

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

+ **FAO 415/2010**

Date of Decision: 13.03.2023

IN THE MATTER OF:

**THE MANAGEMENT OF M/S KAILASH HOSPITAL AND
RESEARCH CENTRE** Appellant

Through: Ms. Mamta Tiwari, Advocate

versus

SMT NISHA AND ORS. Respondents

Through: Mr. Chandan Prajapati, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the '*EC Act*'), the appellant has assailed order/Award dated 11.08.2010 passed by learned Labour Commissioner, Pushp Vihar, Delhi in Case No.WCD/SD/75/06 titled as Smt. Nisha v. Management of Kailash Hospital and Research Center Ltd.

2. Ms. Mamta Tiwari, learned counsel for the appellant, has contended that the impugned Award has been passed by the learned Commissioner despite having no jurisdiction in the case. In this regard, it is submitted that *Pradeep Kumar* (deceased) was employed with

FAO 415/2010

Page 1 of 5

Kailash Hospital & Research Centre, which is located at Noida. At the time of his employment, the deceased had filled up his Employees' Provident Fund Form, wherein both his permanent and temporary addresses were mentioned to be outside Delhi.

It is next contended that though the incident took place on 27.06.2006, the deceased was on leave from 23.06.2006 to 25.06.2006, and on the day of the incident, he had come to the office only for seeking extension of his leave. It is lastly contended that respondent Nos.2 and 3 (the parents of the deceased) had filed a separate claim petition before the Noida Authority, which came to be dismissed on 04.11.2008.

3. Per contra, Mr. Prajapati, learned counsel appearing for respondent No.1, has defended the impugned order. He submits that while passing the impugned order the learned Commissioner had jurisdiction over the claim petition as respondent No.1 was resident of Delhi, which fact is also found mentioned in the memo of parties. In support of his submissions, he has referred to the decision of the Supreme Court in Morgina Begum v. Md, Hanuman Plantation Ltd. reported as (2007) 11 SCC 616.

Respondent Nos.2 and 3 stand served, however, none has appeared on their behalf.

4. I have heard the learned counsels for the parties and gone through the records.

5. With regard to the aspect of jurisdiction, it is noted that though it is claimed in the present appeal that the said contention was raised before the learned Commissioner, no such issue is found recorded in the impugned order. Be that as it may, a perusal of the claim petition would show that respondent No.1 had shown herself to be a resident of property

bearing No.1A/3, Jia Sarai, Near IIT, New Delhi. The fact that the deceased, at an earlier point of time in the year 2014 while filling details in the Employees' Provident Fund Form, had mentioned his permanent as well as temporary addresses to be outside Delhi, would not bar the claim petition filed subsequent to the happening of the incident. At this stage, it would be relevant to advert to Section 21(1)(b) of the EC Act, which reads as under :-

“21. Venue of proceedings and transfer.- (1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which—
(a) ...
(b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; or
(c) ...”

6. Moreover, the decision rendered in Morgina Begum (Supra) applies to facts and circumstances of the present case. Accordingly, the first contention of the appellant is found to be meritless and is rejected. Relevant extract of the said decision is reproduced hereinbelow :-

“6. Section 21(1)(b) of the Act clearly provides that the claim petition may be filed by the claimant where the claimant ordinarily resides. In our opinion, the expression ‘ordinarily resides’ means where the person claiming compensation normally resides at the time of filing the claim petition. The proviso to Section 21(1) which is also relevant for the present controversy, provides that in case the Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, entertains the claim petition then he shall give a notice to the Commissioner having jurisdiction over the area and the State Government concerned. The amended Section 21 has been specifically introduced in the Act by amending Act No. 30 of 1995 with effect from 15-9-1995 in order to benefit and facilitate the

claimants. The Statement of Objects and Reasons for the amendment of the Act, a copy of which has been produced before us, clearly mentions that the amendment has been brought about for benefit of the claimants viz. either the workmen or their dependents. The relevant portion of the Statement of Objects and Reasons, reads as under:-

"It is also proposed to introduce provision for facilitating migrant workmen to file compensation claims before the Commissioners having jurisdiction over the area where they or their dependents ordinarily reside. Provision for transfer of compensation from one Commissioner to another has also been made."

7. Coming to the second contention that the deceased was not on duty on the date of the incident, it is noted that the same has been belied by the appellant's own witnesses, namely *Yogesh Kumar Sharma* and *Sanjiv Sharma*. Both these witnesses appeared and deposed that on the date of the incident, they met the deceased in the D.G. Room, where his body was later found. In fact, *Yogesh Kumar Sharma* had deposed that the deceased had come on duty at about 8:15 a.m. on the day of the incident. Besides, the appellant has not produced any document in support of the contention that the deceased had come to the office on the date of the incident only for seeking extension of his leaves. Accordingly, the second contention being meritless is also rejected.

In reaching such conclusion, this Court is also fortified by letter dated 27.06.2006 written by the appellant to the concerned SHO, P.S. Sector 22, Gautam Budh Nagar, wherein it was mentioned that the incident had occurred on account of electrocution while the deceased was on duty at 09:15 a.m., as well as *panchanama*. As noted above, the appellant's contention has been belied by its own witnesses namely *Yogesh Kumar Sharma* and *Sanjiv Sharma*.

8. Insofar as claim petition filed on behalf of respondent Nos. 2 and 3 is concerned, on a specific query, learned counsel for the appellant submits that the said claim petition was rejected and no appeal was preferred.

9. Accordingly, I find no ground to entertain the present appeal and the same is dismissed being devoid of merits. The remaining compensation amount, which is stated to have been lying deposited, be released to respondent No.1 forthwith alongwith interest accrued thereon, if any.

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

(MANOJ KUMAR OHRI)
JUDGE

MARCH 13, 2023

ga