

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

+ **FAO 472/2018**

Reserved on : 02.03.2023

Pronounced on : 28.04.2023

IN THE MATTER OF:

M/S LANCERS NETWORK LTD Appellant
Through: Mr. Awanish Kumar, Advocate

Versus

RAKHI VARMA Respondent
Through: Mr. D.K. Pandey, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

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 24.07.2018 passed by the learned Commissioner, Employee's Compensation, in Case No.CEC-D/ED/29/2017/3183, vide which the claim petition of the respondent/claimant was allowed and the appellant was directed to deposit death compensation.

2. In the claim petition, it was claimed by the respondent that her husband viz. *Rakesh Verma* (deceased) was employed with the appellant. On account of his employment, he was required to travel outstation and

conduct/arrange raids whenever he received any complaint against manufacturing of counterfeit goods. On 29.06.2017, the deceased had gone to Chandigarh for official work and on his way back, when the bus reached ISBT Kashmiri Gate, he fell while de-boarding. He was rushed to LNJP Hospital, where he expired during treatment on 03.07.2017. In the death summary, the cause of death was opined as *sub arachnoid hemorrhage with intraparchchymal hemorrhage*, which in absence of trauma is spontaneous in nature.

It was further claimed that the deceased was aged about 44 years at the time of the incident and was last drawing salary of Rs.30,000/- per month. Reportedly, he was undergoing mental stress, even on the day of the incident, on account of the appellant denying incentive and travel allowance to him.

3. Learned counsel for the appellant contended that the death of the deceased having been spontaneous is not related to his employment and thus no compensation ought to have been awarded by the learned Commissioner. It was next contended that though the respondent had claimed of receiving a phone call from the deceased on 29.06.2017 in which the deceased had told her about the stress he was undergoing, the phone call was not proved on the record. In support of his contentions, learned counsel placed reliance on the decisions in Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Another reported as **(2007) 11 SCC 668** and Dredging Corporation of India Limited v. P.K. Bhattacharjee reported as **(2013) 10 SCC 224**.

In the alternative, it was submitted that while awarding the compensation, the learned Commissioner failed to take note of the *ex-*

gratia payment of Rs.2,84,690/-, which was made to the respondent (wife of the deceased) vide receipt dated 11.08.2017.

4. Per contra, Mr. D.K. Pandey, learned counsel for the respondent, has supported the impugned order. It was submitted that the deceased was under lot of stress on account of stressful conditions of employment that were created by the appellant, which led to his death. It was further submitted that necessary pleadings in this regard were made in the claim petition. It was also submitted that though in the reply filed before the learned Commissioner, the appellant on the basis of said receipt dated 11.08.2017 had denied liability to pay any further amount, it cannot escape from its statutory liability. In support of his contentions, learned counsel has placed reliance on the decision of Madras High Court in Oriental Insurance Co. Ltd. v. Sumantari Bai & Anr. reported as **2004 ACJ 1759**.

5. A reading of the pleadings and the evidence placed on record would show that the respondent had specially stated in the claim petition that her husband being employed with the appellant was made to travel all over India. The appellant was initially given incentives and travelling allowance, the same were not paid over a long period of time. Though the deceased made repeated requests for release of incentives and travel allowance to the appellant's management, the same was deferred. Eventually, when the deceased expressed an inclination to leave the job, *Col. Subhash Chaudhary*, the Country Head of the appellant, promised release of all the pending dues. The dues however, remain unpaid.

It was averred in the petition that the deceased was mentally pressurized by the appellant and he had disclosed this to the respondent that the management was harassing him unnecessarily. With regard to

29.06.2017, it was specifically stated that the deceased had called the respondent and informed that the appellant was harassing him for not coming back from the police station. When he informed the management that since he was with the police officials, he did not deem it fit to leave them in midst of the work, he was threatened that he would not be given any incentives or travelling allowance. It was claimed that because of the continuous stress, the deceased had suffered the hemorrhage leading to his death.

