



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

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Judgment Reserved on: 17.11.2025

Judgment pronounced on: 28.11.2025

+ **FAO 23/2017 and CM APPL. 1471/2017**

M/S MAHARAJA AGRASEN HOSPITALAppellant

Through: **Mr. Harvinder Singh, Advocate.**

versus

TULSI JOSHI & ORSRespondents

Through: **Mr. R.K. Nain, Ms. Pratima N. Lakra
and Mr. Chandan Prajapati,
Advocates.**

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 30 (1) of the Employees' Compensation Act, 1923 (the EC Act) has been filed assailing the judgment dated 27.10.2016 passed by respondent no. 3, namely, the Commissioner, Employees' Compensation, Government of NCT of Delhi, Labour Department, Partap Nagar, Hari Nagar, New Delhi, whereby the claim application under Section 22 of the EC Act filed by respondent nos.1 and 2 herein has been allowed.



In this appeal, the parties, unless otherwise specified, will be referred to as described in the claim application.

2. The claimants, the widow and son of the deceased, filed an application dated 23.04.2014 before the Commissioner seeking compensation under the EC Act. According to them, the deceased, aged 22 years, was employed with the respondent, namely, M/s Maharaja Agrasen Hospital, as a canteen employee, for kitchen work and procurement of materials from the market. He worked with M/s Good Food Dietary Services, a contractor engaged by the respondent, up to 31.12.2013 and with effect from 01.01.2014, he was employed directly by the respondent/management. In the evening of 09.01.2014, the deceased noticed that vegetables, etc., for the following day were completely out of stock, and so he decided to make arrangements for the same, for which he set out in his two-wheeler. When he reached near a market at around 11:00 P.M., situated within the jurisdiction of police station Vikas Puri, he was knocked down by a speeding vehicle. He fell on the road



and remained there unattended for quite some time. He died on the spot. The deceased was drawing wages at the rate of ₹14,500/- per month at the time of the accident. It was alleged that death occurred out of and in the course of employment and that, though they had repeatedly approached the management for compensation, their request was not heeded to.

2.1. The respondent/management filed written statement disputing the claim. It was contended that the deceased was neither employed by them directly or through any contractor, and therefore, no claim for any compensation could be raised against them. The hospital had outsourced dietary and patient mess work to independent contractors. The deceased might have been employed either by M/s Good Food Dietary Services, but the said contractor's services ended on 01.01.2014, and all its employees, including the deceased, were removed. The respondent/management contended that the contractors would normally arrange supplies a day in advance, so late-night



procurement was quite unnecessary. The accident might have happened while the deceased was on his way home and therefore had no connection with his employment.

2.2. On completion of pleadings, necessary issues were framed. PW-1 and PW-2 were examined on the side of the claimants. On behalf of the respondent/management, RW-1 and RW-2 were examined. On a consideration of the oral and documentary evidence and after hearing both sides, *vide* the impugned judgment, the Commissioner allowed the application holding that the deceased had been employed by the respondent/management as the principal employer and that his death at about 11:30 P.M. on 09.01.2014 had been caused when he was connected with the business of the respondent, and as such he was covered under the EC Act. The claimants were awarded compensation of ₹8,85,480/- along with the interest. The respondent/management has been directed to deposit the total compensation and interest, with liberty to initiate proceedings to



recover the said amount from the contractor through whom the deceased had been engaged by them. Aggrieved, the respondent/management has come up in appeal.

3. The learned counsel for the respondent/management submitted that there is no direct or admissible evidence on record to prove that the deceased was in direct employment with them from 01.01.2014 as alleged in the claim application. It is submitted that the accident occurred past 11:30 PM, about 8 to 10 kms away from the hospital and at a place where no vegetable markets operate. No vegetable market would function late into the night. The accident might have occurred when the deceased was on his way home. No nexus has been established between the presence of the deceased at the scene of the accident and with any work of the respondent/management.

