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BEFORE SH. AMARDEEP, COMMISSIONER
(EMPLOYEE'S COMPENSATION ACT, 1923)
GOVT. OF NCT OF DELHI, LABOUR DEPARTMENT
(SHAHDARA & NORTH EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

No.CEC-I/NE/43/2019/ 1304-05

Dated:- 17.04.23

In the matter of:-

Sh.Sanjeet Kumar S/o Sh. Rajender Mandal
R/o H.No. T-30, KrishanKunj Huts,
Laxmi Nagar, Delhi-110092

.....Claimant

Versus

M/s Vipin Jain, A-10/14,
Jhilmil Industrial Area,
Near Sonia Camp, Shahdara
Delhi-110095

..Respondent

Order

1. Vide this order, I shall dispose off the application dated 24.06.2019 under Employee's Compensation Act 1923 (hereinafter referred to as the Act) wherein the claimant has stated that he was employed with Respondent and received personal injuries on 28.03.2019 at about 4:00 P.M. by an accident arising out of and in the course of employment. The claimant has further stated that the Respondent is builder and property dealer and also the Owner of 400 sq. yard property addressed at A-10/14, Jhilmil Colony, Industrial Area, Delhi and constructs properties for commercial purposes and for renting the same to industries. The claimant has also stated that the property located at aforesaid address was commercial and constructed up to first floor and the factories were being run inside the said property. The Respondent has started constructing second and third floor on the said property and the construction work was going on



for last one month costing more than 20 lakhs and the lintel/concrete roof of the second floor was being put on 28.03.2019. The claimant has further stated that he was operating the concrete mixing machine on 28.03.2019. During the last stage of work in the evening, his left hand got stuck in the machine and was crushed and his entire left hand from shoulder got crushed and he was rushed to GTB hospital where his upper limb was amputated after surgery. The claimant has further stated that MLC was done at the hospital and FIR No. 0194/2019 dated 29.03.2021 was registered in P.S. Seemapuri and his name was mentioned as Sanjeev Kumar instead of Sanjeet Kumar in FIR. The claimant has further submitted that he has not been paid even single paise towards his compensation. The claimant has stated that he sustained injuries to the tune of loss of left upper limb from shoulder resulting in permanent disability and loss of 100% earning capacity as he can never perform the same work which he used to perform earlier and has become unfit for even unskilled work. The claimant has also stated that he is entitled to receive compensation on the immediate wages of Rs. 12,506/- as declared by Govt. of NCT of Delhi for unskilled worker. The age of claimant is stated to be 22 years at the time of accident and he also mentioned that the age of claimant has been mentioned as 28 years inadvertently in the Aadhar card. The claimant has further submitted that he sent Demand Notice dated 15.05.2019 but no response was received from the Respondent. In the last, the claimant has stated that an amount of Rs. 16,61,072/- along with interest @ 12% per annum and litigation fees of Rs. 50,000/- be paid to the claimant.

2. That the notices were served upon the Respondent, the Respondent appeared and filed reply stating therein that there is no direct master & servant relationship between the respondent and the claimant. It is also submitted that the contractor was the necessary party in this case but the applicant has not made the contractor as a party. The respondent has submitted that he approached a contractor namely Naushad for some construction work in his factory who resides in Rani Garden, Delhi that since last seven to eight years whenever the respondent has any construction work in his factory or house, he used to approach contractor Naushad and he used to do all work on contract basis. The Respondent has stated that they have approached the contractor in the February, 2019 for some construction work in his factory. The term of contract was that the material was to be provided by Respondent and Labour by the contractor Sh. Naushad. The



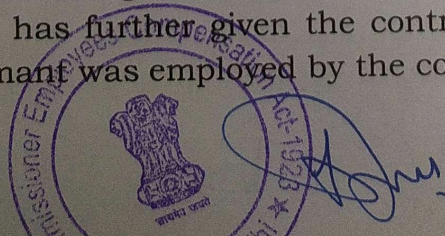
Respondent has also submitted that Sh. Naushad has given the contract of lintel work to contractor Tinku for a sum of Rs. 26,000/- and which was to be completed on 28.03.2019. On 28.03.2019, the Contractor Sh. Naushad informed the Respondent that the lintelwork has been completed and he also informed that a boy was cleaning the machine and has got injured, on which he immediately reached at the construction side and came to know that machine Owner and injured boy was uncle's nephew. (Mama-bhanja) and both were the Owners of the machine. The Respondent has further submitted that he came to know that Police has seized the machine and on the basis of statement made by Sanjeet Kumar and his uncle, the Police has released the machine and in his statement they had told that "no one is responsible for this accident" and has denied the rest of the contents of the claim application and requested to dismiss the claim filed by claimant.