6. Insofar as the appellant had placed reliance on Shakuntala Chandrakant (Supra), it is noted that the claim petition therein was filed claiming that the deceased was employed as a cleaner in vehicle *No.MH-09-A-9727* and while travelling in the said vehicle, developed a chest pain. The Supreme Court, while considering the issue as to whether the death had occurred on account of accidental injury in the course of and out of employment, observed that for attracting the charging provision contained in Section 3 of the EC Act it is necessary that (i) an injury must be caused to an employee (ii) such injury must have been caused by an incident and (iii) it arose out of or in the course of his employment.

It was also noted that there was no allegation in the claim petition that the death had occurred by reason of any strain of work, or the claimant had any personal knowledge as to the quantum or nature of work required to be performed by the deceased, and as to how severe strain was caused during the service. In these facts, it was observed that no circumstance had been brought on record which could show that the deceased suffered a heart attack while doing his job. It was further observed that there has to be a crucial link between causal connections of

an employment with death which cannot be matter of surmise or conjecture.

7. In Dredging Corporation (Supra), the respondent/applicant had suffered an accident on 27.12.1999 while being employed with the appellant. Immediately after the accident, he was diagnosed to be suffering from *ischaemic* heart ailment. The matter was remanded back to return a finding as to whether the respondent's heart's condition has developed as a consequence of stress or strain of his employment with the appellant.

8. In the present case, the factual matrix is substantially different. Respondent had tendered her evidence and reiterated the facts mentioned in the claim petition. She was cross-examined on behalf of the appellant, where she denied the suggestion that the deceased was suffering from any known diseases. She also denied the suggestion that no phone call was received by her from the deceased on 29.06.2017. Considering the allegations made on behalf of the respondent relating to the period prior to 29.06.2017, the contention that the phone call statedly received by the respondent from the deceased on 29.06.2017 was not proved is of no avail to the appellant. After going through the material on record, this Court is of the considered view that the deceased suffered a hemorrhage out of and during the course of employment.

9. The other contention raised on behalf of the appellant was that the learned Commissioner ought to have granted adjustment while awarding the compensation in view of the fact that a settlement amount of Rs.2,84,690/- had already been received by the respondent. A perusal of the receipt dated 11.08.2017 placed on record would show that the said amount was paid by the appellant towards the claims/demand for

reinstatement or including earned wages, encashment of leave, notice pay, retrenchment compensation, bonus, gratuity and all other device which could occur during the employment with the appellant. Moreover, the said amount was paid prior to the filing of the claim petition.

10. As observed above, the amount acknowledged to have been received vide receipt dated 11.08.2017 under the Settlement was received by the respondent towards the aforementioned purpose and not towards the *ex-gratia*. Therefore, it is not liable to be adjusted when awarding compensation under the EC Act. Accordingly, the other contention of the appellant is also rejected.

11. Pertinently, as per Section 4 of the EC Act, while calculating compensation in case of a death resulting from injury, 50% of the monthly wages are to be taken and multiplied with the relevant factor. In the present case, the learned Commissioner erred in restricting the monthly wages to Rs.8,000/- once the claim of last drawn wages to be Rs.30,000/- per month had been accepted. In the opinion of this Court, the compensation payable to the respondent under the EC Act is to be re-computed as under :-

(i)	Relevant factor laid down Under Schedule-IV of the EC Act for 44 years of age	172.52
(ii)	50% of the monthly wages of Rs.30,000/- p.m.	Rs.15,000/-
(iii)	Amount of compensation payable to the dependents of deceased <i>Rakesh Verma</i>	172.52 x 15,000/- = Rs.25,87,800/-

12. Consequently, interim order dated 05.10.2018 is vacated. The impugned order is upheld to the extent that the claim petition of the

respondent was allowed. The appellant is directed to deposit before the learned Commissioner the difference between the enhanced amount of compensation and the compensation amount awarded vide the impugned order, alongwith interest, within a period of two weeks from today. The same, alongwith compensation amount already deposited before the learned Commissioner be released to the respondent forthwith.

13. Appeal is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 28, 2023
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