

**BEFORE SH. S.C YADAV, COMMISSIONER  
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)  
LABOUR DEPARTMENT, GOVT. OF N.C.T. OF DELHI  
5, SHAM NATH MARG, DELHI-110054**

No.CEC/SD/I/63/2018/ 125.

Dated: 27/06/2022.

In the matter of:

**Sh. Mukesh S/o Sh. Sone Lal Paswan,**

R/o H.No. D-148, Bilaspur Camp,

Molarbandh, Badarpur, New Delhi – 110044

.....Claimant

Versus

**Sh. Rakesh Yadav**

R/o Near Lal Mandir, Canal Road,

Near Vilashpur Camp, Lohia Deri,

Molarband Badarpur, New Delhi – 110044

....Respondents

**ORDER**

1. Vide this order, I shall dispose of the application dated 12/12/2018, for seeking injury compensation under section 22 of The Employee's Compensation Act, 1923.
2. In the claim application, the claimant has stated that he was employed as a machine operator in the factory of the respondent from December 2016 to 28/12/2017 on a monthly salary as Rs. 7,000/- per month and overtime was extra. The claimant submitted that on 28/12/2017 the respondent directed to applicant to work on a machine, which was not in use since long time and even it was not properly working, the applicant refused to work on the said machine, but the respondent forcefully insisted to work on that machine and while working on the said machine the right hand of the applicant got crushed in the machine and finger of right hand were got damaged. The claimant further stated that the respondent was aware of the technical defect of the machine, even then the respondent did not take any step to rectify the same and due to the ignorance of the respondent claimant/applicant sustained the injury in his right hand finger and during the treatment he has to go traumatic surgery in his right hand finger and doctor has amputee his right hand finger. It is further submitted that at the time of accident the applicant was under the employment and service of the respondent and the alleged accident took place due to the ignorance and



negligent conduct of the respondent. The claimant further submitted that after the accident of the applicant he was admitted by the respondent to a local Bengali Doctor at Aali Village, Badarpur, New Delhi and told the applicant that he bears all the medical expenses occurred on the said incident and suggested him to not to file complaint to Police and during the treatment the applicant has gone to traumatic surgery in his right hand finger and the doctor amputee the right hand finger. It is further submitted that after some time he demanded the medical expenses for the respondent but the respondent refused to give any single penny, then the applicant/claimant filed a complaint to Higher Police authority against the respondent and he also filed a complaint case against the respondent under section 156(3) Cr.P.C to register the FIR against the respondent at Saket Court, New Delhi. He has pleaded that he has become totally disabled as per law settled by the Hon'ble Supreme Court of India in Re: Pratap Narain Singh Deo vs. Srinivasa Sabata cited at 1976 ACJ 141. The claimant was an Employee and the accident was caused out of and during the course of his employment. The claimant is entitled to compensation to the extent of 100% disability. He has claimed compensation while invoking section 4(1) (c) & 4(1) (d) of the Employee's Compensation Act for temporary as well as for permanent disablement and medical expenses along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%.

3. The summon was sent to the respondent with the direction to appear and to file written statement/documents, if any in their defense before this Authority.
4. Respondent appeared and filed reply wherein it is stated that the claim application has been filed on false, frivolous and baseless grounds to implicate the respondent in false and baseless in order to extract money. Respondent further submitted that the respondent does not fall within the ambit and definition of the "Factory". It is further submitted that there are only four machines which have been installed by the respondent and there are four individuals including the respondent working on the machine, it is submitted that the persons working on the machines cannot be termed to be "workers" since they are paying Rs. 10/- to Rs. 15/- per piece to the respondent as commission for using his machines and the charges vary on piece to piece basis. It is further submitted that the applicant has never worked under the respondent as employee/worker, as alleged. There is no documentary evidence placed on record to prove that the applicant was working as an worker/employee under the answering respondent and denied employee-employer relationship between the claimant and respondent. It is further submitted by the respondent that the claimant has not come before this Hon'ble Court with clean hands and has suppressed material facts. Further stated that the applicant is not a permanent





