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

% ***Judgment Reserved on: 17.11.2025***
Judgment pronounced on: 28.11.2025

\+ FAO 112/2016
M/S CHARMS CARDS PVT LTD .....Appellant
Through: Ms. Shraddha Bhargava, Advocate.

versus

VINOD KANWAR & ORS .....Respondents
Through: Mr. R.K. Nain, Ms.Pratima N. Lakra and Mr. Chandan Prajapati, Advocates.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 30 of the Employee's Compensation Act, 1923 (the EC Act), has been filed by the respondent in **Claim no. WCD/CD/4/08-6649**, before the court of the Commissioner, EC Act, Central District, Puria, New Delhi whereby the claim for compensation of the claimants was allowed. The parties in this appeal will be referred to as described in the original proceedings.

2. The brief facts leading to the present appeal are as follows: The claimants, being the widow, minor children, parents and brother of deceased Sultan Singh, filed an application under the EC Act before the learned Commissioner. It was their case that the deceased was engaged as a mason (*raj mistri*) for construction work in a godown stated to be associated with the respondent. They alleged that on 13.05.2005, at about 7:00 PM, while the deceased was carrying out plastering work on the second floor, the wooden platform on which he was standing collapsed, resulting in his fall and causing grevious injuries. He was taken to LNJP Hospital, where he was declared "brought dead". The body, was thereafter, taken to the native village of the deceased for cremation.

2.1 Based on these assertions, the claimants sought compensation from the respondent/the employer on the ground that death had occurred during and in the course of employment.

2.2 The respondent, however, contended that no construction activity whatsoever had been undertaken at her premises in the year 2005; that the deceased was never employed by the respondent; and that no accident had occurred at the site and that the claim petition had been instituted after an inordinate delay of the alleged date of the incident and that no notice under Section 10 of the EC Act had ever been served upon the appellant.

2.3 On completion of pleadings, necessary issues were raised and the parties went to trial. The claimants examined PW-1 widow of the deceased; PW-2 brother of the deceased; and PW-3 an alleged co-worker. The respondent produced documentary evidence, including the balance sheet for the financial year 2005–06 (Ex. MW1/A).

3. On consideration of the oral documentary evidence and after hearing both sides, the learned commissioner vide the impugned order held that the accident occurred during the course

of employment and awarded compensation of ₹3,53,476/- with interest @12% per annum. Aggrieved, the respondent has preferred the present appeal.

4. The learned counsel for the respondent submitted that the claim was liable to be rejected at the threshold, as it was bereft of even the most rudimentary evidence. It is contended that no First Information Report (FIR), accident report, Daily Diary (DD) entry, Medico-Legal Case (MLC), hospital record, post-mortem report, or death certificate was produced to establish that any accident had occurred at all, let alone one arising out of and during the course of employment. In the absence of such foundational materials, the Commissioner could not have proceeded merely on uncorroborated oral assertions. It is argued that even in a beneficial statute, the core ingredients—employment, accident, and causal nexus—must be proved by credible evidence.

4.1 It is further contended that the respondent consistently denied having ever engaged the deceased in any kind of construction project. To augment this contention, the Company's balance sheet for the year 2005–06 (Ex. MW1/A) was produced, demonstrating that no construction activity had been undertaken during the relevant period. This document, which strikes at the very core of the claim narrative, was completely overlooked by the learned Commissioner. The appellant asserts that such non-consideration of material evidence renders the impugned order perverse.

4.2 The learned counsel for the respondent places strong reliance on the testimony of PW-2 the brother of the deceased, who, during his cross-examination, conceded that the deceased was working independently and was not employed under any management. More critically, he admitted that no accident had taken place involving his brother, and hence no FIR, hospital

record, or post-mortem report existed. These categorical admissions, according to the respondent, destroy the very substratum of the claim. It is submitted that once the witness of the claimants themselves denied the employment and the accident, the entire edifice of the claim will collapse.

4.3 It is further urged that the direction to pay interest at 12% per annum from June 2005 is wholly unsustainable. The claim petition was admittedly instituted on 20.02.2008 after a delay of nearly three years, and thereafter remained pending before the Commissioner for more than seven years. In such circumstances, fastening the liability of interest from a date preceding even the institution of the claim is contrary to the statutory scheme and unsupportable in law.

