

BEFORE SHRI H.N.SINGH, COMMISSIONER
(Under the Employee's Compensation Act, 1923)
GOVT. OF NCT OF DELHI
NORTH DISTRICT, LABOUR WELFARE CENTRE,
NIMIRI COLONY, ASHOK VIHAR, PHASE-IV : NEW DELHI-110052.

No.Misc.EC/Injury/03/ND/20/ 3004-3005

Date: 24/9/21

In the matter of:-

Sh. Sunil Singh S/o Sh. Gopal Singh,
R/o H.No.624,Gali Gautam Malka Ganj,
New Delhi-110007.

Through:- Ajay Kumar Adhikar,
H.No.34,Gali No.2, Pragati Enclave,
Sant Nagar,Burari,Delhi-110084.

.....Claimant/Petitioner

VERSUS

Sh. Anand Sharma,
Owner of M/s. Shivam Enterprises,
House No.314,Gali No.4,Wakade Kha ,
Kishan Ganj,Delhi-110007.

.....Respondent

ORDER

1. Vide this order the undersigned dispose of the claim filed on 18/03/2020 by the claimant/petitioner Sh. Sunil Singh S/o Sh. Gopal Singh under Employees' Compensation Act, 1923 (herein after referred to as the Act). In the said claim application, the claimant has stated that he was working with the management for the last six years as a Karigar and last drawn wages of Rs. 8,000/-. That it is during the service tenure the workman worked with the management satisfactorily and honestly. That the claimant was not getting the legal facilities such as Minimum Wages Rs.16,962/-,Appointment Letter, Attendance Card, ESI & Bonus etc. On demanding the same, the management get annoyed. He further stated that The workman refused to operating the

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machine because the machine was not in working condition but the management forced him to operate the said machine and passing threat of termination. That on 26/05/2016, the workman while working in the factory premises of the management accident occurred and at that time immediately on getting information of such incident, the respondent took the applicant to Parmarth Mission Hospital, and provided medical treatment to the claimant and thereafter the respondent stopped the treatment and claimant treated himself in the Lok Nayak Hospital. It was assured by the respondent that the claimant would not be terminated from the services and the compensation amount would be paid as and when he would be terminated and on 13/12/2019, he was terminated without payment of accident compensation, service compensation, Leave encashment. That the workman demand the compensation and medical expenses wherein the expenses of the hospital comes to Rs. 2,00,000/- approx. That the workman demand accidental compensation+50% penalty and medical expenses.

2. After receipt of the above claim, notice was issued to the respondent. In response, Sh. Pawan Kumar, AR of Respondent filed Vakalatnama which is taken on record and claim application copy supplied to the respondent for filing of written statement. The written statement filed by AR of respondent on 28/12/2020 and matter adjourned for filing of rejoinder.
3. The respondent mentioned in the reply that the application under reply was not maintainable as the applicant had no locus standi to file the present

application and get any claim from the respondent in view of the fact that there exists no relationship of employer and employee between the parties. The applicant had left the services of the respondent way back in the year, 2014 and since then, he had been working somewhere else and had nothing to do with the respondent in any manner whatsoever, but the applicant has concocted a false story. Thus, there was no cause of action in favour of the applicant to file the present application against the respondent and the same is most malafide and is liable to be dismissed with heavy costs. The applicant has not approached Hon'ble Authority with clean hands and has suppressed the true and material facts from Hon'ble Authority.

4. The AR of claimant filed rejoinder on 22/1/2021 which is taken on record. The claimant has stated in the rejoinder that he was working with the respondent regularly for the last six years and he reiterated the same contents as mentioned in the claim.
5. On the pleadings of parties following issues were framed on 22/01/2021 as under :-
 - i) **Whether employer-employee relationship exist between management and claimant?**
 - ii) **Whether accident resulting into injury to the claimant is caused out of and during the course of employment and if so, to what amount of injury compensation the claimant is entitled to ?**

iii) Whether penalty is imposed u/s-4A(3) and if so the quantum thereof?

iv) Relief if any?

6. The matter was adjourned for filing of claimant evidence by way of affidavit and it is filed by the claimant on 25/02/2021 which is taken on record. That the claimant filed evidence by way of affidavit, which was tendered on 09/04/2021 as exhibited WW-1/A wherein he relied upon documents which was Ex.WW-1/1 to Ex.WW-1/13 and Mark-14 & Mark-15. Ex.WW-1/1 was a copy of Postal Receipt, Ex.WW-1/2 was a copy of Aadhaar Card, Ex.WW-1/3 was a copy of Hospital papers, Ex.WW-1/4 was a copy of history Examination Treatment, Ex.WW-1/5 was a copy of continuation sheet, Ex.WW-1/6 was a copy of MLC, Ex. WW-1/7 was a copy of treatment parchi, Ex. WW-1/8 was a copy of discharge slip, Ex.WW-1/9 was a copy of discharge, Ex.WW-1/10 was a copy of Doctors visits, Ex.WW-1/11 was a copy of intake/output chart, Ex.WW-1/12 was a copy of hospital bills, Ex.WW-1/13 was a copy of doctors visits and Mark-WW-1/14 was a copy of Lok Nayak Hospital and Mark-15 was a copy of Demand notice. In his affidavit, the claimant had mainly reiterated the facts/contents of his claim petition. It is noteworthy that respondent management did not place any document with their written statement or letter to proof the claimant had left their service in 2014 and was paid his full and final due.


