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

% **Date of Decision: 27th September, 2017**

\+ FAO 135/2016 & CM No.11283/2016 & 34897/2016

SHRI KRISHAN ..... Appellant
Through: Mr. R.K. Sahni, Adv.

versus

JASODA DEVI AND ORS ..... Respondents
Through: Mr. S.L. Kashyap, Adv. for respondents no.1 to 4.

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

JUDGMENT

1. The appellant has challenged the order dated 14th January, 2016 whereby Commissioner, Employees' Compensation has awarded compensation of Rs.3,68,340/- to respondents No.1 to 4.

2. The appellant was constructing a gymnasium in property No.699, Gram Sabha, Pooth Kalan, Delhi through the contractor (respondent No.5). On 06th March, 2010, Babu Lal was working as a labourer (*Baildar)* under the contractor (respondent No.5) on the first floor of the gymnasium. Babu Lal was carrying construction material (*tasla* with *masala)* on his head when the pad (*balli* and *fatta*), on which Babu Lal was standing, overturned due to which Babu Lal fell down and suffered grievous injuries. Babu Lal was taken to Braham

Shakti Hospital, Pooth Kalan, Delhi where he expired on 10th March, 2010. The police registered FIR No.60/2010 under Section 288/337 IPC at P.S. Begumpur, Delhi. Babu Lal was survived by his widow, two daughters and one son who filed application for compensation before the Commissioner, Employees' Compensation.

3. The appellant contested the claim on the ground that he had given the contract for construction to respondent No.5. Respondent no.5 (the contractor) contested the claim on the ground that he was not the contractor but a co-worker and he worked on the construction site under the appellant on daily wages.

4. Respondent no.1 appeared in the witness box as PW-1 and deposed that the appellant was running the business of gymnasium in property No.699, Gram Sabha, Pooth Kalan, Delhi and her husband was working in the construction of the first floor on 6th March, 2010 when the pad overturned due to which the deceased fell down and suffered fatal injuries. PW-1 produced the copy of FIR marked as Ex.PW-1/1, receipt as Ex.PW-1/2, cremation receipt as Ex.PW-1/3, post-mortem report as Ex.PW-1/4, death certificate as Ex.PW-1/5, hospital receipt as Ex.PW-1/6, notice of demand and postal receipts as Ex.PW-1/8 to PW-1/11. Respondent no.1 examined Meera as a witness who deposed that she was working near the site of the accident and she saw the deceased lying at the site of the accident.

5. The appellant appeared in the witness box as RW-1 and deposed that he had given the contract for construction of gymnasium to respondent no.5. The appellant admitted in cross-examination that he paid Rs.50,000/- to respondent no.1 towards the medical expenses

of the deceased, Babu Lal. The copy of the receipt for Rs.50,000/- was marked as Ex.RW-1/B. The appellant proved the copy of the agreement with the contractor (respondent no.5) as Ex.RW-1/C.

6. The Commissioner, Employees' Compensation held that the appellant was carrying on construction of gymnasium in property No.699, Gram Sabha, Pooth Kalan, Delhi and Babu Lal was working as a workman on 6th March, 2010 when he suffered an accident arising out of and during the course of his employment which resulted in the fatal injuries. Following ***Bhutabhai Angadbhai v. Gujarat Electricity Board***, 1987 (1) L.L.N 156, the Commissioner held the appellant, being the principal employer, liable to pay the compensation under Section 12 of the Employees' Compensation Act. The Commissioner, Employees' Compensation awarded compensation of Rs.3,68,340/- along with the interest @ 12% per annum.

7. Learned counsel for the appellant urged at the time of the hearing that the appellant is not liable to pay any compensation as appellant had engaged respondent No.5 as a contractor and Section 12 of the Employee's Compensation Act is not applicable to the present case.

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

8. 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)

Object of Section 12 of the Employee's Compensation Act

9. In ***Bhutabhai Angadbhai v. Gujarat Electricity Board***, 1987 (1) L.L.N. 156, the Division Bench of Gujarat High Court explained the object of Section 12 of the Workmen's Compensation Act as under:

> *"9. The object of enacting Section 12 of the Act is to give protection to the workmen and secure compensation from the persons who can pay and in case of an accident such workmen will not be dependent, sometime upon a petty contractor who will not be able to pay compensation on account of his financial inability. In our opinion, the main object of enacting Section 12 of the Act is to secure compensation to the employees who have been engaged through the Contractor by the principal employer for its ordinary part of the business, which, in the ordinary course, the principal employer is supposed to carry out by its own servants.*
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> *10. While imposing this liability on the principal employer, sub-Section (2) of Section 12 of the Act has provided that the principal employer will be entitled to be indemnified by the contractor in case the principal employer is required to pay compensation to the employees of the contractor."*
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> *(Emphasis supplied)*

10. In ***M.R. Mishrikoti v. Muktumsab Hasansab Asoti,*** (1972) 2 Mys LJ 449, the Division Bench of Mysore High Court explained the intention of the legislature in enacting Section 12 of the Employees' Compensation Act as under: -

> *"7. In the aforesaid proviso, the term 'employer' is used in contradistinction to the injured workman or the dependent of a deceased workman who had made an application for compensation and who can also appeal from an order of the Commissioner if he feels aggrieved by such order. The intention of the Legislature in enacting that*

> *proviso appears to be that the injured workman or the dependent of a deceased workman 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 after he prefers an appeal."*
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> *(Emphasis supplied)*

11. In ***Koli Mansukh Rana v. Patel Natha Ramji***, 1992 ACJ 772, the Gujarat High Court explained the object of Section 12 as under:

> *"15 ...the very object behind the provisions of section 12 of the Act is to secure compensation to the workman who cannot fight out his battle for compensation by a speedy process. A person who employs others to advance his own business and interest is expected to provide a surer basis for payment of the injured workman 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 employer."*
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> *(Emphasis supplied)*

12. In ***Executive Engineer/Deputy General Manager, Sub Urban Division, DHBVNL, Bhiwani v. Priyanka***, 2017 (153) FLR 302, the Punjab and Haryana High Court explained the object of Section 12 as under:

> *"10…….The avowed object of the said Section is to confer benefits on the employee and their legal representatives in the cases of death for their right to compensation either from the principal or from the contractor at their option. The purpose being that a contractor may be merely a man of straw and, therefore, might not be in a position as such to pay off the claims immediately and, therefore, their interests*

> *were to be protected to avoid any direct confrontation. The right of the principal to be indemnified has thus been incorporated. The interest of the principal employer has been duly safeguarded under Section 12(2), who has entrusted the work to the contractor stipulating the right of indemnification under the Act."*
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> *(Emphasis supplied)*

Interpretation of the words "trade" and "business" in Section 12

13. In ***Payyannur Educational Society v. Narayani***, (1996) 72 FLR 709, 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:

> *"1. Two workmen while engaged in a land excavating operation, were buried alive under heaps of mud billowed on them in a landslide and the site became their grave instantaneously, Dependents of those who died in such a trice made claims for compensation from the owner of the land (appellant) and two others (respondents 2 and 3). The Workmen's Compensation Commissioner (for short 'the Commissioner') found that it was the appellant who had*

employed them, and on that finding he directed the appellant to pay compensation amount to the dependents of those two victims. These appeals are in challenge of the common award passed by the Commissioner.

