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

% **Date of Decision: 20th December, 2017**

\+ FAO 345/2016 and CM Appln.26849/2016

BRIJESH KUMAR VERMA ..... Appellant
Through: Mr. Harvinder Singh, Mr.Jatin Kumar, Advocates

versus

AURANGJEB & ANR. ..... Respondents
Through: Ms. Pratima N. Chauhan, Advocate for respondent no.1.
Mr.Sanjoy Ghose, ASC for GNCTD.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The appellant has challenged the order dated 6th May, 2016 passed by the Commissioner, Employees' Compensation whereby compensation of Rs.10,69,008/- along with interest @ 12% per annum has been awarded to respondent no.1.

2. The appellant is the owner of property bearing No.BU-48, Pitampura, Delhi on which a four storey building was being constructed in March 2012. On 6th March, 2012, the roof (lintel) of the third floor was being laid. Respondent no.1 and his father were

working as labourers on the construction site, along with 12-13 other labourers. According to respondent no.1, the contractor Gulab Singh (respondent no.2) instructed respondent no.1 to climb the wall of the third floor and club the grease of the lift with a cord from the bamboo whereupon respondent no.1 and another labourer told the contractor that the wall was weak and wet and would fall down. On the insistence of the contractor Gulab Singh, respondent no.1 climbed the wall whereupon wall broke and respondent no.1 fell down and suffered grievous injuries namely compression fracture of L1 vertebrae and olecranon fracture of the left elbow along with tendon deformity in both lower legs. Respondent no.1 was admitted to Hindu Rao Hospital. The injuries suffered by respondent no.1 resulted in 80% permanent disability relating to both lower limbs due to post-traumatic paraplegia as per the disability certificate dated 12th April, 2013. Police Station, Maurya Enclave registered FIR No.75 dated 6th March, 2012 under Sections 288/337 against the contractor, Gulab Singh (respondent no.2) in which charge sheet has been filed.

3. On 22nd August, 2012, respondent no.1 filed an application for compensation before the Commissioner, Employees' Compensation against the appellant as well as respondent no.2. Respondent No.1 claimed that the accident arose out of and during the course of his employment. Respondent No.1 claimed compensation according to his age of 21 years, wages of Rs.10,500/- per month @ Rs.350/- per day and 100% permanent disability.

4. The appellant contested the compensation application on the ground that the appellant had given the contract for construction of the

stilt parking and a four storey building to respondent No.2 vide agreement for construction dated 10th August, 2011 and, therefore, the appellant was not liable to pay any compensation to respondent No.1. The appellant filed an application for being deleted from the array of the parties which was dismissed by the Commissioner vide order dated 2nd May, 2013.

5. Respondent no.2 contested the application for compensation on the ground that he had given the sub-contract for construction to Mohd. Rahil who had employed respondent no.1. Respondent no.2, however, admitted having taken respondent no.1 to the hospital where he spent Rs.85,000/- on the treatment of respondent no.1. Respondent No.2 filed an application for impleading Mohd. Rahil as a respondent which was dismissed by the Commissioner vide order dated 2nd May, 2013.

6. On 21st December, 2012, the appellant filed an application seeking direction to the Medical Superintendent of Aruna Asaf Ali Hospital, Delhi to examine respondent No.1 and assess his disability and issue a disability certificate in pursuance to which on 21st February, 2013, the Commissioner directed the Medical Superintendent of Aruna Asaf Ali Hospital to examine respondent No.1 and issue the certificate.

7. On 12th April, 2013, the Medical Superintendent of Aruna Asaf Ali Government Hospital issued a certificate assessing the permanent disability of respondent No.1 as 80% in respect of both lower limbs due to post-traumatic paraplegia. The relevant portion of the said certificate is reproduced hereunder:-

"GOVERNMENT OF NCT OF DELHI
OFFICE OF MEDICAL SUPERINTENDENT
ARUNA ASIF ALI GOVERNMENT HOSPITAL
5, RAJPUR ROAD, DELHI-54

No.1262 *Dated:12.04.2013*

CERTIFICATE FOR THE PERSONS WITH DISABILITIES

This is to certify that Sh/~~Smt./Km~~. Aurangjeb Son/~~wife/Daughter~~ of Sh. Harun Age 22 years old male/~~female~~, registration no.23964 is a case of Post Traumatic Paraplegia. He/~~She~~ is physically disabled/~~visual disabled/speech disabled~~ and has 80% (Eighty percent) permanent (Physical impairment/~~visual impairment/speech & hearing impairment~~) in relation to his/~~her~~ Both lower limbs

Note:

1. *This condition is progressive/non-progressive/ ~~likely to improve~~/ not likely to improve.*
2. *Re-assessment is not recommended/~~is recommended~~ after a period of _____ Months/years.*

(Strike out which is not applicable)

Signed/-	*Signed/-*	*Signed/-*
Specialist	*Specialist*	*Specialist*
Dr. B. Kanhar	*Dr. V.S. Rawat*	*Dr. Rajender*
M.S. (Ortho)	*Specialist Medicine*	*Singh"*
Sr. Ortho Specialist & HOD	*DMC Reg. No.2653*	
(Ortho)	*Member Disability*	
Reg. No. 10361-DMC	*Board*	
Aruna Asif Ali Govt. Hospital		
5, Rajpur Road, Delhi-110054		

8. The Commissioner, Employees' Compensation held that respondent no.1 suffered grievous injuries in the accident while working on the construction of building for the appellant and the accident arose out of and during the course of his employment with

respondent no.2. The Commissioner took the upper-wage limit of Rs.8,000/- per month, respondent no.1's age of 21 years at the time of the accident and the factor of 222.71. The permanent disability of respondent no.1 was assessed by the Medical Board as 80% relating to both limbs due to post-traumatic paraplegia. However, considering that respondent no.1 was unable to do any physical work, the Commissioner took the loss of earning capacity as 100%. The Commissioner, Employees' Compensation held that respondent no.1 was entitled to compensation of Rs.10,69,008/- along with interest @ 12% per annum. The Commissioner held the appellant liable to pay compensation to respondent No.1. The Commissioner gave liberty to the appellant to recover the amount from respondent no.2 or any other person liable according to the appellant by invoking Sections 12 and 13 of the Employee's Compensation Act.

9. Vide order dated 09th January, 2017, this Court requisitioned the record of FIR No.75/2012 dated 06th March, 2012 under Section 288/338 IPC, P.S. Maurya Enclave, Delhi in pursuance to which the relevant record of the FIR No.75/2012 was produced before this Court on 16th May, 2017. The record of the FIR No.75/2012 contains the statement made by the appellant before the police on 03rd September, 2012 under Section 161 Cr.P.C. The appellant stated before the police on 03rd September, 2012 that there was no written agreement between him and Gulab Singh. Translation of the statement of the appellant before the police under Section 161 Cr.P.C is hereunder:

"Case FIR No.75/2012 dated 06.03.12 u/s 288/338 IPC P.S. Maurya Encalve, Delhi
Statement of Brijesh Kumar Verma s/o R.T.Verma r/o BU-48 Pitam Pura, Delhi

U/S 161 CRPC

I am the current resident of abovementioned address and I am doing my private work and I had given the construction work of my house no. BU-48 Pitam Pura, Delhi to contractor Gulab Singh s/o Ram Singh r/o T-133 Mangol Puri, Delhi at the rate of Rs.115 per square feet. Gulab Singh started construction work of my house in October, 2011 and at that time there was no written agreement between us.

You have taken my statement which is correct.

Singed
H.C. Satbir 60/NW
P.S. M. enclave
3.9.12"

10. Learned counsel for the appellant urged at the time of the hearing that respondent no.1 was employed by respondent no.2 who alone was liable to pay the compensation to the petitioner. Reference was made to the construction agreement dated 10th August, 2011 between appellant and respondent no.2 under which respondent no.2 was responsible for the accident during construction. It was further submitted that respondent no.2 had appointed a sub-contractor, Rahil who in turn had employed respondent no.1. It was further submitted that the appellant cannot be held liable to pay the compensation under Section 12 of the Employees' Compensation Act because the construction of the residential house was not part of his trade or business. The appellant disputed the income of respondent no.1 taken by the Commissioner, Employees' Compensation. The appellant

further disputed the permanent disability of 80% assessed by the Medical Board and the loss of earning capacity of 100% assessed by the Commissioner. Reliance was placed on ***Bharat Earth Movers Ltd. v. Bhagyamma***, 1975 A.C.J. 113, ***Dr. B. Radhakrishna v. Gouramma***, 2000 (85) FLR 388, ***Lakshminarayana Shetty v. Shantha***, 2002 III LLJ 523, ***Ajay Singh Lal v. Somwati***, 116 (2005) DLT 421, ***Om Parkash Batish v. Ranjit***, II (2008) ACC 462 (SC), ***Management, Sirishad Construction (P) v. C.P. Ravinder***, 2000 LAB I.C. 1817 and ***Kolhan Samvedak Sangh v. State of Jharkhand***, 2017 (154) FLR 298.

