

**IN THE COURT OF 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**

CEC/SD/I/60/2018 | 181-184.

Dated: 05/02/2021.

IN THE MATTER OF:

Mohd. Guffar @ Gafoor S/o Sh. Abdul Husain

R/o 226, Batla House,
Okhla, New Delhi

.... Claimant/Petitioner

V/s

M/s FEMC Pratibha JV

Unit No. 1/B-56 & 1/B-57, 1st Floor,
Phoenix Paragon Plaza, Phoenix Market City,
LBS Road, Kurla (W), LBS Road,
Mumbai-400070, Maharashtra

....Respondent No.1

M/s Delhi Metro Rail Corporation

Fire Brigade Lane, Barakhamba Road,
Barakhamba, New Delhi-110001

....Respondent No.2

M/s Shri Sidhivinayak Enterprises

Gonthi Belsara, Balsara, Kaundhriyara,
Uttar Pradesh – 212106

....Respondent No.3

For petitioner: Sh. Sarfaraz Ahmad Counsel along with petitioner present.

For Respondent No 1: None Present.

For Respondent No 2: Sh Aryam Tyagi, OA-HR, Legal & IR Present.

For Respondent No 3: Sh. Krshna Pratap Singh, Counsel along with Sh. Prashant Kumar jha present.

ORDER

05/02/2021

1. Vide this order I will disposed of claim application dated 03/12/2018 filed on 04/12/2018 by claimant under section 22 of the Employees Compensation Act, 1923. (Herein after referred as an Act).
2. Petitioner Mohd. Guffar @ Gafoor S/o Sh. Abdul Husain submitted that respondent No 3 M/s Sidhivinayak Enterprises (Sub-contractor) has engaged



him as a helper on last drawn wages Rs. 13,500/- per month. Through Respondent No 3, he was directed to work on site of respondent no. 2 M/s DMRC. Respondent No 2 M/s DMRC had awarded work of construction to Respondent No 1 M/s FEMC- Pratibha JV and Resp. No 1 as further engaged sub contractor through R3 Shri Sidhivinayak for carrying out construction work on the site of Respondent No 2 M/s DMRC. On 16/10/2017, petitioner was doing labour/helper work under the supervision of respondent in premises of Delhi Metro, Panchsheel. It is further contented that in the mean time during the duty hours at about 12:00 o'clock some building material/block fallen down on the left hand of the workman as a result of which petitioner received the grievous injuries and fracture in his left hand thumb and finger. After accident he was brought to Pt. Madan Mohan Malviya Hospital, Malviya Nagar, ND for treatment where his MLC was prepared. Thereafter he was referred to Safdurjung Hospital and on 17/10/2017 thereafter to Sir Gangaram Hosp. New Delhi, where his first finger was amputated and further treatment of the workman was conducted there. Further petitioner submitted that despite having knowledge of accident respondents did not pay any single penny towards compensation. In the last claimant prayed that direction be issued to the respondent to pay injury compensation as per Act along with claim claimant filed documents such as copy of demand notice dated 11/10/2018, postal receipt, Identity card issued by respondent No 1, attendance card, medical documents.

3. Summon was issued to the respondent with direction to appear before this authority for filing reply. Respondent No 1, M/s FEMC Pratibha - JV filed reply vide letter dated 23/09/2019 wherein respondent submitted that they have deployed/engaged M/s Sh. Sidhivinayak Enterprises Respondent No 3, to supply skilled and unskilled labourers for various Civil and housekeeping work by work order No. 22009707 dated 08/06/2015 to 30/06/2017. Md Guffar claimant was working under M/s Sidhivinayak Enterprises. Further R1 submitted that all the bills submitted by R3 was cleared upto 30/06/2017 and further no bill was claimed by agency. Full and Final payment was made to resp. No 3 on 08/12/2017 through resp. no 2 on behalf of resp. no 1 M/s FEMC Pratibha-JV. Respondent No 3 M/s Sidhivinayak Enterprises was deployed at work directly by DMRC Respondent no 2.
4. Petitioner/claimant filed rejoinder by which he denied all the contents of reply of respondent no 1 and reiterated contents of his claim application.
5. Respondent No 2 M/s DMRC Ltd. has also filed reply, wherein it is denied that claimant Md Guffar @ Md Gafoor was ever employed by the respondent as such no relationship of employer and employee/master and servant exist or



ever existed between him and respondent No 2, as such claimant is not a workman u/s 2(s) of the Act. Therefore the application is not maintainable and liable to be dismissed. Further respondent submitted that claimant was working at Panchsheel Metro Station construction site of Delhi MRTC project of Ph-3 through respondent No 1 who was issued ID Card to the claimant which was valid upto 31/08/2016. However accident as alleged by the claimant took place on 16/10/2017. In the last respondent no 2 submitted that claim is not maintainable against them and as such same be dismissed.