3. That rejoinder to the reply was filed by the claimant's side denying the contents of the reply and reiterating the contents of claim.

4. That on the basis of pleadings of all the parties, the following issues have been framed:-

- i) *Whether the employee and employer relationship is existing between Respondent and injured workman?*
- ii) *Whether the injured claimant was under employment of contractor Sh. Naushad/sub-contractor Tinku?*
- iii) *Whether the accident that took place on 28.03.2019 at the site A-10/14, Jhilmil Industrial Area is owned and constructed by Sh. Vipin Jain?*
- iv) *Whether the accident took place during and in course of employment?*
- v) *Whether the injured claimant is entitled for injury compensation as per the E.C. Act, 1923?*
- vi) *Whether the claimant is entitled for interest and penalty as per Act?*

5. That an application under Order -1 Rule-10 of CPC dated NIL was filed by the respondent on 03/02/2020 for deletion of the name of Respondent (Sh. Vipin Jain) from the array of parties and impleading Sh. Naushad (contractor) as a party, mentioning that he has no relation with the claimant and he has given a contract for the work of construction to Sh. Naushad who has further given the contract to Sh. Tinku for lintel work and the claimant was employed by the contractor for lintel work.



6. The application of the respondent for deleting respondent from array of party and impleading Sh. Naushad, contractor was dismissed by the then Authority on 18.01.2021, on the ground that the respondent has admitted that Sh. Naushad was a Mason only, therefore, he cannot be impleaded as a respondent.
7. That evidence by way of Affidavit exhibited as Ex.WW1/A was filed by the claimant along with the documents and he was cross examined by AR of Respondent. Respondent filed his evidence by way of affidavit exhibited as Ex. MW1/A and he was crossed by A.R of claimant.
8. I have gone through the claims, replies and documents filed by the parties and my findings are as under:-

Issue No.1,2& 4

The claimant in his claim as well as in his evidence has stated that he was employed with respondent on 28.03.2019 for the work of lintel and at about 04:00P.M.when he was cleaning the concrete mixer machine, his hand got crushed into the machine. He was taken to the hospital. The respondent in his written statement has stated that he has no relation with claimant. It is further stated that in the month of February, 2019, the respondent has approached to a contractor namely Sh. Naushad@vakeel for some construction work in his factory. That Sh. Naushad has further given contract of lintel work to Sh. Tinku. That when the lintel work has completed then the contractor Sh. Naushad informed Sh. Vipin Jain (respondent) that lintel work has been completed and after completion of lintel work, when the contractor boy was cleaning the machine he got injured. That the respondent (Sh. Vipin Jain) immediately reached and he came to know that the machine owner and the injured boy were Uncle-nephew.

The claimant filed his evidence by way of affidavit and has exhibited copy of FIR Ex.AW1/1(colly.), copy of treatment paper Mark-AW1/2 (colly.), copy of demand notice along postal receipt Ex.AW1/3 (colly.), copy of postal receipt Ex.AW1/4, copy of the reply of the respondent Ex.AW1/5, copy of envelope as Ex.AW1/6, copy of Aadhar card Ex.AW1/7.

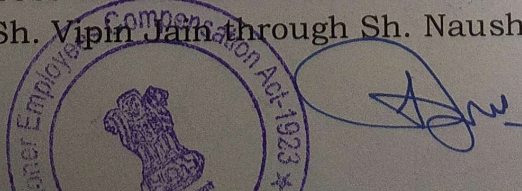
The claimant in his evidence has filed copy of FIR No.0194/2019 (Ex.AW1/1), in the said FIR it is mentioned that during enquiry it is found that today lintel work was carried at A-10/14, Industrial Area and

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after completion of lintel work, one person hand got crushed into mixer machine. The Police has visited at A-10/14, Industrial Area and construction work machine was found at the above site and blood was split underneath the machine. It is further mentioned in the FIR that they have obtained copy of MLC No.A1820/10/19 on which it is mentioned- A/H/O injury due to mixer machine (clafartgrinding machine) at Jhilmil Colony, near metro station on 28.03.2019 at around 04:00 P.M.

