

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. ECI/107/NW/2018 /12.

Dated: 16/04/2024.

IN THE MATTER OF:

Sh. Indresh S/o Lt. Sh. Panchram
Presently R/o B-36, Gali No – 2,
Part-III, Deep Enclave, Vikas Nagar,
New Delhi – 110059

Permanent R/o H.No. 232, Jafarpur Sukarauli,
Tehsil – Jalalpur, Distt. Ambedkar Nagar,
Uttar Pradesh – 224125

...Applicant/Claimant

V/s

M/s Titu Traders,
Office at: - BC-271/272,
Mangolpuri Indl. Area. Phase-II,
New Delhi – 110034

.....Respondents

ORDER

1. Vide this order, I will dispose of the application dated 03/10/2018 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that the management is trading/dealing in Iron scraps, C.I. Scraps, C. Burada, Other Metal Scraps, Heavy Machinery Scraps & Disposal Goods and having its office at above mentioned address from last many years. That he was employed as Labour/Helper with the management at:- BC-271/272, Mangoli Puri Indl. Area, Ph-2, New Delhi-110034 from last 5 years and has been withdrawing the wages/salaries of Rs. 9,500/- per month from the management and the management had not issued an I-card and appointment letter to him. That on 03.08.2018, he attended the duty at above said workplace at about 9:00 a.m. as per daily schedule and started his assigned works. But on same day at afternoon time at about 12:30 p.m., he was shifting



the disposal Scraps from outside in the warehouse along with other labours but during that time a blast had taken place in some disposable scraps and he met with accident in which he suffered grievous injuries on his body and his right hand was fully damaged. That after the blast in scraps, he was admitted in Bhagwan Mahavir Hospital at Pritam Pura, New Delhi, but after few minutes the Doctor of hospital referred him to V.M.M.C & Safdarjung Hospital, New Delhi for treatment, then he was admitted to the Safdarjung Hospital on same day and after the treatment he was discharged on 17-08-2018 and his treatment is still continuing from Safdarjung Hospital. It is further submitted that during treatment, he has spent huge amount on his treatment. That during meantime other co-labourers called on PCR No. 100 informing regarding blast and injury caused to him, the PCR No.100 came to the spot and the police officers of concerned police station also came on the spot and later on 07.08.2018, FIR No. 700/2018 under section 287/337 was registered against the management. It is further submitted that the management not provided any safety equipment before starting the works which are necessary and mandatory prescribed safety measurement were not taken to safeguard the life of the workman as well as others workers who are directly and indirectly engaged for working with the management. That he met with injury/disability during course of the employment and at the workplace, hence the management are fully responsible for the injury/disability in his right hand. That the management deliberately, intentionally, knowingly, willfully had not taken the safety measurements from any unfortunate accidents from the scraps and started the works at the risks of human life. That due to the injury/ disability to him, his family members are suffering from financial loss, which cannot be compensated in terms of money. It is further submitted that the management threatened dire-consequences and misbehaved with him, his family and the workman's brother-in-law namely Sh. Omprakash for withdrawn the complaint immediately which is registered above-said F.I.R in P.S. Mangol Puri. That the management have also failed to provide the daily expenses of treatment to him from date of accident on 03.08.2018. In the end the claimant prayed that the management having full knowledge that he has received the grievous injury and his right hand is fully damaged due to the management negligence. It is, therefore, most humbly prayed that this Hon'ble Commissioner may graciously be pleased to release the outstanding earned wages during treatment and compensation amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs) immediately along with other services benefits in favour of the claimant/ workman towards the injury/ disability received by the workman along with 50% penalty and interest @ 12% p.a.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply in the matter.
4. Respondent filed its reply and submitted that the present claim is false, frivolous, vexatious and abuse of process of the Hon'ble Tribunal and therefore, liable to be dismissed. That the complainant has not approached this Hon'ble court with clean hands



