

Kismat Singh vs. piariya Devi & Ors

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Court : Delhi

Decided On : Sep-27-2018

Appellant : Kismat Singh

Respondent : Piariya Devi & Ors

Advocate for Def. : Ms. Deepali Gupta

Judgement :

\$~ * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

27. h September, 2018 FAO2702011 KISMAT SINGH Appellant Through: Mr. V.K. Diwan and Mr. Lalit Kumar, versus Advocates PIARIYA DEVI & ORS

... RESPONDENTS

Through: Ms. Deepali Gupta, Advocate CORAM: HON'BLE MR. JUSTICE J.R. MIDHA JUDGMENT1 The greatest challenge before the judiciary today is frivolous litigation. False claims are a huge strain on the judicial system. In Subrata Roy Sahara v. Union of India, (2014) 8 SCC470 the Supreme Court observed that the Indian judicial system is grossly afflicted with frivolous litigation and a mechanism needs to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. Relevant portion of the said judgment is reproduced hereunder: 191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims.

(Emphasis supplied) 2. The appellant has challenged the order dated 8th April, 2011 whereby FAO2702011 Page 1 of 47 the Commissioner, Employees Compensation awarded a compensation of Rs.3,27,705/- and funeral charges of Rs.2,500/- along with interest @ 12% per annum w.e.f. 30th October, 2004 to the respondents.

3. Respondent No.1 is the mother and respondent No.2 is the son of late Ajay @ Mahavir Mehto (hereinafter referred to as Ajay) and they filed an application for compensation before the Commissioner, Employees Compensation against the appellant on the averments that Ajay was working in the appellants factory at Village Ranhola, Nangloi, Najafgarh Road, Delhi and was drawing a salary of Rs.3,000/- per month; the appellant had a number of factories and Ajay used to carry fatta/balli from one factory to another; on 17th September, 2004, Ajay demanded his unpaid salary of Rs.96,000/- whereupon the appellant asked him to finish the work and come later to receive the amount; when Ajay came back to receive the amount, the appellant, in connivance with his muscle men, namely, Mahinder, Radhey Shyam and Dinesh assaulted him, which resulted in serious injuries to Ajay who was taken to the hospital; he died due to the injuries on 30th September, 2004; Ajay was married to Promila Devi who left her matrimonial home after the death of Ajay, leaving behind her minor son, Master Manish (respondent No.2) with his grandmother (respondent No.1); an FIR No.868/2004 was registered by the police under Sections 341/3

I.P.C. at P.S. Nangloi; respondent No.1 issued the notice dated 24th May, 2006 to the appellant; the death of Ajay was a result of the accident dated 17th September, 2004 which arose out of and during the course of his employment with the appellant.

4. Vide judgment dated 17th September, 2010, the Sessions Court convicted the three accused persons namely Mahender, Radhey Shyam and FAO2702011 Page 2 of 47 Dinesh under Sections

(Part-II)/34 IPC. The Sessions Court held that Ajay died due to the injuries caused by the accused persons on 17th September, 2004 in the factory of the appellant. Relevant portion of the said judgment is reproduced hereunder: 1. The charge-sheet u/s 173 Cr.P.C. has been filed against the accused persons namely

Mahender S/o Sh. Shri Ram, Dinesh S/o Sh. Chatak & Radhey Shyam S/o Sh. Bhagwan Dass for committing offences as punishable u/s 341/3 IPC on the allegations of wrongfully restraining and causing death of Ajay.

2. Succinctly stating the case of the prosecution is that on 17/

at about 9.00 a.m. on the instructions of Suresh (thekedar), Ajay (since deceased) was shifting the bamboos & tripal (katta) from one factory to other, however he objected as the said ballis were quite heavy whereupon a scuffle arose during which all the accused persons in furtherance of their common intention had obstructed and wrongfully restrained him, as well as inflicted several blows in his chest by their elbows and though he was treated at the SGM Hospital and Trauma Centre as well, yet the said injuries roved fatal and he died on 30/09/04. xxx xxx

xxx 5. Naresh Kumar (PW6) has testified that he was working in the same factory where Ajay (since deceased) was also working and on 17/

at about 9.00 a.m., he saw that Ajay was shifting bamboos and tripal from one factory to other as per instructions of the thekedar Suresh. He has further deposed that Ajay objected as the said ballis were quite heavy whereupon a scuffle arose and all the accused persons grappled with him, thrashed him on the ground and also inflicted various injuries on his person including his chest with the elbows of their hands and shortly thereafter, Mohan Lal (PW-1 brother of the deceased) reached at the spot who along with the owner of the factory took him to a doctor and later on, Ajay succumbed to the said injuries in the hospital. xxx xxx xxx

FAO2702011 Page 3 of 47 informed the police officials regarding 23During their cross-examination on behalf of accused persons, it is placed on record that Ajay (since deceased) had been regularly taking treatment from Dr. Rajesh (PW8) and Mohan Lal (PW1) has also explained that he had not the present occurrence/incident as the contractor and owner of the factory had asked him not to lodge any report as they were ready to bear the medical expenses of Ajay. Accordingly, it is clear that PWs 1 & 4 have also corroborated testimony of PW6 on all relevant aspects and have also proved that Ajay had died due to injuries suffered at the hands of the accused persons. 5. Two accused persons, namely, Mahender and Radhey Shyam preferred appeals before this Court bearing Criminal Appeal Nos.749/2011 and 1000/2011 which were decided vide judgment dated 11th October, 2013. This Court held that Ajay was assaulted by the accused

persons in the factory of the appellant on 17th September, 2004. Relevant portion of the said judgment is reproduced hereunder: 1. Mahender (A-1), Radhey Shyam (A-2) and Dinesh were convicted for committing offences punishable under Section

part- II IPC. By an order dated 28.09.2010, they were sentenced to undergo RI for ten years with fine Rs.15,000/- each. A-1 and A-2 being aggrieved have challenged correctness of the judgment.

