

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

RESERVED ON : 7th DECEMBER, 2017

DECIDED ON : 8th JANUARY, 2018

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FAO 426/2016

A G C R CO-OP HOUSING BUILDING SOCIETY LTD

..... Appellant

Through : Mr.Hari Kishan, Advocate.

versus

PANKAJ KUMAR & ANR

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal has been preferred by AGCR Co-op Housing Building Society Ltd. (hereinafter 'the appellant') to challenge the legality and correctness of orders dated 28.03.2016 and 30.06.2016 of learned Commissioner under Employee's Compensation Act, 1923. The appeal was initially contested by the respondent No.1.

2. Claim petition was filed by Pankaj Kumar – respondent No.1 before the Commissioner on 12.11.2013. It was averred that the claimant's father Hare Krishan Mehto was working as a security guard since 2009 on last drawn wages of ₹9,500/- per month with the appellant and Ghan Shyam Chaudhary, M/s. G.C.International. On 02.11.2013, as usual, the deceased was on his job at night; he died on the same night. After the incident, the claimant approached the respondents for payment of death compensation but it was declined. Legal notice was served upon the respondents but to no effect.

3. The claim petition was contested by the appellant; Ghan Shyam Chaudhary did not appear and was proceeded ex-parte. In the written statement, the appellant averred that the deceased Hare Krishan Mehto was never employed by the society as a security guard and the society was not liable to pay any compensation for his death.

4. Complainant Pankaj examined himself as PW-1 and filed his evidence by way of affidavit (Ex.PW-1/A). He relied upon several documents (Ex.PW-1/1 to Ex.PW-1/12). L.R.Sharma examined himself on behalf of the appellant society and he filed his evidence by way of affidavit (Ex.RW-2/1) and relied on several documents (Ex.RW-1/1A to Ex.RW-1/1E). After perusal of the evidence on record and considering the rival contentions of the parties, by the impugned order, the learned Commissioner granted compensation to the tune of ₹7,58,415/- to the claimant. Being aggrieved and dissatisfied, the present appeal has been preferred.

5. It is relevant to note that none appeared on behalf of the respondents to address arguments on 07.12.2017. I have heard the learned counsel for the appellant and have examined the file.

6. On perusal of the evidence adduced on record by the claimant, nothing credible has come on record to establish if the deceased Hare Krishan Mehto – claimant's father was employed with the appellant society, if so, when and on what salary. No documentary evidence whatsoever has been placed on record to show if the deceased was ever employed in the said society. The claimant did not examine any co-worker in the society to establish that the deceased Hare Krishan Mehto was in employment as a security guard in the

society. No receipt regarding payment of any wages has been placed on record. It is alleged that Hare Krishan Mehto was in employment with the society since 2009. In the claim petition it is mentioned that the deceased had several complaints against the management for not providing various facilities and he used to remain under stress. However, no complaint in writing has been produced on record to show if at any time any grievance was raised by the deceased with the society. No complaint whatsoever was filed against the management of the society before the Registrar Co-operative Societies or the other competent authorities. The appellant society has categorically and specifically denied if the deceased was ever employed as a security guard in the society or was paid any salary @ ₹9,500/-. In the absence of any positive evidence on record, it cannot be inferred that the victim was in employment with the appellant society on the date of incident. No letter of appointment is on record. The claimant did not summon any record from the society or the office of Registrar of Co-operative Societies to ascertain if the victim was an employee with the society. The appellant society has placed on record the names of the employees who were in employment with them on the date of occurrence. These documents have not been controverted.

7. Victim's cause of death is not clear. The victim's body was found in the side-street outside the society. Nothing has emerged on record if there was any nexus between the victim's death and his employment. No FIR for victim's death was lodged at the police station. The doctor who had conducted post-mortem examination was not examined to ascertain the exact cause of death or to find out if it

has any relation with his employment. No document has been placed on record to show if the victim had got any treatment for his any physical ailment prior to the incident.

8. In '*Jyothi Ademma vs. Plant Engineer, Nellore & Anr.*', 2006 (5) SCC 513, it has been observed that the employment must be a contributory cause (solely or in addition to a disease) or acceleratory cause of injury or death. Workman dying of heart attack at workplace suffering from heart disease and receiving treatment therefore prior to the death having no scope for stress or strain in his duties during his employment cannot be held to have died out of or in the course of employment.

9. Circumstances must be shown to exist that the death caused was because of such stress or strain arising in the course of employment. No medical evidence has been produced on record in this regard.

10. In view of the findings above, the impugned order of the learned Commissioner cannot be sustained and is set aside. The appeal is allowed.

11. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

JANUARY 08, 2018 / tr