



2023-IMC-9050



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 22 November 2023**
Judgment pronounced on: 18 December 2023
+ **FAO 463/2019 & CM APPL. 50576/2019, CM APPL. 50577/2019, CM APPL. 50579/2019, CM APPL. 35188/2021**

M/S. PON PURE CHEMICAL PVT. LTD. & ANR.

.....Appellants

Through: **Mr. Alex Joseph, Ms. Merin
Thampan and Mr. Alan Sabu
Mlavil, Advs.**

versus

**COMMISSIONER OF EMPLOYEES
COMPENSATION & ORS.**

..... Respondents

Through: **Mr Satish Kumar Tomar, Adv.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide an appeal instituted under Section 30 of the Employee's Compensation Act, 1923¹ read with Order XLI Rule 1 of the Code of Civil Procedure, 1908², by the appellant company, which is challenging the order dated 23.10.2017 passed by the Learned Labour Commissioner, District South-West in ECD-49/SWD/2016, awarding compensation to the claimants and thus imposing the liability on the appellant company to pay interest upon the awarded compensation.

FACTUAL BACKGROUND:

2. The claimants are the legal heirs of the deceased Shri Tilakraj, being the wife, son and old aged parents respectively. It is claimed

¹ Act



that on 30.05.2012, the deceased Shri Tilakraj was assigned to repair a Split Air Conditioner (Split AC) installed in the office of the appellant company having its office at 1E/12, Sewak House, Jhandewalan Extension, Paharganj, New Delhi. The Split AC was installed on an iron foundation and unknown to the deceased, electric current was running through the iron pipe from the outer portion of the iron grill of the window/opening, and while carrying out the repairs, he suffered an electric shock. The deceased was taken to the RML Hospital where the doctor on duty declared him as 'brought dead' and the MLC of the deceased was prepared, in which the doctor on duty made remarks that there was an *"alleged history of electric burn and the victim patient being brought dead to RML Hospital on 30.05.2012 at 5:05 PM"*. FIR dated 30.05.2012 bearing No. 96 of 2012 was lodged under Section 304A Indian Penal Code, 1860 at PS Paharganj, Delhi.

3. During the investigation, the site was examined by the Electrical Inspector and it was reported that the metallic body of the compressor was not found to be earthed. It was also stated in the report that at the time of inspection the following provisions of the Central Electricity Authority (Measure relating to Safety & Electric Supply) Regulations, 2010 had not been found complied with by the owner/user of the said electrical installation:

- “(i) The metallic frame of the said compressor-motor was not found earthed as required under the provisions of the regulation no.41(xiv) of the said Regulations.
- (ii) The supply of electric energy of the said electrical installation was not found controlled by an earth leakage protective device so as to disconnect the supply instantly on the occurrence of

² CPC



2023-INC:9050



earth fault or leakage of current as required under the provisions of the regulation no. 42 of the said Regulations.”

4. The grieving claimants stated that the deceased was aged 42 years, and was the sole bread winner of the family who was earning a monthly salary of Rs.8000-9000/-. On the filing of the claim petition, a defence was taken by the appellant that the deceased was not their employee and that there was nothing to show that salary was being given by the appellant company; and it was asserted that the deceased was a technician with one Preet Enterprises, Air Conditioned Sale Service Spare, having their registered office at 7A/72, Shop No. 5, W.E.A Channa Market, Karol Bagh, New Delhi from where the appellant had bought his Split AC.

5. Based on the pleadings of the parties, the learned Commissioner framed the following issues:

- “i) Whether there was employee/ employer relationship between the deceased and the respondents?
- ii) Whether death arose in the course of employment?
- iii) If yes, Relief, if any”

6. Suffice to state that the learned Commissioner decided the issues No. 1 and 2 in favour of the claimant, holding that the deceased died during the course of employment with the appellant company. Accordingly, an amount of compensation was computed and compensation of Rs. 7,13,960/- was granted and the claimants were also made entitled to interest as per Section 4A of the Act @ 12% per annum from one month after the accident and Rs. 2500/- towards funeral charges as provided under Section 4(4) of the Act.



2023-IMC:9050



7. Hence this appeal. Although vide letter/notice issued by the learned Commissioner, Employee's Compensation dated 17.09.2021, it was stated that a sum of Rs.7,18,960/- has already been paid to the appellant, the main issue concerning herein is related to the recovery of interest on the principal amount awarded.