2. The incident out of which these appeals arise took place on 17.09.2004 at about 09.00 A.M. at village Ranhola. The genesis of the incident was petty dispute among A-1 to A-3 on the one hand and Ajay, on the other hand whereby they wrongfully restrained Ajay and assaulted him with fists and kicks. Police machinery was set in motion on 24.09.2004 when Ajay was admitted at Sanjay Gandhi Memorial Hospital (in short SGM Hospital); Daily Diary (DD) No.65B (Ex.PX) was registered at PS Nangloi and First Information Report was lodged on 25.09.2004, under Section 341/3

IPC after recording Mohan Lals statement (Ex.PW-1/A). DD No.38A FAO2702011 Page 4 of 47 6. (Ex.PW-10/C) was recorded after getting intimation of Ajays death in the hospital on 30.09.2004.

3. Indisputably, a scuffle took place on 17.09.2004 in Kismats factory in which Ajay was thrashed and beaten but neither he was taken for medical examination nor any report was lodged with the police. He was admitted in SGM hospital by Mohan Lal, his brother on 24.09.2004 at 10.15 P.M The appellants had no animosity with the victim prior to the occurrence. A sudden quarrel took place on 17.09.2004 when the victim objected to carrying of the bamboos/ ballies from one factory to the other on the instructions of Contractor - Suresh who was not implicated in the case. In the said scuffle A-1, A-2 and Dinesh assaulted Ajay and gave beatings resulting injuries on the body. The assailants were not armed with any deadly weapon and no repeated blows were inflicted on vital organ of the deceased. It appears that due to the intervention of the owner of the factory i.e. Kismat, the dispute was settled and the victim and his brother - Mohan Lal did not opt to report the incident to the police The appellants can therefore, only be held guilty of hurt under Section 323 IPC and not under Section 304 Part-II IPC.

4. In the light of above discussion, conviction under Section 304 Part-II IPC is altered to Section 3

IPC. All the convicts were sentenced to undergo RI for ten years with fine ` 15,000/- each Though the appellants were not liable for culpable homicide/ murder, they were nevertheless instrumental in accelerating victims death. But for this unfortunate incident, God knows, for how many days / months, the victim could have survived. Each day was precious for him and his family. On 04th May, 2017, this Court requisitioned the record of the criminal case relating to FIR No.868/2004, P.S. Nangloi under Sections 341/3

IPC. This Court also directed the Investigating Officer of FIR No.868/2004, P.S. Nangloi to produce the record. On 26th July, 2017, ASI Madan Singh from P.S. Nangloi appeared along with the record of FIR No.868/2004, P.S. Nangloi and the compilation of the relevant documents were taken on FAO2702011 Page 5 of 47 record.

7. The appellant contested the claim by denying the relationship of employment with the deceased as well as with the three accused persons, namely, Mahinder, Radhey Shyam and Dinesh. The appellant denied that any such incident took place in his factory. According to the appellant, the incident occurred in the field and was caused by outsiders and there was no nexus between the incident and the death. The appellant also denied the service of notice dated 24th May, 2006 sent by the claimants. The appellant claimed that the respondents have filed this claim to intimidate and extract money from him. The appellant however admitted that he has a factory at Village Ranhola, Nangloi, Najafgarh Road, Delhi. The appellant claimed that the deceased was working under the contractor.

8. Respondent No.1, Piariya Devi filed her affidavit by way of evidence in which she reiterated the averments made in the claim application. The appellant did not cross-examine her despite opportunity. Mohan Lal, elder brother of the deceased, appeared in the witness box and deposed that his deceased brother was employed in the appellants factory and was drawing a salary of Rs.3,000/- per month. He further deposed that on 17th September, 2004, Ajay demanded his unpaid salary whereupon the appellant asked him to finish his work and come back later to receive the amount; but when Ajay went back to receive the amount,

the appellant with his muscle men, namely, Mahinder, Radhey Shyam and Dinesh assaulted him, which resulted in serious injuries to Ajay, who was taken to the hospital, where he died due to injuries on 30th September, 2004 and FIR No.868/2004 was registered by the police under Sections 341/3

IPC at P.S. Nangloi. He further deposed that at the time of the incident, he was working in a factory at Ranhola FAO2702011 Page 6 of 47 which is half a kilometer away from the appellants factory. He further deposed that the said incident was narrated to him by the deceased, Ajay himself.

9. The respondents filed the certified copies of the documents relating to the criminal case arising out of FIR No.868/2004, namely, copies of FIR, site plan, MLC, death certificate, death summary, death report, post mortem report, charge-sheet, statements of Mohan Lal (PW-1), Dr. B.K. Jha (PW-2), Badri Prasad (PW-4), Ct.Satpal (PW-5), Naresh Kumar (PW-6) and Dr. Rajesh Gupta (PW-8) in the criminal case which were considered by the Commissioner, Employees Compensation.

10. The appellant filed his affidavit by way of evidence in which he averred that the deceased Ajay @ Mahavir Mehto was never employed by the appellant and he never employed anyone for his work in the factory because he got the work done through a contractor. The cross-examination of the appellant is reproduced herein under:-

"I am Proprietor of M/s Lakra Enterprises situated at Ranhola Village and dealing in trading work of plastic bottles. I had no workman on 17.9.2004 since I am dealing in trading only. I do not remember whether at that time any contractor was appointed or not but I used to get my work done with the help of contract if needed. On 17.9.2004 no worker namely Ajay @ Mahavir Mehto was working with my company. No any quarrel occurred on 17.9.04 in my company. I do not know the accused person namely Mahinder, Radhey Shyam, Dinesh and Chintoo etc. of FIR No.868/04, U/S3413

