

\$~2 & 3

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

+ **W.P.(C) 12989/2021 & CM APPL. 40930/2021**

NIYAZ MOHHAMAD @ MOHD. NIYAZ Petitioner

Through: Mr. Ram Kanwar Nain with Mr.
Daksh Nain and Ms. Shefali Dua,
Advocates (M: 9312070470)

versus

LABOUR COMMISSIONER & ORS. Respondents

Through: Mr. Naushad Ahmad Khan, ASC,
GNCTD

Mr. Satyakam, ASC with Ms.
Swarnika Singh, Advocates for
Respondents no.1 to 3 with Mr.
Shashi Bhushan, Labour Officer, Mr.
Upender Kumar, Tehsildar, Mr.
Manoj Kumar, Patwari Office, SDM,
Vasant Vihar (M: 9868219633)

Mr. Abhishek Harjika, Advocate for
Respondent No.4

Mr. Sanjay Kumar Aggarwal,
Principal Secretary (Law & Justice)
Ms. Nidhi, SDM, Hauz Khas

(3) AND

+ **W.P.(C) 13094/2021 & CM APPL. 41308/2021**

MANSHA RAM & ANR. Petitioners

Through: Mr. Ram Kanwar Nain with Mr.
Daksh Nain and Ms. Shefali Dua,
Advocates (M: 9312070470)

versus

COMMISSIONER EMPLOYEES COMPENSATION & ORS.

..... Respondents

Through: Mr. Naushad Ahmad Khan, ASC,
GNCTD

Mr. Satyakam, ASC with Ms. Swarnika Singh, Advocates for Respondents no.1 to 3 with Mr. Shashi Bhushan, Labour Officer, Mr. Upender Kumar, Tehsildar, Mr. Manoj Kumar, Patwari Office, SDM, Vasant Vihar (M: 9868219633)
Mr. Abhishek Arjia, Advocate for Respondent no.4.
Mr. Sanjay Kumar Aggarwal, Principal Secretary (Law & Justice)
Ms.Nidhi, SDM, Hauz Khas

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 09.12.2021

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. These matters are part-heard.
3. Pursuant to the directions issued by this Court, vide order dated 17th November, 2021 in *W.P.(C) 12989/2021*, the concerned SDM and Mr. Sanjay Kumar Aggarwal, Principal Secretary (Law, Justice and Legislative Affairs), GNCTD (*hereinafter "Principal Secretary"*) have joined the virtual proceedings.
4. Mr. Aggarwal, Principal Secretary, submits that the judgment of this Court in *Santosh Kumar Jha vs. Deputy Labour Commissioner [W.P.(C) 8092/2016 decided on 24th June, 2021]* was placed before him in September, 2021. Thereafter, he addressed communications to all the SDMs, ADMs and the Recovery Officers in respect of the same. However, no steps could be taken pursuant to the said judgment. He further submits that he was in personal difficulty for the last two-three weeks and is currently on leave.

5. Mr. Aggarwal has further informed the Court that a meeting of the Implementation Committee has been scheduled for 13th December, 2021 in order to set out the steps to be taken in terms of the judgment in ***Santosh Kumar Jha (supra)***.

6. In light of the above, the following directions are issued:

- i. The Implementation Committee shall take a decision as to the steps to be taken in consonance with ***Santosh Kumar Jha (supra)*** and place the said directions before this Court.
- ii. The aforementioned directions shall be issued to all the SDMs, ADMs, District Magistrates, Recovery Officers and other Appropriate Authorities.
- iii. A virtual interactive session for the purpose of sensitization shall be conducted with the said officers by the end of December, 2021 apprising them of the said directions. The concerned Labour Commissioner as also the Commissioner and other officials under the Employees' Compensation Act, 1923 shall also join the virtual interactive session.
- iv. The Implementation Committee shall also consider the earmarking of specific officials for the purpose of expeditious recovery of compensation in case of death of employees under the Employees' Compensation Act, 1923.
- v. Status report as also the minutes of the meeting of the Implementation Committee and the virtual interactive

session conducted with all the concerned officers shall be placed on record, on or before 15th January, 2022.

7. Status Report on behalf of SDM, Hauz Khas has also been placed before the Court, informing the Court that notice was issued to the Judgment Debtor/Respondent No.3- M/s. Aveena Milk Products Private Limited on 10th August, 2021. Thereafter, Show Cause notices have been issued on 24th November, 2021 as also on 8th December, 2021. Time has been granted to the Judgment Debtor till 20th December, 2021 to deposit the dues payable. The SDM further submits that if the said Show Cause notice is not responded to and if the dues are not paid, further action will be taken, in accordance with law.

8. Let SDM, Hauz Khas follow up on the Show Cause notices issued to the Judgment Debtor/Respondent No.3 in *W.P.(C) 12989/2021*, and place the further status report in respect of the same, by 15th January, 2022.

