



\$~38

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

+ **FAO 28/2022**

PHULAN DEVI AND ORSAppellants
Through: **Mr. R.S. Sharma, Adv.**

versus

**M/S SHANKAR SANITARY AND HARDWARE
STORE**Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA**

ORDER

% **24.03.2025**

1. The appellants, who are the wife and children of the deceased/Lt. Sh. Jabar Singh have preferred this Appeal under Section 30 of the Employee's Compensation Act, 1923 ['EC Act'], for setting aside the impugned order dated 21.08.2020, passed by the learned Commissioner, Employee's Compensation, South East District whereby her claim petition seeking compensation on account of death of Lt. Sh. Jabar Singh has been dismissed.

2. In a nutshell, it was the case of the claimants/appellants that the deceased was employed with the respondent and his last drawn wages was ₹10,000/- per month. It was claimed that on 11.01.2017, the deceased was on his duty and he was instructed by the respondent/owner to go to the upper floor of the building, where the shop was located and check the plastic water tank and show the plastic water tank to the customer which were kept in the coping. It is claimed that the deceased fell down from the coping (*Parchhati*) and sustained grievous injuries and eventually died and FIR No.7/2017



was also registered at P.S. Prahaladpur, New Delhi. The appellants/claimants allege that the respondent has not provided any safety gears/guards to the deceased and the mishap resulted in his death.

3. Suffice to state that the claim was dismissed by the learned Commissioner, Employee's Compensation primarily on the ground that the no cogent and reliable proof had been placed or proven on the record that the deceased was employed with the respondent.

4. Having heard the learned counsel for the appellants and on perusal of the record, this Court has no hesitation in holding that the present appeal is devoid of any merit. Unfortunately, the claimant/wife who was arraigned as AW-1 was not an eye witness to the incident.

5. Anyhow, she failed to produce any document concerning the employment of the deceased/husband with the respondent. No proof of salary and wages was given and there is no evidence as to what were the working hours of the deceased with the respondent and for how long he had been working there. No co-worker or employee was examined at her behest. On the contrary, the proprietor of the respondent came in the witness box and categorically deposed that the deceased was not employed by him. However, upon the deceased sustaining injuries, he acted as a good Samaritan and rushed him to the hospital. The respondent also examined one Ajay Kumar, he is an employee who categorically deposed that he had been assisting in selling hardware and sanitary items and getting ₹10,000/- per month. He denied that any person by the name of Lt. Sh. Jabar Singh came to the shop and/or was employed by the respondent. One Devraj Dang was also examined on behalf of the respondent, whose testimony, that he knew no one by the name of Lt. Sh. Jabar Singh nor he was



employed with the respondent, remain unriveted and unimpeached. Needless to state that the burden of proving that there existed a relationship of employer and employee between the deceased and the respondent was upon the claimants, which they woefully failed to discharge.

6. Hence, the present appeal is dismissed.

DHARMESH SHARMA, J.

MARCH 24, 2025
Ch