IPC of P.S. Nangloi. It is wrong to suggest that Ajay @ Mahvir Mehto was beaten up by the aforesaid accused persons in my company on 17.9.04 because they are not my workers. My company is not registered by the Registrar of Company or any

other Govt. Authority/Institute as I have no any labour in my factory. It is wrong to suggest that the afore said workman worked with me FAO2702011 Page 7 of 47 and I had to pay his dues upto Rs.96,000/-. It is wrong to suggest that the workman Ajay was getting Rs.3000/- per month and at the time of accident he was 23 years old. It is wrong to suggest that my son Billoo had admitted him for treatment after the incidence. It is wrong to suggest that I also promised to pay of all the expenses incurred by the injured or his relative later on I backed out. It is wrong to suggest that any FIR was lodged against me. I do not know who has lodged the FIR in my name and no one has arrested me. I have no relation what so ever with Mr. Mohan Lal and I do not know him. I do not know why Mr. Mohan Lal has lodged the FIR against me as I had no enmity with him. There was no particular contractor to whom I assigned the job of contractor. I know the contents of the affidavit. The name of my company may be Bottle Industries at Village Ranhola. PF, ESI, Bonus, Leave and Gratuity etc. are not applicable to my co. because no workman was ever engaged by me. No attendance register and duty register was also applicable at that time. It is wrong to suggest that Ajay @ Mahvir Mehtro was working with me and he was beaten up by my employees and hence my name had been involved in the FIR. It is wrong to suggest that I am deposing falsely. 11. The Commissioner held that the deceased Ajay suffered grievous injuries which resulted in his death, in an accident dated 17th September, 2004 which arose out of and during the course of his employment with the appellant. The Commissioner rejected the defence of the appellant and held that the appellant tried to conceal material facts relating to the employment of the deceased and he falsely presented the facts in his defence evidence.

12. The Commissioner further held that the appellant did not even disclose the nature of his business. With respect to the name of his company, the appellant answered the name of my company may be Bottle Industries. The Commissioner further noted that the appellant stated that he was getting the work done through the contractor but did not disclose the FAO2702011 Page 8 of 47 name of the contractor. The Commissioner relied upon and believed the statement of PW-6 in the criminal case that 30-35 workers were working in the factory on the date of the incident. Relevant portion of the impugned order is reproduced hereunder: In cross examination of Sh. Kismat Singh on 24.05.2010 in respect of his defence evidence

by way of affidavit dated 01.02.2010, respondent replied that he is the proprietor of M/s Lakra Enterprises while in concluding lines he said I know the contents of my affidavit, the name of my company may be Bottle Industries. In para no.3 of his affidavit he deposed that he never employed anyone for his work in his factory as he gets the work done through contractor whereas in cross examination he replied that he had no workmen on 17.09.2004, since he dealt with trading only. The Respondent has not mentioned in his written statement (sic) at any place that he dealt in trading only and also did not mention in written statement that any contractor was engaged by him for the purpose of work in the factory. He even nowhere mentioned the nature of his trading business in his affidavit or in written statement as replied in cross examination. He further replied that there was no particular contractor to whom he assigned the job of contractor while he explained in affidavit that he gets the work done through contractor as such the question of employment of any person does not arise at all. Respondent did not file any document in support of his averments in written statement or affidavit to disprove the claim. He stated that P.F., ESI, Bonus, Leave and gratuity are not applicable to his company because no workman was ever engaged by him and also that no attendance register and duty register was applicable on him. He further denied that incident took place in his factory premises during the course of employment. It is evident that the Respondent has tried to conceal the material facts of employment of workmen in his establishment and falsely depicted the facts in his defence evidence. Brother of deceased Sh. Mohan Lal has filed an affidavit that Ajay @ Mahavir Prasad S/o Sh. Suverdan Prasad is the FAO2702011 Page 9 of 47 name of one and the same person and he was known by the both the names in his village in Bihar. Claimant has also filed the photograph of deceased with his wife Promila Devi and son Master Manish who is living with his grand mother at present and reading in Class III in a school at Delhi. His D.O.B. certificate dated 22.01.2011 has been filed on record mentioning therein the name of father and mother both. Claimant has also filed certified copies of FIR no.8 registered in P.S. Nangloi, U/S3413

IPC, site map of incident, MLC, death certificate, death summary, death report - unnatural death by violence, post mortem report, copy of charge sheet dated 16.03.2005 and the statements of the prosecution as PW-1, PW-2, PW-4, PW-5,

PW-6 and PW-8 of the criminal case trial pending before the Learned ASJ, Rohini, Delhi to bring the truth by certified copies of the documents on record. On perusal of site map which is a document prepared by the IO, indicates the point A is the place where incident took place and point B is the place where eye witnesses were present. Both the points are inside the premises of the factory of the Respondent. In evidence of trial court deposed by PW-6 Sh. Naresh Kumar eye witness and co-worker of the deceased on the day of incident i.e. 17.09.2004, who was present in the factory of Respondent stated that attendance register was maintained in factory of Kismat and the presence of the workers was marked in the register. Whenever anybody was not present his attendance was marked by using the alphabet A and in case of the presence of worker the alphabet P was marked in the attendance register.

workers were working in the factory of Kismat on the day of incident clearly proves that incident took place inside the factory of Respondent during the course of employment. Relying on the documents on record and evidences, I hold that incident took place during the course of employment and deceased was the employee of Sh. Kismat Singh Respondent No.1. Hence issue no.1 is decided in favour of claimant and against the respondent. (Emphasis Supplied) FAO2702011 Page 10 of 47

13. Submissions of the appellant

13.1 The appellant had an open godown named Lakra Enterprises in Village Ranhola, Delhi where empty plastic bottles were collected and their plastic labels and caps were removed and thereafter, the plastic bottles were cleaned and sent for reprocessing to the actual users.

13.2 The appellant never employed any labour/worker and the entire job of removing the labels/caps and cleaning of bottles was done through the contractor.

13.3 The deceased, Ajay was not in the employment of the appellant. The deceased, Ajay was working under the contractor, Suresh which is recorded in the FIR and the settlement between the fighting persons was done by the contractor.

13.4 The appellant placed reliance on the F.I.R in which Mohan Lal, brother of the deceased and the complainant had stated about the engagement of contractor for work and the deceased doing the work under the instructions of the contractor.

