

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/55/2018/ 155.

Dated: 21/07/2022.

IN THE MATTER OF:

Sh. Ram Dayal Pandey S/o Lt Sh. Ram Karan Pandey

E-538, Shastri Park, Gali No. 17,

Shahdara, Delhi - 110053

.....Applicant

Versus

Sh. J. Kumar, C.R.T.G (JV)

Sarai Kale Khan, ISBT, Near RTO,

Sarai Kale Khan, New Delhi - 110013

.....Respondent No.1

M/s Modality Infra LLP,

Through : Sh. J.Kumar, C.R.T.G (JV)

Near RTO, Office Sarai Kale Khan, ISBT,

New Delhi - 110013

....Respondent No.2

Delhi Metro Rail Corporation

Metro Bhawan, Fire Brigade Lane,

Brakhamba Road, New Delhi - 110001

....Respondent No.3

M/s National Insurance Co. Ltd.

Maker Bhawan -1, Sir Vithaldas Thackeray Marg,

New Marine Lines, Mumbai - 400021

....Respondent No.4

ORDER

1. By this order I will dispose of claim application dated 25/04/2018, filed by petitioner under the provision the Employee's Compensation Act, 1923 (herein after referred as Act) for seeking injury compensation from the respondents.
2. The case of claimant is this that the respondent no 2 has taken contract from respondent no 1 and further respondent no 1 has taken contract from respondent no 3. The claimant stated that he was working under the employment of respondent no 2 on the post of Carpenter since 22/06/2017 on monthly wages @ Rs. 17,000/- at Metro Site, Sarai kale Khan and at the time of accident he was of age 38 years. It is further stated that despite informing the respondent several times regarding the fault in the ply-board cutting machine, the respondent did not take any action to repair the machine and asked the claimant to continue working on the same machine and on 08/07/2017 at around 11:40



AM while cutting the Ply-Board, the machine kicked back and the left hand (above Palm) of the claimant got cut. It is further informed that the claimant got treated in Guru Harkishan Hospital and the hospital inserted plates in the injured area of the left hand and after that the claimant got his treatment from some private hospitals but the hand of the claimant is not working like before and the claimant is handicapped from one hand and the claimant has spend Rs. 50,000/- on his treatment. The claimant further stated that the said accident occurred due to the negligence of the respondent while he was on duty and the respondent has not even paid the medical expenses nor paid the compensation amount. The claimant further stated that he has also sent a legal demand notice dated 26/09/2017 to the respondent praying to pay the compensation amount but despite receiving the legal demand notice the respondent did not pay any injury compensation. In the last it is prayed that direction to be issued to management to pay the compensation along with penalty to the workman. Along with claim claimant filed copy of demand notice, copy of ID Card, copy of discharge summary along with medical bills, copy of Aadhar card.

3. Summons were sent to the respondents with direction to appear before this Authority to file reply in the defence in the matter. Respondent No 1 appeared and filed reply and stated therein that the present claim is not maintainable as it was not submitted by the applicant within limitation period as prescribed under section 10 of the EC Act, 1923. It is further stated that moreover the applicant has not filed an application for condoning delay along with an affidavit, mentioning therein reasons of delay after expiry of 02 years and prayed that application may kindly be dismissed on this ground that the present application for seeking claim for direction is barred by limitation. The respondent no 1 further stated that the claimant was employee of M/s Modality Infra LLP (Resp. No 2) at DMRC CC24 Project site and as per the record of Resp. No 1 during the work on 08/07/2017 he has got a minor cut injury on his left hand and the claimant has gone through the medical treatment on the account of respondent no 1 and details of medical treatment records of the same are attached. In the last respondent denied the claim of claimant and prayed that the petition is liable to be dismissed on the ground as discussed above.
4. Respondent no 2 also appeared and filed its reply stating there in that DMRC awarded the work for the construction of Metro line and Ashram Station CC-24 to M/s J. Kumar and that M/s J. Kumar sub-contracted to respondent no 2 i.e. M/s Modality Infra LLP. It is further submitted that during the progress of work Sh. Ram Dayal Pandey (applicant/claimant) got a minor cut on his left hand finger on 08/07/2017 and he was



immediately taken to the hospital by M/s J. Kumar for medical treatment and all the expenses of around Rs.75,000/- incurred during the treatment were deducted from the bills/payment of resp. No 2 by M/s J. Kumar (respondent no.1). In the last respondent prayed that application may kindly be dismissed on this ground that the present application for seeking claim for direction is barred by limitation and no disability or amputation has been recorded by the hospital.