11. Learned counsel for respondent no.1 urged at the time of the hearing that respondent no.1 was an "*employee*" within the meaning of Section 2(1)(dd) of the Employees' Compensation Act. It was submitted that the definition of "*workman"* in Section 2(1) (n) of the Workmen's Compensation Act was amended in the year 2000. It was submitted that Section 2(1) (n) of the Workmen's Compensation Act, 1923 was amended by Workmen's Compensation (Amendment) Act, 2000 with effect from 8th December, 2000 whereby the words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of *'workman'* in Section 2(1) (n) were omitted. The effect of the omission of words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of workman in Section 2(1)(n) by the amendment in 2000 is that a person whose employment is of a casual nature and is

employed other than for the purposes of the employer's trade or business, would be covered within the meaning of *"employee"* as defined in Section 2(1)(dd) of the Employees Compensation Act and entitled to compensation against the principal under section 12 of the Employees Compensation Act. Reliance was placed on ***Govind Goenka v. Dayawati,*** 2013 ACJ 1897 in which this Court held that after the amendment, the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business, would also be covered within the definition of "*workman".* Reliance was also placed on ***Public Works Department v. Commissioner, Workmen Compensation,*** 1981 Lab.I.C. 493 in which Division Bench of Jammu and Kashmir High Court held that the word *"business"* in Section 12 has to be given an extended meaning, so as to include even an activity which engages time, attention or labour as a principal serious concern or interest of an individual without an element of profit in it. The Response of respondent no.1 to the judgments relied upon by the appellant is as under:-

11.1. In ***Bharat Earth Movers Ltd. v. Bhagyamma*** *(supra)* relied upon by the appellant, the Karnataka High Court exonerated the principal holding that the construction of the building was not ordinarily a part of trade or business of the appellant who was engaged in the business of manufacture of earth moving machinery. This judgment does not help the appellant as it relates to an accident in 1969 i.e. prior to the Workmen's Compensation (Amendment) Act, 2000.

11.2. In ***Dr. B. Radhakrishna v. Gouramma*** *(supra)* relied upon by the appellant, the Karnataka High Court held that a person constructing a residential building cannot be held liable unless it is shown that he had given a contract and he was the principal employer. This judgment does not help the appellant as it relates to an accident in 1990 i.e. prior to the Workmen's Compensation (Amendment) Act, 2000.

11.3. ***Lakshminarayana Shetty v. Shantha*** *(supra)* also relates to case prior to Workmen's Compensation (Amendment) Act, 2000 by which the words "*other than a person whose employment was of casual nature*" were omitted.

11.4. In ***Ajay Singh Lal v. Somwati*** *(supra)*, the owner of a residential house was exonerated from the liability under Section 12 of the Act on the ground that the construction work was ordinarily not part of the *'trade or business'* of the owner. This judgement also relates to an accident prior to Workmen's Compensation (Amendment) Act, 2000.

11.5. All the aforesaid four judgments relied upon by the appellant relates to the accidents prior to the Workmen's Compensation (Amendment) Act, 2000 whereas the present case relates to an accident after the 2000 amendment, which came into force on 8th December, 2000. Workmen's Compensation (Amendment) Act, 2000 deleted the words *'trade or business'* from the definition of the word *'workman'*. In ***Govind Goenka v. Dayawati*** *(supra)*, this court held that the effect of omission of *"trade or business"* from the definition

of *"workman"* meant that the owner shall be liable even in respect of the work other than his trade or business.

11.6. ***Bharat Earth Movers Ltd. v. Bhagyamma*** *(supra),* ***Dr. B. Radhakrishna v. Gouramma*** *(supra),* ***Ajay Singh Lal v. Somwati*** *(supra)* and ***Lakshminarayana Shetty v. Shantha*** *(supra)* did not consider the interpretation of the word *"business"* in Section 12. The word *'business'* in Section 12 has been interpreted in ***Payyannur Educational Society v. Narayani*** *(supra),* ***Public Works Department v. Commissioner, Workmen Compensation*** *(supra),* ***Bala Mallamma v. Registrar, Osmania University*** *(supra),* ***Govind Goenka v. Dayawati*** *(supra),* ***Raj Pal Saini v. Kamla*** *(supra)* to include an activity which engages time, attention and labour.

11.7. In ***Om Parkash Batish v. Ranjit*** *(supra),* the Supreme Court dealt with the question as to whether a casual employee would be a *"workman"* within the meaning of Section 2(n) of the Workmen's Compensation Act, 1923 in respect of an accident dated 30th June, 1996. The Supreme Court held that the person, whose employment was of casual nature, was specifically excluded in the definition of workman under Section 2(n) of the Workmen's Compensation Act, 1923. The Supreme Court further held that the words "*other than a person whose employment was of casual nature"* were omitted by an amendment in 2000 but the amendment would not apply to an accident occurred prior to the date on which amendment came into force. The Supreme Court clearly recorded in para 22 of the judgment that they were considering the statutory provision prior to the

amendment of 2000 by which the words "*other than a person whose employment was of casual nature*" were omitted.

11.8. In ***Management, Sirishad Construction (P) v. C.P. Ravinder*** *(supra)*, the employee suffered hearing loss of 20% as per the medical certificate issued by a doctor. The Commissioner, Employees' Compensation held the loss of earning capacity to be 70%. The Andhra Pradesh High Court set aside the order and remanded back the matter to the Commissioner. This judgement does not help the appellant as the claimant in that case was not examined by the Medical Board of a Government Hospital whereas in the present case, the Commissioner, Employees' Compensation directed the Medical Superintendent of Aruna Asif Ali Hospital, Delhi on 21st February, 2013 to examine respondent No.1 and certify his disability in pursuance to which the Medical Board examined the injured-claimant and issued the disability certificate dated 12th April, 2013.

11.9. In ***Kolhan Samvedak Sangh v. State of Jharkhand*** *(supra)*, this Court held the contractor liable to pay the cess and dismissed the writ petition of the contractor for seeking refund of 1% cess deducted by the Rural Works Department. This judgment is not relevant with respect to the liability of an owner of a residential house to pay the compensation under Section 12 in respect of the death/injury to the employee employed through the contractor.

12. Vide order dated 9th January, 2017, Mr. Sanjoy Ghose, learned Additional Standing Counsel for Govt. of NCT of Delhi was directed place on record the safety requirements for construction workers and the legal position with respect to the responsibilities for failure to

comply with the legal norms and standards. Learned Additional Standing Counsel was also directed to give suggestions with respect to the responsibility of the owners of the building who carry out construction without any safety measures for building workers.

13. Mr. Sanjoy Ghose submitted a note with respect to the various statutes applicable to the construction workers and suggestions for ensuring the safety of the construction workers. It was submitted that the definition of "*workman"* in Section 2 (1) (n) of the Workmen's Compensation Act was amended in the year 2000 to include the workers whose appointment were of casual nature and who were employed otherwise for the purpose of employers *"trade or business"*. It was submitted that the rules of purposive construction, liberal interpretation and *cessante ratione legis, cessat et ipsa lex* would apply to interpret the amendment of Section 2 (1) (n). Reliance was placed on ***Workmen of American Express v. Management of American Express***, AIR 1986 SC 458, ***Union of India v. Prabhakaran Vijaya Kumar***, (2008) 9 SCC 527, ***Kunal Singh v. Union of India***, (2003) 4 SCC 524, ***B.D. Shetty v. CEAT Ltd.***, (2002) 1 SCC 193, ***Transport Corporation of India v. ESI Corporation***, (2000) 1 SCC 332, ***Regional P.F. Commissioner v. Hooghly Mills Co. Ltd.***, (2012) 1 SCR 363 and ***H.H. Shri Swamiji Shri Admar Mutt Etc. v. The Commissioner, Hindu Religious & Charitable Endowments Department,*** (1980) 1 SCR 368. Mr. Sanjoy Ghose also submitted a note on the meaning of *"trade or business"* in Section 12 and the legal effect of the omission of words "*trade or business"* from the definition of "*employee*" in Section 2(1)(dd) of the Employees'

Compensation Act on Section 12 of the Employees' Compensation Act. It was submitted that the word "*business"* in Section 12 has been interpreted by the Division Bench of Andhra Pradesh High Court in ***Balla Mallamma v. Registrar, Osmania University, Hyderabad***, 2001 (2) T.A.C. 182 (AP) 11 and ***Govind Goenka v. Dayawati*** *(supra),* in which this Court held that the word *"business"* has to be given extended meaning to include an activity that engages time, attention or labour.

14. During the course of the hearing dated 31st July, 2017, this Court considered the applicability of *Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996* which applies to residential buildings in which more than 10 workers are employed on any day during preceding 12 months and the total cost of the construction is more than Rs.10 lakh. The appellant admitted that he spent more than Rs.10 lakh in the construction of the building but disputed the applicability of the Act on the ground that the building workers employed by the contractor never exceeded 10. The relevant portion of the order dated 31st July, 2017 is reproduced hereunder:

> *"1. Arguments heard with respect to the applicability of Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act,1996 to residential buildings in which more than 10 workers are employed on any day during 12 months and the cost of the building is more than Rs.10,00,000/- and scope of Section 45(2) which imposes the responsibility of payment of the compensation under the Employee's Compensation Act on the owner as defined in Section 2(i), if the contractor fails to make the payment of compensation in respect of the building workers.*

2. Mr. Harvinder Singh, leaned counsel for the appellant admits that the appellant spent more than Rs.10,00,000/- in construction of the building but the building workers employed by the contractor never exceeded 10.

3. At this stage, this Court considered necessary to examine the appellant on oath. The appellant has been partly examined to ascertain the cost of construction and the number of workers employed in the construction of the building."

(Emphasis supplied)

15. On 31st July, 2017, this Court examined the appellant under Section 165 of the Indian Evidence Act when the appellant deposed on oath that only 4-5 persons worked on the site during construction The statement of the appellant recorded by this Court on 31st July, 2017 is reproduced hereunder:

"Statement of Brijesh Kumar Verma, S/o late Sh. Tirath Verma, R/o. BU-48, Pitampura, Delhi.

On SA

I awarded the contract for construction of residential house at property No.BU-48, Pitampura, New Delhi in September, 2011 to respondent No.2. The construction of the building was completed in January, 2013. I incurred cost of Rs.40,00,000/- to Rs.45,00,000/- in the construction of this building. I paid approximately Rs.5,50,000/- to the contractor Gulab Singh. I visited the property approximately about 25-30 times during the course of the construction. Whenever I visited the property, only 4-5 persons (1-2 mistari and 2-3 workers) were doing the construction work."