13.5 No incident took place in the factory premises of the appellant on 17th September, 2004.

13.6 The alleged incident occurred in a field of Village Ranhola and was caused by outsiders.

13.7 The deceased, Ajay did not die because of the

alleged assault. There was no nexus between the alleged incident of assault and the cause of death. 13.8 Piariya Devi (mother of the deceased) never appeared for cross-examination and as such, her evidence cannot be considered. FAO2702011 Page 11 of 47 13.9 Mohan Lal (brother of the deceased) appeared in the witness box as PW2 but no documents have been filed to show that he was the brother of the deceased and respondent no.2 was son of the deceased. 13.10 The correct identity of the deceased, Ajay Kumar is doubtful. Reliance is placed on photocopy of an affidavit dated 20th April, 2009 of Ajay Kumar. It is contended that as per the affidavit, Ajay Kumar was alive on 20th April, 2009 and, therefore, claim of death of Ajay Kumar on 30th September, 2004 in the alleged incident is false. 13.11 The name of the deceased has been mentioned as Mahavir Prasad in ration card who is a different person than Ajay Kumar. Mohan Lal (brother of the deceased) has filed a false affidavit to depose that Ajay Kumar and Mahavir Prasad is one and the same person. According to the appellant, Ajay Kumar and Mahavir Prasad are different persons and no compensation could have been claimed on the death of Ajay Kumar. 13.12 The respondent No.1 and 2 have filed a false claim to extort compensation from the appellant.

14. Submissions of respondents No.1 and 2 14.1 The deceased, Ajay was working as a labourer in the bottle factory of appellant at Village-Ranhola, Nangloi, Najafgarh Road, Delhi, and at the time of incident, he was 23 years old and he was drawing a salary of Rs.3,000/- per month. 14.2 On 17th September, 2004, Ajay was carrying fatta balli from one factory of the appellant to another factory of appellant; scuffle arose in the factory premises of appellant; Ajay was severely beaten up by the muscle men of appellant because he had demanded his balance dues of FAO2702011 Page 12 of 47 salary of Rs.96,000/-; FIR No.868 U/s.341/3 IPC was registered on 25th September, 2004 at P.S.Nangloi, New Delhi against the accused persons namely Mahender, Radhey Shyam and Dinesh; Ajay was admitted to S.G.M. Hospital, Delhi from where, he was referred to Sanjay Gandhi Memorial Hospital, Delhi and thereafter, he was referred to Trauma Centre and due to grievous injuries, he died on 30th September, 2004 during the course of employment. The certified copies of MLC, death report, death certificate, post mortem report and site plan are on record. 14.3 The deceased, Ajay was married to Promila Devi and out of this wedlock, Manish was born who was seven years

old at the time of his fathers death. After the death of Ajay, his widow got remarried with Kameshwar Singh, resident of village Jai Singh Pur, P.O. Seova, Distt. Motihari, Bihar, leaving behind the son, Manish with his grandmother, Piariya Devi. Promila Devi was added as respondent No.2 before the Commissioner, Employees Compensation who did not appear despite service and was proceeded ex-parte. 14.4 The appellant, Kismat Singh was cross-examined on 24th May, 2010 who even did not want to tell the proper name of his firm as he stated that, I am Proprietor of M/s. Lakra Enterprises situated at Ranhola Village, and deposed that The name of my company may be Bottle Industries at Village Ranhola. He stated that he was dealing in trading work of plastic bottles but engaged no workmen/employees and engaged workers through contractor but he does not remember whether at that time any contractor was appointed. He further denied that no such quarrel occurred on 17th September, 2004 in his factory and he FAO2702011 Page 13 of 47 also did not know the accused persons and Ajay never worked with him. 14.5 The name of the appellant in FIR, site plan where the quarrel occurred and the copy of the charge sheet clearly show that a quarrel took place on 17th September, 2004 at 09:00 AM at a factory of bottles belonging to the appellant at Village Ranhola and point Mark-A in the site plan clearly shows the place where the deceased was beaten up, was within in the factory premises of the appellant. Mohan Lal (PW-1), Badri Prasad (PW-4) appeared as witnesses in the criminal case. Naresh Kumar (PW-6), co-worker in the factory of the appellant was the eye- witness and he stated that Ajay was working in the factory of Kismat Singh and the incident took place inside the factory during the course of his employment with the appellant. Naresh, PW-6 deposed that Attendance Register was maintained in the factory of Kismat and the presence of the worker was marked in the register. Whenever anybody is not present his attendance was marked by using the alphabet A and in case of presence of worker the alphabet P was marked in the attendance register.

workers used to work in the factory of Kismat during the day of incident. The police was informed after about two days of the incident by me in the Police Station. My statement was recorded by the police on that day. The statements of Badri and Mohan Lal the brother of deceased were recorded on that day. I do not know whether police had recorded statement of Kismat employer. On the other hand,

the appellant has wrongly stated in his cross-examination that no attendance register and duty register was maintained because no workmen was ever engaged by me. He has also denied that the injured FAO2702011 Page 14 of 47 was admitted by him or his son in any Hospital, whereas PW-6 clearly stated that the owner of the factory was appellant and the appellant and Mohan removed Ajay to the Hospital. Mohan Lal (PW-1) also stated that owner of the factory removed his brother to Private clinic at Najafgarh Road, Nangloi, Delhi and after first aid, his brother was discharged from the hospital. So all these evidences corroborate that the incident took place inside the factory premises of appellant during the course of Ajays employment and he was employed by appellant at Ranhola, Delhi. Mohan Lal, brother of deceased lodged the FIR and reached at the spot on the day of incident on the information of Naresh, who was one of the employees of the appellant. Respondent No.1 and 2 are entitled for compensation under the provisions of the Employees Compensation Act, 1923 with interest from the date of incident and also penalty under Section 4-A, since the appellant defaulted in paying the compensation due under this Act within one month from the due date despite the fact he was well aware about the accident and compensation due from him.

