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

Date of Decision: 6th September, 2023

+ **W.P.(C) 14366/2021**

RAZIA BEGUM

..... Petitioner

Through: Mr. R. K. Nain, Mr. Daksh Nain &
Mr. Chandan Prajapati, Advs. (M:
9312070470)

versus

**COMMISSIONER EMPLOYEES
COMPENSATION & ORS.**

..... Respondents

Through: Mr. Sameer Vashisht, ASC, civil
GNCTD with Mr. Vanshay Kaul,
Adv.

Mr. Rajneesh Mishra, Adv. for R-2.
(M: 98701 11585)

Mr. Ripudaman Bhardwaj, SPP with
Mr. Kushagra Kumar, Adv. with Mr.
Brijendra Singh, DSP for CBI. (M:
9910770710)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.
2. The present petition has been filed challenging the order dated 29th January, 2021 passed by the Ld. Commissioner under the Employees' Compensation Act, 1923 (*hereinafter "the Act"*) in ***ECD/05/NW/2020/2754-56*** titled ***"Smt. Razia Begum v. M/s. Mahaveera Transport Pvt. Ltd."***
3. The background of this matter is that the Petitioner is the mother of one Mohd. Parvej who was stated to be employed as driver in respect of a

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particular vehicle bearing No. HR-47A-3550, with the Respondent No.2 herein. He was driving the said vehicle in Badaun, Uttar Pradesh on 17th February, 2018, and he allegedly went missing thereafter. An FIR being **FIR No. 0098/2018** dated 23rd February, 2018 was also registered in this regard at P.S. Wazirganj, Badaun, Uttar Pradesh.

4. Thereafter, the Petitioner filed the claim under Section 22 of the Act before the Ld. Commissioner, against both, the Respondent No.2/Employer as also Respondent No.3/Insurance Company, which has been rejected. By the impugned order, the claim for compensation under Section 22 of the Act, filed by the Petitioner herein i.e., the mother of the Employee who is claimed to be dead, has been rejected. The reasons stated for the above rejection was that seven years have not passed since the Employee went missing and hence the compensation was not maintainable.

5. On 15 December, 2021, notice was issued in this writ petition. Mr. Vashisht, Id. Counsel appearing for Respondent No.1/Commissioner ECA was also permitted to coordinate with the police authorities in Badaun, Uttar Pradesh to obtain a status report in respect of the FIR No.0098/2018 dated 23rd February, 2018 registered under Section 406 of IPC at P.S. Wazirganj, District-Badaun, Uttar Pradesh.

6. A status report filed from the police authorities was taken on record on 27th January, 2022. A perusal of the said status report along with the documents showed that, during the investigation, it has been found that apart from the FIR No.98/2018 registered under Section 406 of IPC at P.S. Wazirganj, District- Budaun, Uttar Pradesh, there is a separate FIR No. 256/2018 also registered under section 406 of IPC at P.S. Shahjapur, District- Bhiwadi, Rajasthan.



7. Upon a perusal of the letter which was received from the Police Commissioner, District- Bhiwadi, Rajasthan, made it clear that further investigation was required to investigate the missing status of the son of the Petitioner herein, Mohd. Parvej, who was a truck driver with the Employer. The Court felt that such investigation was required especially because the FIR is registered under Section 406 IPC, but the truck with all the goods was seized from District- Budaun, Uttar Pradesh. On the basis of the status reports which was placed on record, the case did not appear to be one of theft, as the goods have not been found missing. The status report also showed that the missing person was also in touch with his brother, through his mobile number, around the time when he went missing.

8. In view of the disclosure in the status report, the Rajasthan police was directed to conduct further investigation and file a final status report to GNCTD. The relevant portion of the 22nd January, 2022 order reads as follows:

“Upon a perusal of the letter which has been received from the Police Commissioner, District- Bhiwadi, Rajasthan, it is clear that, further investigation would be required to investigate the missing status of the son of the Petitioner herein, Mohd. Parvej, who was a truck driver with the Employer. Such investigation would be required especially because the FIR is registered under Section 406 IPC but the truck with all the goods has already been seized from District- Budaun, Uttar Pradesh. On the basis of the status reports which have been placed on record, the present case does not appear to be one of theft, as the goods have not been found missing. The latest status report also shows that the missing person was also in touch with his brother, through his mobile number, around the time when he went missing.



