

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

+ **FAO 113/2021 & CM. APPLs. 10428-30/2021**

Date of Decision: 13.12.2022

IN THE MATTER OF:

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Mr. Pankaj Gupta, Advocate for Ms.
Suman Bagga, Advocate.

versus

SMT. SUNITA & ORS.

..... Respondents

Through: Mr. Pratap Sharma, Advocate for
respondent No.1.
Mr. G.C. Shukla, Advocate for
respondent No.2/DMRC.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'EC Act'), the appellant/respondent No. 3 has assailed the award dated 03.12.2020 passed by the learned Commissioner, Employees' Compensation, South-West District in Case No. EC(D)-05/SWD/2020/2225-2228 whereby it has been directed to pay compensation of Rs.8,67,640/- to the legal heirs/dependant

of the deceased workman, namely, *Pappu* alongwith 12% interest from the date of death.

2. Mr. Pankaj Gupta, learned counsel for the appellant has restricted his submissions to the contention that the amount which was paid by the respondent No. 3/employer to the respondent No. 1/claimant ought to have been adjusted towards the amount of compensation awarded to the claimant as an amount of Rs.4 lacs vide two cheques alongwith an amount of Rs.2,07,555/- in cash was paid to the wife of deceased workman. He thus submits that the aforesaid amount be deducted from the amount of compensation awarded.

3. On the other hand, learned counsel for the respondents have disputed the abovesaid submission made on behalf of the appellant and sought dismissal of the present appeal by contending that cheques of Rs.2 lacs each were voluntarily handed over to the wife of deceased workman by the respondent No. 2/DMRC and the employer as *ex-gratia* payments for the expenses incurred by the family towards the medical bills, transportation costs, last rites and other miscellaneous expenses.

4. I have heard learned counsels for the parties and have also gone through the entire material placed on record.

5. In the claim application filed by respondent No. 1, it was claimed that on 29.05.2017 while being employed with respondent No. 3, the deceased i.e., *Sh. Pappu* suffered fatal burn injuries on account of a fire accident stated to be occurred at the project site. The employer i.e., the sub-contractor had appeared before the Commissioner and admitted that the accident occurred during the course of employment. It was also informed that the employer had taken a workman compensation policy from the present

appellant. It was also stated that the amount was paid to the wife of deceased to overcome the burden of immediate financial crunch.

6. Accordingly, the learned Commissioner while considering the stand taken by the parties directed that the compensation amount be paid to the legal heirs of the deceased workman.

7. The contention raised on behalf of the appellant, when examined in light of Section 8(1) of the EC Act, needs outright rejection as the payments were made voluntarily and directly prior to filing of any claim application and not as an interim compensation. Further, the payments made are not covered by the proviso. The relevant part of the said Section reads as under:

*“8. Distribution of compensation.- (1) No payment of compensation in respect of a *[employee] whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation.”*

8. A Co-ordinate Bench of this Court in New Delhi Municipal Council v. Asha Devi reported as **2016 SCC OnLine Del 5731** while relying on an earlier decision of the Division Bench of this Court in Union of India v. Hira Rani, W.P. (C) 4897/2007 also concluded that an *ex-gratia* payment would not qualify as an interim compensation and thus not liable for deduction. To the similar extent are the observation of the Himachal Pradesh High Court in State of Himachal Pradesh and Another v. Guddi Devi and Others reported as **2019 SCC OnLine HP 1209**.

9. Accordingly, in view of the above discussion, I find no merits in the present appeal, and the same is dismissed alongwith miscellaneous

applications. This Court on 26.07.2021 noted the submissions made on behalf of the appellant and directed the Commissioner not to disburse any further amount to the claimant.

10. Consequently, the impugned order is upheld and the learned Commissioner is directed to release the balance amount of compensation alongwith the interest accrued thereon, if any, to the respondent No. 1/claimant within a period of five weeks from today.

11. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 13, 2022/v

मात्यमेव जयते