15. The Employees Compensation Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. The preamble of the Act reads as under: An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident. This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under: FAO2702011 Page 15 of 47 The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents. An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects to such accidents as do occur. The benefits so

conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may be expected. Liability of Compensation Act the principal under Section 12 of the Employees 16. Section 12 of the Employees 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 Employees 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 FAO2702011 Page 16 of 47 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 than 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. 17. In *N.P. Lalan v. V.A. John*, (1972) II LLJ273Ker, V.R. Krishna Iyer, J.

as he then was, explained the purpose of Employee's Compensation (Emphasis supplied) 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-FAO2702011 Page 17 of 47 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 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 judiciary when applying the (Emphasis supplied) 18. The object for enacting the Employees Compensation Act 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. 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. The main object of enacting Section 12 of FAO2702011 Page 18 of 47 the Act is to secure compensation to the employees who have been engaged by the principal employer through a contractor for the work which the principal employer is supposed to carry out. 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. The intention of the Legislature in enacting Section 12 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 employers) financial position. 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. Reference be made to *Bhutabhai Angadbhai v. Gujarat Electricity Board*, 1987 (1) L.L.N. 156; *M.R. Mishrikoti v. Muktumsab Hasansab Asoti*, (1972) 2 Mys LJ449 *Koli Mansukh Rana v. Patel Natha Ramji*, 1992 ACJ772 *Payyannur Educational Society v. Narayani*, (1996) 72 FLR709 *Public Works Department v. Commissioner, Workmen Compensation*, (supra); *Koodalingam v. Superintending Engineer, Project Circle, Public Works Department, Kozhikode*, 1994 (2) L.L.N. 779; *Sardar Sewa Singh v. Hindustan Lever Ltd.*, 1980 (1) L.L.N. 566 and *Executive Engineer/Deputy General Manager, Sub Urban Division, DHBVNL, Bhiwani v. Priyanka*, 2017 (153) FLR302 in which the Courts have examined the scope of Section 12.

19. 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 FAO2702011 Page 19 of 47 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.

20. 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 an employee or the dependants of an employee, to get the compensation from the principal or from the contractor at their option.

21. Section 12 secures compensation by a speedy process to the employee who cannot fight out his battle for compensation. A person who employs others to advance his own interest is expected to provide a surer basis for payment to 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.

22. 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 a 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 this 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.

23. 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.

24. 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 taking work from him.

25. The definition of workman, as it originally existed in the Workmens Compensation Act, 1923, excluded the workmen whose employment was of a casual nature and who were employed otherwise than for the purpose of employers trade or business. Section 2(1) (n) of the Workmens Compensation Act, 1923 was amended by Workmens Compensation (Amendment) Act, 2000 with effect from 8th December, 2000 whereby the FAO2702011 Page 21 of 47 words other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employers trade or business in the definition of workman in Section 2(1) (n) were omitted.

26. Section 2(1) (n) of the Workmens Compensation Act, prior to the Workmens 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 employers trade or business) who is - in any such capacity as (i) (ii) employed ****].² 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.

27. Section 2(1)(n) of the Workmens Compensation Act, after the Workmens Compensation (Amendment) Act, 2000 reads as under: (Emphasis supplied) Section 2(1) (n) - workman means any person who is - (i) (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. (Emphasis supplied) 28. Workmen Compensation Act was again amended in 2009 by Workmens 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 Workmens 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 Workmens Compensation Act to Employees Compensation Act. Section 2(1)(dd) of the Employees 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; 29. In *Govind Goenka v. Dayawati* (supra), this Court examined the effect of Workmens 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) 30. The principles of statutory construction for social welfare legislations 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 misapplication must be recognized 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.

31. The proceedings before the Commissioner, Employees FAO2702011 Page 24 of 47 Compensation are in the nature of an inquiry and not a trial. Reference be made to Sections 20(3) and 21(3) of the Employees Compensation Act. The principles relating to the difference between an inquiry and trial discussed in *Mayur Arora v. Amit*, 2011 (91) TAC878 apply to proceedings under the Employees Compensation Act. To explain the difference, the procedure in inquiry is Inquisitorial rather than Adversarial trial. In the Inquisitorial system, the presiding Judge is not a passive recipient of information. Rather, the Presiding Judge is primarily responsible for supervising the gathering of the evidence necessary to resolve the case. He actively steers the search for evidence and questions the witnesses, including the petitioner or respondent. Most of the victims of the Employees Compensation belong to the lowest strata of the society and, therefore, duty has been cast upon the Commissioner to ascertain the facts which are necessary for passing the order. To illustrate in a case of death of an employee, the Commissioner may summon the Investigating Officer of the police to ascertain the factum of the accident. Section 25A of the Employee's Compensation Act imposes a time limit of three months to complete the inquiry relating to the compensation. Section 25A of the Employee's Compensation Act, 1923 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.

32. In case of death of an employee in an accident arising out of and during the course of his employment, the employer is required to deposit the compensation amount with the Commissioner, Employees Compensation within thirty days failing which Section 4A(3) of the Employees Compensation Act, 1923 empowers the Commissioner to impose penalty upto 50% of the compensation amount after affording the opportunity to show cause to the employer. Section 4A(3) 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.

Explanation.--For sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the [employee]. or his dependant, as the case may be.

the purposes of this

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33. Summary of Principles

33.1 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.

33.2 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

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machinery for compensating them with pecuniary benefits. 33.3 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. 33.4 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. 33.5 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 employers) financial position. 33.6 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. 33.7 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. 33.8 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. 33.9 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. FAO2702011 Page 28 of 47 33.10 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. 33.11 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. 33.12 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. 33.13 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

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finds support from interpretation have employed the employee and may have been responsible for immediately taking work from him. 33.14 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. 33.15 This the amendment of Section 2(1)(n) of the Act (vide Workmens 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. 33.16 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 employers trade or business is certainly covered within the definition of employee. 33.17 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 employers trade or business are entitled to all the benefits of the Employees 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). 33.18 The proceedings before the Commissioner, Employees

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Compensation are in the nature of an inquiry. The principles relating to the difference between an inquiry and trial are discussed in

Mayur Arora v. Amit, (supra). Findings 34. The deceased, Ajay was working for the appellant in his factory at Village Ranhola, Nangloi, Najafgarh Road, Delhi on 17th September, 2004 through the contractor, Suresh when he was attacked by Mahinder, Radhey Shyam and Dinesh which resulted in injuries which subsequently, resulted in his death.