5. Respondent No 3 also appeared and filed their reply stating therein that the claimant was never ever employed by the answering respondent no 3 and as such no relationship of employee-employer / Master and Servant exists or ever existed between the claimant and the answering respondent and stated that the claimant is not a workman as defined u/s 2(S) of the Industrial Dispute Act, 1947 and prayed that the present application is not maintainable and is liable to be rejected. The respondent further submitted that the claimant has neither annexed any proof of employment at the DMRC site of answering management through contractor or sub-contractor nor attached any proof of the employment. The respondent further submitted that the averment made by the claimant that workman was working at Sarai Kale Khan Metro station construction site of M/s FEMC Pratibha JV (CC-23) in Delhi MRTS Project of Phase-III and no complaint was registered either orally or written on 08/07/2017 at Sarai Kale Khan Metro Station construction site regarding the defect in the ply cutting machine. It is further submitted that a safety team of DMRC being a Principal Employer issuing guidelines to the contractor to follow all the safety Health and environment norms and stated that the averment made by the workman that he was working on faulty machine is false. The respondent further denied that the claimant was working with the answering respondent as alleged carpenter at Sarai Kale Khan Metro Station construction site and his last drawn salary was Rs. 17,000/- per month and further submitted that the claimant is the employee of the respondent No. 1 & 2, one of the contractor/sub-contractor of the answering management. In the last respondent prayed that it is denied that the claimant is entitled for any relief whatsoever from the answering respondent and prayed that the statement of the claim may be rejected accordingly.
6. Petitioner rebutted all the contents of Respondents as stated in their reply and reiterated contents of the claim petition in his rejoinder.
7. On 04/10/2019 after going through the pleadings of the parties and documents on record it was found that it is an admitted fact that the petitioner was employed with respondent no 1 and had met with an accident during the course of his employment with respondent no 1 and the issue to be decided in the matter is only that what amount



of compensation is the claimant entitled for and by whom. The matter was fixed for assessment of disability of the claimant by the medical board and also a show cause notice was issued u/s 4A for imposition of penalty on the parties.

8. On 06/12/2019 the claimant filed an application under Order 1 Rule 10 of CPC read with 151 of CPC to implead M/s National Insurance Company Ltd. as respondent no 4 in the matter. Notices were issued to the party and further on 28/01/2020 due to non appearance the respondent no 4 was proceeded ex-parte.
9. The claimant on 16/12/2019 filed disability certificate assessed by the medical board and as per the disability certificate received in this court the claimant got 32% disabled (as per disability certificate of medical board).
10. Matter was fixed for the evidence of the parties. Claimant examined himself by way of filing his affidavit Ex. CW1/A. The contents of affidavit are corroborated to those claim petition. Claimant also filed documents Ex. CW1/1 to CW1/6 and Mark A i.e. Copy of Medical treatment and bills, Copy of legal notice and postal receipt, copy of reply to the legal notice by resp. No 3, Disability Certificate, Copy of ID Card of workplace, Copy of claim application, copy of insurance policy no. 261400/41/16/8600000056. Claimant has tendered his evidence and was also cross examined by the counsels of respondent no 2 and 3 on 07/02/2020.
11. On 05/05/2022 submission adduced by the parties heard and it come under consideration that it is an admitted fact that the petitioner was employed with respondent no 1 and had met with an accident during the course of his employment with respondent no 1 and the issue to be decided in the matter is only that what amount of compensation is the claimant entitled for and by whom, hence Authority was of view that no further trial was required in the matter and the matter was further fixed for filing reply of show cause notice u/s 4A in the matter.
12. In reference to the Show Cause notice dated 07/10/2019 and 09/05/2022 u/s 4 A of Act respondent no 1 filed its response vide reply dated 04/06/2022, wherein respondent no 1 submitted that the claimant has not given them any information through long about the disability also his employer respondent no 2 not given us any information regarding the disablement of the claimant. Respondent no 1 further stated that they were unable to file any claim/intimation to the insurance agency under WC Policy. The respondent further submitted that as a Principal Contractor they have fulfilled their responsibility



very well as after injury they have immediately sent the claimant to Guru Harkishan Hospital for best treatment in which he was admitted from 08/07/2017 to 10/07/2017 and availed the best possible medical treatment on the cost of the answering respondent. The respondent further denied any liability towards penalty.