The evidence lead by the claimant shows that on 28.03.2019 he was employed at A-10/14, Industrial Area to carry out the lintel work. This fact has also been admitted by the respondent in his written statement. Therefore, there is no dispute with regard to the employment of the claimant and occurrence of the accident on 28.03.2019 at around 04:00P.M. when he was performing his duties. The question is only with regard to, whose employee he was? Whether he was the employee of respondent or of Sh. Naushad or of Sh. Tinku. The respondent has moved an application under Order1 Rule 10 of CPC before the then Commissioner for deleting his name from array of parties and for adding Sh. Naushad as a necessary party being contractor and employer of the claimant. The said application of the respondent was considered by the then Commissioner and vide his order dated18.01.2021, it was dismissed, on the ground that the respondent has admitted that Sh. Naushad was a Mason only, therefore, he cannot be impleaded as a respondent. Further, the respondent along with his written statement has filed copy of contract agreement dated 28.02.2019 between the respondent and Sh. Naushad (alleged contractor),which is also exhibited by him as MW1/1 in his evidence. The said document is a plane paper which bears only signature/thumb impression of one person namely Vakeel. The agreement is not on judicial paper. Further, any agreement to be binding on the parties to the contract has to be signed by all the parties. But the agreement dated 28.02.2019 does not bear the signature of the respondent who himself states that he executed an agreement with Sh. Naushad to carry out the work of construction. Further, to prove that the document bears the signature of Sh. Naushad, the respondent has not called him as a witness to prove the veracity of the document Ex.MW1/1, therefore, the document Ex.MW1/1 does not establish that the respondent has made a contract with Sh. Naushad.

The claimant in his cross examination has stated that on 28.03.2019 he has gone for work of Sh. Vipin Jain through Sh. Naushad. He has further



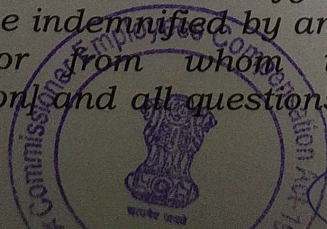
admitted that Sh. Naushad used to give me the work to operate mixer machine. Sh. Naushad used to pay Rs.550/- as his wage. On 28.03.2019, he was working on the direction of Sh. Naushad. He has further stated that he do not know Sh. Tinku. The admission on the part of the claimant during his cross examination shows that on 28.03.2019, he was employed with Sh. Vipin Jain through Sh. Naushad (contractor).

The respondent in his written statement has admitted that the claimant's hand got crushed in concrete mixer machine on 28.03.2019 after completion of lintel work, when he was cleaning the machine. The fact of the occurrence of accident has also been established by way of evidence lead by the claimant i.e. Ex.AW1/1, which shows that the claimant's hand got crushed at A-10/14, Industrial Area in the mixer machine. Since, the occurrence of the accident of the claimant in the mixer machine has been admitted by the respondent, therefore, it is held that the claimant sustained injuries out of and during the course of employment with respondent.

The Section 12 of the Act reads as under:-

(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any⁹⁸ [employee] employed in the execution of the work any compensation which he would have been liable to pay if that⁹⁸ [employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the⁹⁸ [employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor⁹⁹ [, or any other person from whom the⁹⁸ [employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the⁹⁸ [employee] could have recovered compensation, and all questions as to the right to and the amount of any



such indemnity shall, in default of agreement, be settled by the Commissioner.

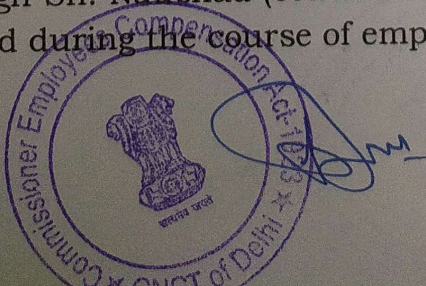
(3) Nothing in this section shall be construed as preventing a ¹⁰⁰ [an employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

As provided under Section 12 of the Act the respondent who is principal employer in this case is liable to make payment of compensation to the claimant.