4. Accordingly, the Rajasthan Police is also directed to conduct further investigation in an expeditious manner, into the whereabouts of Mohd. Parvej and supply a final status report to the Respondent No.1/GNCTD, so that the same can be placed before this Court, by the next date.

5. Let the Respondent No.2/Employer as also the Respondent No.3/M/s. United India Insurance Co. Ltd., file their counter affidavits, within four weeks. Let the rejoinders thereto, if any, be filed within two weeks thereafter.

6. Respondent No. 2/Employer shall also conduct an enquiry with the family of the missing person and place an affidavit on record in respect of the result of the said enquiry .

7. On the next date, this Court would consider whether any interim compensation is to be directed in this matter”.

9. Thus, on 27th January, 2022 the Rajasthan police and the employer of the missing person were directed to conduct further enquiry and investigation. Insurance company was also directed to file its counter affidavit.

10. The SHO, PS Shahjahanpur, Bhiwadi, Rajasthan then filed a status report on 19th April, 2022. The court perused the Status Report and found that the same was inconclusive and was of the view that no concrete facts were ascertained as to the whereabouts of the missing person. On the said date, detailed submissions were made by the insurance company and the employer which are extracted below:

“3. On behalf of the Respondent No.3-M/s. United India Insurance Co. Ltd., it is submitted by Mr. Abhishek Gola, ld. Counsel that the Employee-Driver of the truck bearing No. HR-47A-3550, would be covered by insurance, provided that the Respondent



No.2-Employer deposits the money with the Respondent No.3, in terms of the insurance policy which has been taken by the Employer.

4. Mr. Rajneesh Mishra, Id. Counsel appearing on behalf of the Respondent No.2-Employer submits that ever since the Driver and the truck went missing, the Respondent No.2-Employer has been running from pillar to post to get the FIR registered. The truck was spotted for the last time on 19th February, 2018, when the CCTV captured its movement in Shahjahanpur, District-Bhiwadi, Rajasthan. He submits that even the truck was not recoverable initially for several months, and it is only pursuant to the order of the Id. Sessions Judge, District-Alwar that the truck along with the goods were released. However, the goods, which were tyres, were found to be completely unusable, and the driver has still not been found. He submits that finally, FIR No.98/2018 under Section 406 of IPC at P.S. Wazirganj, District- Badaun, Uttar Pradesh and FIR No. 256/2018 under section 406 of IPC at P.S. Shahjahanpur, District- Bhiwadi, Rajasthan, were registered. However, no proper investigation has been conducted and the whereabouts of Mohd. Parvez remains unknown, till date.”

11. Owing to the fact that in an incident which occurred in 2018 where the police were unable to give a concrete response as to the status report of the missing person, the Court was of the opinion that the police authorities of all three states being Haryana, Rajasthan, and Uttar Pradesh are simply dragging their feet. The Petitioner- Smt. Razia Begum, who is the widowed mother of the missing Employee-Driver, was unable to obtain any monetary compensation or any closure in this matter. Accordingly, it was deemed appropriate to hand over the investigation, pursuant to the two FIRs, being FIR No.98/2018 and FIR No.256/2018, to the Central Bureau of



Investigation (CBI). Copy of the order was directed to be served upon Mr. Ripu Daman Bhardwaj, Special P.P., CBI.

12. After conducting proper investigation, the CBI was directed to place a status report on record. In addition sum of Rs. 3 lacs was awarded in favour of the Petitioner as interim compensation. The Insurance Company, was directed to deposit the said amount with the commissioner which was to be released to the mother of the Petitioner after verifying her credentials.

13. The insurance company sought modification of the said order which was rejected by this court vide order dated 23rd May, 2022 in the following terms:

“6. In these facts and circumstances, this Court is of the opinion that the mother who is the Petitioner before this Court cannot be made to struggle financially on account of her son being missing. Respondent No.3-Insurance Company and Respondent No.2-Transport Company had clearly confirmed on the last date that the Transport Company had obtained third-party insurance, in respect of the vehicle in question.

7. Even today, Mr, Mishra, ld. Counsel appearing for the Respondent No.2-Transport Company submits that the driver is fully covered by the insurance policy which had been taken by the Transport Company.

8. Accordingly, this Court finds no merit in the present application. The same is dismissed.

9. Interim compensation of Rs.3 lakhs in terms of the order dated 19th April, 2022 be released in favour of the Petitioner, by the insurance company, within one week. If the said amount is not paid, additional costs of Rs.25,000/- would be liable to be paid to the Petitioner by the Respondent No.3-Insurance Company.”

