @ Atul Kumar, S/o Sh. Mansha Ram, was employed with the respondent as field boy for delivering courier packets and his duty hour was 11:00 a.m. to 11:00 p.m. On 05-02-2019, he died during the course and out of employment. On 05-02-2019, deceased was on duty left for Ambience Mall towards his office on the bike after delivering the parcel. While on the way at about 10:00 p.m. when he reached NH-8 Highway, Gurgaon to Delhi carriageway service road near Dwarka link road, Mahipalpur, Delhi, an unknown vehicle hit the bike of the deceased and ran away. Due to which the deceased fell down on the road and sustained grievous injuries. Police came to the place of accident and took the deceased in injured condition to J.P.N.A.T.C, A.I.I.M.S., where he was declared brought dead. On the next day Post-Mortem of the dead body of the deceased was conducted and thereafter the dead body was handed over to the family. Thereafter the body of the deceased was taken to his native lace for cremation. The accident was registered under Police Station Vasant Kunj South, District South West Delhi vide FIR No. 0101/19, dated 06-02-2019. The applicants are dependents of the deceased / employee being his parents and the deceased was unmarried at the time of his accident/death. The deceased was drawing wages @ Rs.17,000 /- per month including all allowances and he was aged 23 years at the time of his accident. The Respondent is having the notice of the accident since the day of its occurrence. That the deceased was employed with Respondent and he was on duty



at the time of accident. The accident was caused during his employment. They have stated that the claimants are entitled to receive death compensation as per Employee's Compensation Act, 1923. They are also entitled to interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the Compensation Act."

5. There is no gainsaying that labour statutes such as the EC Act constitute 'beneficial legislation' for the welfare of employees and should be liberally construed in their favour. In this regard, the Supreme Court in Jaya Biswal and Others v. Branch Manager, IFFCO Tokio General Insurance Company Limited and Another reported as **(2016) 11 SCC 201** has opined thus:-

"20. The EC Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act which reads as under:

"An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident."

This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under:

"... The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate



medical treatment for their workmen should mitigate the effects to such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may be expected.”

(emphasis supplied)

21. Thus, the EC Act is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in the course of employment should be construed as such.”

6. An appeal filed under Section 30 of the EC Act is confined only to examine substantial questions of law and is not to be considered on the touchstone of an appeal akin to Section 96 of the Code of Civil Procedure, 1908. At this juncture, this Court would profitably refer to the decision in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11 SCC 514**, where the Supreme Court reiterated that the scope of interference in an appeal filed under Section 30 of the EC Act is limited to substantial questions of law and findings of facts proved either way, are not to be likely interfered with. Relevant excerpt from the decision reads as under:-

“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependants of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the



employer to cover the incident, etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s) his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.”

7. I have gone through the entire records of the learned Commissioner, Employees’ Compensation. A perusal of the same would show that the claimants had placed on record the following documents:

- (i) A copy of FIR No.0101/2019 registered at P.S. Vasant Kunj South;
- (ii) A copy of Post-Mortem Report (PMR) of the deceased;
- (iii) A copy of Delivery Run Sheet of the deceased;
- (iv) A copy of Salary Certificate of the deceased issued by the appellant;
- (v) A copy of Aadhar Card of the deceased; and



(vi) A copy of Aadhar Card of respondent No. 1/Sh. Mansa Ram

8. In the proceedings before the learned Commissioner, the claimants had examined one *Sh. Sudhanshu Dubey*, cousin brother and room-mate of the deceased, who had stated that the deceased was working with the appellant for the last two and half years and receiving salary of Rs. 17,000/- per month. It is borne out from the record that despite grant of multiple opportunities, the appellant failed to lead any evidence. In fact, in the proceedings recorded on 19.02.2020, it is mentioned that a cost of Rs.1,000/- was imposed on the appellant for not leading its evidence, and considering its conduct, the evidence of the appellant was closed.

9. Though the appellant has raised a contention that no liability can be fastened on it to pay compensation as the deceased was employed only on *ad hoc* basis, the same is meritless and rejected in view of the law laid down by this Court in Govind Goenka v. Dayawati and Others reported as **2012 SCC OnLine Del 1723** and Brijesh Kumar Verma v. Aurangjeb & Anr. reported as **2017 SCC OnLine Del 12513**.

10. In Govind Goenka (Supra), a Co-ordinate Bench of this Court analysed the change in the scope of definition of ‘workman’ under the EC Act post its amendment in the year 2000 and held as under:-

“8. So far as the definition of workman envisaged in Section 2(n) of the said Act is concerned, there has been a drastic change in the definition of the “Workman” as it stood prior to the amendment and after the amendment. Prior to the amendment, certainly the workman whose employment was of a casual nature and who was employed otherwise than for the purpose of trade or Business of the employer would not fall in the said definition. However, after the amendment of the said definition through the Amending Act 46 of 2000, the



Parliament had removed the said mischief which was then prevailing and coming in the way of such casual Workmen who met with an accident during the course of the employment unconnected with the employer's trade or Business. With the amendment of the said definition, now certainly the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or Business would also be covered within the definition of workman. The impact of the difference of the definition of the workman as it stood prior to the amendment and after the amendment has been referred to in the case of in Om Prakash Batish v. Ranjit @ Ranbir Kaur, JT 2008 (5) SC 443, and relevant paragraphs of the same are reproduced as under:

“21. The definition of “workman” as provided in Section 2(n) of the Act, as it stood on the date of the incident, reads as under:

“(n) “Workman” means any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of employer's trade or Business who is-

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of the Armed Forces of the Union and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.”