2. There is no dispute that at the time of the catastrophe the two workmen were engaged in excavation work on appellant's land. Appellant is a registered society called "Payyannur Educational Society". Appellant's contentions were that the two workmen were not employed by the society but they were recruited by the second respondent to whom the society sold soil at the rate of Rs. 15/- per Lorry load and that the mishap occurred during the operation undertaken by the second respondent who was permitted by the society to do the excavatory work and collect the soil. In other words, appellant's main case is that it was not the employer.

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7. Learned counsel for the appellant advanced the following arguments to bypass Section 12 of the Act. That provision can be invoked only if the digging work as part of "the trade or business" of the society and further such should have been the normal business of the society. According to the counsel, the ordinary business of the society is to impart education and the digging work was not a part of it at all.

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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. Kptwal, 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 Kailsdh 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)

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

Compensation, (1981) Lab I.C. 493, 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 taxins, 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:*
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> > *"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. 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 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:

"....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 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."*
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> *(Emphasis supplied)*

15. In ***Bala Mallamma v. Registrar, Osmania University***, 2002 ACJ 986, 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:*
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> > *"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."*
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> *(Emphasis supplied)*

16. In ***Govind Goenka v. Dayawati***, 2012 (2) TN MAC 105 (Del.), 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.*
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> *xxx xxx xxx*
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> *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)

17. 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*** (*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."*
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> *(Emphasis supplied)*

18. In ***Delhi Development Authority v. Raju @ Maya Ben***, (2014) 143 DRJ 612, an electrician appointed by a contractor in a high rise building fell down and suffered 100% disability. Applying Section 12 of the Employees' Compensation Act, this Court upheld the compensation awarded against the principal. The relevant portion of the judgment is reproduced hereunder:

> *"4. As per Section 12 of the Act two persons are liable to the employee who suffers an accident arising out of and in the course of the employment. One is the parent employer who employed him and second is the person with whom the employee is working on the directions of his parent employer, called the principal under Section 12. As per Section 12 of the Act the person with whom the employee is working, though not employed by such a person, such person became a principal employer and an employee is entitled to claim compensation from the person with whom he is working i.e. the principal*

although not directly employed by the said person/principal. The right given under Section 12 of the Act is only an alternative right and an employee can also sue his parent employer. In the present case, the parent employer respondent no. 2 herein and the person with whom the respondent no.1 was working was the appellant no.1. The requirements of Section 12 of the Act are therefore clearly satisfied in the facts of the present case.

5. The issue argued before this Court on behalf of the appellant is that since the respondent no. 1 was not employed by the appellant no.1, therefore, no liability arises of the appellant no.1, in my opinion, is clearly answered against the appellant no.1 in view of the clear language of Section 12 of the Act which has been reproduced above. Appellant no.1 therefore, in terms of Section 12 of the Act is principal in case injuries were caused to respondent no.1/employee while working with the appellants, although the respondent no. 2 was the actual/parent employer of the respondent no. 1 herein."

19. In ***Lokhart Estate, Devicolam v. Kaliappan,*** 1976 (1) L.L.N. 532, the Division Bench of Kerala High Court held the tea estate liable to pay compensation in respect of death and injury of workmen employed through the contractor for construction of *cooli-lines* for the estate workers as construction of *cooli-lines* was part of their business. The relevant discussion of Section 12 in the said judgment is reproduced as under:

"4……. It is necessary, in order to render a person, who has not directly employed the workman or workmen concerned, liable to answer the claim for compensation, to show the existence of various requisites which would attract Section12(i) and one of them is that the principal employer has, in the course or for the purpose of his trade or business contracted with any other person 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. It is said that the trade or business of the principal here is that of producing tea in the Estate, manufacturing it, preparing it for the market and marketing it and any work which is ordinarily part of this work could alone fall within the scope of Section12(i). Consequently, it is said that if the workmen were engaged in such activities as construction of cooli-lines when they met with the accident, even if the cooli-lines were constructed for the purposes of the Estate, that would not enable a claim to be made against the Estate as the principal employer. This contention calls for examination of what the trade or business of the principal is. The term ‘‘trade" or "business" would not have been used in Section 12(i) to mean the same, though in certain contexts they may bear the same meaning. The very fact that both these terms are employed in the section would indicate that they connote different ideas and they do not cover the identical field, "trade" as generally understood means activities of buying and selling and the business which is related to such buying and selling whereas "business" is a term of such larger import. All categories of business need not be trade, since there are many categories in which there is no element of trade at all, Taking for instance, the case of a tea estate, the trade may refer to the activities of buying and selling, buying for the purpose of the business of the tea estate and selling the products of the tea estate. Business is a concept which takes in all the activities including the running of a hospital for the Estate, the maintenance of cooli-lines, providing such amenities as are agreed to between the management and the labour and all other incidental activities. It goes without saying that in the assessment to income-tax, if the Estate is to claim deduction for expenses of business, expenses such as those incurred for the purpose of running a hospital for the benefit of the Estate will be claimed as business expenses though they are not to be treated as trading expenses.

5. In a different context the question of the distinction between business and trade was considered by the Chancery Division in

the decision in, In re A Debtor (1927 (1) Chancery 97). Sir Scrutton, L.J., said in that case:

> *"The word 'trade' is often confined to buying and selling commodities. Where to draw the line between what is a profession and what is a trade is a matter which it is not possible to deal with by any general definition. 'Business' is a much wider term than 'trade.' The word 'business' at least covers a continuous occupation involving liabilities to others."*

We cannot agree with the counsel for the principal employer that the construction of cooli-lines in the estate is not part of the business of the principal. Section 15 of the Plantations Labour Act, 1951 obliges every employer to provide and maintain for every worker and his family residing in the plantation necessary housing accommodation. It is a statutory duty. In discharge of such duty, the employer may himself construct houses for residence of the workers or such work may be done through a contractor. If he does such work by himself, it cannot be said that it is not part of his business, for, the business is not concerned merely with growing tea and selling it. Tea can be grown only in the tea estate and a tea estate could be run only in accordance with certain regulations and one of the regulations is that quarters are to be provided. Even if there be no statutory obligation if it is the usual requirement of the business or a term of the employment, then work such as construction of cooli-lines would be part of the business of the employer. If that be so, the consequences cannot be avoided by entrusting the work to a contractor."