3.1. It was further submitted that the Commissioner erred in shifting the burden of proof from the claimants to the respondent and drawing an adverse inference despite evidence coming on



record that the deceased was never employed by the respondent/management and that canteen and kitchen work had always been outsourced till 31.12.2013 to M/s Good Food Dietary Services and thereafter to M/s Prime Services, none of whom had employed the deceased on the date of the accident.

4. *Per contra*, the learned counsel for the claimants submitted that there is no substantial question of law involved in the present appeal and therefore, as per the provisions of Section 30 of the EC Act, the same is liable to be dismissed. Reliance was placed on the dictum in **Northeast Karnataka Road Transport Corporation vs. Sujatha (2019) ACJ 29 2018 SCC OnLine SC 2296** and **Golla Rajana vs. Divisional Manager (2017) 1 SCC 45** to canvass the point that factual determinations regarding employment-accident nexus, wages, and dependents are not appealable.

4.1. It was further submitted that the claimants have proved the employer-employee relationship through consistent and



unshaken testimony, and that the respondent/management has failed to rebut it. Reliance was placed on the dictum in **Tebha Bai vs. Raj Kumar Keshwani (2018) 7 SCC 705**, wherein it has been held that consistent and unshaken testimony of the widow is sufficient, especially when the employer brings no contrary evidence. Reference was also made to Section 106 of the Indian Evidence Act, 1872 (the Evidence Act) and to the judgment of the Apex Court in **M/s Mackinnon Mackenzie And Co. (P) Ltd. Vs. Ritta Fernandes (1969) ACJ 419**, wherein it has been held that when vital facts are within the employer's special knowledge, failure to produce the same would lead to drawing of an adverse inference.

4.2. It was submitted that, while applying the theory of notional extension, the deceased was performing an act incidental to his employment and therefore, the accident clearly arose out of and during the course of employment. Reliance was placed on the dictum in **Daya Kishan Joshi & Anr. vs. Dynemech Systems**



Pvt. Ltd., (2018) 11 SCC 642, to state that travel undertaken for fulfilling work obligations falls within employment, even if the accident occurs outside the workplace, because the employee is in the “*danger zone*” of employment.

4.3. Finally, the learned counsel for the claimants also submitted that the respondent/management is liable as a principal employer under Section 12 of the EC Act even if it is found that the deceased had been engaged by a contractor with whom the respondent/management had entered into a contract. Reliance was placed on the dictum in **Subhash Chaudhary v. Nirmala Devi (2019 ACJ 937)** to state that Section 12 of the EC Act applies even in layered or informal contractual arrangements, and the claimants may proceed against the principal employer irrespective of inter-se contractual terms.

5. Heard both sides.

6. Section 12 of the EC Act reads thus-

“(1) Where any person (hereinafter in this section



referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the [employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person, from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the



amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a employee from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

7. As noticed earlier, the case of the claimants is that the deceased worked with M/s Good Food Dietary Services up to 31.12.2013 and with effect from 01.01.2014, he had been employed directly by the respondent/management. The claimant no. 1, when examined as PW-1 in her cross-examination, also deposed that her husband was initially employed by M/s Good Food Dietary Services; that the contract awarded to M/s Good Food Dietary Services by the respondent/management ended on 31.12.2013 and that with effect from 01.01.2014, the respondent/management had entered into a contract with M/s



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Prime Services, F-30, Moti Nagar, New Delhi. The claimants do not have a case that the deceased was engaged by M/s Prime Services, with whom the respondent/management had entered into a contract with effect from 01.01.2014. Even assuming that the deceased was employed by the first contractor, namely, M/s. Good Food Dietary Services, it is admitted that their contract with the respondent/management had come to an end by 31.12.2013. Though the claimants assert that the deceased had been employed directly by the respondent/management with effect from 01.01.2014, there is no material(s) to support the said case.

