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. CEC-I/NE/61/2017/ 30 Date: 31/01/2023

IN THE MATTER OF:

Sh. Rakesh S/o Sh. Kalwa
R/o 266, 10 Futi Gali, Ram Enclave,
Vill Banthala, Lony, Gaziabad, UP ...Applicant/Claimant

V/s

M/s. Rohit Cooker
C-Block, Gali No. 2, Tukmeerpur,
Dayalpur, Delhi – 110094 .....Respondent

ORDER

1. Vide this order, I will dispose of the application of the applicant/claimant seeking injury compensation dated 07/09/2017.

1. Claimant in the claim petition stated that the respondent is having a cooker factory at C-Block, Gali No 2, Tukmeer Pur, Dayalpur, Delhi – 110094 where he was working on a Buffing machine since 01 year on the post of Cooker polisher on a monthly salary of Rs. 10,000/-. The claimant submitted that the said 7.5 horsepower buffing machine was not working properly, in this regard the claimant has earlier informed the respondent, but the respondent asked the claimant/workman to continue working on the same machine. It is further submitted by the claimant that on 13.04.2017 at about 11:30 AM while working on the said machine his hand got stuck into the machine and got grievously injured. The claimant further submitted that the respondent instead of providing any medical treatment took him to a Pahalwan Shop and got it bandaged continuously for 03 days, but there was no improvement in the condition and on 16/04/2017 the claimant had to go to the emergency ward of Guru Teg Bahadur Hospital and got treatment in the said hospital till 27/07/2017. During this period of treatment the respondent failed to provide any injury compensation or medical expense to him. The claimant was 37

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years old at the time of accident. In the last the claimant submitted that due to the grievous injuries the he has suffered permanent disability, hence respondent is liable to pay compensation along with interest at the rate of 18% per annum and penalty to the extent of 50%.

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

3. Respondent in its reply submitted that there is no relationship of employee - employer with the workman hence the question of claim under labour Act does not arise. Further respondent denied all the contents of claim application of the claimant in toto and prayed that the claim petition deserve to be dismissed.

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

5. On 19/06/2018 following issues were framed for adjudication:
    1. Whether the claimant sustained injury during the course and out of his employment under the respondent and if so to what amount, claimant is entitled under Employees Compensation Act?
    2. Any Other relief?

6. 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 WW1/4 and i.e. copy of legal demand notice, Copy of postal receipt, Copy of Medical Documents of Guru Teg Bahadur Hospital, Copy of Operation documents of Swami Dayanand Hospital. His statement was also recorded on 19/02/2019 and was also cross examined by counsel of respondent on 19/02/2019. Further claimant examined another witness Sh. Satish Kumar (a co-worker) by way of affidavit Ex. CW1/A and further tendered his evidence on 01/10/2019 and was also cross examined by counsel of respondent on 01/10/2019.

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7. Respondent filed evidence by way of affidavit of vide Ex. MW-1. The contents of affidavit are corroborative to those reply. His statement was also recorded on 20/04/2022 and was also cross examined by counsel of claimant on 20/04/2022.

8. The matter was fixed for arguments. Arguments were filed and oral were heard.

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:

The case of claimant is this that the respondent is having a cooker factory at C-Block, Gali No 2, Tukmeer Pur, Dayalpur, Delhi – 110094 where he was working on a Buffing machine since 01 year on the post of Cooker polisher on a monthly salary of Rs. 10,000/-. The claimant submitted that the said 7.5 horsepower buffing machine was not working properly, in this regard the claimant has earlier informed the respondent, but the respondent asked the claimant/workman to continue working on the same machine. It is further submitted by the claimant that on 13.04.2017 at about 11:30 AM while working on the said machine his hand got stuck into the machine and got grievously injured. The claimant further submitted that the respondent instead of providing any medical treatment took him to a Pahalwan Shop and got it bandaged continuously for 03 days, but there was no improvement in the condition and on 16/04/2017 the claimant had to go to the emergency ward of Guru Teg Bahadur Hospital and got treatment in the said hospital till 27/07/2017. During this period of treatment the respondent failed to provide any injury compensation or medical expense to him as such claimant sought direction against the respondent under the Act for payment of compensation.

In reply respondent denied employee-employer relationship and accident occurred out of and in course of his employment. Further respondent submitted that since claimant was not working with the respondent at any point of time as such question does not arise of any accident in his factory during the course of his employment. Further respondent has taken stands that claimant did not file any documentary evidence regarding employment with respondent as well as regarding accident such as police complaint, FIR etc. to prove his case. To prove the case claimant examined co-worker Satish Kumar Ex CW1/A, who deposed in the cross

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examination that he was working with the claimant at the time of accident. further in cross examination claimant stated that report of doctor falling from height in respect of claimant is incorrect and as per his view claimant received injury during his working hours with respondent.

Written submission of both the parties have been considered and accordingly after going through the pleading of the parties and documents available on record the claimant relies upon the documents available on record regarding medical treatment which is filed by the claimant Ex. 1/3 itself states injury fall from height i.e Emergency registration card dated 16/04/2017. While in claim and in all the proceedings claimant alleged that on 13/04/2017 he met with accident in the machine where his hand got struck in the machine, thus the contention of claim application and doctor report Ex. 1/3 is contradictory. Further for a moment If I believe in the statement of claimant that he received injury while he was working on the machine then there might be some police complaint or FIR should be lodged against the owner of the factory. But in this case nothing has been placed on record. Merely on the statement of the claimant it cannot be held that claimant had received injury out of and in the course of his employment with the respondent. In such circumstances onus lies upon the claimant to prove his case by way of documentary evidence in regard his accident and employment with the respondent. In these circumstances claimant failed to prove his case. As such he is not entitled for any relief.

10. Given under my hand and seal of this Authority on this 31st day of January, 2023.

31/1/23

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

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