16. Respondent no.1, in his cross-examination dated 10th December, 2014, had stated that more than 30 workers were working on the site and 12-13 labourers were present on the date of accident. Relevant portion of the cross-examination of respondent no.1 is reproduced

hereunder:

> *"It is correct that I was daily wage labourer. My father is also a daily wage labourer. It is correct that I was part of labours who were in supposed to put linter in BU-48, Pitam pura, delhi and I was called my Md. Rahil as well as Sh. Gulab Singh. 30 more workers were working with Mohd. Rahil……*
>
> *xxx xxx xxx*
>
> *……On that day i.e. 06.03.2012, I was working on the 3rd floor of the premises. It is incorrect that I was specifically called for putting up of linter in the said premises and I did not do any other work……12-13 other labourers were present on the date of accident"*

17. On 11th August, 2017, this Court heard the arguments on the applicability of BOCW Act to the present case. It was submitted on behalf of the appellant that the appellant was the owner of the building but he was not an employer as defined in Section 2(1) (i) of BOCW Act. It was further submitted that respondent no.2 (contractor) was the employer for the purpose of Section 2(1) (i) of BOCW Act. It was further submitted that the owner of the building can be held liable only when the owner himself carries on the construction activity on his premises but when the construction is carried out through the contractor, the contractor will be deemed to be the owner. It was further submitted that the appellant was not liable to pay compensation under Section 45 of the BOCW Act. It was further submitted that the liability, if at all, will arise if the contractor fails to make the payment.

18. The submissions of respondent no.1 with respect to the BOCW Act are that the Act applies to every establishment where 10 or more building workers were employed in the building or other construction

work; *"building or other construction work"* has been defined in Section 2(1)(d) of the BOCW Act; the term "*employer"* has been defined in Section 2(1)(i) of the BOCW Act which defines employer to mean owner and includes the contractor in relation to an establishment; *"establishment"* has been defined in Section 2(1)(j) which only excludes the construction work of the residential house by the owner himself where the cost of construction is less than Rs.10 lakh; and Section 45 imposes the liability of payment of compensation on the employer as defined in Section 2(1)(i) . It was submitted that the appellant was the employer and clearly liable to pay the compensation under Section 45 of the BOCW Act as the cost of construction was more than Rs.10 lakh and more than 10 employees were employed in the construction work.

19. Mr. Sanjoy Ghose, learned Additional Standing Counsel for GNCTD urged at the time of the hearing that BOCW Act applies to private construction of residential building where the cost of such construction is more than Rs.10 lakh and more than 10 building workers had been employed on any day in the preceding 12 months. The *"employer"* defined in Section 2(1) (i) of BOCW Act specifically includes the owner. Section 58 of the BOCW Act clearly provides that the provisions of Employee's Compensation Act shall apply to the building workers. Section 45 of the BOCW Act makes the contractor and employer liable to pay the compensation to the building worker. The appellant, being the owner of the building, is an *"employer"* within the meaning of Section 2(1) (i) and is liable to pay the compensation under Section 45 of the BOCW Act.

20. ***Liability of the principal under Section 12 of the Employee's Compensation Act***

Section 12 of the Employee's Compensation Act imposes the liability of payment of compensation on the principal with right to recover the same from the contractor in respect of work being carried out by the contractor. Section 12 of the Employee's Compensation Act is reproduced hereunder:

> *"**Section 12** – **Contracting** –*
> *(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 an 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 that 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."

(Emphasis supplied)

21. ***Object of Section 12 of the Employee's Compensation Act***

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. 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. 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 a contractor for the work which the principal employer is supposed to carry out. 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. 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. 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. Reference be made to ***Bhutabhai Angadbhai v. Gujarat Electricity Board***, 1987 (1) L.L.N. 156; ***M.R. Mishrikoti v. Muktumsab Hasansab Asoti,*** (1972) 2 Mys LJ 449; ***Koli Mansukh Rana v. Patel Natha Ramji***, 1992 ACJ 772; ***Payyannur Educational Society v. Narayani***, (1996) 72 FLR 709; ***Public Works Department v. Commissioner, Workmen Compensation,*** *(supra);* ***Koodalingam v. Superintending Engineer, Project Circle, Public Works Department, Kozhikode***, 1994 (2) L.L.N. 779; ***Sardar Sewa Singh v. Hindustan Lever Ltd***., 1980 (1) L.L.N. 566 and ***Executive Engineer/Deputy General Manager, Sub Urban Division, DHBVNL, Bhiwani v. Priyanka***, 2017 (153) FLR 302 in which the Courts have examined the scope of Section 12.

22. 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.

23. 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.

24. 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.

25. 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 this 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.

26. 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.

27. 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 taking work from him.

28. ***Interpretation of the words "trade or business" in Section 12***

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 the employees should get speedy remedies and it appears that the intention of enacting 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 is kept in mind, then the words *"trade"* or *"business"* may not have the same meaning which they would have,

for instance, when used in interpreting a taxing statute. 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. 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 12 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 the 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"* and it means "***anything which occupies the time and attention and labour of a man for the purpose of profit***". 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. Used in broader sense, a person building his residential house 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. Used in broader sense, a person building his residential house, may well be said to do *"business"* in so far as the said activity engages his time, attention or labour as principal serious concern or interest. Reference be made to the following judgments in which the Courts interpreted the words *"trade or business"* in Section 12:-

28.1. In ***Payyannur Educational Society v. Narayani***, *(supra),* two workmen engaged in land excavating operation were buried alive in a landslide whereupon claim for compensation was made against an educational society. The society contested the claim on the ground that the society sold the soil to the contractor, who had engaged the workman and was liable to pay the compensation. It was further pleaded that ordinary business of the society was to impart education and digging work was not part of its *"trade"* or *"business".* The Division Bench of Kerala High Court headed by K.T.Thomas, J. as he then was, held that the word *"business"* used in Section 12 of the Act has been intended to convey the meaning as the work or task undertaken by the person concerned which are not restricted to trade or commercial work alone. The relevant portion of the judgment is reproduced hereunder:-

> *"9. It is trite law that the safe guidance for interpreting any provision in a statute or for understanding the scope and meaning of a particular word in provision, is to ascertain the intention of the legislature. However wide in the abstract, general words and phrases are more or less elastic and admit of restriction or extension to suit the legislative intention. "The object of the legislation would afford answer to the problems*

arising from ambiguities which it contains", (vide Maxwell on the "Interpretation of Statutes" 12th edition at page 86).

10. We bear in mind that one of the objects for enacting the Act even as early as 1923 was to ameliorate the hardships of economically poor workmen who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits. With the progress of times the concept impelled the courts, by and large, to make stretched constructions without violating the fundamental principles in order to advance the above object. Looking at it from the above angle, the object of the legislature in providing Section 12 in the Act is to safeguard the right to compensation when the employer delegates the work to another person.

11. We will now proceed to consider in what manner the words "business" and "ordinarily" in Section 12 of the Act should be understood.

12. Section 3 of the Act imposes a liability on the employer to pay compensation in cases where personal injury is caused to a workman by accident arising out of and in the course of the employment. 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 any claim for contribution from his contractor or delegatee, but that can be dealt with as between them separately. The victim or his dependents are not to be involved in such disputes. This much can easily be discerned from the section.

13. The meaning of the two crucial words in Section 12 has to be understood in the above context. We do not think that the word "business" in the section need 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'. A reference to the Dictionary would

reveal that 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". 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. We think that, the word business used in Section 12 of the Act has been intended to convey the meaning as the work or task undertaken by the person concerned which are not restricted to trade or commercial work alone. Hence the interpretation given to the words "trade or business" appearing in Article 19 of the Constitution, or in the Rent Control Law is not apposite in the context of Section 12 of the Act. We may observe with great respect that the Division Bench of this Court in Travancore Devaswom Board v. Prushothaman (1989 2 LLJ 114), has not adopted any principle in conflict with the above view.

14. In Bata Shoe Company v. Union of India AIR 1954 Bombay 129 Gajendragadhkar, J. (as he then was) observed that the word "business" in its wider connotation may have more extensive meaning than the word "trade". His Lordship then quoted Jessel M.R. in Smith v. Anaerson 1880 15 Ch D 247 who stressed the meaning of business as "anything which occupies the time and attention and labour of a man for the purpose of profit". This wide meaning was followed in Public Works Dept. v. Commissioner 1981 Lab I.C. 498 by a Division Bench consisting of Dr. A.S. Anand, J. (as His Lordship then was) and I.K. Kotwal, J. in Workmen's Compensation cases. We are, therefore, emboldened by the above decisions in adopting the wide connotation for the word "business" in the present case.

15. Our next endeavour is to ascertain what the legislature meant by the word "ordinarily" in Section 12 of the Act. The word "ordinarily" is an elastic term. It is seen used in different

statutes. The word has different shades of meaning in different contexts (vide Kailash Chandra v. Union of India (1961-II-LLJ-369) (SC). If it is used for referring to jurisdictional aspects it may mean "in large majority of cases but not invariably". When the word is used for referring to residential qualification it may sometimes include even temporary residence. But 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 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 has not 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 of the Act for projecting that idea. So the word "ordinarily" in Section 12 of the Act means "otherwise, normally". We cannot confer any other meaning to the term "ordinarily" as it appears in the section. We did not find anything contrary to the above legal position in the decision of the Division Bench of this Court in Vijayaraghavan v. Velu (1973 I LLJ 490).

16. Learned counsel for the appellant lastly contended that as the soil was sold to the second respondent, appellant had lost any ownership thereof and hence he cannot be made liable. What was sold by the appellant was only the soil and not the land. As long as the soil was not separated and transported, it remained as part of the land. The work involved in transforming land into soil must necessarily have been done when the ownership and title of the land remained with the appellant. So the appellant cannot disclaim liability in that line either.

