

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/33/2018 | 45

Date: 22/02/2023

IN THE MATTER OF:

Sh. Lokesh S/o Sh. Devi Singh

C-210, Pratap Nagar, Samboli, Delhi - 110093

.....Applicant/Claimant

V/s

Sh. Ajay Gupta

D-508, Gali No. 3, Ashok Nagar, Delhi - 110095

Also at:-

Sh. Ajay Gupta

H.No. 9718, Bail Gali, Rohtash Nagar,

Naveen Shahdara, Delhi - 110032

.....Respondent

ORDER

1. Vide this order, I will dispose of claim application dated 16/08/2018 filed by the claimant for seeking injury compensation under the Employees Compensation Act, 1923.
2. The Claimant in the claim application has submitted that he used to work with Respondent as machine operator since march 2017 and his last drawn wages was Rs. 14,500/- per month. It is further submitted that owner Sh. Ajay Gupta is involved in the business of manufacturing of cardboard box. It is further submitted that the Respondent did not provide labour facility like appointment letter, attendance register, wages register, PF, leave, earned leave and safety apparatus under the Factories Act whereas he had been continuously demanding the same but no attention was paid to it. It is also submitted that the machine was also not working properly whereas he requested the Respondent to get it rectified but the Respondent threatened him and told him that his services will get terminated if he will not work on said machine. On 04.05.2018 the Respondent /Management asked the Claimant to work fast as there is pressure of work but he informed to the Respondent that an accident will take place as machine is not working properly. After hearing the above the Respondent threatened to him that his services shall be terminated if he will not work in speed. Consequently, the workman met with an



accident at 11 am due to the negligence of the Respondent and malfunctioning of machine. The Claimant's right hand got injured. The Respondent took him away to the GTB hospital where doctor prepared MLC No. 2630/14/18 and an FIR No. – 0146/2018 was registered against the owner Sh. Ajay Gupta. In the accident the Claimant's three fingers of right hand got amputated and working capacity of thumb, middle finger, wrist got finished. The Claimant has submitted that he was 24 years old at the time of accident. He sent a notice on 12/05/2018 through union demanding compensation but the Respondent not paid the same. The Claimant has prayed to grant compensation of Rs. 7,34,059 along with 12% of interest and also prayed for imposing 50% penalty.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply in the matter. Respondent appeared and filed reply on record.
4. The Respondent in its reply submitted that there existed no relationship of employee and employer between the parties. The answering respondent further submitted that he was not running any "Gatta factory" as alleged by the claimant, hence therefore, the question of occurring any accident arising out of employment and in the course of employment does not arise. It is further submitted by the respondent that the police have registered a false FIR No. 0146/2018 against them and no charge sheet have been filed till date against him. The Respondent further submitted that there arose no cause of action against the Respondent for filing a claim application against him. The Respondent submitted that he did not admit the Claimant to the GTB Hospital. It is further submitted by the respondent that the claim has been filed by the claimant showing the address D-508, Gali no – 3, Ashok Nagar, Delhi-110093 against them whereas the premises No. D-508 is big premises consisting of so many sub premises and the Respondent does not reside there. Further rest of contents of claim petition has been denied in toto by the answering respondent and stated that there is no any responsibility of the answering respondent to pay compensation to the claimant and in the last prayed that application in question is liable to be dismissed.
5. Petitioner rebutted all the contents of Respondents as stated in the reply and reiterated contents of the claim petition in his rejoinder.
6. On 31/01/2019 following issues were framed for adjudication:
 1. Whether the claimant Sh. Lokesh Kumar sustained injury during the course and out of his employment under the respondent and if so, to what amount claimant is entitled under EC Act, 1923?
 2. Any other relief?



7. Matter was fixed for the evidence of the claimant. Claimant filed his 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 WW1/5 i.e. copy of MLC slip no. 2630/14/18 of Guru Teg Bahadur Hospital, Shahdara, Delhi, Copy of FIR NO. 0146/2018 registered against Sh. Ajay Gupta, copy of Aadhar Card, Copy of demand notice, copy of postal receipt of demand notice. His statement was also recorded on 25/09/2019 and was also cross examined by counsel of respondent on 08/02/2021.
8. On behalf of Respondent/Management Sh. Ajay Gupta filed affidavit vide Ex. RW1/A. The contents of affidavit are corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 21/12/2022.
9. The matter was fixed for arguments. Written Arguments were filed by the claimant and the respondent and oral submission was also heard in detail.
10. On the basis of pleadings of the parties and documents available on record I am giving my findings on the issues framed in the matter as under:

Issue No. 1

11. The case of claimant is this that he was working as a machine operator since March 2017 on the last drawn wages of Rs. 14,500/- with Ajay Gupta at D508, Gali No 3, Ashok Nagar, Delhi – 110093 in his Gutta factory. On 04/05/2018 he met with an accident resulting thereby three fingers of his right hand got amputated out of and in the course of his employment as alleged by the claimant. MLC and FIR was registered in this case. Despite many request respondent did not pay the injury compensation to the claimant as such he filed this claim. For brevity of the case I am not repeating whole facts of the case as narrated above in para no 2. On the other hand respondent denied the claim of claimant on the ground that there was no employee employer relationship existed between Sh. Lokesh and respondent Sh. Ajay Gupta, since Ajay Gupta was not running any Gutta Factory as alleged by the claimant in his claim. As such the question of any accident arising out of and in the employment does not arise at all. As such respondent is not liable to pay any compensation to the claimant. Further claimant has not produced any service contract arrived / executed between claimant and respondent to establish respondent as a employer in this case. Claimant has also not disclosed name of the establishment of the respondent where as alleged he was working. On this ground respondent denied his liability for payment of compensation under the Act to the claimant.