8. When it was pointed out that there is no evidence or material to support the claim that the deceased was directly employed by the respondent/management, the learned counsel for the claimants referred to the dictum in **M/s Mackenzie and Co. (P) Ltd. vs. Ibrahim Mahmmmed Issak, 1969 (2) SCC 607** and submitted that there need not be any direct evidence to prove the same and that the court can infer the same from the materials on



record.

8.1. In **Ibrahim Mahmmed Issak** (*supra*), it was held that in the case of death caused by accident, the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. However, this would not mean that a workman who comes to Court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant, these essential facts may be inferred when the facts proved justify the inference. On the one hand, the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is, of course, impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it.

9. In the case on hand, there is no material apart from the



assertions made in the claim application and by PW-1 to infer that the deceased was, in fact, employed directly by the respondent/management with effect from 01.04.2014. It is true that the strict rules of the Code of Civil Procedure, 1908 or the Evidence Act are not applicable to proceedings of this nature. However, foundational facts like employer-employee relationship and death during the course of employment will have to be established by the claimants, and only then, the onus would shift to the employer. In the case at hand, the Commissioner relied on Section 106 of the Evidence Act to say that the burden has shifted to the respondent/management to establish that the deceased was not an employee either directly or through the contractor. This, according to the learned counsel for the claimants, is right, and in support of the argument, he relied on a dictum in **Ritta Fernandes** (*supra*).

10. In the said case, the deceased was an employee on a ship of which the appellants were agents. The deceased was admitted to



the ship's hospital as he was suffering from hepatomegaly and pulmonary congestion. The deceased died while in the hospital, and the cause of death, according to the post-mortem report, was found to be cardiac failure with pulmonary collapse and an abscess of the liver. His wife moved an application for compensation alleging that the cause of his death was cardiac failure and hepatomegaly, which he contracted "as a result of disease in the course of employment". The management resisted the claim on the ground that the death had nothing to do with the employment and that the deceased did not die of an injury arising out of and in the course of employment. It was contended by the management that the deceased had died due to a pre-existing disease and not due to any strain or injury caused due to employment. The management also took up a contention that it was for the pre-existing disease that he had been admitted to the hospital on 02.12.1961, and thereafter, he had passed away on 10.12.1961. The respondent/management did not produce any evidence to prove the



treatment that was given to the deceased while he had been admitted to the ship's hospital. The documents that were produced were not proved in any manner known to law. The result was that there was no evidence to establish that the deceased had been admitted and was undergoing treatment as an inpatient in the ship's hospital. The High Court took the view that the respondent/management had special knowledge as to whether the deceased was an inpatient in the ship's hospital during the aforesaid time, and as they had not produced the best evidence available in their possession, an adverse inference ought to be drawn. This finding was affirmed by the Apex Court.

11. The facts of the aforesaid case are not similar to the facts in the case on hand. In the said case, the respondent/management, despite being in possession of the best evidence, which could have shed light on the controversy, withheld it from the Court and hence the reason why an adverse inference was drawn against them. In the case on hand, the respondent/management has produced



documents like the attending register and connected records to show that the deceased was never employed by them directly or through the contractor who was subsequently engaged by them. Therefore, there were no documents in the possession of the respondent/management, which they withheld, so as to draw an adverse inference. Apparently, the Commissioner went wrong in relying on Section 106 of the Evidence Act to draw an adverse inference against the respondent/management.

12. Further, reference was made to the dictum in **Shahajahan v. Shri Ram Gen Insurance Co. Ltd., 2021 SCC OnLine SC 3133** to canvass the point that when the management takes the plea that the deceased was not employed by them, it is for the management, who have best evidence, to prove the same. I am afraid the dictum in the said decision is also not applicable to the facts of the present case because in **Shahajahan** (*supra*), clear evidence had come on record that the deceased therein was in fact employed as a driver with the respondent/management, and when



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the witnesses of the claimants were examined, no incriminating circumstances were made out. In fact, not even a suggestion was put to the witnesses that the deceased was not a driver employed by the respondent/management. It was in the said circumstances, it was held that it was the management/employer who had the best evidence to depose whether the deceased was engaged by him or not. In the present case, as noticed earlier, apart from the plea taken up in the claim application and the oral assertions made by PW-1, there is no evidence to show that the respondent/management had directly employed the deceased from 01.01.2014. This is especially so when PW-1 herself admits that the earlier contract with M/s. Good Food Dietary Services, by whom the deceased had been engaged, expired on 31.12.2013. The claimants do not have a case that the subsequent contractor, namely, M/s Prime Services, had at any point of time engaged/employed the deceased herein.

