

CASE OF RAM PASWAN

This matter was taken up for hearing on different dates and finally heard today. The applicant was present along with her in-laws and advocate Shri Vijay Kant Mishra. The Company was represented by its Site Engineer Shri S.K. Suhail and Advocate Shri Rana Pratap Singh.

The applicant has approached the Commission seeking compensation on account of the accidental death of her husband Ram Paswan, resident of village Karhu P.S. Bihpur, district Bhagalpur. On 8.5.2009 while engaged in the work of transporting sand and stone for the respondent company he was drowned in river Ganga. The respondent company namely Hindustan Steelworks Construction limited, a Government of India undertaking, does not dispute the fact that the death of Ram Paswan was caused by accident arising out of and in course of his employment while working on the Raghapur – Kajikoria anti erosion work in the river Ganga being executed by them. In their show cause they admitted that he died while working on the river. They, however, took the plea that the work in the aforesaid division was being carried out by Avantika – Ghra (J/V) of Hyderabad who in turn appoint local contractors to do the work at various places, according to the situation and circumstances. In this regard they further stated that "on an in-depth enquiry it appears that the contractor Avantika –Ghra (J/V) have done a part of the Anti Erosion work on the bank of Ganga and the other part was given by them to local contractor Niranjana Singh".

In fairness to the company, it may be stated that at the first hearing the learned advocate did take a feeble objection to the effect that the deceased not being employee of the company, they are not liable for compensation for his death. At the final hearing, however, he did not press this plea. He stated that in deference to the Commission's observations the company was prepared to pay compensation on humanitarian ground. On being asked, he initially stated that the company was ready to pay thirty-forty thousand rupees. On persuasion, he stated that amount upto seventy-eighty thousand rupees could be paid.

Learned advocate, however, submitted that the applicant has lodged criminal case with respect to the incident against the officials of the company and the company would pay the amount only in the event the applicant agrees to withdraw the same. The applicant and her brother-in-law (husband's brother who was present at the time of hearing) readily agreed to do so.

Apropos the offer of compensation the Commission observed that there must be some basis for arriving at a figure or amount whereafter on that basis a negotiated statement can be arrived at. The Commission pointed out that the

basis can be found in the Workmen's Compensation Act 1923 which is the relevant statute on the point of compensation for death or injury on account of accident arising out of and in course of employment.

At this stage it would be relevant to refer to the relevant provision as contained in section 4 of the said Act which reads as follows:-

"Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :-

"(a) where death results from the injury	an amount equal to fifty percent of the monthly wages of the deceased workman multiplied by the relevant factor;
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Or

	an amount of eighty thousand rupees, whichever is more;
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(b)"
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Explanation I appended to the above provision lays down that for the purpose of clause (a) and clause (b), "relevant factor" in relation to workman is the factor specified in the second column of that schedule specifying the number of years which are the same as the completed years of age of the workmen on his last birthday immediately preceding the date on which the compensation fell due.

It was stated on behalf of the applicant that Ram Paswan was 25 years old at the time of accident and death and the relevant factor should be arrived at accordingly. On behalf of the company it was submitted that though there is no proof of age, he was not less than 28 years old at the relevant time. There was also disagreement about the 'monthly wages' of the deceased. Learned advocate for the company took the plea that the deceased was getting remuneration on daily wage basis and work was not being taken on all days in a month. As regards quantum of wages the stand of the company was that the deceased was getting wage @Rs.60-70 per day.

As seen above, section 4 of the Act refers to "monthly wages" and not daily wages; but, it does not mean that the compensation in respect of a person working on daily wage basis cannot be determined under section 4 of the Act. The Workmen's Compensation Act is a piece of beneficial legislation and its provisions have to be interpreted in a manner so as to serve the object which is to protect the interest of the workman and his family in case of injury or death by accident. In the opinion of the Commission, in cases of daily wage employee/workman, his

monthly wages for the purpose of section 4 would be total of the wages received by him on daily basis in a month.

Coming to the quantum of wages, the plea of the company that the deceased was getting remuneration @Rs.60-70, as pay per day has to be summarily rejected. It is not in dispute that the Government of Bihar has fixed wage of unskilled employee/workman at the rate of Rs.104 per day (now it is Rs.114). Thus calculated, the monthly wage of the deceased would work out to Rs.3120 (calculated for 30 days) per month. The plea that the work was not being taken from the deceased and he was not being paid wages on all days is not supported by any evidence. The Commission therefore has no hesitation in holding that the monthly wages of the deceased for the purpose of section 4 of the Act would work out to Rs.3120. As per the formula laid down in section 4, half of the said amount is to be multiplied by the 'relevant factor'. It may be observed that though there is a dispute about the age of the deceased, in the absence of any proof – one way or the other – the Commission would accept the higher of the two age – i.e. 28 years as claimed on behalf of the company. For a person 28 years of age, the relevant factor as per column 2 of schedule IV is 211.79. Multiplied by the said factor, the total amount would work out to 3,30,392 rupees. In other words, as per the formula laid down in Section 4 of the Act read with the Schedule IV, on the death of the deceased his dependants would be entitled to compensation of Rs.3,30,392.

In these premises it is not possible to accept the so-called enhanced offer of Rs.70-80,000 which is totally arbitrary and unjust. The Commission observed that as a matter of fact considering the plight of family of the deceased which comprises of a young widow and 5 year old daughter, the Company should show grace and pay higher amount, say, Rs.4 lakhs. The Commission also made an offer that if the company is ready to pay Rs.3 lakhs in two instalments – one immediately and the second after withdrawal of the criminal case, the matter could be treated as finally settled. Hearing was briefly adjourned to enable Shri Suhail to take instructions from the Senior officials. At the resumed hearing, however, he stated that the company would fight the criminal case in the lower court but it would not pay more than the amount offered i.e.70-80 thousand rupees.

The Commission is of the view that notwithstanding the response of the applicant to the above offer, it cannot agree on the aforesaid amount which considering the nature of the claim arising out of accidental death of a young man in course of his employment is a paltry amount. In any view, Rs.70-80,000 cannot be the value of life of a young man in his twenties. It is clear that what

the Company is really interested in is closure of the proceeding in the criminal case; and the offer of payment can not be regarded as a gesture or act of generosity.

Before we close the discussions it must be observed that although, as indicated above, the show cause of the company contained a suggestion as if the deceased was employed by a sub-contractor and a plea to this effect was also taken, albeit feebly, at the initial stage of hearing, the manner in which the claim was contested giving reference to the quantum of wages of the deceased, the number of days of employment in a month, his age at the time of death etc, leaves no room for doubt that whatever be the status of the deceased of the company on paper, he was really an employee of the company. The company has all the necessary details about his employment – which is enough to blast the suggestion that the deceased was not an employee of the company. Such a plea, it is well-known, is usually and routinely taken to deny the claim of the employee. If I may say so, it does not behove an employer like the Hindustan Steelworks Construction Limited which is an undertaking of the Government of India to deny compensation to a young woman and her five year old daughter on such untenable ground.

In the result, the Commission holds that the applicant be paid a sum of Rs.3,30,000 as compensation by respondent Hindustan Steelworks Construction Private Limited within six weeks.

Compliance report be filed by 30.6.2010.

Copy of this order may be sent to the Chairman/Managing Director Hindustan Steelworks Constructions Limited at the registered office of the Company, namely P34/A Gariahat Road (south) Kolkata – 700031 besides the Chief Project Manager Shri A.A. Kaiser on his Patna address i.e. Land Development Building (3rd Floor), Budh Marg, Patna and the applicant.

Justice S.N. Jha
Chairperson