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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 18th OF OCTOBER, 2022

WRIT PETITION No. 6361 of 2022

BETWEEN:-

GITA BAI LODHI W/O LATE SHRI GANESH SINGH LODHI, AGED ABOUT 35 YEARS, OCCUPATION: HOUSE WIFE R/O VILLAGE SHIKARPURA, PIPARIYA, JANPA PANCHAYAT PATERA, DISTRICT DAMOH M.P. (MADHYA PRADESH)

....PETITIONER

(BY SHRI R.N. MISHRA - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS SECRETARY LABOUR DEPARTMENT MANTRALAYA VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. TO, THE COLLECTOR D A M O H DISTRICT DAMOH M.P. (MADHYA PRADESH)
3. TO, THE SUB DIVISIONAL OFFICER DAMOH DISTRICT DAMOH M.P. (MADHYA PRADESH)
4. TO, CHIEF EXECUTIVE OFFICER ZILLAPANCHAYAT DAMOH DISTRICT DAMOH M.P. (MADHYA PRADESH)
5. TO, CHIEF EXECUTIVE OFFICER JANPAD PANCHAYAT PATERA DISTRICT DAMOH M.P. (MADHYA PRADESH)
6. TO THE LABOUR OFFICER DISTRICT DAMOH M.P. (MADHYA PRADESH)

....RESPONDENTS

(BY SHRI PIYUSH BHATNAGAR - PANEL LAWYER)

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This petition coming on for admission this day, the court passed the

following:

ORDER

Petitioner has filed this writ petition mentioning therein that her husband Ganesh Singh Lodhi was a registered labour. He died on 06.07.2018 due to road accident.

It is submitted that petitioner is entitled to a sum of Rs.4,00,000/- on account of death of her husband Ganesh Singh Lodhi in terms of the notification dated 31/12/2016 issued by Labour Department, Mantralaya, Vallabh Bhawan, Bhopal, amending the scale of compensation payable on account of accidental death.

Shri Piyush Bhatnagar, learned Panel Lawyer, in his turn, submits that FIR is available on record. Accident took place on account of rash and negligent driving of vehicle No. MP-20-BA-2510. It is submitted that it is a case of road transport accident and not of meeting an accident and sustaining injury/death at work place. Therefore, provisions of the said gazette notification Annexure P-4 will not be applicable and the petition is misconceived.

After hearing learned counsel for the petitioner and going through the record. Madhya Pradesh Bhawan Evam Anya Sannirman Karmkar Niyojan avam Seva Sharto Ka Viniyaman Niyam, 2002 having framed in compliance of the provisions contained in Building and other Construction Workers (Employment and Conditions of Service) Act, 1996 hereinafter referred to as the Act of 1996.

Section 2(d) defines that "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm

water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply;

Section 2(e) defines that a "Building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person -

- (i) who is employed mainly in a managerial or administrative capacity; or
- (ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

The preamble of the Act of 1996 provides that it is - to regulate employment and conditions of service and building and other constructions workers and to provide for their safety, health and welfare measures and for other matters connected therewith or accidental thereto.

Thus, it is evident that the Act has been communicated to provide for safety of the building and other construction workers during the building work.

Section 2 (k) defines "Fund" means the Building and other Constructions

Workers' Welfare Fund of the Board constituted under sub-section (1) of Section 24.

Chapter VII deals with Safety and Health Measures. Section 39 provides for notice of certain accidents.

Section 2 (J) defines "Establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs;

Section 39 (1) reads as under :-

(1) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

Thus, it is evident that the accident taking place in the establishment as defines in Section 2 (j) of the Act of 1996 will entitle a building and other construction worker for compensation from the fund constituted under Section 24 (1) of the Act of 1996.

Admittedly, in the present case, the accident took place outside the

establishment as is evident from the F.I.R. brought on record by the State as Annexure R-1 which reveals that the F.I.R. was registered at Police Station Hindoriya, District Damoh for offences punishable under Sections 279, 337, 304-A and 134 of I.P.C. for an accident which took place at about 8 P.M. on 25/06/2018 when deceased Ganesh S/o Pooran Singh Lodhi met with an accident on being hit by the Driver of the offending vehicle M.P.-20-B.A.-2510 in a rash and negligent manner causing the said accident.

It has come on record that Late Shri Ganesh Lodhi died in a road transport accident and had not met with an accident in the establishment as defined in the Act of 1996 entitling him to derive any benefits from the Fund besides others reasons as are mentioned in the order dated 24/04/2019 passed by the Chief Executive Officer, Janpad Panchayat Patera, District Damoh.

Thus, taking this fact into consideration along with the Labour Department circular no. bha.sa.ka.ma-2016-8056 dated 31st December, 2016, it is evident that the ex-gratia is payable only when death occurs at the construction site during the construction work. This being the legal position, petitioner is not entitled to receive any compensation in the form of ex-gratia or what has been termed by the petitioner as the "last grace aid" as there is no provision for such payment.

Thus, the petition is devoid of merit as no payment can be made in the absence of any provision for such payment for an accident taking place outside the establishment and not in relation to the work of the establishment.

Accordingly, the petition fails and is **dismissed**.

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