The Hon'ble High Court of Delhi in the matter of Sh. Krishan Vs Jasoda Devi & Ors. FAO No.135/16 has held that- *In the present case, the appellant awarded the contract to respondent no.5 (contractor) for construction of a gymnasium as part of his trade and business in pursuance to which Respondent no.5 engaged the deceased, Babu Lal who suffered an accident arising out of and during the course of his employment on 6th March, 2010 which resulted in fatal injuries. Applying the principles laid down in the judgements discussed above, Babu Lal is held to be an employee within the meaning of Section 2 (1) (dd) read with Entry (viii) (a) of Schedule II of the Employees Compensation Act; respondent no.5 is held to be the contractor and the appellant is held to be the principal. This Court is satisfied that the ingredients of Section 12 are satisfied in the present case and the appellant, being the principal, is liable to pay the compensation to the legal representatives of the deceased, Babu Lal with right to recover the same from the contractor (respondent no.5). This case is squarely covered by the principles laid down in the judgments mentioned above. Similarly, the Hon'ble High Court of Delhi in the matter of Subhash Chaudhary Vs Nirmila Devi & Ors. FAO No.228/2016 has also held that the principal employer is liable to pay compensation to a workman who is employed through contractor.*

In view of above, it is held that Sh. Vipin Jain (respondent) is principal employer and he employed the claimant on 28.03.2019, to carry out the lintel work through Sh. Naushad (contractor) and the claimant sustained injuries out of and during the course of employment.



Further as provided Under Section 12 of the Act and as held by Hon'ble High Court of Delhi in FAO No.228/16 and 135/2016, the respondent who is a principal employer is held liable to make payment of compensation. Further, as provided U/s 12 (2) the respondent is entitled to be indemnified by the contractor Sh. Naushad.

Issue No.3

The claimant in his claim has stated that he was employed by the respondent and the respondent is the owner of A-10/14 Jhilmil Colony, Industrial Area, Delhi. The respondent in his written statement has stated that he approached a contractor namely Naushad for some construction work in his factory in the month of February, 2019. The term of contract was that material was to be provided by the respondent and labour by the contractor Sh. Naushad. That Sh. Naushad has further given contract of lintel work to Sh. Tinku. That when the lintel work has completed then the contractor Sh. Naushad informed Sh. Vipin Jain (respondent) that lintel work has been completed and after completion of lintel work, when the contractor boy was cleaning the machine he got injured. That the respondent (Sh. Vipin Jain) immediately reached and he came to know that the machine owner and the injured boy were Uncle-nephew. The respondent in his written statement has admitted that he has given contract to Sh. Naushad for construction at his factory A-10/14 Jhilmil Colony, Industrial Area, Delhi. In view of admission by the respondent in his written statement, it is held that the premises of A-10/14 Jhilmil Colony, Industrial Area, Delhi is owned and constructed by Sh. Vipin Jain.

Issue No.5 & 6

Since, issue no.4 has been decided in favour of the claimant, therefore, he is held entitled to compensation which is calculated as under:

Age of the claimant- 28 years as per Aadhar Card

Wages of the claimant is taken as Rs.8,000/- per month as provided under Section 4 (1-B)

Wages for calculation of the compensation, 60% of Rs.8,000/- =

Rs.4,800/-

Age Factor- 211.79




Disability-90% as per disability certificate no. 646/40/08/19 dated 22.08.2019 issued by GTB Hospital

Compensation Amount- $\frac{211.79 \times \text{Rs.} 4,800/- \times 90}{100} = \text{Rs. } 9,14,933/-$

Therefore, the claimant is entitled to receive Rs.9,14,933/- towards injury compensation from Respondent.

9. Since the Respondent has failed to deposit compensation amount within 30 days from the date of accident with this Authority hence Respondent is also liable to pay 12% interest per annum on awarded amount with effect from 28.03.2019 till its realization.
10. A show cause notice under section 4(A)(3)(b) for imposition of penalty was issued to both the respondent. Respondent has not shown any reasonable ground for not making payment of compensation to the claimants. Therefore, the claimants are also held entitled to Rs.2,28,733/- i.e. 25% of the awarded amount as penalty.
11. Now, M/s Vipin Jain, A-10/14, Jhilmil Industrial Area, Near Sonia Camp, Shahdara, Delhi-110095 is hereby directed to deposit Rs.9,14,933/- (Rupees Nine Lac Fourteen Thousand Nine Hundred Thirty Three Only) alongwith simple interest @ 12% per annum w.e.f. the date of accident i.e. 28.03.2019 till the date of payment along with Rs.2,28,733/- (Rupees Two Lac Twenty Eight Thousand Seven Hundred Thirty Three Only) as penalty by way of Demand Draft/ Pay Order in favour of "**Commissioner Employees Compensation, District Shahdara**" within 30 days from today, failing which proceedings to recover the amount of compensation as well as the interest, as an arrear of land revenue, shall be initiated as per the provisions of Section 31 of the Act.

Given under my hand and seal on this 17th day of April, 2023.


(AMARDEEP)
COMMISSIONER, EMPLOYEES COMPENSATION