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7. The matter adjourned for cross examination of the claimant. On 28/07/2021 respondent called several times but none appeared at 3.00 P.M. from the respondent management sides. Therefore, the matter proceeded ex-parte against the respondent and the written argument was filed by the claimant on 03/08/2021 & matter was reserved for orders on 27/08/2021.
8. That on examination of pleadings/documents on record, hearing of arguments, respondent stopped appearing in this case, hence in absence of respondent it has been established and fair to assume that the claimant was in the employment of respondent management and received injuries out of and in the course of his employment. Further, in view of the above facts, circumstances and the documents on record, there is nothing to disbelieve the unchallenged and unrebutted statement/evidence of claimant. Since the respondent management opted not to defend itself, this authority has no alternative but to believe the facts of the claim petition. As such, Issue No.1 and 2 are decided in favour of claimant and against the respondent.
9. As such I hold that petitioner Sh. Sunil Singh met with an accident out of and in the course of his employment with respondent. He is liable to receive injury compensation from the respondent. Therefore the Medical Superintendent, Aruna Asaf Ali Hospital, Delhi was requested to assess disability of claimant in respect of injuries suffered in Right Upper Limbs. Chairman, Disability Board issued Certificate No.1616 dated 25/03/2021 wherein disability in respect of claimant has been assessed 70% in relation to his Right Upper Limbs. The

claimant has lost of his right hand upper limbs and his working capacity thus I am agreed with the loss of earning to the extent of 70%.

10. As far as the last drawn wages of the claimant /workman, Sh. Sunil Singh, is concerned, the claimant has stated that he was being paid Rs. 8,000/- per month at the time of accident. For the purpose of calculation of amount of compensation, the last drawn wages of workman Sh. Sunil Singh is taken as Rs. 8,000/- which is the maximum limit of wages fixed for the purpose of calculation of compensation under the provisions of law.
11. That as per the Aadhar card the date of birth of the claimant is 01/01/1986 and the date of accident is 26/05/2016 at the time of accident the age of claimant was 30 years and there is no rebuttal evidence to this effect. Therefore, for the purpose of calculation of compensation, the age of injured at the time of accident is taken as 30 years.
12. That with respect to delay and laches point raised by the respondent it is observed that Ld. Predecessor Authority is deemed to have condoned the delay, if any, while considering to issue notice to the respondent herein, as the claimant did file application for condonation of delay. However even on merits as available on the file the claimant has stated that the respondent provided medical help initially on the date of accident and some time ahead but stop the same and also refuse to pay compensation when the injury became partial permanent (as also evident from the certificate of disability referred in para 12). If the aforesaid statement of claimant is believed to be true then he should not be made to suffer for non compliance by the respondent. The

respondent was supposed to file report of accident but same has not been done and also the respondent has not deposited any compensation amount within 30 days. It was also duty of the respondent to help the claimant in the present claim as provided in the amended Act of 1923 but they have fail to do so. It is further observed that the respondent has not cared to file any set-aside application in respect of decision to proceed Ex-party hence this Authority is left with no other option but to proceed and to pass orders on the basis of pleadings and evidence available.

13. That in view of the above facts and circumstances and on the basis of 30 years of age, the relevant applicable factor and Rs. 8,000/- per month wages, the payable amount of compensation is calculated as under:-

1.	Relevant factor of years of age	-	207.98
2.	60% of wages Rs.8,000/- which is the maximum limit of wages as per Act	-	Rs.4,800/-
3.	Percentage of disability	-	70%
4.	Amount of compensation		
	<u>207.98X 4800 X 70% :</u>	=	Rs. 6,98,812/-

14. As per provisions of section 4A(3)(a) of the Act, the claimant is also considered to be entitled to interest @ 12% per annum on the principal amount of compensation from one month after the date of accident i.e.

26/06/2016 till its deposition in favour of the Commissioner Employee's Compensation, North District.

15. Whereas, in the claim, the claimant has prayed that the respondent be directed to pay penalty to the extent of 50% of the principal amount. The respondent has not come forward to put forth his defense. After examining all the facts of this case, this authority is of the considered opinion that the ends of justice would meet out if the respondent is further paid 25% of the principal amount of compensation. Therefore, u/s 4A (3) (b) it is decided to impose penalty upon the respondent to pay an amount equal to 25% of the principal amount of compensation which comes to **Rs. 1,74,703/-**.
16. On the issue of medical, the claimant has failed to provide detail as to what amount he has received from the respondent hence the claim for medical treatment reimbursement cannot be decided at this stage. However in the interest of justice, without creating any precedence, the claimant is given liberty to file appropriate application for medical treatment as per section 4 of the Act which shall be decided and disposed off on its merit.
17. Now, therefore **Sh. Anand Sharma, Owner of M/s. Shivam Enterprises, House No.314, Gali No.4, Wakade Kha, Kishan Ganj, Delhi-110007** is directed to deposit Principal amount of compensation amounting to **Rs. 6,98,812/-** alongwith with interest @ **12% per annum w.e.f. 26/06/2016** and **penalty of 25% i.e. Rs. 1,74,703/-** till its deposition in favour of the authority within 30 days of receipt of this order failing which the

same shall be recovered as an arrear of land revenue as per provisions of section 31 of the Act.

Given under my hand and seal of this Court on this 24 day of 09,
2021.


(H.N.SINGH)
**COMMISSIONER, EMPLOYEE'S COMPENSATION
NORTH DISTRICT**


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