

\$~7

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

%

**Date of Decision: 19<sup>th</sup> April, 2018**

+ FAO 228/2016 and C.M. Appl. 18806/2016

SUBHASH CHAUDHARY ..... Appellant

Through: Appellant in person.

versus

NIRMALA DEVI & ORS ..... Respondents

Through: Mr. R.K. Nain, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**JUDGMENT (ORAL)**

1. The appellant has challenged the order dated 15<sup>th</sup> November, 2016 passed by the Commissioner, Employees' Compensation whereby compensation of Rs.6,77,760/- along with interest @ 12% per annum has been awarded to respondents no.1 to 3.

2. The appellant is the owner of property bearing No.RZ-B-30, Mahavir Vihar, Sector-1, Dwarka, New Delhi and he was constructing the second floor of the said property through the contractor (respondent No.4) in September, 2014. On 04<sup>th</sup> September, 2014 at about 08:45 A.M., two labourers namely, Laxmi Pandit and Ramesh were pulling an iron window frame using a rope from the second floor of the building when the rope suddenly broke down due to the heavy weight of the iron window frame and both the labourers fell down and suffered fatal injuries. The police

registered FIR No.560/2014 under Sections 288/337/304 IPC at P.S. Dwarka against the contractor.

3. The deceased, Laxmi Pandit was survived by his widow and two minor daughters who filed an application for compensation before the Commissioner, Employees' Compensation. The appellant contested the application on the ground that he had awarded the contract for construction of the residential house to respondent No.4, who alone is liable to pay compensation. The appellant disputed the relationship of employment with the deceased. The appellant further pleaded that the deceased was a casual worker. It was further pleaded that the construction of the residential house was not for his trade and business and, therefore, the appellant was not liable to pay compensation to the respondent no.1 to 3.

4. The Commissioner, Employees' Compensation held that the deceased suffered fatal injuries in the accident during the construction of the residential house of the appellant and the accident arose out of and during the course of his employment. The Commissioner, Employees' Compensation held that respondents No.1 to 3 were entitled to compensation of Rs.6,77,760/- along with interest @ 12% per annum. The Commissioner held the appellant liable to pay compensation to respondents No.1 to 3. The Commissioner observed that appellant being the principal employer is liable to indemnify the respondents No.1 to 3 with liberty to recover the same from respondent No.4 under Section 12 (2) of the Employee's Compensation Act but did not grant recovery rights to the appellant.

5. Vide order dated 17<sup>th</sup> January, 2018, this Court initiated the penalty proceedings against the appellant and issued a show cause notice to the

appellant under Section 4A(3) of the Employees Compensation Act to which the appellant has filed the reply.

6. The appellant submits that he had awarded the contract for construction of the second floor of his residential house to respondent No.4 who should be held liable to pay the compensation. It is further submitted that the penalty should not be imposed on the appellant considering that the appellant has already deposited the compensation amount along with interest @ 12% per annum. The appellant further submits that he took the deceased to the hospital in his car and provided all possible medical help to the deceased and, therefore, a lenient view should be taken with respect to amount of penalty.

7. The law with respect to the liability of the owner of the building to pay the compensation to the legal representatives of the worker who dies during the construction of a residential house is well settled. Reference is made to the recent judgment of this Court in **Krishan v. Jasoda Devi**, 2017 SCC OnLine Del 11137. Relevant portion of **Krishan v. Jasoda Devi** (*supra*) is reproduced hereunder:

“43. Summary of Principles

43.1. *The Employees’ Compensation Act, 1923 is a piece of social beneficial legislation and its provisions have to be interpreted in a manner so as not to deprive the employees of the benefit of the legislation.*

43.2. *The object for enacting the Employees’ Compensation Act even as early as 1923 was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits.*

43.3. *Section 12 safeguards the right to compensation when the employer delegates the work to another person. Section*

*12 is intended to secure to an employee the right to claim compensation not only against his immediate employer who, in the Act, is referred to as a contractor, but also against the person who had employed such contractor to execute the work. The Act refers to him as the principal.*

*43.4. The main object of enacting Section 12 of the Act is to secure compensation to the employees who have been engaged by the principal employer through the contractor for the work which the principal employer is supposed to carry out by his own employees. If a person substitutes another for himself to do his work, he ought not to escape the liability which would have been imposed upon him, if he had done it himself.*

*43.5. The intention of the Legislature in enacting Section 12 provision appears to be that the injured employee or the dependent of a deceased employee who has been awarded compensation by the Commissioner, should not be put to any difficulty in realising such amount of compensation on account of any recalcitrance of the employer or on account of the vicissitudes of his (the employer's) financial position.*

*43.6. Section 12 of the Act has, in effect, stretched the contours of the word "employer" wider as to include the person contracting with another person for carrying out the work of the former. In such cases, the provision enjoins that the principal shall stand substituted as the employer. This is achieved by the words "where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer". The principal may have a claim for indemnity from his contractor or delegatee but the victim or his dependents are not to be involved in such disputes.*

*43.7. Section 12 will apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. The agreement or contract between the principal and the contractor shall govern only their inter-se rights and liabilities, and cannot affect the right of the employee or the dependants of the employee, to get the compensation from the principal or from the contractor at their option.*

43.8. Section 12 shall apply even in cases of several tiers of employers or petty contractors. It is a matter of common knowledge that contractors in turn employ other petty contractors working under their direction and an employee may be actually employed by one of these aforesaid persons and in such a case, there may be no direct privity of contract between the principal and the employee in the last analysis. The employee has, for all practical purposes to deal with an immediate employer but when it comes to lodging a legal claim for compensation on account of an accident, he is concerned with the principal employer and not the immediate employer qua the employee.