35. The deceased, Ajay was working for the appellant through the contractor, Suresh and the appellant, being the principal employer, is liable to pay the compensation to respondents No.1 and 2 under Section 12 of the Employees Compensation Act. All the ingredients of Section 12 are satisfied in the present case and the appellant, being the principal, is liable to pay the compensation to respondent no.1 with the right to recover the same from the contractor. This case is squarely covered by the principles laid down in the judgments discussed above.

36. The death of Ajay due to the aforesaid attack is an accident for the purpose of Employees Compensation Act. Reference be made to the judgment of Supreme Court in Rita Devi v. New India Assurance Co. Ltd., 2000 ACJ801(SC) and to the judgments of this Court in United India Insurance Co. Ltd. v. Kamlesh, (2017) 4 LLJ522 Ram Niwas Gupta v. Bindu Singh, (2017) 241 DLT1 and Star Press v. Meena Devi, (2017) 239 DLT357 in which this Court has extensively examined the law with respect to the liability of the employer to pay compensation in cases of accidental murder. Applying the principles laid down in the above mentioned judgments, the death of Ajay is held to be an accident. In the present case, the dominant purpose of the assailants was not to kill the deceased; the deceased did not in any way added to the peril; the deceased could not and did not contemplate his assault, and it was an unforeseen and untoward happening and therefore, an accident. There is a casual connection between the employment and the accidental attack as the deceased was working in the factory when he was assaulted during the course of his employment. But for his employment, the deceased would not have been at the place of accident, where he was at the time when he was assaulted and accident occurred in the course of the employment of the deceased.

37. Since the proceedings under the Employees Compensation Act are in the nature of an inquiry, this Court summoned the Investigating Officer of FIR No.868/2004, P.S. Nangloi who produced the record which was examined by this Court. This Court also summoned the record of the criminal case relating to FIR No.868/2004 which was examined by this Court as part of the inquiry. This Court is satisfied that respondent No.1 and 2 are entitled to the compensation of Rs.3,27,705/- and funeral charges of Rs.2,500/- along with interest @ 12% per annum w.e.f. 30th October, 2004 for the reasons stated hereinabove.

38. The appellant has misused the process of law by raising false claims. The appellant has shamelessly resorted to falsehood. The appellant has no respect for truth and this case warrants prosecution as well as imposition of penal costs on the appellant. The particulars of the false claims of the appellant are as under:-

"38.1. The appellants contention that no incident took place in his factory on 17th September, 2004 is absolutely false and is rejected. FAO2702011 Page 32 of 47

... RESPONDENTS

No.1 and 2 have duly proved that the incident took place inside the appellants factory. The site plan on record shows that the incident has taken place inside the appellants factory, which has been accepted by the Sessions Court as well as the High Court. 38.2. The appellants plea that incident dated 17th September, 2004 took place in the fields of the Village Ranhola and was caused by outsiders, is false and rejected. Respondent No.1 and 2 have duly proved the place of incident as well as the name of the accused persons. The Sessions Courts as well as the High Court have accepted the place of incident as well as the name of the accused persons. 38.3. The appellants plea that the deceased, Ajay did not die due to the alleged assault is also false. It has been duly proved by the claimants and also held by the Sessions Courts as well as by the High Court that the deceased, Ajay died because of the injuries in accident. 38.4. Piariya Devi appeared in the witness box as PW1 on 02nd September, 2009 when an opportunity to cross-examine her was given to the appellant who sought an adjournment which was declined by the Commissioner on the ground that Piariya Devi, aged about 80 years had come from Motihari, Bihar and it was not possible

for her to appear again. The Commissioner recorded her statement on the basis of the Court questions. The appellants representative stated that he does not want to ask any question from PW1. The appellant did not cross-examine PW1, Piariya Devi despite opportunity granted and the un-rebutted testimony of PW1 constitutes sufficient proof of the respondents case. In that view of the matter, the appellant have raised a false plea before this Court that PW1 did not appear for cross-examination and no opportunity of cross-examination was afforded to the appellant. 38.5. The appellant filed the photocopy of the affidavit bearing the name of the deceased, Ajay Kumar, father of Manish Kumar to contend that Ajay Kumar has not died and is still alive. The affidavit appears to have been filed in some school to secure the admission of Manish Kumar in second standard in 2009. The contents of the affidavit with respect to the name of the deponent are certainly not correct but to contend that Ajay Kumar is alive is the height of the false claim that can be raised by a litigant. 38.6. Mohan Lal (brother of the deceased) filed the affidavit before the Commissioner to depose that Ajay Kumar was also known as Mahavir Prasad. This Court is satisfied that Ajay Kumar and Mahavir Prasad are one and same person. The appellants plea that Ajay Kumar and Mahavir Prasad are two different persons, is false and is rejected. 38.7. The appellants submission disputing relationship of Mohan Lal (brother of the deceased) and Manish Kumar (son of the deceased) is frivolous and is rejected. 38.8. The appellants plea that respondent Nos.1 and 2 have filed a false claim and are liable to be prosecuted under Section 340 of the Cr.P.C., is the limit of frivolous submissions that can be raised by a litigant. The appellant has raised false claims before this Court and is liable to be prosecuted under Section 209 of the Indian Penal Code. 38.9. This Court is pained to note that the appellant has interfered with the administration of justice by raising false claims to frustrate the lawful claim of respondent Nos.1 and 2. FAO2702011 Page 34 of 47 39. According to the appellant, the deceased was working through the contractor of the appellant. However, the appellant never produced relevant records of his factory such as name of the contractor(s), nature of work done by contractor(s), amount paid to the contractor(s), salary slips, attendance register or name of workers employed by contractor(s) which are mandatory under Contract Labour (Regulation and Abolition) Act, 1970 as 30-35 workers were working in the

appellants factory on the date of the incident.