9. List for hearing on 3rd February, 2022.

W.P.(C) 13094/2021 & CM APPL. 41308/2021

10. The present petition seeks enforcement of the order dated 17th November, 2020 passed by the Ld. Commissioner under the Employees' Compensation Act, 1923 in *EC(D)-11/SWD/2019/1906* titled *Sh. Mansa Ram & Ors. v. M/s. B4 Express Service (P) Ltd.* By the impugned order, the Ld. Commissioner has awarded a sum of Rs.8,79,800/- as compensation payable in favour of the deceased Employee, along with interest at 12% per annum. The operative portion of the impugned order dated 17th November, 2020 reads as under:

“9.Relief:

Next comes as to what amount of compensation the claimants are entitled. It has been stated by the claimants in the claim application that the deceased employee was aged 23 years at time of his death and in the Post Mortem Report of the deceased, his age shown as 23 years. Hence, as per Post Mortem Report as well as pleading of the claimant for the purpose of the calculation of compensation, the age of the deceased at the time of death is taken as 23 year for the purpose of calculation of compensation in the case. In the claim application it has been stated that the deceased was drawing wages @ Rs.17,000/- per month. But as per the Govt. notification his wage can be taken Rs.8,000/- per month. Hence his wage is thus taken Rs. 8,000/- per month.

In view of the age and wage, the applicants are entitled to death compensation as under:-

Relevant factor – schedule IV in 23 years of age :
219.95

50% of the wages @ Rs. 8,000/ pm per section 4 :
Rs.4,000/-

Amount of compensation : 219.95X 4000 :

Rs.8,79,800/-

10. The applicants/claimants are also entitled to interest as per Section 4A of the ‘Act’ @ 12% per annum from 30 days after the accident and Rs.5,000/- per month towards funeral charges.

11. The respondent was issued show cause notice under Section 4A(3)(b) to explain as to why penalty be not imposed on them for failing to deposit compensation within 30 days from the date of accident. In spite of service of notice, they did not respond nor filed any response. Given that the respondent did not

take the provision seriously and this calls for invocation of penal provision. I impose a penalty to the extent of 50% of the principal amount of compensation. A penalty of Rs. 4,39,900/- is imposed on them.

*12. Therefore, the claimants are entitled to receive death compensation from Respondent, hence Respondent i.e. M/s B4 Express Service (P) Ltd, through Sh. Vijay Kumar, B-843/1, Vasant Kunj Road, Mahipalpur, New Delhi-110037 is directed to deposit in favour of Commissioner Employees Compensation an amount of **Rs. 8,79,800/- (Rupees Eight Lakhs Seventy Nine Thousand Eight Hundred Only)** on account of compensation payable to the claimants along with interest @ 12% p.a. w.e.f. 05.03.2019 till its realization, and penalty of Rs.4,39,900/- through pay order in favour of “**Commissioner Employees Compensation**” within a period of 30 days from pronouncement of the order before this Authority failing which the same shall be recovered as arrears of land revenue.*

Given under my hand and seal of on the 11th November, 2020.”

11. The present petition was preferred by the family of the deceased employee who have repeatedly approached the authorities for recovery of the compensation awarded in terms of the impugned order dated 11th November, 2020. However, no steps were taken by the authority to recover the said compensation.

12. A perusal of the impugned order dated 17th November, 2020 shows that one Sh. Atul Kumar Dubey, S/o Sh. Mansha Ram was employed as a field boy for delivering courier packets. The Employee passed away on 5th February, 2019 during the course of employment. According to the impugned order, the written statement was filed by the Employer before the

Ld. Commissioner, and issues were framed in the matter. However, no evidence was adduced by the Employer, despite granting opportunities for filing the same. Thus, the impugned order was passed by the Ld. Commissioner on the basis of the evidence adduced by the Employee. Since the date of the impugned order, no challenge has also been filed by the Employer against the impugned order. Under these circumstances, the father and mother of the deceased Employee have preferred the present petition.

13. Vide order dated 22nd November, 2021 in this petition, notice was issued to the Employer-Respondent No.4/M/s B 4 Express Service (P) Ltd, Mr. Abhishek, Id. Counsel for the Respondent No.4 has entered appearance today on behalf of the Employer. He submits that no evidence could be led by the Employer before the Ld. Commissioner as the Authorised Representative of the Employer had fallen ill. He submits that no challenge has been filed *qua* the said impugned order dated 17th November, 2020. He submits that in view of the orders passed by the Supreme Court *in Re: Cognizance for Extension of Limitation [Suo Moto Writ Petition (Civil) No.3 of 2020]*, the period for filing an appeal against the impugned order stands extended.

14. The family of the deceased Employee, who must be in a dire financial condition, has sought enforcement of the impugned order dated 17th November, 2020. The Employee died way back on 5th February, 2019. No challenge to the impugned order has been filed to date. Considering the foregoing facts, it is directed that no further action shall be taken pursuant to the recovery of the compensation awarded, subject to a deposit of a sum of Rs. 4 lakhs by the Employer with the Registrar General of this Court, on or before 21st December, 2021.

15. If the amount of Rs.4 lakhs is not deposited by the Employer, action would be liable to be taken against Shaikh Ziaul Hakim, S/o Shekh Suleman, Director of the Employer/Respondent No.4- M/s. B 4 Express Service (P) Limited, having its registered office at KH No. 1027/1, 1028/1, 1032/1, Road No.6, Near Grand Shobha Hotel, Mahipalpur, New Delhi-110037.

16. It is made clear that if the Employer/Respondent No.4 wishes to avail of his appellate remedies in accordance with law, the amount in terms of the statutory provisions shall be deposited by the Employer, and adjustment shall be granted for Rs. 4 lakhs, if deposited before this Court, in terms of this order.

17. List for compliance in respect of deposit of Rs.4 lakhs by the Employer, on 22nd December, 2021.

18. List for hearing on 3rd February, 2022.

19. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH, J

DECEMBER 9, 2021

mw/AD