17. When the legal position is understood thus, we are of the view that appellant is the employer vis-a-vis the victims, as per Section 12 of the Act. Appellant is therefore liable to pay the compensation due under the Act to the claimants. Accordingly, we dismiss the appeals."

(Emphasis supplied)

28.2. In ***Public Works Department v. Commissioner, Workmen***

Compensation *(supra)*, the Division Bench of Jammu and Kashmir High Court held that the word *"business"* occurring in Section 12 has to be given an extended meaning, so as to include even an activity which engages time, attention or labour as a principal serious concern or interest of the Government or an individual without an element of profit in it. The relevant portion of the judgment is reproduced hereunder:

> *"4. Unlike the word "trade" which merely; connotes commercial activity, 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. In saying so, I derive support from the following observations made by their Lordships of the Supreme Court in M/s. Hindustan Steel Ltd. v. State of Orissa, AIR 1970 S C 253:*
>
> > *"The expression "business" though extensively used is a word of indefinite import, in taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure."*

Its amplitude has been more exhaustively dealt with by Gajendragadkar J. in Bata Shoe Co. Ltd. v. Union of India, AIR 1954 Bom 129 wherein it has been observed :

> *"In its wider denotation, the word "business" may have a more extensive meaning than the word "trade". But in the context, we think it would be safe to adopt the definition of the word "business" laid down by Jessel M. R. in 'Smith v. Anderson', (1880) 15 Ch D 247 at p. 258 (B), where the learned Judge has observed that 'anything which occupies the time and attention and labour of a man, for the purpose of profit, is business". It is true that the word "business" in its most general and unrestricted sense may conceivably cover all human activities. It may even include the business of governing a country. But we are disposed to hold that the context in which the word has been used in S. 18 (b), Presidency Small Cause Courts Act, S. 20, Civil P. C. and CL 12 of the Letters Patent, requires that this word should not be construed in such a wide and unrestricted sense."*

5. The next question which then falls for determination is; what meaning should be assigned to the word "business" occurring in Section 12?

6. <u>It is well settled that where a word used in a statute is capable of two meanings, only that meaning should be assigned to it which carries out its object. This rule 'of interpretation of statutes</u> has been often times affirmed by their Lordships of the Supreme Court. In M/s. New India Sugar Mills Ltd. v. Commr. of Sales Tax, Bihar, AIR 1963 S C 1207 it was held:

> *"....<u>It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature</u>*

used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid."

Again, in South Asia Industries Pvt. Ltd. v. S. Sarup Singh AIR 1966 SC 346, it was observed:

> *".... A court would be fully justified in holding that in such a case it was intended that an order for recovery of possession can be made against the assignee alone for that would enable the object of the statute which was to enable the landlord to recover possession, to be achieved. An interpretation which defeats the objects of a statute is, therefore, of course, not permissible."*

7. The only object behind the provisions of Section appears to be to secure speedy payment of compensation resulting from injuries to a workman. The legislature intended to make doubly sure payment of such compensation to the workman, or to his dependants in the event of his death, as it could not exclude the possibility of the contractor being in some cases a man of straw, whose straitened circumstances might jeopardise the changes of recovery of such compensation. If, therefore, a restricted meaning is given to the word "business" so as to imply an activity with the object of earning profit only, the object behind Section 12 is likely to be defeated. Not only to speak of the Government performing its various functions of a welfare State, even many other persons may have to be kept out of the purview of Section 12 by assigning such a limited meaning to the word "business" occurring in it. Such an interpretation would absolve from liability to pay compensation even a person who would appoint a contractor for building his residential house, as building one's residential house cannot be said to have the object of earning profit or gain behind it. It cannot, as such, be said to partake of "business or trade" in commercial sense. Merely because the word "business" is clubbed with the word "trade" in Section 12, it should not be inferred that it has been used in simple commercial sense. Both these words have to be read disjunctively and rot conjunctively. Similarly, the doctrine of immunity attached to sovereign acts of State cannot be

extended to acts like constructing roads or bridges, as such acts are not of such a nature as cannot be done by a private person. Viewed thus, the word "business" occurring in Section 12 has to be given an extended meaning, so as to include even an activity which engages time, attention, or labour as a principal serious concern or interest of the Government or an individual without an element of profit in it. It is one of the meanings given to the word "business" in dictionary. (See Webster's New International Dictionary, Vol. I, Ed. 1926). Construction of roads being one of the principal concerns of the Public Works Department of the Government inviting its serious attention, it is "business" within the meaning of Section 12 and the appellant was thus the principal employer vis-a-vis the deceased labourers."

(Emphasis supplied)

28.3. In ***Bala Mallamma v. Registrar, Osmania University*** *(supra),* a claim for compensation was made for the death of a workman who fell down from a height of 40 feet while whitewashing the walls of Osmania University Science College. The claim was contested by the University on the ground that the University was constituted for imparting education and the whitewashing of the walls of the University was not a part of the *"trade"* or *"business"* of the University. The Division Bench of Andhra Pradesh High Court, following ***Public Works Department v. Commissioner, Workmen Compensation*** *(supra), held* that whitewashing/colour washing was a regular feature of the activity of the University and it could be treated ordinarily as part of the *"business"* of the University because the words *'trade'* or *'business'*, as used in the Act, have to be understood in the context in which the Act was enacted, failing which the very *raison d'être* of Section 12 of the Act would be defeated. The relevant portion of the judgment is reproduced hereunder:

"14. The learned Counsel for the applicant has drawn our attention to the judgment of the Supreme Court reported in Mohan Lal v. R. Kondaiah, . Para No.3 of the said judgment is important for the purpose of the present case, which is reproduced below:

> *"The expression business has not been defined in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is a common expression which is sometimes used by itself and sometimes in a collection of words as in "business, trade or profession". It is a word of large and wide import, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various Dictionaries except to say that every one of them notices a large number of meanings of the word. In a broad sense it is taken to mean 'everything that occupies the time, attention and labour of men for the purpose of livelihood or profit'. In a narrow sense it is confined to commercial activity. It is obvious that the meaning of the word must be gleaned from the context in which it is used. Reference to the provisions of the Constitution or other statutes where the expression is used cannot be of any assistance in determining its meaning in Section 10(3) (a) (iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act; more so if the two Acts in which the same word is used are not cognate Acts. Neither the meaning, nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand, it is a sound, and, indeed, a well-*

known principle of construction that meaning of words and expressions used in an Act must take their colour from the context in which they appear".

15. This judgment reiterates a principle of interpretation and the principle is that the meaning of the word must be gleaned from the context in which it is used. Meaning assigned to a word in a particular Act may mean one thing and the meaning of the same term may give a different meaning when used in a different Act. Therefore, the word 'trade' or 'business' as used in this Act have to be understood in the context in which this Act has been enacted. Basically the Act has been enacted to provide compensation to the workers suffering during the course of employment. It is also the purpose of the Act that they 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 word 'trade' or 'business' may not have the same meaning which it would have, for instance, when used in interpreting a taxing statute. If the plea of the University is accepted that they are engaged in imparting education, conducting examinations and conferring degrees only and cannot be termed to be doing any business or trade and hence they are not liable to pay compensation, then any person engaged for similar activity by any Government Department, any University, any hospital, if faced with an accident, would not be able to get compensation in terms of Section 12 of the Act although such a person would be a workman under the Act. Similarly if an individual who wants to construct a residential house of his own engages a person for construction of the house and if such a person faces an accident during the course of the building of the house, he would be remediless under the Act. Even otherwise the normal activity of the University is imparting education, conducting of examinations and conferring degrees, this they cannot do without having proper buildings."

(Emphasis supplied)

28.4. In ***Govind Goenka v. Dayawati*** *(supra),* the appellant engaged

a contractor for repairs and alterations in his shop. A portion of the wall fell on a labourer who suffered fatal injuries whereupon a claim for compensation was made against the owner who contested it on the ground that the deceased labourer was employed by the contractor. This Court, following the judgement of Division Bench of Andhra Pradesh High Court in ***Balla Mallamma v. Registrar, Osmania University*** *(supra)*, held that the word *"business"* in Section 12 has to be given an extended meaning. The relevant portion of the judgment is reproduced hereunder:

> *" 6. As would be seen from the definition of "employer" envisaged under Section 2(e) of the Act, the same is of wide amplitude and would certainly encompass the present appellant who at the relevant time had employed the services of the contractor to carry out the job of repairs and alterations in his shop. The contractor who had taken the services of the deceased workman as a labourer no doubt will also be covered within the definition of employer but qua the appellant he would remain his agent and the appellant would be the principal employer. There is thus no difficulty to arrive at a conclusion that the appellant for all intents and purposes was the principal employer who had engaged the services of an Agent contractor to carry out the said job of the repair work.*
>
> *xxx xxx xxx*
>
> *9. So far as the interpretation of section 12 of the Act is concerned, again reference has been made to the principal making a contract for the purposes of trade or business, the judgment of the Division Bench of Andhra Pradesh High Court in the case of Balla Mallamma v. Registrar, Osmania University, Hyderabad and Anr, 2001(2)T.A.C.182(AP) is a complete answer……*
>
> *10. As would be seen from the above judgment of the Hon'ble Division Bench where the Osmania University, Hyderabad had engaged services of a contractor for white washing and painting the walls of the University and a worker employed by*

the contractor while white washing the walls had fallen and died and the objection raised was that whitewashing the walls of the University would not be an activity which could be construed as an activity for the purposes of trade and business of the University. Giving an extended meaning to the word "business" employed in the said section 12, the Hon'ble Division Bench took a view that the restricted meaning given to the said expression would defeat the very raison d'être of section 12 of the Act.

12. The said interpretation given by the Division Bench also finds support from the amendment brought by the Parliament in the definition of Section 2(1)(n) of the Act omitting the words "Casual workman" and a workman who is employed other than for the purposes of employer's trade or business. Reverting back to the facts of the present case, here also the deceased workman was employed by the contractor and although for carrying out repair job it might not be the principal activity of the appellant but yet the appellant cannot escape its liability keeping in view the object of the said beneficial piece of legislation.

