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

No.ECI/114/NW/2018/ 317. Date: 16/12/2022

IN THE MATTER OF:

Sh. Raj Kumar S/o Sh. Babu Lal
H.No 3/41, Utsav Vihar, Karala, Delhi
C/o Delhi State General Karamchari Union
D-266, B-62, In front of Chandershekhar Azad Colony,
Wazir Pur Industrial Area, Delhi - 52 ...Petitioner/Claimant

V/s

M/s A.K Polymers,
A-32, Sector-1, Bawana,
Delhi – 110039 ....Respondent

ORDER

1. By this order I will dispose off claim petition dated 18/10/2018 filed by claimant for seeking injury compensation under Employees Compensation Act, 1923.

2. Claimant in the claim petition stated that he was employed with the respondent as a helper for past 20 years and was getting salary of Rs. 10,000/- per month. The claimant further stated that he was employed with the management in there factory at kanjhawla, Delhi and was transferred to Bawana, Delhi. The claimant further submitted that on 28/02/2018 the respondent gave instructions to him along with 2-3 other employees to take iron pipes from ground floor to 4th floor and following the instructions he along with the other employees was taking the iron pipes and on the terrace due to getting misbalance the iron pipe got in contact of the high voltage electric wire, as a result he got burn injuries along with other employees. It is further submitted that after the accident the respondent got him admitted in Brahm Shakti Hospital, Badi-Puth Village, where he remained admitted for 04 days. It is further stated by the claimant that the respondent further continued his treatment from Safdarjung Hospital. Claimant further stated that the respondent kept giving the travel allowances, salary and medical expenses, but did not give any injury compensation to him. Claimant further stated that the respondent did not inform the

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police regarding the incident. It is further stated that the respondent kept pressurizing him to make a statement before the police that the incident happened due to his own negligence and there is no any mistake of the respondent. It is further stated that due to the accident the claimant has lost both his legs and hands, because of which the claimant is unable to walk or do any work. In the last claimant prayed that directions to be given to the respondent to pay compensation along with interest at the rate of 12% per annum and penalty to the extent of 50%. Along with claim the claimant filed copy of demand letter dated 16/10/2018, copy of Medical documents.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply in the matter.

4. Respondent in its reply denied all the contents of claim of the claimant on the ground that there was no employee employer relationship between the claimant and the respondent. Claimant filed this claim only to extort money from the management. In the last respondent prayed that the claim petition deserve to be dismissed with heavy cost.

5. Claimant filed rejoinder by which he denied contents of reply and reiterated the contents of his claim application.

6. On 29/08/2019 following issues were framed for adjudication:
    1. Whether Employee-Employer relationship exists between the parties?
    2. Whether accident resulting into injury to claimant is caused out of and during the course of employment and if so, to what amount?
    3. Relief if any?
    4. Whether the penalty is imposable upon respondent?

7. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. WW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. WW1/1 to WW1/7 i.e. Copy of demand notice dated 06/01/2018, copy of complaint (PS Bawana) dated 16/10/2018, copy of medical documents, copy of postal receipts, copy of Aadhar Card and was also cross examined by counsel of respondent on 19/02/2020, but same was not completed by the counsel for respondent as such same was deferred for next date as was fixed in the matter, but thereafter many dates were fixed to complete the cross examination but respondent did not turn up to complete the deferred cross of

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claimant, as such right of respondent to cross examine the claimant was closed and matter was fixed for the respondent evidence.

8. Further despite given sufficient opportunities to respondent, he failed to lead any evidence in the matter, hence the right of respondent to lead evidence was closed on 02/08/2022.

9. The matter was fixed for arguments. Argument was filed by the claimant and oral submission was also heard.

10. On the basis of pleadings 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:

The case of claimant is this that he was employed with the respondent as a helper for past 20 years and was getting salary of Rs. 10,000/- per month. The claimant further stated that he was employed with the management in there factory at kanjhawla, Delhi and was transferred to Bawana, Delhi. The claimant further submitted that on 28/02/2018 the respondent gave instructions to him along with 2-3 other employees to take iron pipes from ground floor to 4th floor and following the instructions he along with the other employees was taking the iron pipes and on the terrace due to getting misbalance the iron pipe got in contact of the high voltage electric wire, as a result he got burn injuries along with other employees. It is further submitted that after the accident the respondent got him admitted in Brahm Shakti Hospital, Badi-Puth Village, where he remained admitted for 04 days. It is further stated by the claimant that the respondent further continued his treatment from Safdarjung Hospital. Claimant further stated that the respondent kept giving the travel allowances, salary and medical expenses, but did not give any injury compensation to him. Claimant further stated that the respondent did not inform the police regarding the incident. It is further stated that the respondent kept pressurizing him to make a statement before the police that the incident happened due to his own negligence and there is no any mistake of the respondent. In reply respondent denied all the contents of claim application on the ground that there was no employee employer relationship between claimant and the respondent, claimant has filed this claim only to extort money from them. To prove case claimant examined himself by Ex. WW1/A and also filed documents such as Ex. WW1/1 to WW1/7 as mentioned above in Para No. 1. Counsel for respondent did not complete cross examination of the claimant despite given sufficient opportunity and even did not lead any evidence to prove contents of reply. As such I have no ground to consider contention of the respondent reply. Since respondent failed to prove his case as such it is proved that

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claimant had worked with respondent on the day of accident and had met with an accident out of and in the course of his employment as such he is entitled to receive injury compensation from respondent. In view of this issue No 1 & 2 is decided in favor of the claimant and against the respondent.

Issue No. 3 & 4

For calculation of compensation as made discussion above for relief I am taking age of claimant as 52 years (as per DOB 01/01/1966 mentioned in Aadhar Card) and relevant factor 146.20 and 60% of last drawn wages restricted to 8,000/- and 68% disability, as such calculation is made as under:

$$\frac{146.20 * 4800 * 68}{100} = \text{Rs. } 4,77,196/-$$

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

11. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent since he failed to discharge responsibility under the Act despite having knowledge of accident and compelled the claimant to file litigation without any reason.

12. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent to deposit Rs. **4,77,196/- (Rupees Four Lakh Seventy Seven Thousand and One hundred Ninety Six Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 27/03/2018 till its realization and the respondent is further directed to deposit **25% penalty of awarded amount i.e. Rs. 1,19,299/-** 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.

13. Given under my hand and seal of this Authority on this 16th day of December, 2022.

16/12/22

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

Commissioner under Employee's Compensation Act, 1923 ★ Delhi ★