(Emphasis supplied)

20. In ***Kerala Balagram v. Kochumon***, 1997 (3) L.L.N. 921, an employee suffered amputation of two fingers while working for a charitable society. The application for compensation was contested on the ground that the appellant was a charitable society and conducts no *"trade"* or *"business"* and therefore, the deceased was not be a

workman. The Kerala High Court rejected the argument and held that the agricultural operations of the charitable society are covered in the term *"business"* and merely because the nature of the society is charitable, it will not get absolved from the liability under the Act. The relevant portion of the judgment is reproduced hereunder:

> *"3……The words 'trade or business' are used in several statutes like fiscal statutes, rent laws and labour laws, apart from Article 19(1)(g) of the Constitution of India. The meaning ascribed to such words shall always be with reference to the context and with respect to the content of the statute itself. Therefore, the meaning that is ascribed in one statute cannot be taken to interpret the very same words in another statute legislated with altogether a different intention and object. The said words in the fiscal statutes or rent laws cannot have a similar meaning when employed (sic) in any welfare legislation like Workmen's Compensation Act.*
>
> *4. Even if profit motive must be there, to consider a venture as 'business', even then the appellant cannot escape from the liability. As is seen from Schedule II the workmen engaged in farming and agricultural operations come within the definition of the 'workman'. The appellant society is also conducting agricultural operations and farming. Even if private individual or society conducts agricultural operation for in, house use and consumption and not for the purpose of sale, there will be a profit element in the conduct of agriculture. No society or individual will, under normal circumstances, without expecting a surplus, invest funds for agricultural operations. The appellant society conducting a destitute home in conducting agricultural operation, because it is more profitable to produce paddy by itself rather than purchasing it from outside for feeding the children and with an intention that by investing funds in the agriculture it can produce paddy worth more than the amount invested. That itself is sufficient profit motive. Therefore, the agricultural operations of the appellant come within the term 'business' employed in Section 2(1)(n) of the Act. Merely because the nature of the appellant*

> *society is charitable, it will not get absolved from the liability under the Act to compensate the workman who had met with an accident during the course of employment in connection with its business."*
>
> *(Emphasis supplied)*

21. In ***Assistant Director of Horticulture Division, Anna Pannai v. Andi***, 1993 (3) L.L.N 493, the horticulture department allotted the work for digging a well. A labour employed by a contractor for digging the well died in an accident during the course of employment whereupon the legal representatives raised the claim against the government which was contested on the ground that the digging of the well was entrusted to a contractor who alone is liable to pay compensation. It was further contended that digging of a well is neither a *"trade"* nor a *"business"*. Rejecting this contention, the Madras High Court held the construction of wells and deepening of existing wells as ordinary work of P.W.D., and therefore, it would be considered as a *"business"* within the ambit of Section 12 of the Act. The relevant portion of the judgment is reproduced hereunder:

> *"8. In this case, the digging of the well is the work that was entrusted to the contractor, for which purpose, the deceased employee was employed. The question is, whether the digging of well is a trade or business.*
>
> *9. In a Welfare State, any activity by the State for the welfare of the people, even though cannot be termed as 'trade', it will come within the definition of 'business'. In Bai Mani and Others v. Executive Engineer 1987 I.A.C.C. 76 the Gujarat High Court had occasion to consider a case where the State Government through its Public Works Department, was doing excavation and construction work for the purpose of constructing a dam. In that case, the Court said that the word 'business' has a much wider meaning and covers activities*

which may not be commercial and may include the construction work carried out by the Public Works Department. In that case, the learned Judge of the Gujarat High Court followed an earlier decision of the same Court reported in Executive Engineer, Kadana Dam and Another v. Phebiben and Others 1977 A.C.J. 204. That was also a case of construction of a dam by P.W.D. through a contractor. In that case, the Court said that the word 'trade' means 'commercial activity'. But the word 'business' has a much wider connotation and covers activities which may not be commercial and may include the construction work carried out by the Public Works Department. Trade and business cover not only commercial activity but also many other activities which will he covered by the term 'business'. In the earlier decision of the Gujarat High Court which was followed by the same Court in 1987 1 ACC 76, it was said that, 'Construction of all sorts of work indisputably is the ordinary activity of the Public Works Department and one such ordinary activity was sought to be carried out through the contractor'. In this case, due to drought conditions, naturally, construction of wells and deepening of existing wells is one of ordinary work of P.W.D., one of the State Departments and therefore, it could be considered as a 'business' coming within the scope of Sec. 12 of the Workmen's Compensation Act. In that view of the 30 matter, the finding of the authority that all the respondents are liable to compensate the claimant is justified."

(Emphasis supplied)

22. In ***Koodalingam v. Superintending Engineer, Project Circle, Public Works Department, Kozhikode***, 1994 (2) L.L.N. 779, 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)

23. In ***Superintending Engineer, Mettur Thermal Power Station, Tamil Nadu Electricity Board, Mettur v. Veerappan***, 2011 (2) TN MAC 88, the Electricity Board entered into an agreement with the contractor to remove the coal dust whereupon the contractor engaged the workmen. While collecting coal from heap of waste, the coal suddenly slided on the workmen resulting in fatal injuries. The claim for compensation was made against the Board under Section 12 of the Employees' Compensation Act. The Madras High Court examined Section 12 and held that the removal of coal ash was an ordinarily a part of *"trade"* or *"business"* of the Electricity Board under Section 12 and therefore, the Board was liable to pay the compensation. Relevant portion of the said judgment is reproduced hereunder:

"44. The contention of the Board that they have to be absolved of their liability arises only in a case, if the contract was to do certain things, not ordinarily a part of business or trade. If removal of coal ash was a requirement, incidental or connected with the generation of electricity, the business of the Principal Employer, then the work would have been done by the Board or through an Immediate Employer, under his supervision, if he had contracted the Immediate Employer/Contractor. ……

45. Merely because coal was sold for profit to the Immediate Employer the Board cannot be permitted to contend that the removal of coal dust is not ordinarily a part of their trade or business. May be coal was sold, after removal, by the Contractor, but that was not the main activity for which, the Contractor was engaged. The activity for which the work was

entrusted to an Immediate Employer, viz., the Contractor was ordinarily a part of their work, i.e., trade or business. On the facts of this case and applying the principles stated supra in various decisions, this Court is of the view that the contract executed by the Electricity Board with the Contractor, forms part of the trade or business and hence, they are liable to pay compensation to the legal representatives of a deceased workmen.