13. It was further submitted by referring to Section 4-A of



the EC Act, that it is the duty of the respondent/management to pay compensation in case of death or injury. It is no doubt true that the employer would certainly be liable to pay compensation, in case of death or injury caused to their employees, if the same is caused during the course of employment. In **Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289**, relied on by the claimants, there was no dispute that the injury in question was caused to the employee by an accident which arose out of and in the course of employment with the employer/management therein. In the said circumstances, it was held that once the same is proved, it is the duty of the employer/management under Section 4-A of the EC Act to pay compensation.

14. Reference was further made to the dictum in **Daivshala v. Oriental Insurance Company Ltd., 2025 SCC OnLine SC 1534** to canvass the point that “accident arising out of and in the course of employment” occurring in Section 3 of the EC Act will include accident occurring to an employee while commuting from



his residence to the place of employment for duty or from the place of employment to his residence after performing duty, provided the nexus between the circumstances, time and place in which the accident occurred and the employment is established. Here, the respondent/management had taken up a contention that the deceased might have met with the accident while on his way home. Therefore, it was submitted by learned counsel for the claimants that even if that be so, he is entitled to compensation under the EC Act.

15. It is no doubt true that if an accident occurs while commuting to the place of employment or back, the same would also come within the phrase “accident arising out of and in the course of employment”. However, in this case, as stated earlier, there is no evidence or materials to show that the deceased was employed/engaged either directly or through a contractor by the respondent/management, and hence the dictum in the aforesaid case can also not be applied to the facts of the present case.



16. As held in **Northeast Karnataka Road Transport Corporation v. Sujatha (2019) 11 SCC 514**, an appeal under Section 30 of the EC Act would lie if only a substantial question of law arises. In this case, as noticed earlier, the learned Commissioner has erred in relying on Section 106 of the Evidence Act to conclude that the burden of proof lay on the management to prove that the deceased was not their employee. It is well settled that the initial burden to prove the foundational facts that the deceased was employed/engaged either directly or through a contractor by the respondent/management is on the claimants. It is only when the said aspect is established, the onus of proof would shift to the respondent/management to rebut the same or rebut/discredit the case put in by the claimants. That being the position, the conclusion based on a wrong understanding or interpretation of law did raise a substantial question of law in the appeal and hence arguments to the contrary are liable to be rejected.



17. Before I conclude, I refer to the pleadings in the claim application, which reads thus:

“That the deceased Dharma Nand Joshi, S/o Sh. Kamiapati Joshi, was employed as a canteen employee, for the Kitchen work and for procurement of material, from the market. He worked with M/s Good Food Dietary Services up to 31-12-2013 and with effect from 01-01-2014 he was employed with M/s Maharaja Agrasen Hospital on 09-01-2014 in the evening it was noticed that vegetables etc. for the following date was totally out of stock and he had to make arrangement for it. He took out a two-wheeler and started to make arrangement for the same. It was odd hour and possibility for the availability of the material was rare...”

(Emphasis supplied)

17.1. If the possibility of availability of vegetables at such an odd hour was quite remote, what was the necessity for the deceased to still venture out late into the night to attempt to achieve an impossibility? The conduct appears indeed strange.

18. In the aforesaid circumstances, the impugned award is



liable to be set aside, and hence I do so.

19. In the result, the appeal is allowed. There shall be no orders as to costs.

20. Application(s), if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 28, 2025
Mj/er