

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. CEC/96/WD/17/ 136 .

Date: 27/04/2013 .

IN THE MATTER OF:

Sh. Dharmender

B-140, Satya Enclave, Prem Nagar – III,
Nangloi, Delhi - 110041
V/s

...Applicant/Claimant

M/s Vandana Enterprises,

A-46, Ring Road, Rajouri Garden,
New Delhi - 110027

.....Respondent

ORDER

1. Vide this order, I will dispose of the application filed on 17/11/2017 by the applicant/claimant for seeking injury compensation.
2. The case of claimant is this that he along with his father were doing work of delivery man for last 3-4 years in M/s Vandana Enterprises at A-46, Rajauri Garden, Delhi – 110027. It is further submitted by the claimant that on 06/11/2015 as usual he was doing his job of delivering gas cylinders and came to rented accommodation H.No B-288, Shivaji Vihar, Janta Colony, Delhi for lunch and parked the loaded rickshaw with gas cylinders in the rented house and during taking food when he switch on the fan suddenly the cylinder loaded on the rickshaw caught fire and he received severe multiple grievous due to fire and after treatment due to serious injuries the doctors referred him to Lok Nayak Jay Prakash Narayan Hospital where doctors have opined that the his body has burnt upto 77% and he was further discharged from the hospital on 20/04/2016 but his treatment is still going on. The claimant further submitted that an FIR no. 709/15 u/s 285/336/337 IPC was registered in P.S. Khyala, New Delhi. 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 of Rs. 30,00,000/- along with interest at the rate of 18% per annum and penalty to the extent of 50%.
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 submitted that the application under EC Act is not legally maintainable as there is no relationship of employee and employer between the parties at any moment. Respondent further submitted that the claimant has concealed the fact from this Hon'ble Court. It is further submitted by the respondent that a FIR was lodged, against



the claimant, in which it is clearly mentioned that the claimant in connivance with his father, used to take the cylinders at B-288, Janta Colony, ground Floor, Shivaji Vihar, Delhi where they used to shift some of the gas from the cylinders in empty cylinders, to make money, which is clear that the claimant and his father were stealing the gas and cheating with the respondent and Indian Oil Gas Company. It is further submitted by the respondent that as per the delivery record, which is being maintained by the respondent, the cylinders were taken by the father of the claimant from the godown of the respondent for delivery and they were not authorized to keep the cylinders for further delivery at any other place, which does not belong to the respondent and it clearly shows that the father of the claimant deliberately with malafide intention to siphon the gas from the cylinder and to deliver less gas to the customers, with the intention to earn extra money and to cheat and defraud with the company. The respondent further denied employee-employer relationship between parties and prayed the complaint is liable to be dismissed. Further respondent denied rest of contents of claim petition in toto and prayed that the claim petition deserve to be dismissed.

5. Claimant filed rejoinder by which he denied contents of reply filed by respondent and reiterated the contents of his claim application.
6. On 03/04/2019 following issues were framed for adjudication:
 1. Whether employee-employer relationship was existed between claimant/employee and respondent?
 2. If so, whether claimant received injury resulting then by left side of half body burn of claimant out of in the course of employment?
 3. Whether claimant is entitled injury compensation along with interest of penalty from respondent?
 4. If so, what relief and what direction are necessary in this regard?
7. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. CW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. CW1/1 to CW1/7 and Mark A i.e. copy of Aadhar Card, Copy of FIR dated 06/11/2015, copy of legal demand notice, Copy of postal receipt, Copy of reply to demand notice, copy of disability certificate, copy of Medical Documents, copy of MLC. His statement was also recorded and was also cross examined by counsel of respondent on 27/11/2019.
8. Further claimant examined another 02 witnesses Sh. Omkar (a co-worker) by way of affidavit Ex. CW2/A and further he tendered his evidence and was also cross examined by counsel of respondent on 16/12/2019 and another witness Sh. Subhash (a co-worker) by way of affidavit Ex. CW3/A and further he tendered his evidence and was also cross examined by counsel of respondent on 16/12/2019.