43.9. In case of the multiplicity of immediate and indirect or remote employers/contractors, Section 12 relieves an employee of the difficulty of ascertaining with precision as to who should be deemed to be the actual employer liable for compensation under the Act. The purport of Section 12 is to create a deemed employer-employee relationship between the principal employer and the employee of the immediate employer who is brought in by the principal employer as his contractor.

43.10. Section 12 secures compensation to the employee who cannot fight out his battle for compensation by a speedy process. A person who employs others to advance his own interest is expected to provide a surer basis for payment of the injured employee than the intermediary, who may often turn out to be a man of straw, from whom compensation may not be available. This is the purpose for which the claimant is given the option under section 12(3) of the Act to claim the compensation either from the principal or from the contractor.

43.11. The contractor may not be a man of means or he may be merely a man of straw or it may be that wittingly or unwittingly he may possibly be part of an arrangement conceived by the principal to avoid confrontation directly with the employee engaged in the execution of the work. In either case, the interests of the employee need to be protected and that is what the provision secures to the employee. The principal can seek indemnification from the contractor if he has been made answerable for the payment of compensation. The right of

*the principal to be indemnified has thus been incorporated under Section 12(2), who has entrusted the work to the contractor stipulating the right of indemnification under the Act.*

*43.12. Section 12 of the Act gives protection to the employee in case of an accident and secures compensation from the persons who can pay, so that such employee will not be dependent upon a petty contractor(s) who may themselves not be able to pay compensation on account of their financial inability.*

*43.13. Section 12 is an enabling provision for the benefit of the employee(s) and enacted with the clear objective that the employee(s) should not be hampered by technicalities or practical difficulties of deciphering the correct employers. A pragmatic method has thus been devised for fixing the liability of the principal employer and thereby affording speedy relief to the employee for payment of compensation on account of the accident, though the principal has been invested with the right of indemnifying himself from the contractor who may have employed the employee and may have been responsible for immediately taking work from him.*

*43.14. The words "trade" or "business" used in Section 12 of the Act have to be understood in the context in which this Act was enacted. The Act was enacted to provide compensation to the employees suffering during the course of their employment. It was also the purpose of the Act that employees should get speedy remedies and it appears that the intention of enacting the Section 12 of the Act was only to ensure that compensation is paid by the principal expeditiously and if this purpose of the Act and the provision are kept in mind, then the words "trade" or "business" may not have the same meaning which it would have, for instance, when used in interpreting a taxing statute.*

*43.15. The words "trade" or "business" are used in several statutes like fiscal statutes, taxing statutes and rent laws. The meaning ascribed to such words shall always be with reference to the context and with respect to the content of the statute itself, Therefore, the meaning that is ascribed in one statute cannot be taken to interpret the very same words in another*

*statute legislated with altogether a different intention and object. The said words in the fiscal statutes or rent laws cannot have a similar meaning when employed in any welfare legislation like Employee's Compensation Act.*

*43.16. The term "trade" or "business" would not have been used in Section 12(1) to mean the same, though in certain contexts they may bear the same meaning. The very fact that both these terms are employed in the section would indicate that they connote different ideas and they do not cover the identical field, "trade" as generally understood means activities of buying and selling and the business which is related to such buying and selling, whereas "business" is a term of much larger import.*

*43.17. The word "trade" connotes commercial activity whereas the word "business" is of much wider import and may be used in different contexts in different senses. Used in one context, it may imply a particular occupation or employment to earn livelihood or gain, whereas used in a different context it may mean an activity which engages time, attention, or labour as a principal serious concern or interest. Its connotation may thus vary with the varying contexts in which it is used. In taxing statutes for instance, the word "business" will always denote an activity carried out with the object of earning profit, though the same may not be true when used in relation to other activities. Used in broader sense, a person building his residential house or a Government constructing a road, may well be said to do "business" in so far as the said activity engages his or its time, attention or labour as principal serious concern or interest.*

*43.18. The meaning of these two crucial words in Section 12 has to be understood in the context of its object. The word "business" in the Section need not be restricted to what is synonymous with "trade". The use of the conjunction 'or' should be understood as disjunctive for covering totally different areas unconnected with "trade". The word "business" has different shades of meanings. Among them, the most suitable in the present context is that which "The Oxford Advanced Learners Dictionary of Current English" has given as its third meaning: "Task, duty, concern or undertaking to do*