6. Respondent No 3 M/s Sh. Sidhivinayak enterprises also filed reply, wherein respondent stated that suit is not maintainable in the present forum because the resp. Has given total salary and 02 months salary in advance at the time of accident and after accident the resp. admitted the applicant to the hosp. And the total accident expenditure beard by the Respondent except these averments rest of other contents of claim has been denied and prayed that claim is not maintainable as such same is liable to be dismissed.
7. Claimant filed rejoinder in response to reply filed by Resp. No 2 and 3 wherein contents of replies have been denied in toto.
8. On 05/12/2019 following issues were framed for adjudication by the then Ld. Authority
 1. Whether the claimant Md. Guffar @ Md. Gafoor is entitled for compensation for the injury occurred during course of employment and if so from where and what amount?
 2. Any other relief and other direction, if any?
9. Claimant filed medical disability certificate by which 25% permanent disability in relation to his left hand with amputation under finger has been assessed by medical board Pt. Madan Mohan Malviya Hosp. As per Medical report dated 24/02/2020 No F14/59/12/884/Pt.MMH/1089. During the proceeding Ld Counsel for claimant stated that he does not want to lead any evidence as respondent no 3 has admitted factum of employee employer relationship, accident occurred out of and in the course of his employment at the site of Respondent No 2 M/s DMRC on 16/10/2017. This contention has already been taken on proceeding on my order on 02/02/2021. The contention of Ld. Counsel for petitioner has been proved from the written statement of resp. No 3 as per there admission. Respondent No 2 DMRC has also stated in its reply which is on record that petitioner was working at their site on the day of accident and had received injury in his left hand account of this his finger of left hand 1 finger amputated as per disability certificate From the contention of

5/2/21



the reply submitted by the respondents it is proved that in this case resp. no 3 was employer in respect of claimant and during and in the course of his employment he met with an accident resulting thereby they received grievous injuries in his left hand and received 25% permanent disability. In view of this I am of the view that no further trial is required in the matter and accordingly I hold that claimant is entitled injury compensation from Respondent no3. Section 3 of the Act is to place employer's liability for compensation. Section 3 of the Act is reproduced as under:

1. If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter.

Provided that the Employer shall not be so liable –

a) In respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding 03 days.

b) In respect of any injury not resulting in death or (permanent total disablement caused by) an accident which is directly attributable to –

I) The employee having been at the time thereof under the influence of drink or drugs or

II) The wilful disobedience of the employee to an order expressly given, or to rule expressly framed, for the purpose of securing the safety of (employees) or

III) The wilful removal or disregard by the (employee) or any safety guard or other device which he knew for be provided for the purpose of securing the safety of (employee).

10. In view of provision of section 3, Respondent no 3 is the employer and liable to pay compensation to claimant as per provision of the Act.

11. For calculation of injury compensation age of claimant as 60 years on the basis of date of birth 01/01/1957 as per his Aadhar Card, 25% disability as per medical disability certificate, 60% wages of Rs. 8,000/- as restricted under the Act and relevant factor 117.41 as per schedule IV of the Act has been taken for consideration. Accordingly compensation is calculated as under:

$$\frac{25 \times 4800 \times 117.41}{100} = 1,40,892/-$$

12. In view of above calculation claimant is entitled to receive Rs 1,40,892/- as a injury compensation. Further Respondent did not pay compensation despite having notice of accident as per section 4A, as such claimant is also entitled to



receive 12% interest on awarded amount after 30 days from the accident till it is paid.

13. In view of above discussion I direct respondent No 3 M/s Sh Sidhivinayak Enterprises, Gonthi Belsara, Balsara, Kaundhriyara, Uttar Pradesh – 212106, to deposit Rs 1,40,892/- along with 12% simple interest per annum on awarded amount after 30 days from the date of accident with Commissioner Employees Compensation by way of Demand Draft within 30 days from today failing same shall be recovered as per provision of the Act.
14. Regarding issue of penalty Show cause notice dated 10/12/2019, was given to all the respondents to show cause why penalty be not imposed upon them but no reply was submitted as such respondent No 3 is also liable to pay 50% penalty of awarded amount to the claimant. Accordingly further I direct respondent No 3 to also deposit 50% of Rs 1,40,892/- which comes Rs. 70,446/- as a penalty under section 4A(3)(b) by way of demand draft in favour of Commissioner Employees Compensation within 30 days along with main direction as above. In view of this all the issues are decided in favour of the claimant.
15. Accordingly order is announced in the open court today i.e. 05/02/2021. Copy of the order be given dasti, for compliance to the parties.
16. Given under my hand and seal of this Authority on this 05th day of Feb, 2021.

B 05/2/21
(S.C. Yadav)

Commissioner
Employee's Compensation Act, 1923