resident of Delhi as alleged, as he is permanent resident of Bihar and is in habit of blackmailing the innocent individuals to extort money. The respondent further submitted that a day before the incident the applicant had come to one Sh. Satender to seek work of helper/apprentice who is using one of machines of the respondents and is paying piece to piece basis commission to the respondent for using the machine and the work are being taken from various fabricators who are working on high scale. It is further submitted that a bare perusal of the medical reports conclusively prove that there is no serious/grievous injury sustained by the applicant, as alleged and there is no documentary evidence placed on record regarding incapability of the applicant. It is further submitted that the respondent on the request of Sh. Satender, who was using his machines for preparing piece paid considerable amount to the applicant for the alleged medical expenses. It is further submitted that the applicant has connections with the political leaders at high level. It is submitted that the applicant lodged a false complaint against the respondent and pressurized the police authority to coerce the respondent to accede his illegal and untenable demand of the applicant. It is further submitted that the police authority pressurized the respondent to pay a considerable amount to the applicant and the respondent in order to get rid of the harassment and mental torture paid a considerable amount to the applicant to settle and compromise the matter and the police authority also got signed a few blank papers from the respondent and due to pressure from the Police Authority the respondent signed the same. The respondent further submitted that after compromise and settling the matter the claimant/applicant went to his native place at Patna-Bihar and got removed upper part of the index finger in order to implicate the respondent in a false, frivolous and baseless case of compensation against the answering respondent with malafide and dishonest intentions. The respondent management stated that the matter once settled and compromised cannot be reopened only to harass and extort money from the individuals. The respondent further submitted that the claimant/applicant has also filed a complaint before District Court at Saket under Section 156(3) to lodge an FIR which was duly investigated in detail and investigation report has already been filed in court by the police authority. The respondent further submitted that it is denied that the applicant has been working as machine operator in the factory of the respondent w.e.f. December 2016 to 28/12/2017 on a monthly salary of Rs. 7,000/- per month, as alleged or that overtime was extra, as alleged. It is further submitted that the applicant has not placed on record any documentary proof in support of his contention. The respondent/management further submitted that it is denied that on 28/12/2017 the respondent directed the applicant to work on a machine, which was not in use since long time, rest of contents of claim petition has been denied in toto and prayed that the claim petition deserve to be dismissed.



5. Claimant filed rejoinder by which he denied all the contents of reply filed by respondent and reiterated the contents of his claim petition.
6. On the basis of pleadings of the parties and documents placed on records, the following issues were framed for adjudication on 04/10/2019:
  - 1) Whether the employer-employee relationship ever existed between the respondent - applicant/claimant?
  - 2) And if so whether the claimant got injured during the course of employment of respondent?
  - 3) And if so, to what amount of compensation and other relief is he entitled and what other directions are necessary in this respect?
7. Matter was fixed for the evidence of the parties. Claimant examined himself by way of filing his affidavit Ex. CW1/1. The contents of affidavit are corroborated to those claim petition. Claimant also filed documents Ex. CW1/1 to CW1/4 i.e. Copy of Medical treatment and bills, Copy of complaint filed before Higher Police Authority, Copy of claim application, Copy of Aadhar Card of claimant and other documents as Mark 'A' to Mark 'C' i.e. Copy of Police complaint, copy of disability certificate. Claimant has tendered his evidence and was also cross examined by the counsel of respondent on 22/11/2019.
8. For Respondent Mr. Rakesh Yadav and Sh. Dharamveer, filed their statement/evidence by way of affidavit Ex. RW1/1 and RW2/1, they also tendered their evidence and were also cross examined by the counsel of claimant on 13/02/2020. The contents of affidavit are corroborated of those reply.
9. The case was fixed for arguments. The claimant filed written submission on record, but despite given various opportunities the respondent did not file written argument on record hence finally on 09/05/2022 the right of respondent to file written argument was closed and further oral submissions adduced by the counsel for claimant heard in detail.
10. On the pleadings of the parties, documents filed therein and the evidence adduced by the parties on their behalf, I have to give my findings in the case as under:

#### **Issue No. 1 & 2**

The claim of claimant is this that he was employed as a machine operator in the factory of the respondent from December 2016 to 28/12/2017 on a monthly salary as Rs. 7,000/- per month and overtime was extra. On 28/12/2017 while he was working on the machine he received injuries in his right hand finger due to that one finger of right hand was amputee. On the other side respondent





denied the averment made by claimant and employee-employer relationship. On the ground that claimant was not a regular employee and he was engaged through contractor Dharmender on piece rate basis i.e. Rs. 10/- to Rs. 15/-. Further respondent had taken ground that claimant has never worked under the respondent as a employee and there has not placed any documentary evidence on record to prove employee employer relationship. Further respondent had taken grounds that accident was occurred due to sole negligence of the claimant. Respondent at the request of Sh. Satender who was using his machine for preparing piece paid considerable amount to the applicant for the alleged medical expenses. In cross examination respondent has stated that his company was working as name and style Others Embroidery and Satender was working on one of his machine for last and half year. 04 to 06 workers were working on machine but they were not regularly working. Respondent had also examined Sh. Dharamveer S/o Lt. Sh. Bhundia Ex. RW2/1 (Contractor) as a witness but he failed to file any agreement between respondent no 1 and him which establish that he was contractor of respondent no 1 in absence of any agreement it cannot be considered that Ex. RW2/1 is the Contractor of respondent no 1. In cross examination alleged contractor stated that he worked with respondent from last 02 years and is not aware about the alleged accident whether it was occurred or not. Even he does not remember how his name was mentioned in his evidence. Further he stated that with respondent company 02-04 workers were working. He has not placed any records showing that he was contractor and providing work of embroidery and fabrication garments. On the other side claimant in cross examination has stated that 04 to 06 persons were working with the respondent on their 04 machines. After considering the pleadings of the parties it is proved that claimant had word with respondent on their machine and met with an accident resulting thereby his one finger of right hand was amputee it is proved on the pleading of the respondent that while medical treatment the respondent has paid considerable amount to the claimant. Further respondent has taken stand that matter was settled between the parties but no documents placed on record. It all shows that claimant was working with the respondent and he met with an accident with respondent out of and in the course of his employment and accordingly he received 25% disability of physical disability/permanent (physical impairment in relation to his right upper limb) as per disability certificate issue by Pt. MM Hospital Mark 'B'. Accordingly claimant is entitled to receive injury compensation from respondent owner of the company. In view of above issue No 1 & 2 are decided in favour claimant and against the respondent.



**Relief:**

In view of discussion made in issue No 1 & 2. For calculation of injury compensation the age of claimant is taken as 23 years on the day of accident on the basis of his DOB i.e. 12/03/1994 as mentioned in his Aadhar no. 932414114823 Ex. CW1/4, relevant factor 219.95, 60% of wages of Rs. 8000/- as restricted under the Act and 25% disability. In the given wage, age and loss of earning capacity the claimant is entitled to compensation as under:

- |      |                              |   |          |
|------|------------------------------|---|----------|
| i)   | Relevant factor of 23 years  | : | 219.95/- |
| ii)  | 60% of wages @ Rs. 8000/- pm | : | 4800/-   |
| iii) | 25% disability               |   |          |
| iv)  | Amount of compensation       |   |          |

$$\frac{219.95 \times 4800 \times 25}{100}$$

: Rs. 2,63,940/-

11. The claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident as respondent failed to deposit compensation as per section 4A with the Commissioner Employee's Compensation.
12. Regarding issue on penalty show cause notice was issued but considering the facts of the case since respondent did not reply to show cause as such I held that respondent is liable to pay penalty 10% of awarded amount to claimant.
13. Therefore, the claimant is entitled to receive injury compensation from respondent. The respondent is directed to deposit before this Authority an amount of **Rs. 2,63,940/- (Rupees Two Lakhs Sixty Three Thousand Nine Hundred Forty Only)** on account of compensation payable to the claimant along with interest @ 12% p.a. w.e.f. 28/01/2018 till its realization and respondent is also directed to deposit 10% penalty of awarded amount i.e. **Rs. 26,394/- (Rupees Twenty Six Thousand Three Hundred Ninety Four Only)** through pay order in favour of 'Commissioner Employee's Compensation' within a period of 30 days from pronouncement of the order before this Authority.
14. Given under my hand and seal of this Authority on this 9th day of July, 2022.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