46. Yet another aspect to be considered is whether the execution of any agreement by the Immediate Employer, viz., the Contractor, to indemnify the Principal Employer, the Electricity Board, would disentitle the injured workman or the legal representatives from claiming compensation against the Principal Employer. Such an agreement or contract entered into between the Principal Employer and Contractor can only govern their inter se rights and would not in any way affect the rights of the workman or the dependents to get their compensation either from the Principal Employer or from the Contractor. Option is given to the claimants to claim compensation from anyone of them or both.

47. Provision of Section 12(1) of the Workmen's Compensation Act, would apply notwithstanding the agreement or contract entered into between the Principal Employer and Contractor regarding their liability for payment of compensation under the Act. Section 12(2) of the Workmen's Compensation Act, confers a right on the Principal Employer, who is made liable to pay compensation under the provisions to get himself indemnified by the Contractor and in such circumstances, both the Principal Employer and the Contractor would be jointly and severally liable to pay compensation."

(Emphasis supplied)

24. In ***Panditrao Shamrao Bhongade v. Sunanda, Widow of Nagesh Dongra***, 2000 (2) L.L.N. 527, a claim for compensation was made in respect of the death of a labourer who suffered electric shock during construction of a shopping complex. The owner of the

shopping complex contested the claim on the ground that he was constructing a shopping complex on his own land and it is not the *"trade"* or *"business"* of the appellants to construct buildings and therefore, they are not liable under Section 12 of the Employees' Compensation Act. The Nagpur Bench of Bombay High Court rejected the argument and held the owner liable to pay the compensation. Relevant portion of the said judgment is reproduced hereunder:

> *"2. The original non-applicants No. 1 to 3 (appellants herein) owned and possessed a plot on the southern bank of Amba Nala at Amravati where they were making the construction of their building known as 'Bhangade Complex' (hereinafter referred to as shopping complex). They employed original non-applicant No. 4 as Contractor for carrying out the construction work. Deceased Nagesh was employed by the Contractor original non-applicant No. 4 for construction work as a labourer. On May 23, 1990 at about 3.30 p.m. the non-applicant No. 3 asked Nagesh and 3/4 other workers, who were doing the work at construction site of the said complex to lower down the electric motor pump in the well of the non-applicants No. 1 to 3. The water from that well was being utilized for the construction of the said complex and while doing work by lowering down the electric motor pump, deceased Nagesh received electric shock and ultimately died.*
>
> *xxx xxx xxx*
>
> *9. The learned Counsel for the appellants emphasised on the terminology in the course of or for the purpose of his trade or business contracts with any other person 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 any workman employed in the execution of the work .....". What is contended is that the appellants were constructing a shopping complex on their own land. It is not trade or business of the appellants to construct*

buildings and, therefore, they cannot be said to be principal employers.

xxx xxx xxx

13. However, what is contended by the learned Counsel for the appellants Mr. Chandrukar is that the appellants were constructing the shopping complex on their own land and it was not their regular trade or business to do construction work by purchasing different plots and they were not in any way builders by profession. To accept the argument would tantamount to not only negativing the intention of the Legislature behind the provision but to adding something to the provisions of Section 12 which states that it must be in the course of trade or business of the person referred to as the principal who contracts with any other person. A case wherein a person is building his own house on his land or on land possessed by him has engaged an contractor may not be covered but where a person is constructing a building either for constructing and disposing of and selling residential flats or for constructing a market complex for selling the shops or leasing them out then it would be difficult to comprehend that it was not in the course of his trade or business. In other words, it is necessary to find that it is his regular business to purchase plots and construct buildings thereon. This would mean adding the word "regular" to the provision of Section 12 which is against all the principles of interpretation. The Legislature is presumed to know its business well and when the Legislature has not used the words as "in the course of regular trade or business" it is not possible to accept the arguments of the learned Counsel for the appellants and to hold that since it was not a regular business of the appellants to construct shopping complex or buildings, they are not in the position of the principal employers.

xxx xxx xxx

15……<u>While interpreting the provisions of Workmen's Compensation Act, it must be borne in mind that it is a beneficial legislation and should not be interpreted in a manner so as not to deprive the claimant-workman of the benefit of the legislation specially by adding certain words to the terminology used in the statute. Since the statute does not</u>

use the words in Section 12 as "in course of regular trade or business," it must be accepted that it is only "in course of trade or business" and if a person builds or constructs even one building for sale of residential flats or for selling or leasing out residential flats or shops, then it becomes his business. The sole purpose of entering into such business is to earn profit and it would be travesty of justice to hold that it is not his trade or business since he was not regularly indulging into that activity. In this connection, the learned Counsel for the respondents relied on a decision of this Court in the case of Sarjerao Unkar Jadhav v. Gurindar Singh and Anr., (1992 I LLJ 156) (Bom) wherein the provisions of Section 12 were required to be interpreted. In that case before this Court, the Electricity Board had given a contract for painting electric poles and the workman employed by the contractor was injured while painting the poles. The question was, whether painting of electric poles was ordinarily a part of trade or business of : principal i.e. electricity board and giving a finding in the affirmative the learned single Judge held in 1992 I LLJ 156 at 159, 160:

> *"9. The dispute in this case is regarding the second condition only, there being no dispute that the supply of electricity is the trade or business of respondent No. 2 and the contractor was engaged for the purpose of that trade or business. Therefore, what is required to be considered is whether painting electric poles is also a work which is ordinarily a part of the trade or business of respondent No. 2 and this requires to be examined in the context of the three decisions relied upon by Mr. Chandrachud. No doubt, the legislature has in its wisdom used the expression "trade or business" in Sub-section (1) of Section 12 at two places which could not be without any purpose. In fact, the purpose has been brought out very succinctly in the three decisions relied upon by Mr. Chandrachud. However, the safer test would be that if it is ordinarily a part of business of the principal to*

> *execute certain work, then ordinarily he will do that work by his own servants and he cannot escape the liability for accident that takes place merely because he has engaged a contractor. Now, in the present case, the trade or business of respondent No. 2 is to supply electricity. One cannot supply electricity without having electric poles. Electric poles are not one or two in number. They are hundreds and thousands having regard to the area of operation of respondent No. 2. In Bombay climate, the poles are likely to get rusted unless painted frequently. It will thus be an ordinary part of respondent No. 2's business to paint the poles if it is interested in supplying electricity continuously and properly. It is for this reason that I am inclined to hold that the contractor was engaged not only for the purpose of respondent No. 2's trade or business, but the activity in which the workman was engaged was ordinarily a part of its trade or business. Accordingly, I further hold respondent No. 2 responsible and liable for compensation under Section 12(1)of the Workmen's Compensation Act."*

25. In ***Sardar Sewa Singh v. Hindustan Lever Ltd.***, 1980 (1) L.L.N. 566, 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)

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

26. ***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.

