

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 506/2018, CM APPL. 45120/2018 and CM APPL. 45121/2018**

Date of Decision: 16.12.2022

IN THE MATTER OF:

BAHAI HOUSE OF WORSHIP

..... Appellant

Through: Mr. R.R. Kumar and Mr. Yogesh
Gupta, Advocates.

versus

SMT. MUNISHA

..... Respondent

Through: Mr. Fidel Sibastian and Mr. Shiyas
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the '*EC Act*'), the appellant has assailed the order dated 08.06.2018 passed by the learned Commissioner, Employees' Compensation (South District), Delhi in Case No. CEC/SD/D/20/2017/407.

2. Learned counsel for the appellant contended that though *Mohd. Iqrar* (the deceased) was employed with the appellant at the time of the incident, however the Tribunal erred in arriving at a conclusion that his death had occurred during the course of employment. In support of his contention, learned counsel has referred to the attendance register of the

deceased for the month of September, 2015 wherein his attendance is marked only upto 24.09.2015. It is contended that the deceased had remained absent on 25/26.09.2015. Lastly, it is submitted that no medical documents have been produced on record by the respondent/claimant.

3. Learned counsel for the respondent, on the other hand, has supported the impugned order.

4. I have heard learned counsels for the parties and perused the entire material placed on record.

5. There is no gainsaying that labour statutes such as the EC Act constitute '*beneficial legislation*' for the welfare of workmen 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. Further, an appeal filed under Section 30 of the EC Act is confined only to examination of 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 may profitably refer to the decision in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11 SCC 514**. In the captioned case, 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 interfered with. It was further held 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 dependents 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. In the statement of claim, it was claimed that *Mohd. Iqrar* was 47 years old and working with the appellant since 1987 as a Gardner and had put in about 29 years of service. It was further claimed that the deceased was drawing a salary of Rs.11,167/- per month at the time of his death. During the proceedings before the learned Commissioner, the claimant (wife of the deceased) had examined herself and one *Sanatan Mandal* as CW1 and CW2 respectively. The claimant had filed her evidence by way of an affidavit and also placed on record the death certificate of *Mohd. Iqrar* wherein date of death and place of death has been mentioned as 26.09.2015 and *Safdarjung Hospital, New Delhi*. *Sanatan Mandal* also filed his evidence by way of an affidavit and stated that he and *Mohd. Iqrar* have been co-workers for around 30 years. He further stated that on account of the workload, the deceased was in constant tension. He also stated that on 26.09.2015, the deceased had come to attend his duty but instead of signing the attendance register went to *Shaheen Javid*, the appellant's General Manager and complained him of feeling unwell. *Shaheen Javid* asked the deceased not to perform his duty and advised him to go to the *Safdarjung Hospital*. The witness, further stated that he had accompanied *Mohd. Iqrar* when he went to meet *Shaheen Javid*, who had also given him Rs.700/- towards the taxi fare. The witness also stated that he had told *Shaheen Javid* not to send *Mohd. Iqrar* to the *Safdarjung Hospital* but instead to some good hospital in a vehicle belonging to the appellant, however *Javid*, in turn, replied that needful would be done afterwards. It was also stated that he took *Iqrar* to the *Safdarjung Hospital* where he was admitted in the

emergency. He was told that the condition of *Iqrar* was very bad. Admittedly, *Mohd. Iqrar* expired on the very same day in the hospital.

8. From the above, it is evident that neither the employment of the deceased with the appellant nor his death on 26.09.2015 has been denied. The only contention raised is that since the deceased had not joined duty on 26.09.2015, his death cannot be held to have occurred during the course of employment. The contention deserves outright rejection in view of the categorical statement made by *Sanatan Mandal*, from which it stands established that the deceased was under stress and on 26.09.2015, he had come on the duty but was advised to go to the *Safdarjung Hospital*. The witness was not even cross-examined on this aspect. This Court is of the considered opinion merely because he had not marked his presence in the attendance register for two days, it cannot be said that *Mohd. Iqrar's* death did not occur during the course of employment with the appellant.

9. Accordingly, in view of the above discussion, I find no merits in the present appeal, and the same is dismissed alongwith miscellaneous applications. This Court on 30.11.2018 while admitting the appeal noted the submission made on behalf of the appellant that an amount of Rs.12,69,418/- was deposited with the learned Commissioner, Employees' Compensation and directed that 25% of the said amount be released to the respondent/claimant.

10. Consequently, the learned Commissioner is directed to release the balance amount of compensation alongwith the interest accrued thereon, if any, to the respondent/claimant within a period of two weeks from today.

11. A copy of this judgment be communicated to the concerned Commissioner for information.

DASTI

**(MANOJ KUMAR OHRI)
JUDGE**

DECEMBER 16, 2022

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