and is trying to take undue and unlawful again from the answering respondent company and cause wrongful loss to it. Thus, the present complaint is liable to be dismissed. That this Hon'ble court has no jurisdiction to entertain the present claim petition. The Claimant was a helper/servant at his office/Godown, the relationship of the claimant with the respondent was as master-servant relationship. Thus, the present claim is liable to be dismissed on this ground alone. That the present claim under reply is misconceived, untenable and frivolous, not only in law but in equity and fair play and deserves outright dismissal. That the petition is not maintainable under section 4A of the workmen's compensation Act as the relation between claimant and Respondent is as Servant and master. That the claim under reply is blatant abuse of the process of law and manifestly a mischievous attempt to over-reach at his Hon'ble court and the claim under reply in any case is not tenable, either in equity or in law particularly since the Claimant has suppressed material facts from this Hon'ble court. The Claimant is not only guilty of suppressio-veri but also of suggestion false, inter-alia in attempting to establish false and frivolous ground. In the last the answering respondent denied and refused all averments made by the Claimant and further denied any liability of the incident occurred which was solely by the negligence of the claimant itself, despite the above fact the respondent had bearded all the expense incurred on the medical treatment, medicines, food, special diet of the Claimant, just on the humanitarian grounds. That the FIR lodged is merely an afterthought and on ill advised just to create pressure on the respondent to extract money and fulfill his ulterior motive, as the incident occurred on 03.08.2018 and the said FIR was registered on 07.08.2018 having various blunders. Thus, the present claim is liable to be dismissed on this ground alone. Further answering respondent denied rest of contents of claim petition in toto and prayed that in the light of above mentioned facts, it is submitted that the petition is liable to be dismissed with costs.

5. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
6. On 11/03/2019 following issues were framed for adjudication:
 - i) Whether the accident leading to injuries to the workman was caused due to his negligence?
 - ii) Whether the respondent is liable for payment of penalty u/s 4(A) to the injured?
7. Matter was fixed for the evidence of the claimant. Claimant examined one witness i.e. Sh. Omprakash (Ex. CW1/2). His statement was recorded on 03/02/2020 and was further cross examined by counsel of respondent on 20/07/2023.

Further claimant filed statement by way of affidavit Ex. PW2/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. PW2/1 to PW2/5 and Mark A to Mark B i.e. copy of Aadhar card, Copy of



MLC/Discharge Summary dated 17/08/2018, copy of medical bills, copy of FIR No. 700/18 dated 07/08/2018 PS Mangolpuri, Copy of legal notice dated 12/09/2018, copy of postal receipt, copy of tacking report. Her statement was also recorded on 05/07/2022 and was further cross examined on 12/06/2023 and completed on 20/07/2023.

8. For respondent Smt. Kamlesh Sharma – filed her evidence by way of affidavit Ex. RW1/A. The contents of affidavits were corroborative to those reply. Her statement was also recorded and was also cross examined by counsel of claimant on 20/12/2023.
9. On the pleading of the parties, evidence adduced on their behalf and the arguments addressed thereon, I have to give my findings as under:-

ISSUE No. 1 & 2:

10. The case of claimant is this that the management is trading/dealing in Iron scraps, C.I. Scraps, C. Burada, Other Metal Scraps, Heavy Machinery Scraps & Disposal Goods and having its office at above mentioned address from last many years. That he was employed as Labour/Helper with the management at:- BC-271/272, Mangoli Puri Indl. Area, Ph-2, New Delhi-110034 from last 5 years and has been withdrawing the wages/salaries of Rs. 9,500/- per month from the management and the management had not issued an I-card and appointment letter to him. That on 03.08.2018, he attended the duty at above said workplace at about 9:00 a.m. as per daily schedule and started his assigned works. But on same day at afternoon time at about 12:30 p.m., he was shifting the disposal Scraps from outside in the warehouse along with other labours but during that time a blast had taken place in some disposable scraps and he met with accident in which he suffered grievous injuries on his body and his right hand was fully damaged. That after the blast in scraps, he was admitted in Bhagwan Mahavir Hospital at Pritam Pura, New Delhi, but after few minutes the Doctor of hospital referred him to V.M.M.C & Safdarjung Hospital, New Delhi for treatment, then he was admitted to the Safdarjung Hospital on same day and after the treatment he was discharged on 17-08-2018 and his treatment is still continuing from Safdarjung Hospital. It is further submitted that during treatment, he has spent huge amount on his treatment. That during meantime other co-labourers called on PCR No. 100 informing regarding blast and injury caused to him, the PCR No.100 came to the spot and the police officers of concerned police station also came on the spot and later on 07.08.2018, FIR No. 700/2018 under section 287/337 was registered against the management. It is further submitted that the management not provided any safety equipment before starting the works which are necessary and mandatory prescribed safety measurement were not taken to safeguard the life of the workman as well as others workers who are directly and indirectly engaged for working with the management. That he met with injury/disability during course of the employment and at the workplace, hence the management are fully responsible for the injury/disability in his right hand. That the