27. 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)*

28. 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."*

29. 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 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;"

30. 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)

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

31. 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 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.

32. 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)*

33. In ***Nandu @ Nandkishor S/o Laxmi Narayan Chandak v. Sheela Bai***, 2006 (1) M.P.L.J. 172, an employee met with an accident while repairing a pump installed in sixty feet deep well situated in residential premises which resulted in fatal injuries. The Madhya Pradesh High Court held the deceased to be a workman within the meaning of Section 2(1) (n) and Schedule II of the Workman's Compensation Act.

34. In ***C. Arumugham v. Revathi,*** (2015) 1 TN MAC 734, an employee fell down accidentally while painting a wall which resulted in fatal injuries. The Madras High Court held that a person employed in the construction of any building will come within the meaning of *"employee"* as defined in Section 2(1)(dd) of the Employees' Compensation Act. The Madras High Court further held it mandatory to deposit the entire award amount along with the interest within the statutory period in order to maintain the appeal under Section 31 of the Employees' Compensation Act and the appeal would not be maintainable if the interest is not deposited. Relevant portion of the said judgment is reproduced hereunder:

"10. ……The effect of the said omission is that the employees found in the list of persons mentioned in Schedule II of the Employee's Compensation Act, 1923 are eligible to get compensation. Clause (viii) of Schedule II of Employee's Compensation Act, 1923 reads as follows:-

> *"(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; "*

A reading of the said provision would show that the person employed in a construction of any building will come within the meaning of 'employee' as defined under Section 2(1)(dd) of the Employee's Compensation Act, 1923. As per the list of employees given in clause (viii) of Schedule II, I am of the opinion, even a person, who works in the house of an individual, if sustains injuries during the course of said employment, he is entitled for compensation under the Employee's Compensation Act, 1923. Therefore, the question as to whether the deceased was working in the Kalyana Mandapam or in the house of the appellant is totally immaterial after the omission of Section 2(1)(n) of the Employee's Compensation Act, 1923. Therefore, the judgment relied upon by the learned counsel appearing for the appellant reported in (2003) 9 SCC 190 cannot be made applicable to the facts of the present case.

11. It is the yet another submission of the learned counsel appearing for the respondents that though a direction was given by the Deputy Commissioner of Labour to the appellant to pay the compensation amount along with interest at the rate of 12% per annum after 30 days from the date of accident, the appellant has not deposited the interest amount. Without depositing the interest, the appellant has filed the present appeal, which would amount to non-compliance of the requirement of Third Proviso to Section 30(1) of the Employee's Compensation Act, 1923. Therefore, on this ground also, the appeal is liable to be dismissed. In this

regard, the learned counsel appearing for the respondents has relied upon the decision of this Court reported in 2012(2) TN MAC 750 - Oriental Insurance Co. Ltd. v. R.Mahalingam, wherein, this Court, by relying upon the judgment reported in 1993 ACJ 736 (J & K) - J & K SFC v. Ghulam Mohd, has held as follows:-

> *"21. Appeal in hand is not accompanied by the requisite certificate and therefore, instead of certificate, a letter addressed to the Commissioner enclosing a cheque accompanying the Memorandum of appeal cannot be termed to be the compliance to the requirement of Third Proviso to Section 30(1) of the Act, 1923. The Insurance Company / appellant having not deposited the interest accrued on its failure to deposit the amount within 30 days from the date of receipt of order and as the Memorandum of Appeal is not accompanied by a certificate by the Commissioner to the effect that the Appellant Insurance Company has deposited with him the amount payable under the order appealed against is not sufficient compliance of the requirement of Third Proviso to Section 30(1) of the Act, 1923 and as such I hold that the appeal filed by the insurance company is not maintainable."*

As per Section 30(1) of the Employee's Compensation Act, 1923, deposit of award amount with interest within the statutory period is mandatory and only if the appellant satisfies the requirement in filing the appeal, the appeal could be entertained. But, here, the interest was not deposited by the appellant. Now, the appellant herein has taken out an application in M.P.No.1 of 2014 to condone the delay of 919 days in depositing a sum of Rs.1,43,568/- being the interest of the award amount of Rs.7,97,600/- and another application in M.P.No.2 of 2014 to permit him to deposit a sum of Rs.1,43,568/- towards interest on the award amount of Rs.7,97,600/-. I find that absolutely no sufficient cause has been made out in the application to condone the delay.

Therefore, I am of the opinion, since the appellant has not complied with the mandatory requirement as per Third Proviso to Section 30(1) of the Employee's Compensation Act, 1923, on that ground also, the appeal is liable to be dismissed and further, I find that no substantial question of law is involved in this appeal to make an interference in the order passed by the Deputy Commissioner of Labour, Coimbatore."

(Emphasis supplied)

Rules of Interpretation of Social welfare legislations

35. 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 mis-application must be recognised 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.

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

37. 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.

Purpose of Employee's Compensation Act, 1923

38. 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)

Rules of "Purposive Interpretation", "Superior Purpose" and "Felt Necessity"

39. 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 unorganised 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 aforecited 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)

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)

Rule of liberal interpretation of social welfare legislations

40. 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.

41. 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)*

Cessante ratione legis, cessat et ipsa lex

42. 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)

43. ***Summary of Principles***

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

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

43.3. Section 12 safeguards the right to compensation when the employer delegates the work to another person. Section 12 is intended to secure to an employee the right to claim compensation not only against his immediate employer who, in the Act, is referred to as a contractor, but also against the person

who had employed such contractor to execute the work. The Act refers to him as the principal.

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

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

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

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

from the contractor at their option.

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

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

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

43.11. The contractor may not be a man of means or he may be merely a man of straw or it may be that wittingly or unwittingly he may possibly be part of an arrangement

conceived by the principal to avoid confrontation directly with the employee engaged in the execution of the work. In either case, the interests of the employee need to be protected and that is what the provision secures to the employee. The principal can seek indemnification from the contractor if he has been made answerable for the payment of compensation. The right of the principal to be indemnified has thus been incorporated under Section 12(2), who has entrusted the work to the contractor stipulating the right of indemnification under the Act.

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

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

43.14. The words *"trade"* or *"business"* used in Section 12 of the Act have to be understood in the context in which this Act was enacted. The Act was enacted to provide compensation to the employees suffering during the course of their employment. It was also the purpose of the Act that employees should get speedy remedies and it appears that the intention of enacting the Section 12 of the Act was only to ensure that

compensation is paid by the principal expeditiously and if this purpose of the Act and the provision are kept in mind, then the words *"trade"* or *"business"* may not have the same meaning which it would have, for instance, when used in interpreting a taxing statute.