I have considered all the pleadings of the case and found that no document have been placed on record by the claimant to establish his case against the respondent that he was employee of the respondent and met with an accident out of in the course of his employment with respondent. In cross examination also nothing has come on record which establish that claimant was working with the respondent. In cross examination claimant deposed as under:

“that he does not have knowledge about the pendency of FIR No. 0146/2018 and he has not pursued the criminal case. It is correct that D-508, Gali no – 3, Ashok Nagar consisting eight (08) different / separate premises in the numbers D-508/1 to D-508/8. It is correct that Ex-WW-1/X bears the name of Bobby only at point ‘A’. It is correct that I have not filed any document to show that I was working with Sh. Ajay Gupta, Respondent. It is correct that I have not filed any document to show that Sh. Ajay Gupta was running any “GUTTA FACTORY”. It is correct that no name of any establishment or factory or firm has been mentioned by me in the claim statement at point ‘A’.” When the respondent denied employee employer relationship then onus shifts upon the claimant to prove his case by way of documentary evidence, but in this case nothing have been brought on record, which establish that claimant was employee of the respondent and met with an accident out of and in the course of his employment.

Further it is pertinent to mention that the claimant has not mentioned any name of the firm where he was working. He has filed claim against the personal name of Respondent. The claimant has also not mentioned the specific premises no. located in the property No. D-508, Gali No.-3, Ashok Nagar, Delhi-93 whereas he has admitted during cross examination that it is correct that D-508, Gali no – 3, Ashok Nagar consisting eight (08) different / separate premises in the numbers D-508/1 to D-508/8. The claimant has also not deposed anything regarding the person Bobby whereas he has stated during cross examination that Ex-WW-1/X bears the name of Bobby only at point ‘A’ which is copy of MLC. The claimant has also admitted that he does not have knowledge about the pendency of FIR No. 0146/2018 and he has not pursued the criminal case. No doubt it is the burden of claimant to prove his case but his evidence does not inspire any confidence. How come the claimant claims to be an employee of Respondent but he does not know the name of firm, he does not know the specific premises no. where he was working, he has not explained about the person Bobby who took him to hospital and he is not aware about the fate of FIR. He is also not in possession of any document to prove his employment with Respondent.



12. The respondent relied upon the following judgements in support of their case:-

The Hon'ble Madhya Pradesh High Court in Dhyani Singh Vs Raman Lal reported in 2001 LLR 148 held in an appeal filed under Workmen Compensation Act-1923 as under:-

"To prove a contract of employment, there has to be a direct evidence to show some nexus between the claimants and respondent. This can be of any kind such as appointment letter, monthly pay slip, deduction of PF, Payment of any dues which would show that he was in the employment and correspondence wherein the respondent has admitted that claimant was in the employment. In substance, the court are in favour of documentary evidence to record a definite finding on such type of issue. They are the best piece of evidence for coming to a conclusion one way or other.

The Hon'ble Karnataka High Court in T.S.Prabhu & Others Vs Bhavani Poojary [Smt.] & Others reported in 2002-[LB4]-GJX-1083 held in an appeal filed under Workmen Compensation Act-1923 as under:-

"The claimant must file some acceptable evidence for a claim under section 3 of the Act..... The findings must be given on the basis of some material on record."

The Hon'ble High court of Bombay in Kamla Bai Vs Sohan Lal reported in 2004-[LB4]-GJX-0738 held in an appeal filed under Workmen Compensation Act-1923 as under:-

"It is the burden of the claimant to prove the basic contention of existence of relationship of employer and employee to claim compensation under the Act."

The Hon'ble Supreme Court of India in Mackinnon Mackenzie & Co. Pvt. Ltd. Vs Ibrahim Mahommed Issak reported in AIR 1970 SC 1906 held in an appeal filed under Workmen Compensation Act-1923 as under:-

"In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose out of and in the course of employment rest upon the applicant, these essentials may be inferred when the facts proved justify the inference. On the other hand, the commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to



lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn but the evidence must be such as would induce a reasonable man to draw it."

Delhi High Court in Automobile Association of Upper India vs P.O.Labour Court-II and another reported in 2006 LLR 851, held as under

"Engagement and appointment in service can be established directly by the existence and production of an appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave record, deposit of provident fund contribution and employees state insurance contribution etc. The same can be produced and produced by the workman or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records. The workman can even make an appropriate application calling upon the management to call such records in respect of his employment to be produced. In these circumstances, if the management then fails to produce such records, an adverse inference is liable to be drawn against the management and in favour of the workman"

13. Weighing the evidence of claimant in the scale as provided in above judgments and in absence of any documentary proof, it is clear that the claimant have failed to prove relationship of employer and employee by producing any cogent and reliable documentary evidence. I am constrained to hold that there existed no relationship of employer and employee between the claimant and Respondent. Hence this issue is decided in favour of the respondent and against the claimant. Accordingly, claimant failed to prove that claimant met with an accident out of and in the course of his employment with respondent.

Issue No. 2

14. In view of discussion as made above the claimant is not entitled for any relief.

15. Given under my hand and seal of this Authority on this 22nd day of February, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