40. The appellant has not even disclosed the aforesaid relevant facts in this appeal. The relevant portion of this appeal are reproduced hereunder: 1. That the petitioner is a Citizen of India residing at Village Ranhola, Delhi and has been basically an Agriculturist. In the small portion of his agricultural land the petitioner has kept an open Godown for collection of empty Plastic Bottles purchased through the Scrap Dealers. The said Godown is named as M/s. Lakra Enterprises where Paper Labels and Caps of the Plastic Bottles are being removed and then after cleaning the Plastic Bottles are sent for re-processing/further processing to the actual users. The entire job of removing the Labels/Rappers and Caps from the Bottles and cleaning of bottles are done through Contractor. The appellant never employed any Labour/Worker nor engaged any person for the jobs narrated hereinabove. xxx xxx xxx 7. As far as documents are concerned, the appellant had clearly stated that he never employed anybody for his work and he got the work done through Contractor and as such he did not file any document. The appellant had further stated that E.P.F., E.S.I., Bonus, Leave, Gratuity were not applicable to his company because no workman was ever engaged by him and also that no Attendance Register was applicable on him. The Appellant further denied that any incident took place in his factory premises... The engagement of the Contractor is also apparent from the F.I.R. in which the complainant Shri Mohan Lal has also clearly stated engagement of a Contractor FAO2702011 Page 35 of 47 for work and Shri Ajay, deceased doing work under the instructions of the Contractor. In the subsequent portion of the F.I.R., the complainant Shri Mohan Lal has further stated that the Contractor had got settlement done, meaning thereby that the deceased Shri Ajay was working under the contractor and the Contractor was the main person and a settlement (naturally between the fighting persons) was also got done by the Contractor. The Learned Commissioner (sic) under Workmens Compensation Act failed to appreciate that in such a situation there was no role of the appellant in the employment of Shri Ajay (sic), deceased nor in connection with his work i.e. carrying of alleged Balli/Fatte from one factory to the other which he was doing under the instructions of the Contractor and he had no role in the fight between Shri Ajay on one hand and alleged Shri Mahender, Radhey Shyam, Dinesh and Chintu on the other hand and that the appellant had no role in

settlement of their dispute which was also got done by the Contractor. Making false claim is an offence under Section 209 of the Indian Penal Code 41. Raising a false claim before the Court is an offence under Section 209 of Indian Penal Code which is reproduced here under:-

"(Emphasis Supplied) Section 209 - Dishonestly making false claim in Court - Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. 42. In H.S. Bedi v. National Highway Authority of India, 2016 (155) DRJ259 this Court examined the scope of Section 209 of the Indian Penal Code and held as under: 15.1 Section 209 of the Indian Penal Code makes dishonestly making a false claim in a Court as an offence punishable with imprisonment upto two years and fine. FAO2702011 Page 36 of 47 15.2 The essential ingredients of an offence under Section 209 are: (i) The accused made a claim; (ii) The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv) That the accused knew that the claim was false; and (v) The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person. 15.3 A litigant makes a claim before a Court of Justice for the purpose of Section 209 when he seeks certain relief or remedies from the Court and a claim for relief necessarily impasses the ground for obtaining that relief. The offence is complete the moment a false claim is filed in Court. 15.4 The word claim in Section 209 of the IPC cannot be read as being confined to the prayer clause. It means the claim to the existence or non-existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and its application to facts as established. To clarify, the word claim would mean both not only a claim in the affirmative to the existence of fact(s) as, to illustrate, may be made in a plaint, writ petition, or an application; but equally also by denying an averred fact while responding (to the plaint/petition, etc.) in a written statement, counter affidavit, a reply, etc. Doing so is making a claim to the non-existence of the averred fact. A false denial, except when the person responding is not aware, would constitute making a claim in Court under Section 209 IPC. 15.5 The word claim for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for

criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law. 15.6 Whether the litigants claim is false, is not considered merely from whatever he pleads (or omits to plead): that would be to elevate form over substance. To make out the offence, the Court does not merely inspect how a litigants pleadings have been drafted or the case has been presented. The real issue to be considered is whether, all said and done, the litigants action FAO2702011 Page 37 of 47 has a proper foundation which entitles him to seek judicial relief. 15.7 Section 209 was enacted to preserve the sanctity of the Court of Justice and to safeguard the due administration of law by deterring the deliberate making of false claims. Section 209 was intended to deter the abuse of Court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy. 15.8 False claims delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude. 15.9 Filing of false claims in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false claims. 15.10 The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. More often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan- dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. 15.11 The disastrous result of leniency or indulgence in invoking Section 209 is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result. 15.12 Unless lawlessness which is all pervasive in the society is not put an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the litigants making false claims are allowed to go scot free, every law breaker would

violate the law with immunity. Hence, deterrent action is required to
Page 38 of 47 uphold the majesty of law. The Court would be failing in its duties, if false claims are not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Courts would lose its efficacy to the litigant public. (Emphasis supplied) Imposition of costs 43. False claims and defences are really serious problems. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. It is the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs of all these years long litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of filing false cases.

44. The Supreme Court and this Court have time and again held that heavy costs should be imposed in frivolous cases and in appropriate cases, prosecution be ordered to maintain purity and sanctity of judicial proceedings.

