



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

+ **FAO 374/2018, CM APPL. 31998/2018**

Date of Decision: 13.09.2022

IN THE MATTER OF:

BABU LAL & ANR

..... Appellants

Through: Mr. Anurag Ojha and Mr. Gautam
Barnwal, Advocates.

versus

MUNNI DEVI & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. Learned counsel for the appellants seeks one more opportunity to file the process fee.
2. A perusal of the case records would show that taking into account the lackadaisical approach of the appellants in serving the respondents, a cost of Rs.2,000/- was earlier imposed vide order dated 19.03.2019. Again, on 14.11.2019 the appellants having remained casual in their approach to serve the respondents, a further cost of Rs.5000/- was imposed, which was directed to be deposited with the Delhi High Court Legal Services



Committee.

3. Today, on enquiry, learned counsel for the appellants submits that the cost of Rs.5,000/- has not been deposited. Further, as per the Office Report, the appellants have not taken any steps to file the process fee to serve the respondents. Considering the aforesaid, I am of the view that the appeal is liable to be dismissed for non-prosecution.

4. Be that as it may, I have also gone through the impugned Award/order dated 25.04.2016 as well as the documents placed on record.

5. The appellant has preferred the present appeal under Section 30 of the Workmen's Compensation Act, 1923 and Section 96 read with Order XLI Rule 1 CPC. It is noticed that in the claim petition, the claimant (respondent No.1 herein) averred that the present appellants were owners/occupants of property bearing No. 4004-05, Gali Barna, Pahri Dhiraj, Sadar Bazar, Delhi – 110006, who engaged one *Humayu Khan* (respondent No.2 herein) to construct a building at the aforesaid property. It was further averred that *Humayu Khan* was working under the direct control of present appellants and he further employed one *Ashok* (son of claimant), one *Kalicharan* (son of claimant) and one *Kunwar Pal* (husband of claimant) as labourers.

It was claimed that in spite of asking for safety measures, no safety equipment or life-saving equipment was provided at the appellants' site. It was further claimed that appellant/respondent No.2 without waiting for settling of the concrete of third floor, insisted the labourers including the deceased to stall the building material of the fourth floor and on 01.06.2014, while *Ashok*, *Kalicharan* and *Kunwar Pal* were working at site, the entire building collapsed due to heavy load on the roof of third floor of the building. As per the claims, fatal injuries were received by injured/*Ashok*



and injured/*Kunwar Pal* only on account of negligence of the appellants/respondent No.2.

6. Reportedly, injured/*Ashok* and injured/*Kunwar Pal* were taken to Hindu Rao Hospital vide MLC Nos. 3662/2014 and 3658/2014 respectively, where both were declared brought dead. Post-mortem of the deceased was conducted and FIR No. 251/2014 was registered under Sections 288/337/304(A) IPC at Police Station Sadar Bazar. The claimants had sent a legal notice dated 26.05.2015, to which no reply was received. Along with the claim petition, copy of FIR, medical records of Hindu Rao Hospital, post-mortem report(s) of the deceased, dead body handing over receipt, death certificates of the deceased, investigation report in FIR, complaints given to DCP and legal notices sent to the appellants were also placed on record by the claimant(s).

7. The appellants, while denying their liability, contended that the deceased persons were employed through *Humayu Khan*. The learned Commissioner, Employee's Compensation, after hearing the arguments and going through the records, came to the conclusion that the appellants have not denied the fact that the death of *Kunwar Pal* and *Ashok* occurred during the course of employment i.e., at the construction site of the appellants. Further, although the appellants took the stand that a written contract was executed between them and respondent No.2 as per which the entire responsibility of construction and the site was under direct control and supervision of respondent No.2, no such agreement was placed on the record.

8. The ages of deceased/*Kunwar Pal* and deceased/*Ashok* were taken to be 52 and 32 years respectively, and the concerned Commissioner awarded



compensation of Rs.5,84,800/- and Rs.8,15,400/- alongwith simple interest @ 12% p.a. from the date of accident till its realization.

9. Keeping in view the aforesaid, I find no ground to interfere with the impugned order passed by the Commissioner. Consequently, the appeal is dismissed alongwith pending application, for non-prosecution as well as on merits. The amount deposited by the appellants be released to claimants/respondent No. 1 forthwith, if not already done.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 13, 2022

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