43.15. The words *"trade"* or *"business"* are used in several statutes like fiscal statutes, taxing statues and rent laws. The meaning ascribed to such words shall always be with reference to the context and with respect to the content of the statute itself, Therefore, the meaning that is ascribed in one statute cannot be taken to interpret the very same words in another statute legislated with altogether a different intention and object. The said words in the fiscal statutes or rent laws cannot have a similar meaning when employed in any welfare legislation like Employee's Compensation Act.

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

43.17. The word *"trade"* connotes commercial activity whereas the word *"business"* is of much wider import and may be used in different contexts in different senses. Used in one context, it may imply a particular occupation or employment to earn livelihood or gain, whereas used in a different context it may mean an activity which engages time, attention, or labour as a principal serious concern or interest. Its connotation may thus vary with the varying contexts in which it is used. In taxing statutes for instance, the word *"business"* will always denote an activity carried out with the object of earning profit, though the

same may not be true when used in relation to other activities. Used in broader sense, a person building his residential house or a Government constructing a road, may well be said to do *"business"* in so far as the said activity engages his or its time, attention or labour as principal serious concern or interest.

43.18. The meaning of these two crucial words in Section 12 has to be understood in the context of its object. The word *"business"* in the Section need not be restricted to what is synonymous with *"trade".* The use of the conjunction 'or' should be understood as disjunctive for covering totally different areas unconnected with *"trade".* The word *"business"* has different shades of meanings. Among them, the most suitable in the present context is that which *"The Oxford Advanced Learners Dictionary of Current English"* has given as its third meaning: ***"Task, duty, concern or undertaking to do a work".*** The word *"business"* in its wider connotation may have more extensive meaning than the word *"trade".* Lord Jessel M.R. in ***Smith v. Anaerson***, 1880 15 Ch D 247, stressed the meaning of *"business"* as ***"anything which occupies the time and attention and labour of a man for the purpose of profit"***. Some succinct illustrations have also been given in the said dictionary to drive the meaning home. They are: *"It is a teacher's business to help his pupils; I still make it my business to see that money is paid promptly; that is no business of yours".* In none of the illustrations, the word *"business"* is used to denote anything connected with trade or commerce. The word *"business"* used in Section 12 of the Act has been intended to convey the meaning ***"the work or task undertaken by the person concerned"*** which is not restricted to trade or commercial work alone.

43.19. The word *"ordinarily"* is an elastic term. It is seen to be used in different statutes. The word has different shades of meaning in different contexts. The word *"ordinarily"* is

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

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

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

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

43.23. The definition of *"employee"* envisaged in Section 2 (1) (n) of the said Act has undergone drastic change. Prior to the amendment, an employee whose employment was of a casual nature and who was employed otherwise than for the

purpose of trade or business of the employer; did not fall in the said definition. However, after the amendment of the said definition through the Amending Act 46 of 2000, the Parliament had removed the said mischief which was then prevailing and coming in the way of such casual employee who met with an accident during the course of the employment unconnected with the employer's trade or business. With the amendment of the said definition, now an employee whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business is certainly covered within the definition of employee.

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

Conclusion

44. In the present case, the appellant awarded the contract to respondent no.5 (contractor) for construction of a gymnasium as part of his trade and business in pursuance to which Respondent no.5 engaged the deceased, Babu Lal who suffered an accident arising out of and during the course of his employment on 6th March, 2010 which resulted in fatal injuries. Applying the principles laid down in the judgements discussed above, Babu Lal is held to be an employee within the meaning of Section 2(1)(dd) read with Entry (viii) (a) of Schedule II of the Employees' Compensation Act; respondent no.5 is

held to be the contractor and the appellant is held to be the principal. This Court is satisfied that the ingredients of Section 12 are satisfied in the present case and the appellant, being the principal, is liable to pay the compensation to the legal representatives of the deceased, Babu Lal with right to recover the same from the contractor (respondent No.5). This case is squarely covered by the principles laid down in the judgments mentioned above.

45. 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. Section 4A(3) of the Employees' Compensation Act is reproduced hereunder:-

> ***"Section 4A. Compensation to be paid when due and penalty for default.-***
> *(1) .....*
> *(2) .....*
> *(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall--*
> *(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and*
> *(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:*
> *Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."*

46. In ***Rajan v. P.M. Subramonian***, 1994 ACJ 25, the Division Bench of Kerala High Court examined the scope of proviso to Section 4A(3)(b) of Employee's Compensation Act and adjudicated the issue of penalty instead of remanding back the matter. The relevant portion of the judgment is as under: -

> *"15. Now, we come to the main question raised in this appeal, whether the imposition of penalty, and that too at the maximum rate, without framing an issue, or without affording the appellant an opportunity to be heard regarding imposition of the penalty or its quantum is valid in law. The question of framing an issue or putting the appellant on notice of the proposal are really matters of fairplay and fair procedure related to the principles of natural justice. Section 4-A(3) on it terms does not contain any provision for framing an issue or for hearing an employer before imposing penalty, or regarding its quantum, but that is a requirement of natural justice. It was held in A.K. Kraipak v. Union of India AIR 1970 SC 150, and reiterated in Union of India v. J.N. Sinha 1970-II-LLJ-284 that while the rules of natural justice do not supplant the law but supplement it, if a statutory provision can be read consistently with the principles of natural justice, Courts should do so because it must be presumed that the Legislature and the statutory authoritis intend to act in accordance with the principles of natural justice. These rules being rules of fairness should therefore be followed and read into every provision unless their application is excluded either expressly or by necessary implication. Section 4-A(3) does not expressly exclude the application of the principles of natural justice, nor is there anything therein excluding their application by implication. In fact, as a quasi-judicial authority exercising statutory powers involving determination of rights of parties, it is elementary that the Commissioner should observe the rules of natural justice in the performance of his functions. Though the Act or the Rules do not envisage a full-fledged trial, as in a civil court, a regular hearing and determination of rights is contemplated therein. In fact, Rule 28 of the Rules framed*

under the Act requires the Commissioner to frame and record the issues upon which the right decision of the case appears to depend. This is evidently intended to put the parties on notice of the points arising for consideration and on which they are expected to adduce evidence. It is a matter for the Commissioner to decide whether penalty should be imposed or not. Therefore, the question of imposition of penalty may arise for consideration even without a specific plea in that behalf by the workman, as held by the High Court of Punjab and Haryana in Dalip Kaur v. Northern Railway 1992-I-LLJ-762. Since the question of imposition of penalty is thus a matter which will necessarily arise for consideration while passing an award, it will be prudent and advisable for the Commissioner to frame an issue as to whether penalty is imposable under Section 4-A(3) and, if so, the quantum thereof to enable the parties to address themselves on these aspects as well at the hearing.