5. *Per contra*, the learned counsel for the claimants submitted that though PW-1 to PW-3 were extensively cross-examined, nothing was brought out to discredit their testimony. Their

testimonies, viewed as a whole, established both the employment of the deceased and the occurrence of the accident. It is urged that absence of formal documentation such as FIR or MLC cannot, by itself, defeat a claim under a beneficial legislation.

5.1 The learned counsel for the claimants would place reliance on **Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mahmmod Issak, 1969 ACJ 422 (SC)**, to contend that strict proof is not required and that oral testimony—if credible—can suffice to establish the accident. The claimants rely on the principle that a liberal and non-technical approach is mandated in cases involving unorganised labour.

5.2 Further, reliance was placed on the decision of the Apex Court in **Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ritta Fernandes, 1969 ACJ 419 (SC)**, and Section 10A(3) of the E&C Act to argue that when records relating to employment lie within the special knowledge of an employer, failure to produce such

evidence would result in an adverse inference. It is contended that the respondent's denial of construction work cannot defeat a claim, when no employment records were produced, and the employer was in a position to produce such records.

5.3 Further, the learned counsel relies on the dictum in **Shriram General Insurance Co. Ltd. v. Babu & Anr**., **FAO 361/2013 (Delhi High Court)**, wherein this Court held that insistence on FIR or MLC in claims relating to unorganised labour can defeat the very purpose of the EC Act, and that the Commissioner may rely upon oral evidence, if consistent and credible.

5.4 The claimants further place reliance on the dictum in **Maghar Singh v. Jaswant Singh, 1997 ACJ 517 (SC), Tebha Bai & Ors. v. Rajkumar Keshwani, (2018) 7 SCC 705, and Parameshwaran v. M.K. Parameshwaran Nair, 1991 (1)** TAC 416, to contend that the EC Act is a welfare legislation and

technical or procedural deficiencies should not come in the way of granting relief, particularly where the dependants of a deceased workman come from a weaker socio economic background.

5.5 Reliance is further placed on the dictum **Chiman Surakhia Vasva v. Ahmed Musa Ustad**, **1987 ACJ 161 (Gujarat High Court)**, for the proposition that provisions of the CPC and Evidence Act do not strictly apply to proceedings before the Commissioner, and that the inquiry is intended to be summary and guided by the overarching objective of ensuring compensation in genuine cases of employment injury or death.

5.6 The learned counsel for the claimants further argued that workers in the unorganised sector typically do not receive appointment letters, wage slips, or formal documentation of employment. The family members of the deceased, being simple rural labourers, were in a state of shock at the time of his death and

were unaware of the need to lodge an FIR, insist upon a post-mortem, or preserve hospital documentation.

5.7 Lastly, the learned counsel also submitted that the present appeal does not raise any substantial question of law and is therefore not maintainable by relying on **North East Karnataka Road Transport Corporation v. Sujatha, 2018 SCC OnLine SC 2296**, wherein the distinction between a substantial question of law and a mere question of fact was elaborated.

6. Heard both sides.

7. The incident took place on 13.05.2005. The claim petition was filed on 20.02.2008, i.e., nearly three years after the alleged occurrence. As per Section 10(1) of the EC Act, in case of death the claim should be filed within two years from the date of death. The last proviso to sub-section (1) of Section 10 of the EC Act says that the Commissioner may entertain and decide any claim even if preferred beyond the due time as provided in the sub-

section, if he is satisfied that the failure was due to sufficient cause. In the counter filed before the Commissioner, no objection regarding delay was taken up and hence no issue is seen raised regarding the same. As no issue was raised, the Commissioner had no occasion to consider the same. Hence, such a contention cannot be taken up for the first time in appeal. Therefore, the argument that the claim was barred by limitation is liable to be rejected.

8. An argument was also raised that no notice as contemplated under Section 10(1) of the EC Act had been given. The case of the claimants is that the incident took place in the premises of the respondent. In the light of clause (a) to the 4th proviso to sub-section (1) of Section 10 of the EC Act, the argument also cannot hold good.