The ingredients of the said provisions are:

- (i) The Workman must not be employed as a casual Workman;*
- (ii) His employment must be in connection with the employer's trade and Business.*

22. We must, however, place on record that the words beginning from “other than a person whose employment is of a casual



nature and who is employed otherwise than for the purpose of the employer's trade or Business” have been omitted by Act 46 of 2000. We are, however, considering the statutory provision as it then stood.

23. The Workman in the present case was employed for a limited period for carrying out repair works in a residential house. The same does not, thus, answer the description of a workman as contained in the provision of the Act.

24. Schedule II appended to the said Act to which reference was made by Mr. Dhingra, in our opinion, is not applicable, as it is subject to the provisions of Section 2(1)(n) of the Act. If, therefore, the law as it then stood would exclude the applicability of the Act, having regard to the definition of the term “workman” the same cannot be held to include deceased only because he was working in connection with a building activity.

Even otherwise, working in a residential house does not satisfy the requirement of law.

25. We must also bear in mind that the very fact that the Act was amended is itself a pointer to show that the Parliament intended to avoid a mischief which was prevailing.

Applying the Principles of Mischief Rule [Heydon's case, 1584 (3) Co. Rep. 7a], it must be held that prior to the amendment of the definition of “Workman” the category of Workman to which Ram Lal belonged did not come within the purview of the provisions of the said Act.”

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10. *As would be seen from the above judgment of the Hon'ble Division Bench where the Osmania University, Hyderabad had engaged services of a contractor for white washing and painting the walls of the University and a worker employed by the contractor while white washing the walls had fallen and died and the objection raised was that whitewashing the walls of the University would not be an activity which could be construed as an activity for the purposes of trade and Business of the University. Giving an extended meaning to the word*



“Business” employed in the said Section 12, the Hon'ble Division Bench took a view that the restricted meaning given to the said expression would defeat the very raison d'être of section 12 of the Act.

11. The said interpretation given by the Division Bench also finds support from the amendment brought by the Parliament in the definition of Section 2(1)(n) of the Act omitting the words “Casual workman” and a Workman, who is employed other than for the purposes of employer's trade or Business. Reverting back to the facts of the present case, here also the deceased workman was employed by the contractor and although for carrying out repair job it might not be the principal activity of the Appellant but yet the Appellant cannot escape its liability keeping in view the object of the said beneficial piece of legislation.

12. For the expeditious grant of compensation in the event of such accidents taking place in favour of the victim's dependent members, this act was enacted and a hyper-technical interpretation of the statute would not only defeat the purpose of the said Act but would be adding insult to injury.”

11. In Brijesh Kumar Verma (Supra), another Co-ordinate Bench of this Court, on the strength of law laid down in Govind Goenka (Supra), observed as under:-

“37. In Govind Goenka v. Dayawati (supra), this Court examined the effect of Workmen's Compensation (Amendment) Act, 2000 and held that, after the amendment, the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business, would also be covered within the definition of “workman” ...

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47. Interplay of Section 12 and Section 2(1)(dd) of the Employees Compensation Act. (Earlier Section 2(1)(n) of Workmen's Compensation Act)



The effect of the omission of words “other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business” in the definition of workman in Section 2(1)(n) by the amendment in 2000 is that a person whose employment is of a casual nature and is employed other than for the purposes of the employer's trade or business comes within the meaning of “employee” as defined in Section 2(1)(dd) of the Employees Compensation Act. Although the words ‘trade’ or ‘business’ remain in Section 12 of the Employees Compensation Act, applying the rules of ‘purposive interpretation’, ‘superior purpose’, and ‘felt necessity’ this Court is of the view that the words ‘trade’ or ‘business’ in the definition of “employee” in Section 2(1)(dd) were omitted to grant all the benefits of the Act to casual employees and employees employed other than for the purposes of employer's trade or business as held in Govind Goenka (supra).”

It is noteworthy that though an appeal was preferred before the Supreme Court against the aforesaid decision, the final order/judgment was not interfered with on merits.

12. Keeping in view the facts and circumstances of the case, I find no ground to interfere with the impugned order. The appeal is accordingly dismissed, alongwith the pending applications.

13. It is noted that the claimants, i.e. *Sh. Mansa Ram* and *Smt. Meera Devi*, had also preferred a writ petition bearing W.P.(C) No. 13094/2021, which was disposed of on 09.03.2022 after recording that an amount of Rs.4,00,000/- was deposited by the appellant in pursuance of order dated 09.12.2021 passed therein and an amount of Rs.11,57,100/- has been deposited by the appellant/*B4 Express Service (P) Ltd.* in pursuance of orders passed in the present appeal.

14. Vide order dated 05.04.2022 passed in the instant appeal, this Court had directed that an amount of Rs.2,00,000/- out of Rs.11,57,100/- be



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released in favour of the respondents. Having reached the foregoing conclusion, it is directed that the remaining/balance amount of compensation lying deposited with the Registrar General of this Court be released in favour of the respondents forthwith.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 23, 2022/v