ANALYSIS AND DECISION:

8. Having heard the learned counsels for the rival parties and upon meticulous perusal of the record, it would be expedient to re-produce the reasons given by the learned Commissioner while deciding the issues, which are as follows:

“6. It is stated by the claimants that on 30.05.2012, the deceased who was aged about 42 years, was deputed to repair the Split AC installed in the office of the Respondent Company. When the deceased went to the projection of the office to check the outer unit of the Split AC, which was installed on the Iron Foundation. An iron pipe was there and one edge of the said pipe was-intact with outer unit of the AC and another edge was intact with the open heavy electric wire/line and the electric current was running in the iron pipe, iron foundation of the AC and in the entire out parts of the AC. The deceased tried to open the cover of the outer unit /part of the AC to check the fault, he suffered a heavy electric shock, consequent he fell down. The deceased Sh. Tilakraj was shifted to RML Hospital, where the doctor on duty declared him as "*Brought Dead*". The MLC of the deceased was prepared and the doctor has mentioned in the MLC as "*alleged history of electric burn and brought dead to RML Hospital on 30.05.22012 at 5:05 PM*". He was 42 years of age at the time of his death and his last monthly salary was Rs. 8000 - 9000/-. The claimants state that they are entitled to receive death compensation as per provisions of The Employee's Compensation Act, 1923.

Furthermore, the Respondents have not brought any evidence on record to disprove the claimant's evidence. That the deceased was not an employee of the respondents and there was no documentary proof also with the claimants to show that he was an employee of the respondent company. Furthermore, it is necessary to prove the wages to prove the fact of employment and no evidence was there to show the salary/wages given by the respondents to the deceased. The Counsel for the respondent



2023-IMC-9050



argued that the deceased was working as a technician with Preet Enterprises from where the respondent bought the Air conditioner, it was also argued that the actual owners of the premises from whom the Respondent rented the space haven't been made party to this petition. Lastly it is argued that the present petition is time barred under the Act. On the other hand the Claimants have denied the allegations/contentions raised by the Respondent. The Respondent in their written arguments while emphasizing that the word "employment" used in section 3 of the Act is with specific purpose and the court is required to give the correct meaning to the said word as held in "*Lata Ramchandar Ubale Vs. Ramchandra Shankar Ubale and another* [2012 (4) Mh. L.J. 747]" The said judgment unfortunately is not applicable in the present-case as the witness of the respondent i.e. **Vishnu Kumar G**, had categorically admitted in is cross that "*on 30.05.2012, deceased Sh. Tilak Raj and Sh. Shiv Kumar Ram were working for the company as they were installing the ACs in the company.*" It was also admitted by the same witness that "*it is correct that the entire area was taken on lease by the Respondent Company was 'under control and supervision of the Respondent Company.'*" The witness also rightly mentioned that the "*it is correct that on 30.05.2012, Sh Tilak Raj died in the office premises of the Respondent Company*". The Respondent while relying on another Judgment of Hon'ble Delhi High Court in "*Mohd. Zulfikar Ali Vs. Commissioner under the Employees Compensation Act & Ors.*" have argued that this Court shouldn't have entertained the present claim petition as the same is time barred as per Section 10(1) of the Employees Compensation Act, 1923, unfortunately, the above stated Judgment too cannot be relied on as the Claimants had filed an application for condonation of delay on 16.02.2017 which was heard and decided accordingly. Furthermore, Hon'ble Delhi High Court in *M/S Adecco India Pvt. Ltd. vs. Shriram & Anr.* **FAO No. 461/2016** wherein the court has dealt the a similar defence taken by the company, the relevant para is reproduced here in; "*Counsel for the appellant argued that the claim petition was time barred, and therefore should have been dismissed. However, it is noted that though this defence was raised in the written statement, but the appellant did not choose to get any issue framed on the same. Obviously, the appellant is therefore deemed to have abandoned its plea of limitation. In case the appellant was of the opinion that the Employee's Compensation Commissioner ought to have framed an issue because it was pressing the issue of limitation, then after the issues were framed, appellant should have moved an application for framing of issue with respect to issue of limitation and admittedly this was not done. Therefore, appellant cannot now*



2023-IMP:9050



*argue that it had pressed the issue of limitation". In the present case also, the Respondent refrained from moving an application for framing of issue with regards to limitation, nor was the order on condonation challenged by the Respondent in Hon'ble High Court of Delhi, thus appellant cannot argue the issue of limitation at this stage. No cogent evidence has been brought on record by the Respondent to challenge the claim of the claimants, **Therefore, in the light of the evidence brought on record, it becomes clear that the deceased died in due course of his employment under the Respondent and since no cogent evidence has been led by the Respondent in order to disprove the Claimants; the contentions raised by the Claimants are substantiated and stand proved.***