13. For the expeditious grant of compensation in the event of such accidents taking place in favour of the victim's dependent members, this act was enacted and a hyper technical interpretation of the statute would not only defeat the purpose of the said Act but would be adding insult to injury……."

(Emphasis supplied)

28.5. In ***Raj Pal Saini v. Kamla***, (2016) 151 FLR 302, a *mistry* suffered an electric shock during the construction of second floor of a building. The owner of the building contested the claim on the ground that he had engaged the contractor who in turn had engaged the employee. Following ***Govind Goenka v. Dayawati*** (*supra*), this Court held the owner liable to pay compensation under Section 12 of the Act. The relevant portion of the judgment is reproduced hereunder:

> *"6. On careful consideration of the rival contentions of the parties, this Court is of the view that the appellant, being the principal employer, is liable to pay the compensation to the respondent who was admittedly engaged in the construction work at the petitioner's house and was electrocuted on 16th December, 2009. This case squarely covered by Govind Goenka v. Dayawati (supra) in which this Court held that the principal employer cannot escape its liability on the ground that the deceased employee was employed by the contractor."*
>
> *(Emphasis supplied)*

28.6. 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. 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. This Court agrees with the view taken by the different High Courts in the judgments discussed herein above.

29. ***Section 12 would apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act***

In ***Koodalingam v. Superintending Engineer, Project Circle, Public Works Department, Kozhikode*** *(supra)*, the Division Bench of Kerala High Court held that Section 12 would 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 of contract between the principal and the contractor governs only their *inter-se* rights and liabilities, and cannot affect the right of the workmen or their dependants to get the compensation form the principal or from the contractor at their option. Relevant portion of the judgment is as under:

> *"11.....The avowed object with which Section 12 was enacted as part of the Act as seen from the Report of the Select Committee is to enable the workmen or the dependents of the workmen to proceed against the contractor or against the principal or both and to make the contractor liable to indemnify the principal in all cases in the absence of any agreement to the contrary. The Report of the Select Committee would also show that while finalising the provision the Committee has eliminated the provision which in the Bill as introduced exempted the Government and local authorities from liability imposed by this clause. The Committee has observed that these authorities are liable just in the same manner as private individuals. If these were the avowed objects with which Section 12 of the Act was incorporated in an enactment which itself is a beneficial legislation intended to confer benefits on the workmen, we are of the view that the provisions in Section 12(1) would apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. So long as the Section has not been made specifically subject to any contract to the contrary, the Section would have application in all cases where the conditions specified in the Section are satisfied. The fact that no non obstante provision is used in the Section may not be a sufficient reason to exclude the application of the Section to cases where the conditions are satisfied. At best, agreements or contracts entered into between the principal and contractor can govern only their inter se rights and liabilities and cannot affect the right of the workmen or their dependents to get compensation either from the principal or from the contractor at their option. Right to get indemnified from the contractor*

specifically conferred on the principal under Section 12(2) of the Act sufficiently safeguards the interest of the principal who has entrusted the work to the contractor stipulating the liability under the Act."

(Emphasis supplied)

30. ***Section 12 imposes the liability on the principal where several tiers of contractors or petty contractors are employed***

In ***Sardar Sewa Singh v. Hindustan Lever Ltd.*** *(supra)*, the Allahabad High Court held Section 12 of the Workmen's Compensation Act to be an enabling provision for the benefit of the workmen enacted with a clear objective that the workmen should not be hampered by technicalities or practical difficulties of deciphering the correct employers. A pragmatic method has been advised for fixing the liability on the principal employer for affording speedy relief to the workmen for payment of compensation on account of the accident. Section 12 imposes the liability on the principal where several tiers of contractors or petty contractors are employed. The relevant discussion of Section 12 is as under:

"3……Chapter II of the Act captioned "workmen's compensation" deals with the question of compensation claimed by a workman. Ordinarily such claims are disposed of under the provisions of Ss. 3 to 5. The scheme of the Act is that the "employer" as defined in S. 2(c) should be liable in the manner mentioned in S. 3. In view, however, of the vastly increasing ramifications of industrial establishments and the multiplicity of immediate and indirect or remote employers which such process inevitably involves the Legislature has inserted a provision in the Act which may relieve a workman of the difficulty of ascertaining with precision as to who should be deemed to be the actual employer liable for compensation under the Act. Section 12, therefore, provides for a case where we have several tiers of employers or petty employers. It is a

matter of common knowledge that in big industrial establishments important branches of undertakings are entrusted to contractors, who may in their turn have to employ other petty contractor working under their direction and a workman may be actually employed by one of these aforesaid persons and in such an elaborate hereby there may be no direct privity of contract between the principal and the workman in the last analysis. The workman 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 workman. This is an enabling provision for the benefit of the workman and enacted with the clear objective that the workman 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 workman 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 workman and may have been responsible for immediately taking work from him."

(Emphasis supplied)

31. ***Effect of amendment of Workmen's Compensation Act by Workmen's Compensation (Amendment) Act, 2000***

31.1. ***Definition of "Workman/Employee"*** - The definition of *'workman'*, as it originally existed in the Workmen's Compensation Act, 1923, excluded the workmen whose employment was of a casual nature and who were employed otherwise than for the purpose of employer's *"trade"* or *"business"*. Section 2(1) (n) of the Workmen's Compensation Act, 1923 was amended by Workmen's Compensation (Amendment) Act, 2000 with effect from 8th December, 2000 whereby

the words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of *'workman'* in Section 2(1) (n) were omitted.

31.2. Section 2(1) (n) of the Workmen's Compensation Act, prior to the Workmen's Compensation (Amendment) Act, 2000 read as under:

> *"**Section 2(1) (n)** –*
>
> *"workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is –*
>
> *(i) .....*
>
> *(ii) employed ****][2] in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them."*
>
> *(Emphasis supplied)*

31.3. Section 2(1)(n) of the Workmen's Compensation Act, after the Workmen's Compensation (Amendment) Act, 2000 reads as under:

> *"**Section 2(1) (n)** –*
>
> *"workman" means any person who is –*
>
> *(i) .....*
>
> *(ia).....*
>
> *(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing*

of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them."

(Emphasis supplied)

31.4. Workmen' Compensation Act was again amended in 2009 by Workmen's Compensation (Amendment) Act, 2009 with effect from 18th January, 2010 whereby the words *"workman"* and *"workmen"*, were substituted with the words *"employee"* and *"employees"*. The Workmen's Compensation (Amendment) Act, 2009 omitted Section 2(1)(n) that defined *"workman"* and replaced it by Section 2(1)(dd) which defined *"employee"*, though the substance of the definition remained the same. The aforesaid amendment also changed the name of the Workmen's Compensation Act to Employee's Compensation Act. Section 2(1)(dd) of the Employee's Compensation Act reads as under:

*"**Section 2(1) (dd)** –*

"employee" means a person, who is –

(i) .....

(ii) .....

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where

the employee is dead, include a reference to his dependants or any of them;"

31.5. The definition of *"employee"* in Section 2(1)(dd) of the Employee's Compensation Act has to be read with Schedule II and the relevant Entry No.(viii) of Schedule II reads as under:

*"**SCHEDULE II***

[Section 2(1) (dd)]

LIST OF PERSONS WHO SUBJECT TO THE PROVISIONS OF SECTION 2(1) (dd), ARE INCLUDED IN THE DEFINITION OF EMPLOYEES

The following persons are employees within the meaning of Section 2(1) (dd) and subject to the provisions of that section that is to say any person who is –

"(viii) employed in the construction, maintenance, repair or demolition of –

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or....."

(Emphasis supplied)

31.6. In ***Govind Goenka v. Dayawati*** *(supra)*, this Court examined the effect of Workmen's Compensation (Amendment) Act, 2000 and held that, after the amendment, the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business, would also be covered within the definition of "*workman".* Relevant portion of the said judgment is reproduced hereunder:

"8. So far as the definition of workman envisaged in Section 2(n) of the said Act is concerned, there has been a drastic change in the definition of the "workman" as it stood prior to the amendment and after the amendment. Prior to the

amendment, certainly the workman whose employment was of a casual nature and who was employed otherwise than for the purpose of trade or business of the employer would 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 workmen 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 certainly the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business would also be covered within the definition of workman."

(Emphasis supplied)

32. ***Rules of Interpretation of Social welfare legislations***

32.1. The principles of statutory construction are well settled that the words occurring in statutes of liberal import such as social welfare legislation and *'Human Rights'* legislation are not to be put in procrustean beds or shrunk to *Lilliputian dimensions*. In construing these legislations, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions but to advance the intent.

32.2. It is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning as well as a popular meaning, the

Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid.

32.3. It is trite law that the safe guidance for interpreting any provision in a statute or for understanding the scope and meaning of a particular word in provision, is to ascertain the intention of the legislature. However wide in the abstract, general words and phrases are more or less elastic and admit of restriction or extension to suit the legislative intention. The object of the legislation would afford answer to the problems arising from ambiguities which it contains.