16. In Mathura Prasad v. Saiyed Khursheed Ahmad, (1981) 59 FJR 168, the High Court of Allahabad held that the Commissioner should normally pass an order regarding penalty also while disposing of the case, a proposition with which we agree. In Vijay Ram v. Janak Raj (1981) ACJ 84, the High Court of Jammu and Kashmir took the view that an order imposing penalty may be passed by the Commissioner after he has awarded the compensation, depending on the facts of a given case. The learned Judge then proceeded to observe:

> *"But, in no case shall he impose a penalty under Section 4-A, unless he has given to the employer a prior reasonable notice of his intention to do so, and thereby provided him an opportunity of showing cause for delayed payment of the compensation. Obligation on the part of the Commissioner to hear the party to be adversely affected is implicit in Sub-section (3), for what was the reason for not making the payment without delay, can be known to that person alone who is required to make the payment, and to none else. Unless, therefore, he*

> *is called upon to show cause for the delayed payment, it is not reasonably possible for the Commissioner to come to a conclusion whether or not there was any justification for the delay. He cannot be allowed to reach his satisfaction at his whim and caprice simpliciter. In what form such a notice may be given will further depend upon the facts of each case. In one case an issue on the plea of penalty may constitute such a notice, whereas in another case such a notice may be reasonably inferred even from the pleadings of the parties coupled with their conduct during the trial,"*

17. The Karnataka High Court dealt with the same question in their decision in Oriental Insurance Co. v. Jevaramma, (1988) ACT 671. The Division Bench followed an earlier decision of the same High Court in N.A.K. Pathan v. Julekabi Pathan, (1987) 70 FJR 40, in which it was held that what was necessary under Section 4-A(3) was that the employer should know the case he is required to meet and he was afforded a reasonable opportunity of meeting the case. The subsequent Bench observed that penalty cannot be imposed merely as a matter of course, and the discretion to levy penalty must be exercised judicially after due consideration of the relevant circumstances. This presupposes an opportunity to be given to explain the circumstances for the delay which entails material consequences.

18. Section 4-A(3) is a penal provision imposing a penalty on the employer. The satisfaction of the Commissioner contemplated therein should be based on materials. It has to be reached on a conspectus of all the facts and circumstances of the case. There may be umpteen reasons why the employer is not liable for the penalty. There can be various reasons for nonpayment of the amount of compensation on the due date, or for its delayed payment. The employer may be able to point out justifiable reasons for the delay or the non-payment. In any case, he may also be able to make out sufficient reasons why the penalty should either be waived, or be fixed at a low

amount. In fact, the section vests a discretion in the Commissioner in the matter of penalty, the prescription being only of the maximum. The reasons made out by the employer may have an impact not only on the question of imposition of penalty, but also on its quantum. All this cannot be effectively decided unless the attention of the parties is focussed on the question of imposition of penalty and the exercise of the discretion, in which event the employer can place his materials in justification of the delay or at least plead in mitigation for a lesser amount of penalty. This he will not be able to do unless he is given an opportunity to be heard in the matter.

19. The hearing to be afforded need not necessarily have the trappings of a regular trial or hearing. The framing of an issue under Rule 28 will suffice, but that may not be obligatory, though desirable. The Commissioner may even in the course of the hearing draw the attention of the parties to the question of penalty and hear them. If such an opportunity to produce their materials and to be heard, is afforded, that will be sufficient to meet the requirements of natural justice. What is essential and what is required is compliance with the rules of natural justice, so that the affected party, namely, the employer, gets an opportunity to produce his materials and to plead that there was justification for the delay or for imposition of a lesser amount than the maximum prescribed. Essentially, it is a question of complying with the rules of natural justice.

20. The Law Commission of India had in its sixty-second Report rendered in October, 1974, on the Workmen's Compensation Act, suggested the addition of a proviso to Section 4A(3) to provide for a reasonable opportunity to the employer to show cause why an order for payment of penalty should not be passed. The Act has not been amended pursuant thereto, but we are of the view that the recommendation of the Law Commission was only to make explicit what otherwise was implicit in the section.

21. So far as this case is concerned, there was no issue framed on the point. There is also no case that the Commissioner heard the parties on the question of penalty after apprising them of his proposal to impose the same or about the quantum.

The order impugned therefore suffers from the vice of violation of the principles of natural justice in so far as it relates to the imposition of penalty. This would normally require a remit to the Commissioner but for the fact that the parties are agreed that this question may be decided here itself to avoid further protracted proceedings before the Commissioner.

22. Counsel for the appellant pleads that the appellant had acted bona fide. He had a plea of non-liability. That found acceptance with the Commissioner in the first instance, though not with this Court. In such a case, it cannot be said that his conduct was so contumacious or unreasonable as to require being penalised under Section 4-A(3). A parallel case in the High Court of Punjab and Haryana in Shiv Lal v. Punjab State Electricity Board, (1991) ACJ 443, is relied on. It is also stated that the respondent is now employed elsewhere, a fact which is referred to in the appeal memorandum, though no evidence was tendered about it before the Commissioner. Counsel submits, on these premises, that the penalty, if at all it is to be sustained, should be minimal.

23. On the other hand, counsel for the respondent points out that the appellant had taken a totally false plea that the respondent was not his workman at all. He succeeded in the first instance on an irrelevant ground not raised in the written statement, which was perversely accepted by the Commissioner when the poor toddy tapper could not give the number of the tree from which he fell down. He also refers to the fact that the appellant behaved in a most cruel manner in that he did not even arrange for the proper treatment of the respondent in the hospital and he had to fend his way all alone. His right hand has been amputated and he is disabled for life. But he has been delayed in getting the compensation- even the pittance provided by the Act for thirteen years.

24. Exercise of the discretion regarding imposition of penalty has to be related to all these circumstances. Normally the exercise of discretion has to be done by the authority who is vested with that power. We have however thought it proper to deal with the matter in this Court having regard to the request made by the parties and the fact that we are exercising an

> *appellate power. The exercise of the discretion depends upon the facts and circumstances of each case. Precedents like the decision of the Punjab and Haryana High Court relied on by the appellant rendered on their own facts cannot furnish any true guidance for the exercise of the discretion in this case. The facts in this case are clear. The accident took place on November 19, 1979. The appellant did not deposit the whole or any portion of the amount of compensation due to the respondent till the order impugned was passed. On the other hand, he took up every conceivable plea to defeat the claim of the respondent. He could not sustain any of them eventually. By this contumacious conduct, the respondent who has lost a valuable limb, was deprived of the compensation due for well over twelve years. The compensation is payable on the very date on which the accident occurs though the employer is given one month's time to make deposit of the amount. On the facts above stated we are satisfied that there was no justification for the delay in the payment of the compensation. The Commissioner has imposed the penalty at 50 per cent. of the amount of compensation. But, having regard to the fact that the Commissioner himself contributed in part to the delay by his first illegal order, we feel that a penalty of 75 per cent. of the amount fixed by the Commissioner, namely, Rs. 10,080 will meet the ends of justice."*
>
> *(Emphasis supplied)*

47. The Commissioner, Employees' Compensation has not imposed penalty under Section 4A of the Employees' Compensation Act. Section 4A(3) of the Employees' Compensation Act provides for a mandatory show cause notice and opportunity of hearing to the appellant before imposing penalty. Since this appeal is continuation of the proceedings before the Commissioner, Employees' Compensation, notice is hereby issued to appellant to show cause as to why the penalty be not imposed under Section 4A(3) of the Employees' Compensation Act. Reply to the show cause notice be

filed by the appellant within four weeks.