management deliberately, intentionally, knowingly, willfully had not taken the safety measurements from any unfortunate accidents from the scraps and started the works at the risks of human life. That due to the injury/ disability to him, his family members are suffering from financial loss, which cannot be compensated in terms of money. It is further submitted that the management threatened dire-consequences and misbehaved with him, his family and the workman's brother-in-law namely Sh. Omprakash for withdrawn the complaint immediately which is registered above-said F.I.R in P.S. Mangol Puri. That the management have also failed to provide the daily expenses of treatment to him from date of accident on 03.08.2018. I have gone through the documents, evidence and contents of claim application available on record. The fact about the incident has been not denied by the respondent. The only facts which respondent has denied is that claimant is not entitled for any injury compensation as he was engaged as a helper/daily wager. Further respondent has taken the ground that the matter was settled between the respondent and claimant vide memorandum dated 08/04/2019 duly notarized but the claimant has denied about any settlement. The evidence CW1/A Sh. Om Prakash has admitted in his cross examination that the memorandum of settlement dated 08/04/2019 bears his signature and also bears his photograph and he has received settlement amount. Further CW1/A stated that this settlement was done forcefully and amount was given to him for the treatment expenses. Further the said memorandum of settlement dated 08/04/2019 had been not executed between claimant and the respondent and the same is not even exhibited as such same cannot be considered as a part of evidence in this matter.

Medical examination of the claimant was done by Aruna Asaf Ali Govt. hospital, wherein claimant Indresh s/o Panchram has been assessed 60% permanent (physical impairment) in relation to his right upper limb. The fact has been proved that the incident had occurred on 03/08/2018 in the premises of respondent and claimant has injured in this incident out of and in the course of his employment. Further as the respondent has taken objection that claimant was injured due to his negligence, but nothing has been brought on record by the respondent to prove that claimant was injured due to his negligence as such this contents of the respondent is not considerable. Further section 8 sub section 1 provides legal liability of the respondent to deposit compensation with the Commissioner. Section 8 stipulates as under:

“8. Distribution of compensation.- (1) No payment of compensation in respect of a *[employee] whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased *[employee], an employer may make to any dependant advances on account of compensation of an amount equal to three months' wages of such *[employee] and so much of such amount] as does not



exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer."

In view of above discussion it is proved that claimant Indresh met with an accident with respondent out of and in the course of his employment and has become 60% disabled for his employment as such I hold that claimant is entitled to receive compensation from the respondent. In view of this issue no. 1 is decided in favour of claimant and against the respondent.

11. As made discussion above for relief I am taking age of claimant as 32 years (as per date of birth 01/01/1986 mentioned in Aadhar Card No.961288681303) and relevant factor 203.85 and 60% of last drawn wages restricted to 8,000/- and 60% disability, as such calculation is made as under:

$$\frac{203.85 \times 4800 \times 60}{100} = \text{Rs. } 5,87,088/-$$

The applicant/claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident.

12. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondents.

13. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent to deposit **Rs. 5,87,088/- (Rupees Five Lakh Eighty Seven Thousand Eighty Eight Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 02/09/2018 till its realization and the respondent is further directed to **deposit 25% penalty of awarded amount i.e. Rs. 1,46,772/- within 30 days** 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 16th day of April, 2024.

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