32.4. ***Purpose of Employee's Compensation Act, 1923***

In ***N.P. Lalan v. V.A. John,*** (1972) II LLJ 273 Ker, V.R. Krishna Iyer, J. as he then was, explained the purpose of Employee's Compensation Act in the following words:-

> *"4.The Act with which I am concerned relates to workers, and the entire purpose of the statute is to see that the weaker section of the community, namely, the working class, is not caught in the meshes of litigation which involves a protracted course of appeal. That is why the statute creates a special Tribunal and provides only for a restricted appeal ……*
>
> *xxx xxx xxx*
>
> *Part IV of the Indian Constitution serves as a perspective while construing the Workmen's Compensation Act. May be that pre-Constitution statutes were interpreted in a particular way by Courts on certain assumptions of the State's functions at that time. Today it is absolutely plain that the Directive Principles of State Policy, though not enforceable by a Court, are nevertheless fundamental in the governance of the country, and must inform the judicial mind when interpreting statutes calculated to promote the welfare of the working class. In fact, Article 42 enjoins upon the State to make provision for securing*

just and humane conditions of work and Article 43 compels the State to endeavour to secure, by suitable legislation, to all workers conditions of work ensuring a decent standard of life. Indeed, the spirit of Part IV of the Constitution must colour the semantic exercises of the judiciary when applying the provisions of the Workmen's Compensation Act. If that be the approach to be made, I am clear in my mind that the argument that the proviso to Section 30 has been interpreted liberally in the pre-Constitution days is of no significance. The same words, with socio-economic developments in society, acquire a new emphasis in tune with the changed conditions. It is clear therefore, that the dynamics of legal interpretation based on social changes which have taken place in the nation's life and goals demand ……"

(Emphasis supplied)

32.5. ***Rules of "Purposive Interpretation", "Superior Purpose" and "Felt Necessity"***

In ***Lanco Anpara Power Ltd v. State Of Uttar Pradesh***, (2016) 10 SCC 329, the appellants challenged the applicability of Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as "the BOCW Act") and the Buildings and Other Construction Workers' Welfare Cess Act, 1996 (hereinafter referred to as "the Welfare Cess Act") on the ground that they were registered under the Factories Act, 1948 and therefore, they were not covered by the definition of *"building or other construction work"* as contained in Section 2(1)(d) of the BOCW Act and, therefore, the said Act was not applicable to them by virtue of Section 1(4) of BOCW Act. The Supreme Court held that the "*superior purpose*" of BOCW Act and the Welfare Cess Act has to be kept in mind as both these enactments namely BOCW Act and Welfare Cess Act are social welfare legislations. It was

further observed that the concept of "*felt necessity*" and "*purposive interpretation*" would apply since the purpose of BOCW Act is to take care of a particular necessity i.e. welfare of unorganized labour class involved in construction activity as stated in the Statement of Objects and Reasons of the BOCW Act. The relevant portion of this judgement is reproduced herein under:-

> *"25. We have bestowed our due and serious consideration to the submissions made of both sides, which these submissions deserve. The central issue is the meaning that is to be assigned to the language of Section 2(1)(d) of the Act, particularly that part which is exclusionary in nature i.e. which excludes such building and construction work to which the provisions of the Factories Act apply. Before coming to the grip of this central issue, we deem it appropriate to refer to the objectives with which the Factories Act and the BOCW Act were enacted, as that would be the guiding path to answer the core issue delineated above.*
>
> *xxx xxx xxx*
>
> *39. ……. As pointed out above, if the construction of this provision as suggested by the appellants is accepted, the construction workers who are engaged in the construction of buildings/projects will neither get the benefit of the Factories Act nor of the BOCW Act/Welfare Cess Act. That could not have been the intention of the legislature. The BOCW Act and the Welfare Cess Act are pieces of social security legislation to provide for certain benefits to the construction workers.*
>
> *40. Purposive interpretation in a social amelioration legislation is an imperative, irrespective of anything else. This is so eloquently brought out in the following passage in Atma Ram Mittal v. Ishwar Singh Punia [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] : (SCC p. 289, para 9)*
>
> > *"9. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and*

most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. See Commentaries on the Laws of England (facsimile of 1st Edn. Of 1765, University of Chicago Press, 1979, Vol. 1, p. 59). Mukherjea, J. as the learned Chief Justice then was, in Poppatlal Shah v. State of Madras[Poppatlal Shah v. State of Madras, AIR 1953 SC 274 : 1953 Cri LJ 1105 : 1953 SCR 677 : (1953) 4 STC 188] said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind them said Judge Learned Hand, a long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislature has used and the true meaning of what words [Ed.: Lord Reid in the afore cited case had observed: (AC p. 613: All ER p. 814) "We often say that we are looking for the intention of Parliament, but this is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said."] as was said by Lord Reid in Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G. [Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G., 1975 AC 591 : (1975) 2 WLR 513 : (1975) 1 All ER 810 (HL)] We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law."

(Emphasis in original)

xxx xxx xxx

41. How labour legislations are to be interpreted has been stated and restated by this Court time and again. In M.P. Mineral Industry Assn. v. Regl. Labour Commr. (Central) [M.P. Mineral Industry Assn. v. Regl. Labour Commr. (Central), AIR 1960 SC 1068] , this Court while dealing with the provisions of the Minimum Wages Act, 1948, observed that this Act is intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as a beneficent rule of construction. In Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] , this Court reminded that semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

42. We would also like to reproduce a passage from Workmen v. American Express International Banking Corpn. [Workmen v. American Express International Banking Corpn, (1985) 4 SCC 71: 1985 SCC (L&S) 940], which provides complete answer to the argument of the appellants based on literal construction: (SCC p. 76, para 4)

> *"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion*

in Prenn v. Simmonds [Prenn v. Simmonds, (1971) 3 All ER 237: (1971) 1 WLR 1381 (HL)]). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations."

43. In equal measure is the message contained in Carew and Co. Ltd. v. Union of India [Carew and Co. Ltd. v. Union of India, (1975) 2 SCC 791]: (SCC p. 802, para 21)

> *"21. The law is not "a brooding omnipotence in the sky" but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate."*

44. The sentiments were echoed in Bombay Anand Bhavan Restaurant v. ESI Corpn. [Bombay Anand Bhavan Restaurant v. ESI Corpn., (2009) 9 SCC 61: (2009) 2 SCC (L&S) 573] in the following words: (SCC p. 66, para 20)

> *"20. The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act,*

therefore, must receive a liberal construction so as to promote its objects."

45. In taking the aforesaid view, we also agree with the learned counsel for the respondents that "superior purpose" contained in the BOCW Act and the Welfare Cess Act has to be kept in mind when two enactments — the Factories Act on the one hand and the BOCW Act/Welfare Cess Act on the other hand, are involved, both of which are welfare legislations. [See Allahabad Bank v. Canara Bank[Allahabad Bank v. Canara Bank, (2000) 4 SCC 406] , which has been followed in Pegasus Assets Reconstruction (P) Ltd. v. Haryana Concast Ltd. [Pegasus Assets Reconstruction (P) Ltd. v. Haryana Concast Ltd., (2016) 4 SCC 47 : (2016) 2 SCC (Civ) 524 : (2016) 1 Scale 1] in the context of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 1956.] Here the concept of "felt necessity" would get triggered and as per the Statement of Objects and Reasons contained in the BOCW Act, since the purpose of this Act is to take care of a particular necessity i.e. welfare of unorganised labour class involved in construction activity, that needs to be achieved and not to be discarded. Here the doctrine of purposive interpretation also gets attracted which is explained in recent judgments of this Court in Richa Mishra v. State of Chhattisgarh [Richa Mishra v. State of Chhattisgarh, (2016) 4 SCC 179.

(Emphasis supplied)

32.6. ***Rule of liberal interpretation of social welfare legislations***

In ***Prakash Cotton Mills (P) Ltd. v. State of Bombay***, (1957) 2 LLJ 490, Chagla J. unerringly observed that no labour legislation, no social legislation, no economic legislation, can be considered by a Court without applying the principles of social justice in interpreting the provisions of these laws. Social justice is an objective which is embodied and enshrined in our Constitution. It would indeed be startling for anyone to suggest that the Court should shut its eyes to

social justice and consider and interpret a law as if our Country had not pledged itself to bringing about social justice.

32.7. The rule of interpretation is that welfare, social and beneficial statutes are not to be construed strictly. In ***Regional P.F. Commissioner v. Hooghly Mills Co. Ltd.,*** [2012] 1 SCR 363, the Supreme Court observed that a liberal rule of interpretation should be applied to social welfare legislations. The Court observed as follows:

> *"23. If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometime enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty.*
> *24. The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender."*
>
> *(Emphasis supplied)*

32.8. ***Cessante ratione legis, cessat et ipsa lex***

One of the most ancient maxims known to our law and constantly followed by our Courts is *cessante ratione legis, cessat et ipsa lex* i.e. when the reason for a law ceases, the law itself ceases. This principle of law can be applied to the present proposition. A restrictive interpretation to the words *"trade or business"* would disallow large claims of employees who otherwise would be covered by the Statute

and the purpose behind the enactment would be lost. This principle of law has been applied in ***H.H. Shri Swamiji Shri Admar Mutt Etc, v. The Commissioner, Hindu Religious & Charitable Endowments Department and Ors.***, [1980] 1 SCR 368 as well as the Foreign Courts. In ***Fox v Snow,*** 6 N.J. 12 (1950), the Supreme Court of New Jersey observed:

> *"Cessante ratione legis, cessat et ipsa lex (the reason for a law ceasing, the law itself ceases) is one of the most ancient maxims known to our law and it is constantly followed by our courts. Of this maxim it was said in Beardsley v. City of Hartford, 50 Conn. 529, 47 Am. Rep. 677, 682 (1883), "This means that no law can survive the reason on which it is founded. It needs no statute to change it; it abrogates itself." The same thought was enunciated by Lord Coke in Milborn's Case, 7 Coke 7a (K.B. 1609): "Ratio legis est anima legis, et mutata legis ratione, mutatur ex lex" (the reason for a law is the soul of the law, and if the reason for a law has changed, the law is changed). "It is revolting," says Mr. Justice Holmes, "to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past," and "To rest upon a formula is a slumber that, prolonged, means death."*
>
> *(Emphasis supplied)*

33. ***Interplay of Section 12 and Section 2(1) (dd) of the Employees Compensation Act. (Earlier Section 2(1)(n) of Workmen's Compensation Act)***