45. In *Ramrameshwari Devi v. Nirmala Devi*, (2011) 8 SCC249 the Supreme Court has held that the Courts have to take into consideration the pragmatic realities and have to be realistic in imposing the costs. Relevant portion of the said judgment is reproduced hereunder: 43. ..We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable
Page 39 of 47 time is consumed or more appropriately wasted in a large number of uncalled for cases. xxx xxx xxx 52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed?. In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials. xxx xxx xxx C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated

documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. filing of 54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the

... RESPONDENTS

had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or

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were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the

... RESPONDENTS

to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of facts and circumstances of this case, we do not find any infirmity in totality of the FAO2702011 Page 40 of 47 the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by the fundamental principle that wrongdoers should not get benefit out of frivolous litigation. following (Emphasis supplied) 46. In Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (2012) 5 SCC370 the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences. Relevant portion of the said judgment is reproduced

hereunder: 85. This Court in a recent judgment in *Ramrameshwari Devi* (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. (Emphasis supplied) FAO2702011 Page 41 of 47 47. In *Subrata Roy Sahara v. Union of India* (supra), the Supreme Court stressed the need for imposition of costs in frivolous litigations. Relevant portion of the said judgment is reproduced hereunder: 191. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault?. (Emphasis Supplied) Ethics in litigation - Duty not to deceive or mislead 48. The most basic obligation of the litigant and his lawyer is not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal argument and other submissions or communications with the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of the advocate and solicitor. As an officer of the Court, he is expected to advance the public interest in

the fair administration of justice even if this would jeopardise his client's interests. Hence, he is required to inform the Court of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues. In the same context, he is prohibited from advancing submissions, opinions or propositions which he knows to be contrary to the law. He is bound not to make any statements which are inaccurate, untrue and misleading.

49. In *D.P. Chadha v. Triyugi Narain Mishra*, (2001) 2 SCC221 the Supreme Court held as under:-

"22. ... A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent... (Emphasis supplied) 50. This Court is of the view that the appellants counsel did not fairly state the facts but presented them in such a way as to mislead the Court as to true facts and thereby, abused the process of law. This matter was heard on various dates when the counsel for the appellant raised highly irresponsible and frivolous pleas and mislead this Court on law as well as on facts. The appellants counsel did not disclose the material facts fairly and truly and FAO2702011 Page 43 of 47 stated them in a distorted manner and thereby,

misled this Court. The appellants counsel have attempted to overreach and mislead this Court by false and untrue statements and withholding true information which would have a bearing in this matter. The appellants conduct to mislead the Court not only injured the respondent Nos.1 and 2 but also caused serious damage to this institution. The appellant has no respect for truth and has polluted the fountain of justice with tainted hands. The appellant has interfered with the administration of justice and has attempted to impede, undermine and obstruct the free flow of the holy stream of justice. The law does not require the Court to sit back with folded hands and fail to take any action in the matter. However, the appropriate order in this regard shall be passed after hearing the appellants counsel. Conclusion 51. On 17th September, 2004, the deceased Ajay @ Mahavir Mehto was assaulted which resulted in his death. The death of Ajay is an accident for the purpose of compensation under the Employees Compensation Act. The deceased was working for the appellant, through the contractor at the time of accident and the accident arose out of and during the course of employment of the deceased. All the ingredients of Section 12 of Employees Compensation Act are satisfied in the present case and the appellant, being the principal, is liable to pay the compensation of Rs.3,27,705/- along with interest @12% per annum to respondent no.1 with the right to recover the same from the contractor.

52. The appellant has deposited Rs.3,27,705/- with the Commissioner, Employees Compensation out of which 2/3rd amount has already been released to respondents No.1 and 2 and the balance 1/3rd amount is lying FAO2702011 Page 44 of 47 with the Commissioner. The Commissioner, Employees Compensation is directed to release the balance amount to respondents No.1 and 2 by transferring the same to their savings bank account near the place of their residence in Bihar.

53. The appellant is directed to deposit the balance award amount with the Registrar General of this Court within two weeks. The amount already deposited shall be first adjusted towards the interest and thereafter, towards the principal in terms of Order XXI Rule 1 of the Code of Civil Procedure and the principles laid down by this Court in Brijesh Kumar Verma v. Aurangjeb, FAO3452016 decided on 24th April, 2018. The computation of the interest shall be filed on affidavit before the next date of hearing.

54. Section 4-A(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. In the present case, the compensation was not paid to respondent no.1 and 2 when it fell due. However, the Commissioner, Employees Compensation has not imposed penalty under Section 4-A (3) of the Employees Compensation Act. This Court is empowered to take up the proceedings for imposition of penalty.

55. Issue show cause notice to the appellant to show cause as to why the penalty be not imposed under Section 4-A (3) of the Employees Compensation Act. Let the reply to the show cause notice be filed within two weeks.

56. This case warrants imposition of heavy cost on the appellant for instituting this frivolous litigation and, therefore, cost of Rs.2,00,000/- is imposed on the appellant. The cost be deposited by the appellant with the Registrar General of this Court within two weeks. FAO2702011 Page 45 of 47 57. This Court is of the prima facie view that the appellant has raised false claims before this Court and therefore, a show cause notice is hereby issued to the appellant to show cause as to why a complaint be not made against him under Section 340 Cr.P.C. for raising false claims under Section 209 IPC. Reply to the show cause notice be filed by the appellant within two weeks.

58. The appeal is disposed of in the above terms. List on 16th October, 2018 for considering the reply of the appellant to the show cause notices mentioned in para 55 and 57 above as well as hearing in terms of paragraph 50 above. The appellant shall remain present in Court on the next date of hearing.

59. Mr. Kirti Uppal, President of High Court Bar Association and Mr. Sanjoy Ghose, Additional Standing counsel for GNCTD are appointed as amicus curiae to assist this Court in this matter.

60. Copy of this judgment be sent to Mr. Kirti Uppal, President of the Delhi High Court Bar Association; Mr. Sanjoy Ghose, Additional Standing counsel for GNCTD and Mr. Sajiv Kakra, Advocate for compliance by State Bank of India.

61. Mr. Sanjoy Ghose, Additional Standing counsel for GNCTD shall circulate the copy of this judgment to all the Commissioners, Employees Compensation.

62. Mr. Sanjoy Ghose, Additional Standing counsel for GNCTD shall ensure the compliance of paragraph 52 by the Commissioner, Employees Compensation.

63. The record of the criminal case relating to FIR No.868/2004 be returned back.
FAO2702011 Page 46 of 47 64. The record of the Commissioner, Employees Compensation be also returned back forthwith.

65. Dasti. SEPTEMBER27 2018 dk J.R.MIDHA, J.

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