13. Further respondent no 2 also filed reply to the show cause notice and stated therein that at the time of accident the claimant was immediately taken to the hospital and treated by respondent no.1 and all the expenses of treatment were borne by the answering respondent. The respondent further stated that after treatment the claimant went to his home and never approached the respondent for any claim or compensation till he applied before this Hon'ble Court as a result the answering respondent also didn't approached the insurance comp. In the last respondent no 2 stated that as there was no claim made by the claimant before coming before this Hon'ble court, hence prayed that respondent no 2 cannot be held responsible for the payment of penalty.

14. On the basis of the pleading of the parties and docs available on the record I am giving my findings as under: -

Relief:

The case of claimant is this that the respondent no 2 has taken contract from respondent no 1 and further respondent no 1 has taken contract from respondent no 3. The claimant stated that he was working under the employment of respondent no 2 on the post of Carpenter since 22/06/2017 on monthly wages @ Rs. 17,000/- at Metro Site, Sarai kale Khan. It is further stated that despite informing the respondent several times regarding the fault in the ply-board cutting machine, the respondent did not took any action to repair the machine and asked the claimant to continue working on the same machine and on 08/07/2017 at around 11:40 AM while cutting the Ply-Board the machine kicked back and the left hand (above Palm) of the claimant got cut. It is further informed that the claimant got treated in Guru Harkishan Hospital and the hospital inserted plates in the injured area of the left hand and after that the claimant got his treatment from some private hospitals but the hand of the claimant is not working like before and the claimant is handicapped from one hand and the claimant has spend Rs. 50,000/- on his treatment. Since factum of employee employer relationship, accident caused out of and in the course of his employment with respondent no 2 M/s Modality Infra LLP are not disputed and in this case respondent no 2 had taken Employees Compensation Insurance Policy bearing Policy No 261400/41/16/8600000056 valid for the period from 11/09/2016 to midnight 10/09/2017 from respondent no 4 M/s National Ins. Co. Ltd. covering all the employees employed by respondent no 2 and on the day of accident claimant was employed by Respondent no 2 and was covered by this policy, accordingly claimant is entitled to receive injury compensation from respondent no



2 and respondent no 4 jointly or severally as such respondent no 4 National insurance company is liable to indemnify to respondent no 2.

15. In view of above made discussion for relief I am taking age of claimant as 48 years on the basis of date of birth i.e. 01/01/1969 as mentioned in Aadhar Card and relevant factor 159.80 and 60% of last drawn wages restricted to 8,000/- and 32% disability as per medical certificate issued by Pt. Madan Mohan Malviya Hosdptial on 14/12/2019, as such calculation is made as under:

$$\frac{159.80 * 4800 * 32}{100} = \text{Rs. } 2,45,453/-$$

16. Regarding issue of penalty from the pleadings of the respondent no 2 it is clear that despite having notice of accident from the date of its occurrence respondent no 2 had not taken any steps to facilitate to claimant to get the compensation from respondent no 4 since respondent no 2 ad taken workmen compensation policy as such respondent no 2 did not comply mandate of section 4A of the Act. As such respondent no 2 is liable to pay 50% penalty to claimant on awarded amount which comes Rs. 1,22,726/-.

17. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent along with reimbursement of actual medical expenditure incurred by the employee on his treatment and 50% penalty on awarded amount. Accordingly I direct Respondent No. 4 M/s National Insurance Company to deposit **Rs. 2,45,453/- (Rupees Two Lakh Forty Five thousand Four hundred and Fifty Three Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 08/08/2017 till its realization and **Rs. 11,480/- (Eleven thousand Four Hundred and Eighty only) medical expenditure as per Ex CW1/1 Colly (Pg. C/373 to C/335) as submitted by claimant** and further respondent no 2 M/s Modality Infra LLP is also directed to deposit **penalty amount of Rs. 1,22,726/- (One Lakh Twenty Two Thousand Seven hundred and Twenty Six only)** through pay order in favour of "Commissioner Employee's Compensation" within a period of 30 days from pronouncement of the order.

18. Given under my hand and seal of this Authority on this 21st day of July, 2022.

(S.C. Yadav)
Commissioner
Employee's Compensation Act, 1923