Relief

7. The age of the deceased at the time of accident/death was 42 years as per Post Mortem Report. Therefore, the age of deceased for the purpose of calculation for the benefit of death compensation is taken as 42 years. The monthly wages for the purpose of calculation of benefits is taken Rs. 8,000/- per month as per the notification issued by the Ministry of Labour and Employment vide dated 31.05.2010. Therefore, the compensation payable to the petitioner is calculated as under:-

- i) Relevant factor for 42 years of age : 178.49
 - ii) 50% of last drawn monthly salary
@ Rs. 8000/- per month : Rs. 4,000/-
 - iii) Amount of compensation : 224.00X4000
 - iv) Compensation amount : Rs. 7,13,960/-"
- {Bold portions emphasized}**

9. On a careful perusal of the aforesaid reasoning given by learned Commissioner as also on perusal of the digitized Lower Court Record (LCR) containing the evidence of the recorded witnesses during the proceedings, it is evident that except for making a **bald assertion** that the deceased was not its employee, no evidence was led by the appellant in this regard. No witness was summoned from M/s. Preet Enterprises so as to substantiate the plea that the deceased was employed with such firm and not with the appellant. CW-2 Shri Shiv



2023-IMC-9050



Kumar Ram in his cross-examination categorically denied that the deceased was a worker or an employee of M/s. Preet Enterprises. It is also borne out from the record that RW-1 Shri. Vishnu Kumar G., examined on behalf of the appellant had no personal knowledge of the facts and circumstances of the case. At the same time he acknowledged that the deceased and Shiv Kumar Ram (CW-2) were working for the appellant company and were repairing and installing the split AC. RW-1 Sh. Vishnu Kumar G., also acknowledged that the premises was under control of the appellant company and evidently the deceased was on the spot to install the split AC along with another employee of M/s. Preet Enterprises.

10. That being the factual position established on record, it is pertinent to mention here that the term 'employee' is defined by Section 2(dd) of the Act to mean as under:-

“(dd) "employee" means a person, who is-

- (ii) (a)Not Relevant.
- (b)Not Relevant.
- (c) a person recruited as driver, helper, **mechanic**, cleaner or in any other capacity in connection with a motor vehicle,
- (d)Not relevant
- (iii) 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 any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them.”

11. Further the term employer is defined by Section 2(e) as under:-



2023-IMG-9050



“(e) "employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of [an employee] **are temporarily lent or let on hire to another person by the person with whom the [employee] has entered into a contract of service or apprenticeship, means such other person while the [employee] is working for him.**”

12. It is further relevant to note Schedule II which further provides as under:-

“SCHEDULE II

[See [Section 2(1)(dd)]]

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF [SECTION 2(1)(DD)], ARE INCLUDED IN THE DEFINITION OF [EMPLOYEES]

The following persons are [employees] within the meaning of d[section 2(i)(dd)] and subject to the provisions of that section, that is to say, any person who is-

(ii) employed, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made [whether or not employment in any much work is within such premises or precinct], and steam, water or other mechanical power or **electrical power is used; or**

(iii) employed for the purpose of making, altering, **repairing**, ornamenting, finishing or otherwise adapting for use, transport or sale any article or **part of an article in any premises.**”

13. A purposeful conjoint interpretation of the aforesaid provisions would clearly demonstrate that an ‘employee’ is a person who is engaged or recruited as a mechanic and who is performing any work by virtue of an express or employee contract in relation to any electric work or installation of any appliances at the premises, that would make the employer liable.



14. In the instant matter, the deceased was working in the premises which were within the control of the appellant company for the purpose of repair and installation of split AC Unit. This would make him an employee upon the application of Section 2 (dd) r/w Schedule-II of the Act. The appellant company had hired the deceased by virtue of an express agreement and pursuant thereto the deceased performed not only repairs but also looked into the installation of AC unit at the premises. The word ‘recruited’ as it appears in clause (c) of Section 2(dd) of the Act is not defined under the Act and in its natural dictionary³ and grammatical meaning used in ‘past tense’ or as a ‘past participle’ it would mean someone who joined, was engaged or hired to serve a company, firm or organisation etc.

15. In view of the aforesaid discussions, the present appeal is devoid of any merits. The same is dismissed. All the pending applications also stand disposed of.

DHARMESH SHARMA, J.

DECEMBER 18, 2023

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³Reinforce, supplement, or keep up the number of (a class of people or things) {Oxford English Dictionary, Sixth Edition, Volume-2, page No. 2493}