The effect of the omission of words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of workman in Section 2(1)(n) by the amendment in 2000 is that a person whose employment is of a casual nature and is employed other

than for the purposes of the employer's trade or business comes within the meaning of *"employee"* as defined in Section 2(1)(dd) of the Employees Compensation Act. Although the words *'trade'* or *'business'* remain in Section 12 of the Employees Compensation Act, applying the rules of *'purposive interpretation'*, *'superior purpose',* and *'felt necessity'* this Court is of the view that the words *'trade'* or *'business'* in the definition of *"employee"* in Section 2(1) (dd) were omitted to grant all the benefits of the Act to casual employees and employees employed other than for the purposes of employer's trade or business as held in ***Govind Goenka*** *(supra).*

34. ***Judicial precedents must be applied with reference to the facts of the case***

34.1. The judgments relied upon by the appellant, namely, ***Bharat Earth Movers Ltd. v. Bhagyamma*** *(supra),* ***Dr. B. Radhakrishna v. Gouramma*** *(supra),* ***Lakshminarayana Shetty v. Shantha*** *(supra),* ***Ajay Singh Lal v. Somwati*** *(supra),* ***Om Parkash Batish v. Ranjit*** *(supra),* ***Management, Sirishad Construction (P) v. C.P. Ravinder*** *(supra) and* ***Kolhan Samvedak Sangh v. State of Jharkhand*** *(supra),* do not help the appellant for the reasons given by the respondent no.1 in para 12 which are hereby accepted and are not being repeated herein for the sake of brevity. The other judgments cited by the appellant do not support the appellant.

34.2. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a

decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases.

34.3. In ***Padma Sundara Rao v. State of Tamil Nadu*** (2002) 3 SCC 533 the Supreme Court held that the ratio of a judgment has to be read in the context of the facts of the case and even a single fact can make a difference. In para 9 of the said judgment, the Supreme Court held as under:

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in British Railways Board v. Herrington. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

34.4. In ***Bharat Petroleum Corporation Ltd* v. *N.R. Vairamani*,** (2004) 8 SCC 579**,** the Supreme Court held that a decision cannot be relied on without considering the factual situation. The Supreme Court observed as under:-

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact*

situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)

> *"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge…"*

10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294: 1970 AC 1004: (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said,

> *"Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances".*

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062: (1971) 2 All ER 1267] observed:

> *"One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament."*

And, in Herrington v.British Railways Board [(1972) 2 WLR 537: (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

> *"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered*

that judicial utterances made in the setting of the facts of a particular case."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

xxx xxx xxx

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.""

(Emphasis supplied)

Liability of the owner of a residential building under the Building and Other Construction Workers Act, 1996

35. BOCW Act is a social welfare legislation to benefit the construction workers. The preamble of BOCW Act is reproduced hereunder:

"An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures

and for other matters connected therewith or incidental thereto."

36. BOCW Act applies to every establishment which employs or had employed 10 or more building workers in any building or other construction work on any day in preceding 12 months. Section 1(4) of the Act is reproduced hereunder:

> *"**Section 1** - **Short title, extent, commencement and application***
>
> .....
>
> *(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work.*
>
> *Explanation.—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment."*
>
> *(Emphasis supplied)*

37. Section 2(1) (d) of the BOCW Act defines *'building or other construction work'*. Section 2(1)(d) is reproduced hereunder:

> *"**Section 2** – **Definitions***
>
> *(1) In this Act, unless the context otherwise requires,—*
>
> *...*
>
> *(d) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications,*

dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aquaducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply;"

38. Section 2(1) (j) of the BOCW Act defines *"establishment"*. It is a wide definition which includes the establishment of an individual who employs building workers as well as establishment belonging to a contractor. However, an individual who employs workers in any building or construction work in relation to his own residence, where the cost of construction is less than Rs.10 lakh, is not included. Section 2(1)(j) is reproduced hereunder:

*"**Section 2** - **Definitions***
(1) In this Act, unless the context otherwise requires,—
...
(j) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs"

(Emphasis supplied)

39. Section 2(1) (i) of the BOCW Act defines the *"employer"* which includes the owner. Section 2(1)(i) is reproduced hereunder:

*"**Section 2** - **Definitions***

(1) In this Act, unless the context otherwise requires,—

...

(i) "employer", in relation to an establishment, means the owner thereof, and includes,—

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or though a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(Emphasis supplied)

40. Section 2(1) (g) of the BOCW Act defines the *"contractor".* Section 2(1)(g) is reproduced hereunder:

*"**Section 2** - **Definitions***

(1) In this Act, unless the context otherwise requires,—

...

(g) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor;

41. Section 2(1) (e) of the BOCW Act defines *'building worker'*. Section 2(i)(e) is reproduced hereunder:

"(e) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed

or implied, in connection with any building or other construction work but does not include any such person—

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;"

42. Section 45 of the BOCW Act imposes the liability of payment of compensation on the employer in the event of the failure of the contractor to make the payment of compensation to the building worker pay compensation in accordance with the provision of the Employee's Compensation Act. Section 45 of the BOCW Act is reproduced hereunder:

*"**Section 45** - **Responsibility for payment of wages and compensation***

(1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.

(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923 (8 of 1923), and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

43. Section 58 of the BOCW Act extends the provisions of the Employee's Compensation Act to the building workers. Section 58 of the BOCW Act is reproduced hereunder:

> *"**Section 58** - **Application of Act 8 of 1923 to building workers***
> *The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Act applies had been included in the Second Schedule to that Act"*

44. This Court is of the view that the BOCW Act applies to the construction of a residential building in which more than 10 building workers have been employed in the preceding 12 months and the cost of such construction is more than Rs.10 lakh. The owner of the aforesaid residential building would be an employer within the meaning of Section 2 (1) (i) and Section 45 of BOCW Act makes him liable to pay the compensation under the Employee's Compensation Act.

Findings

45. The appellant is the owner of property bearing No. BU-48, Pitam Pura, Delhi on which he raised a four storeyed building through the contractor (respondent no.2). On 06th March, 2012, respondent No.1 was working as a labourer on the construction site of the aforesaid building when he fell down and suffered grievous injuries. The aforesaid accident arose out of and during the course of the employment of respondent No.1 with respondent No.2. Respondent no.1 is held to be an employee as defined in Section 2 (1) (dd) of the Employee's Compensation Act read with Clause (viii) (a) of Schedule

II of the Employee's Compensation Act.

46. The definition of *'workman'*, as it originally existed in the Workmen's Compensation Act, 1923, excluded the workmen whose employment was of a casual nature and who were employed otherwise than for the purpose of employers *"trade or business"*. Section 2 (1) (n) of the Workmen's Compensation Act, 1923 was amended by Workmen's Compensation (Amendment) Act, 2000 with effect from 8th December, 2000 whereby the words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of *'workman'* in Section 2(1) (n) were omitted. The effect of the omission of words "*other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business*" in the definition of workman in Section 2(1)(n) by the amendment in 2000 is that a person whose employment is of a casual nature and who is employed other than for the purposes of the employer's trade or business is covered within the meaning of *"employee"* as defined in Section 2 (1) (dd) of the Employees Compensation Act. Applying the rules of *'purposive interpretation'*, *'superior purpose',* and *'felt necessity'*, this Court is of the view that the words *'trade or business'* in the definition of *"employee"* in Section 2 (1) (dd) were omitted to grant all the benefits of the Act to casual employees and employees employed other than for the purposes of employer's trade or business. In ***Govind Goenka v. Dayawati*** *(supra)*, this Court examined the effect of Workmen's Compensation (Amendment) Act, 2000 and held that, after the

amendment, the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business, would also be covered within the definition of "*workman"*. This Court agrees with the above interpretation.

47. In ***Payyannur Educational Society v. Narayani*** *(supra),* ***Public Works Department v. Commissioner, Workmen Compensation*** *(supra),* ***Bala Mallamma v. Registrar, Osmania University*** *(supra),* ***Govind Goenka v. Dayawati*** *(supra),* the Courts have interpreted the word '*business'* in Section 12 of the Employee's Compensation Act to include an activity which engages time, attention and labour. This Court agrees with the interpretation of the word *'business'* in the aforesaid judgments. Applying the principles laid down in the aforesaid judgments, construction of a residential house by the appellant through the contractor (respondent no.2) would fall within the meaning of *'business'* and, therefore, the appellant is liable to pay the compensation to respondent no.1 under Section 12 of the Employee's Compensation Act.

48. All the ingredients of Section 12 are satisfied in the present case and the appellant, being the principal, is liable to pay the compensation to respondent no.1 with right to recover the same from the contractor (respondent no.2). This case is squarely covered by the principles laid down in the judgments discussed above.

49. There is no merit in the appellant's contention that the appellant cannot be held liable in view of written agreement with the contractor under which the contractor is liable. As held in ***Koodalingam v. Superintending Engineer, Project Circle, Public Works Department,***

Kozhikode *(supra),* Section 12 would 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. The appellant's contention is, therefore, rejected.