9. The impugned award proceeds on the premise that the deceased was engaged as a mason by the respondent and that the accident in question arose out of and during the course of such

employment. The burden to establish the foundational facts like employment, occurrence of the accident, and the nexus between the accident and the employment lay upon the claimant. In the present matter, the claim is founded exclusively on the oral testimony of the witnesses. Admittedly, there is no FIR, DD entry, MLC, hospital record, post-mortem report, or even a death certificate—to support the alleged incident of 13.05.2005. Therefore, I will consider whether the oral evidence on record is sufficient to prove the claim.

10. The testimony of PW-2, the brother of the deceased and a claimant himself, is of decisive significance. In his cross-examination, he unequivocally stated that the deceased was working independently and was not employed under any management. The relevant portion of his testimony reads thus-

> *"My brother Mr. Sultan was not an employee with any management; he was working independently as mistri.I do not have any contract for documents to establish that my*

brother was working for Charms Card Pvt. Ltd. It is incorrect to suggest that my deceased brother was not performing construction work with the respondent."

PW-2 further admitted:

"It is incorrect to suggest that no accident was occurred with the respondent (Vol.) I was present at the time of accident and is a witness for the same. It is correct that no FIR was lodged for the accident stated in the present case. I do not have any record to establish the fact that my deceased brother was taken to the hospital; after the accident. It is correct that as no accident took place with :my brother and because Of the same no FIR no Post Mortem Record and Hospital Record are present with me." Court Question : Whether you understand the previous question asked by the respondent management ANS: 'Yes'.'

(Emphasis supplied)

11. A reading of the above cross-examination shows that PW-2 has made two mutually destructive statements in the same breath. While he initially attempted to assert that an accident had occurred, he immediately admits that no accident took place with his brother and that for this reason no FIR, hospital record or post-mortem report exists. This is not a mistake or inadvertent statement, as the Court specifically asked him whether he

understood the question, and he categorically responded in the affirmative. This affirmation renders the admission conscious, voluntary and unequivocal. The testimony of PW-2, therefore, not only fails to establish the occurrence of the accident but, in fact, directly negates it. Once the claimant's own principal witness asserts that no accident occurred and that the deceased was not employed under any management, the very foundation of the claim stands demolished. This categorical admission demolishes the very occurrence of the alleged accident and renders the claim fundamentally untenable.

12. PW-3, the alleged co-worker, in his chief examination has stated that Pukhraj (PW-3) and other workers hired a vehicle and took Sultan Singh to his village as he had already expired. He has no case that Sultan Singh had been taken to the hospital and that during the course of the journey, the latter had breathed his last. The testimony of PW-3 is inconsistent with the case set up in

the claim petition and by PW-2 as per which immediately after the accident, Sultan had been taken to the LNJP Hospital where he was declared ‘brought dead’. But if PW-3 is to be believed, Sultan was taken in a vehicle directly to his village. These aspects coupled with the absence of any records like post mortem certificate, FIR, etc., raise doubts regarding the case.

13. Now what remains is the testimony of PW-1, the widow, admittedly had no personal knowledge of the incident.

14. On the other hand, the respondent produced documentary evidence, including the balance sheet for the year 2005–06 (Ex. MW1/A), showing that no construction activity was undertaken during the relevant period.

15. In aforesaid circumstances, the conclusion that the testimony of the witnesses was unimpeached and that it proves that the accident occurred during the course of employment of the deceased is plainly perverse. The evidence does not merely fall

short—it affirmatively negates the case set up by the respondent/claimants. Findings returned in disregard of material admissions and documentary evidence, and unsupported by any contemporaneous record, cannot be sustained in law.

16. For the aforesaid reasons, this Court is of the considered view that the learned Commissioner erred in accepting the claim and awarding compensation. The award dated 30.10.2015 is liable to be set aside.

17. The appeal is accordingly allowed. The impugned order dated 30.10.2015 passed in Claim No. WCD/CD/4/08-6649 is set aside and so the claim petition shall stand dismissed.

18. There shall be no order as to costs.

CHANDRASEKHARAN SUDHA
(JUDGE)

NOVEMBER 28, 2025