14. Vide order dated 19th April, 2022, this Court had transferred the investigation in the matter to the Central Bureau of Investigation (CBI). The



CBI then conducted its investigation and filed various interim reports. The Investigating Officer from the CBI was also present in court from time to time. The CBI submitted one status report and further time was sought for conducting the investigation. Vide order dated 27th July, 2022, a further status report on behalf of the CBI was directed to be filed.

15. On 20th October, 2022, Mr. Ripu Daman Bhardwaj, Id. Special Public Prosecutor for the CBI had filed the status report dated 19th October, 2022, which was presented to the Court. The said status report was signed by Mr. B.P. Singh, the concerned IO, CBI, SCI. The said officer was also present in Court. On the basis of the said report, the Court had directed that further investigation be concluded and the final status report be placed on record.

16. Today, a further status report on behalf of the CBI has been received. As per the said status report, after thorough investigation through GPS data of the vehicle, the CCTV footage at the various Toll Plazas, as also statements recorded by the CBI, it appears that the CBI has come to the conclusion that based on circumstantial evidence, Mohd. Parvej, who is son of the Petitioner has been murdered and one Mr. Anil Yadav, who was the conductor/helper in M/s Mahaveera Transport Pvt. Ltd., has also been killed.

17. Further, Mr. Ripu Daman Bhardwaj, Id. Special Public Prosecutor for the CBI submits that they were unable to trace the body of Parvej, as the incident has taken place long back. However, as per para 60 of the status report the skeleton of Parvej was found, and the same was sent for DNA testing. The extract of the report is set out below:

“60. That, records of Police Stations Bawal, Kasola, Dahruhera of Distt Rewari, Haryana, Police Stations Chaupanki, Tapukera, Khushkhera, Shahjahanpur and Mundaawara of Distt - Bhiwadi, in which jurisdiction



either Sabi river is crossing or road leading to Aligarh is crossing, are checked to know any unidentified dead body. It is found that one skeleton was recovered on 04.04.2018 by the police of PS Mundaawar from the area of river Sabi near village Mundanwar, Distt - Bhiwadi, Rajasthan. The DNA Profiling Reports and other relevant documents were collected for investigation. The blood samples of Razia Begum, the petitioner & mother of missing driver Pervaiz and Mohd. Kabir brother of missing driver Pervaiz were collected and sent to CFSL for DNA Profiling and matching with the DNA Profile report of skeleton.”

18. In view of the facts now disclosed in the status reports and the evidence that has now emerged, the missing person ought to be taken as dead as the investigation may not reveal anything further qua the tracing of the missing person. Thus, there is no reason to keep the present writ petition pending. The compensation deserves to be determined and released to the Petitioner. The Court having perused the status report filed by the CBI, is clearly of the opinion that Petitioner's case deserves to be considered for compensation under Section 22 of the Act.

19. Accordingly, the present writ petition is allowed and the impugned order dated 21st September, 2021 is set aside. The Commissioner, Employees Compensation shall now process the case of the Petitioner and calculate and release the compensation under Section 22 of the Act.

20. The CBI shall continue the investigation and shall proceed in the case of both Parvej and Anil Yadav in accordance with law, including registration of FIRs, if the need so arises.

21. The Court would like to record its appreciation for the CBI and the Investigating Officer B.P. Singh, the concerned IO, CBI, SCI, who have



been able to bring a closure to this matter, especially for the mother of Mr. Parvez.

22. Considering the nature of the matter and the fact that substantial delay has already occurred, the Commissioner is directed to dispose of this matter on an early date and in any case, within a period of three months. The status report is taken on record. The interim compensation of Rs.3 lakhs, which was granted to the Petitioner shall be adjusted in the final compensation. Further, costs of Rs.50,000/- is also awarded to the Petitioner, towards the present writ petition, which shall be added to the compensation awarded by the Commissioner and shall be released.

23. The petition is allowed in the above terms.

24. List before the Commissioner under the Employees Compensation Act on 4th October, 2023. Mr. Vashisht, Id. Counsel appearing for Respondent No.1/Commissioner ECA to communicate the present order, to the concerned authority.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 6, 2023/dk/ks
(corrected & released on 13th September, 2023)