50. There is no merit in the defense of respondent no.2 that he had appointed Mohd. Rahil as sub-contractor who in turn had employed respondent no.1. Respondent no.2 filed an application under Order 1 Rule 10 of the Code of Civil Procedure for impleading Mohd. Rahil as a respondent which was rejected by the Commissioner vide order dated 02nd May, 2013. On the appreciation of evidence before the Commissioner, this Court holds respondent no.1 to be the employee of respondent no.2 and the defence of respondent no.2 before the Commissioner for shifting the liability to Mohd. Rahil is rejected. So far as the appellant is concerned, Section 12 imposes the liability on the principal where several tiers of contractors or petty contractors are employed as held in ***Sardar Sewa Singh v. Hindustan Lever Ltd.*** *(supra).*

51. Notwithstanding clear liability of the appellant to pay the compensation to respondents No.1 under Section 12 of the Employee's Compensation Act, the appellant is also liable to pay the compensation under Section 45 read with Section 1(4), Section 2(1)

(d), (e), (g), (i), (j) and 58 of the BOCW Act. BOCW Act applies to construction of a residential buildings in which more than 10 workers had been employed and cost of the residential building was more than Rs.10,00,000/-. Section 45 of BOC Act makes the employer liable to pay the compensation and the term *'employer'* in Section 2(1) (i) of the BOCW Act includes the owner. In the present case, BOCW Act is applicable as the cost of the appellant's building was more than Rs.10,00,000/- and more than 10 building workers were employed during the construction work. The appellant's building falls within the definition of *'building and other construction work'* as defined in Section 2(1)(d); respondent no.1 is a *'building worker'* within the meaning of Section 2(1)(e) of the BOCW Act; the appellant's building is an *'establishment'* within the meaning of Section 2(1)(j) of the BOCW Act as the cost of the construction was more than Rs.10 lakhs; Respondent no.2 is a *'contractor'* within the definition of Section 2(1)(g) of the BOCW Act and the appellant, being the owner, is an *'employer'* within the definition of Section 2(1) (i) of the BOCW Act which includes the owner. The appellant is liable to pay the compensation to respondent no.1 under Section 45 of the Employee's Compensation Act as the contractor has failed to make the payment of the compensation when it fell due. The objection of the appellant that the appellant is not the employer and he is not liable to pay the compensation under Section 45 is rejected.

52. Respondent no.1 suffered post-traumatic paraplegia which resulted in 80% permanent disability relating to both lower limbs as per the disability certificate dated 12th April, 2013. The

Commissioner, Employees' Compensation has taken the loss of earning capacity as 100%. Respondent no.1 appeared before this Court on 9th March, 2017 and this Court is satisfied that the Commissioner, Employees' Compensation has rightly taken the loss of earning capacity as 100% as respondent no.1 is unable to do any work. Computation of compensation of Rs.10,69,008/- by the Commissioner is upheld.

Conduct of the appellant

53. During the course of hearing dated 31st July, 2017, the appellant raised a false claim before this Court that less than 10 workers were employed during the construction whereupon this Court examined the appellant under Section 165 of Indian Evidence Act when the appellant made a false statement on oath with respect to the number of the workers. It is matter of record that more than 30 workers were employed on the site as stated by respondent No.1 during his cross-examination on 10th December, 2014. Even the appellant, in his written submissions filed before the Commissioner, Employees' Compensation on 27th January, 2016, admitted that respondent no.1 and 10-15 labourers were working on the site on the date of the accident. The relevant portion of the written submissions of the appellant, duly signed by the appellant and respondent no.2 as well as their counsel are reproduced herein below:-

> *"3. ……The above said applicant was brought to the site of work by Mr. Mohd. Rahil alongwith 10-15 labourers on daily wages, who used to lay linter work in the building on the day of incident i.e. 6.3.2012……*
>
> *Gulab Singh* *Brijesh Kumar Verma*

Signed/- *Signed/-*
Respondents
Signed/-
Counsel

Delhi *Through*
Dated: 27.1.2016"

54. Raising a false claim before the Court is an offence under Section 209 of Indian Penal Code which is reproduced here under:-

> ***"Section 209 - Dishonestly making false claim in Court — Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine."***

55. In ***H.S. Bedi v. National Highway Authority of India***, 2016 (155) DRJ 259, this Court examined the scope of Section 209 of the Indian Penal Code and held as under:

> *"15.1 Section 209 of the Indian Penal Code makes dishonestly making a false claim in a Court as an offence punishable with imprisonment upto two years and fine.*
> *15.2 The essential ingredients of an offence under Section 209 are: (i) The accused made a claim; (ii) The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv) That the accused knew that the claim was false; and (v) The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person.*
> *15.3 A litigant makes a 'claim' before a Court of Justice for the purpose of Section 209 when he seeks certain relief or remedies from the Court and a 'claim' for relief necessarily impasses the ground for obtaining that relief. The offence is complete the moment a false claim is filed in Court.*
> *15.4 The word "claim" in Section 209 of the IPC cannot*

be read as being confined to the prayer clause. It means the "claim" to the existence or non-existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and its application to facts as established. To clarify, the word "claim" would mean both not only a claim in the affirmative to the existence of fact(s) as, to illustrate, may be made in a plaint, writ petition, or an application; but equally also by denying an averred fact while responding (to the plaint/petition, etc.) in a written statement, counter affidavit, a reply, etc. Doing so is making a "claim" to the non-existence of the averred fact. A false "denial", except when the person responding is not aware, would constitute making a "claim" in Court under Section 209 IPC.

15.5 The word 'claim' for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law.

15.6 Whether the litigant's 'claim' is false, is not considered merely from whatever he pleads (or omits to plead): that would be to elevate form over substance. To make out the offence, the Court does not merely inspect how a litigant's pleadings have been drafted or the case has been presented. The real issue to be considered is whether, all said and done, the litigant's action has a proper foundation which entitles him to seek judicial relief.

15.7 Section 209 was enacted to preserve the sanctity of the Court of Justice and to safeguard the due administration of law by deterring the deliberate making of false claims. Section 209 was intended to deter the abuse of Court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy.

15.8 False claims delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude.

15.9 Filing of false claims in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false claims.

15.10 The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. More often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

15.11 The disastrous result of leniency or indulgence in invoking Section 209 is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result.

15.12 *Unless lawlessness which is all pervasive in the society is not put an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the litigants making false claims are allowed to go scot free, every law breaker would violate the law with immunity. Hence, deterrent action is required to uphold the majesty of law. The Court would be failing in its duties, if false claims are not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Courts would lose its efficacy to the litigant public."*

(Emphasis supplied)

Conclusion

56. The impugned order holding the appellant liable to pay the compensation of Rs.10,69,008/- along with interest @12% per annum to respondent no.1 is upheld. However, the appellant is granted recovery rights to recover the compensation amount from respondent no.2 (contractor) after making the payment of the entire compensation amount to respondent no.1.

57. In the present case, the compensation was not paid to respondent no.1 when it fell due. Section 4A(3) of the Employees' Compensation Act provides for penalty upto 50% of the compensation amount if the compensation due under the Act is not paid within one month it fell due. However, the Commissioner, Employees' Compensation has not imposed penalty under Section 4A (3) of the Employees' Compensation Act. The Commissioner, Employees' Compensation is directed to initiate the penalty proceedings under Section 4A (3) of the Employees' Compensation Act in accordance with law.

58. This Court is of the prima facie view that the appellant has raised a false claim before this Court and therefore, a show cause notice is hereby issued to the appellant to show cause as to why a complaint be not made against him under Section 340 Cr.P.C. for raising a false claim under Section 209 IPC. Reply to the show cause notice be filed by the appellant within four weeks.

59. The appeal is disposed of in the above terms. Pending application is also disposed of.

Disbursement of Compensation Amount

60. The appellant has deposited Rs.10,69,008/- with the Commissioner, Employees' Compensation on 14th July, 2016. The appellant is directed to deposit interest amount with the Registrar General of this Court within four weeks.

61. Vide order dated 9th March, 2017, this Court directed the Commissioner, Employees' Compensation to instruct State Bank of India, Tis Hazari Courts Branch to transfer the aforesaid amount of Rs.75,000/- to the savings bank account No.36035499387 of respondent No.1 with State Bank of India, Tis Hazari Courts Branch and the monthly interest on the FDR of the balance amount be transferred to the savings bank account of respondent No.1 near the place of the residence of respondent No.1.

62. The Commissioner, Employees' Compensation is directed to disburse the remaining amount to respondent No.1 by directing the State Bank of India, Tis Hazari Courts Branch in the following manner:-

(i) Rs.8,00,000/- be kept in 50 FDRs of Rs.16,000/- each in the name of respondent no.1, Aurangjeb for the period 1 month to 50 months respectively with cumulative interest.

(ii) The balance amount, after keeping Rs.8 lakh in FDRs, be released to respondent No.1 by transferring the same to his individual savings bank account near the place of his residence.

(iii) The maturity amounts of the FDRs made in the name of respondent no.1, Aurangjeb along with the interest shall be

transferred to his individual savings bank account near the place of his residence.

(iv) All the original FDRs shall be retained by the State Bank of India, Tis Hazari Courts Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to respondent No.1.

(v) No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

(vi) The concerned bank of respondent No.1 is directed not to issue any cheque book or debit card to respondent no.1 and if the same have already been issued, concerned bank is directed to cancel the same. Respondent no.1 shall produce the copy of this judgement before the concerned bank whereupon the concerned bank shall make an endorsement on the passbook of respondent no.1 that no debit card or cheque book shall be issued to respondent no.1 without the permission of this Court.

(vii) The concerned bank shall permit respondent no.1 to make cash withdrawals on the basis of the withdrawal forms.

(viii) Respondent no.1 shall produce his passbook to the Manager, State Bank of India, Tis Hazari Courts Branch who shall ensure and verify that an endorsement on the passbook of respondent no.1 has been made to the effect that no cheque book or debit card has been issued and if the same have already been issued, concerned bank has cancelled the same.

63. List on 29th January, 2018.

64. The record of the Commissioner, Employees' Compensation be returned back forthwith for being listed before the Commissioner, Employees' Compensation for initiating penalty proceedings on 15th January, 2018.

65. Copy of this judgement be given *dasti* to the counsel for the parties.

66. Copy of this judgement be given *dasti* to Sanjoy Ghose, Additional Standing counsel for GNCTD for compliance by Commissioner, Employees' Compensation and Mr. Sajiv Kakra, Advocate for compliance by State Bank of India, Tis Hazari Courts Branch.

J.R. MIDHA
(JUDGE)

DECEMBER 20, 2017
ak/dk