*a work". The word "business" in its wider connotation may have more extensive meaning than the word "trade". Lord Jessel M.R. in Smith v. Anaerson, 1880 15 Ch D 247, stressed the meaning of "business" as "anything which occupies the time and attention and labour of a man for the purpose of profit". Some succinct illustrations have also been given in the said dictionary to drive the meaning home. They are: "It is a teacher's business to help his pupils; I still make it my business to see that money is paid promptly; that is no business of yours". In none of the illustrations, the word "business" is used to denote anything connected with trade or commerce. The word "business" used in Section 12 of the Act has been intended to convey the meaning "the work or task undertaken by the person concerned" which is not restricted to trade or commercial work alone.*

43.19. *The word "ordinarily" is an elastic term. It is seen to be used in different statutes. The word has different shades of meaning in different contexts. The word "ordinarily" is employed in Section 12 of the Act for a different connotation. That has to be understood in the background of the preceding portion in the Section 12 wherein execution of the work carried out through any other person contracted by the principal for this purpose is mentioned. What the principal would have done if he would not have contracted with another person to carry out that work? He himself would have normally done that work or caused it to be done under his supervision. The word "ordinarily" is used in Section 12 for projecting this idea. So the word "ordinarily" in Section 12 means "otherwise, normally". No other meaning can be conferred to the term 'ordinarily' as it appears in Section 12.*

43.20. *Applying the rules of liberal and purposive interpretation, superior purpose and felt necessity, the word "business" occurring in Section 12 is given an extended meaning, so as to include even an activity which engages time, attention, or labour. Hence, construction of a residential house would be covered in Section 12. This Court agrees with the view taken by the different High Courts in the judgments discussed herein above.*



43.21. *If the person who employs contractor is allowed to evade his liability by raising the defence that only the contractor or the intermediary should pay the compensation, then Section 12 will become redundant.*

43.22. *This interpretation finds support from the amendment of Section 2(1)(n) of the Act (vide Workmen's Compensation (Amendment) Act, 2000) by including casual employees and employees employed other than for the purposes of employer's trade or business in the definition of "employee".*

43.23. *The definition of "employee" envisaged in Section 2 (1) (n) of the said Act has undergone drastic change. Prior to the amendment, an employee whose employment was of a casual nature and who was employed otherwise than for the purpose of trade or business of the employer; did not fall in the said definition. However, after the amendment of the said definition through the Amending Act 46 of 2000, the Parliament had removed the said mischief which was then prevailing and coming in the way of such casual employee who met with an accident during the course of the employment unconnected with the employer's trade or business. With the amendment of the said definition, now an employee whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business is certainly covered within the definition of employee.*

43.24. *Applying the rules of literal and purposive interpretation, superior purpose and felt necessity, this Court is of the view that the casual employees and employees employed otherwise than for the purposes of the employer's trade or business are entitled to all the benefits of the Employee's Compensation Act including that of Section 12 of the Act. This Court agrees with the view taken by this Court in Govind Goenka v. Dayawati (supra)."*

*(Emphasis Supplied)*

8. This case is squarely covered by the principles laid down by this Court in the aforesaid judgment. The appellant being the principal employer cum owner is liable under Section 12 of the Employees Compensation Act to pay the compensation to the legal representatives of the deceased, Laxmi

Pandit who suffered an accident arising out of and during the course of his employment with the contractor while constructing the appellant's house. There is no infirmity in the award of compensation of Rs.6,77,760/- along with interest @ 12% per annum passed by the Commissioner, Employees' Compensation. The impugned award of the Commissioner, Employees' Compensation is upheld. However, recovery rights are granted to the appellant to recover the compensation amount from respondent No.4.

9. With respect to the issue of penalty, a lenient view is taken against the appellant, who took the deceased to the hospital immediately after the accident and extended all possible help to save the life of the deceased. In that view of the matter, penalty of Rs.1,60,000/- is imposed on the appellant under Section 4A(3) of the Employees Compensation Act. The appellant is directed to deposit the penalty amount with the Registrar General of this Court within four weeks.

10. The appeal is dismissed. Pending application is disposed of.

11. List for disbursement of the balance compensation amount as well as penalty amount on 30<sup>th</sup> May, 2018.

12. Learned counsel for the respondents shall furnish the particulars of the savings bank accounts of respondents No.2 and 3 near the place of their residence on the next date of hearing. The concerned bank of respondents No.2 and 3 is directed not to issue any cheque book or debit card to respondents No.2 and 3 and if the same have already been issued, the bank is directed to cancel the same and make an endorsement on their passbooks to this effect. Respondents No.2 and 3 shall produce the copy of this order to the concerned bank, whereupon the bank shall make an endorsement on the passbooks of respondents No.2 and 3 that no cheque book and/or debit card

shall be issued to respondents No.2 and 3 without the permission of this Court. However, the concerned bank shall permit respondents No.2 and 3 to withdraw money from their savings bank account by means of a withdrawal form. The respondents No.2 and 3 shall produce the original passbooks of their individual savings bank account with the necessary endorsement on the next date of hearing.

13. Copy of this judgement be given *dasti* to parties under signatures of the Court Master.

**APRIL 19, 2018**

rsk

**J.R.MIDHA, J.**