48. There is no merit in this appeal which is hereby dismissed. Pending applications are disposed of.

Disbursement of Compensation Amount

49. The appellant has deposited Rs.6,41,000/- with the Commissioner, Employees' Compensation on 25th April, 2016. The Commissioner, Employees' Compensation is directed to disburse the aforesaid amount along with interest accrued thereon to respondents No.1 to 4 by directing the concerned bank to keep Rs.5,50,000/- in FDRs in the following manner:-

(i) Rs.2,50,000/- be kept in 50 FDRs of Rs.5,000/- each in the name of respondent No.1, Yashodha@Jasoda Devi for the period of 1 month to 50 months respectively with cumulative interest.

(ii) Rs.1,00,000/- be kept in 20 FDRs of Rs.5,000/- each in the name of respondent No.2, Puja@Pooja for the period of 1 month to 20 months respectively with cumulative interest.

(iii) Rs.1,00,000/- be kept in 20 FDRs of Rs.5,000/- each in the name of respondent No.4, Sahil@Suraj for the period of 1 month to 20 months respectively with cumulative interest.

(iv) Rs.1,00,000/- be kept in FDR in the name of respondent No.3, Poonam till she attains majority with cumulative interest. Upon attaining majority, the bank shall release the interest portion to respondent No.3 by transferring the same to her individual savings bank account as mentioned hereinafter and keep the principal amount of Rs.1,00,000/-

in 20 FDRs of Rs.5,000/- each in the name of respondent No.3, Poonam for the period of 1 month to 20 months respectively with cumulative interest.

50. The balance amount, after keeping Rs.5,50,000/- in FDRs, be released to respondents No.1, 2 and 4 in equal shares by transferring the same to their respective individual savings bank accounts given below:-

(i) Yashodha@Jasoda Devi (Respondent No.1)
A/c. No.60113421345
Bank of Maharashtra, Sector-24, Rohini Branch
IFSC Code :MAHB0001342
MICR Code:110014038

(ii) Puja@Pooja (Respondent No.2)
A/c. No.60249030784
Bank of Maharashtra, Sector-24, Rohini Branch
IFSC Code :MAHB0001342
MICR Code:110014038

(iii) Poonam (Respondent No.3)
A/c. No.60249032216
Bank of Maharashtra, Sector-24, Rohini Branch
IFSC Code :MAHB0001342
MICR Code:110014038

(iv) Sahil@Suraj (Respondent No.4)
A/c. No.60249032409
Bank of Maharashtra, Sector-24, Rohini Branch
IFSC Code :MAHB0001342
MICR Code:110014038

51. All the original FDRs shall be retained by the concerned Bank. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to respondents No.1, 2 and 4.

52. The maturity amounts of the aforesaid FDRs along with the interest shall be transferred to the aforesaid savings bank accounts of the respective beneficiaries.

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

54. Bank of Maharashtra, Sector-24, Rohini Branch is directed not to issue any cheque book or debit card to respondents no.1 to 4 and if the same have already been issued, Bank of Maharashtra is directed to cancel the same. Respondents no.1 to 4 shall produce the copy of this judgement before the Bank of Maharashtra, Sector-24, Rohini Branch whereupon Bank of Maharashtra shall make an endorsement on the passbooks of respondents no.1 to 4 that no debit card or cheque book shall be issued to respondents no.1 to 4 without the permission of this Court.

55. Bank of Maharashtra, Sector-24, Rohini Branch shall permit respondents no.1 to 4 to make cash withdrawals on the basis of the withdrawal forms.

56. Bank of Maharashtra, Sector-24, Rohini Branch is directed to send a compliance report with respect to cancellation of debit card or cheque book of the respondents no.1 to 4 before the next date hearing.

57. List for reporting compliance by the Bank of Maharashtra and for the consideration of reply of appellant to the show cause notice on

31st October, 2017.

Post script

58. Section 25A of the Employee's Compensation Act provides that the Commissioner shall dispose of the matter relating to compensation under the Act within a period of three months. Section 25A is reproduced hereunder:-

> *"**Section 25A. Time limit for disposal of cases relating to compensation**—*
>
> *The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee."*

59. This case relates to an accident dated 06th March, 2010 in respect of which the application for compensation was filed on 7th December, 2010. The case was taken up for the first time by the Commissioner, Employees' Compensation on 19th January, 2011 when the notice was issued to the respondents. The application for compensation remained pending for more than five years. The case was listed for 46 (forty-six) times out of which the Presiding Officer did not take up the matter on 11 (eleven) dates being busy in meetings/election-duty or was on leave. The Commissioner, Employees' Compensation has also not imposed the penalty under section 4A(3)(b). The manner in which the proceedings have been conducted reflects a very casual approach. It appears that the Commissioner, Employees' Compensation was pre-occupied with the administrative work and was unable to devote time to the judicial work.

60. Considering that the appeal from the order of the Commissioner, Employees' Compensation lies before the High Court under Section 30 of the Employee's Compensation Act, this Court is of the view that the Commissioners, Employees' Compensation should be drawn from the State Judicial Service in the rank of Additional District Judge in terms of the Section 20 of the Employee's Compensation Act. In FAO 385/2013 titled ***New India Assurance v. Puran Lal***, this Court has already recommended to the Government of NCT of Delhi in this regard.

61. Government of NCT of Delhi is again directed to expedite the consideration of the matter in this regard.

62. Copy of this judgement be sent the Secretary, (Law, Justice and Legislative Affairs), GNCTD. Copy of this judgement be also sent to Bank of Maharashtra, Sector-24, Rohini Branch, Delhi for compliance.

63. Copy of this judgement be given *dasti* to counsel for the parties as well as to Mr. Sanjoy Ghose, Additional Standing Counsel for GNCTD who shall send the same to the Secretary, (Law, Justice and Legislative Affairs), GNCTD.

SEPTEMBER 27, 2017 **J.R. MIDHA, J.**
ak/dk