9. Respondent filed evidence by way of affidavit of Smt. Geeta Pandey (Partner) vide Ex. RW1/A. The contents of affidavit are corroborative to those reply. Her statement was also recorded and was also cross examined by counsel of claimant on 16/09/2021 and completed on 15/12/2021.
10. Further respondent examined another witness Sh. Rajender Prasad Mishra (an employee) by way of affidavit Ex. RW2/A and further tendered his evidence and was also cross examined by counsel of respondent on 16/12/2019 and completed on 11/07/2022.
11. The matter was fixed for arguments. Arguments were filed and oral were heard.
12. 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:

13. The case of claimant is this that he along with his father were doing work of delivery man for last 3-4 years in M/s Vandana Enterprises at A-46, Rajauri Garden, Delhi – 110027. It is further submitted by the claimant that on 06/11/2015 as usual he was doing his job of delivering gas cylinders and came to rented accommodation H.No B-288, Shivaji Vihar, Janta Colony, Delhi for lunch and parked the loaded rickshaw with gas cylinders in the rented house and during taking food when he switch on the fan suddenly the cylinder loaded on the rickshaw caught fire and he received severe multiple grievous due to fire and after treatment due to serious injuries the doctors referred him to Lok Nayak Jay Prakash Narayan Hospital where doctors have opined that the his body has burnt upto 77% and he was further discharged from the hospital on 20/04/2016 but his treatment is still going on. The claimant further submitted that an FIR no. 709/15 u/s 285/336/337 IPC was registered in P.S. Khyala, New Delhi. on the other side respondent denied employee employer relationship on the ground that claimant was never employed with the respondent as such question does not arise for any compensation. Further respondent submitted that duly appointed as a distributor for LPG (Indian Gas) by Indian Oil Corporation Ltd. The IOC issued the guidelines for marketing discipline and according to the said guidelines the delivery boy cannot unload or deliver the LPG gas cylinder at any place or to any other person except mend to deliver at any customers place. Respondent placed copy of guidelines on the record. Respondent has further taken ground that the claimant in connivance with his father used to take the cylinders at B-288, Janta Colony Ground Floor, shivaji Vihar, Delhi where they used to shift some of the LPG gas into empty cylinder to make money, thereby cheating the respondent firm and IOCL. On 06/11/2015 when a blast occurred in the cylinder at the above premises the father of the claimant who was working with the respondent as a delivery boy had parked the loaded rickshaw with gas cylinders in the rented house which is not permissible as per the guidelines of the IOC. An FIR was lodged against the claimant by the police. Which clearly mentions that the claimant in connivance with his father used to take the cylinders at B-288, Janta Colony, GF, Shivaji Vihar, Delhi, where they used to shift some of the gas from cylinders to empty



cylinders to make money. The claimant in his claim and cross examination has admitted that on the day of blast in cylinders rickshaw was parked at his rented residence as discussed above. The cause of fire as narrated by the claimant that when he was switching on the fan suddenly fire occurred and blast took place.

14. To prove his case claimant examined 02 witnesses ExCW2/A & EX. CW3/A who stated that they were working with the respondent, but did not clearly stated that how the fire took place in loaded cylinder rickshaw. During the cross examination also nothing came on record clearly which establish that claimant had received injury out of and in the course of his employment. On the other side respondent herself and another 1 witness Ex. RW2/A examined who stated that claimant had never employed with them as alleged by him. Further claimant did not produce any cogent documents such as appointment letter, salary slip or identity card or any type of delivery slip which was issued in favour of claimant.
15. After considering the pleadings of the parties on the basis of documents available on record claimant did not produce any documents related to his employment with respondent like appointment letter, salary slip and identity card or any type of delivery slip which was issued in favour of claimant. Witnesses examined by the claimant also has not supported completely case of claimant that he was employed with respondent. Further it is admitted fact that rickshaw loaded with LPG gas cylinder was parked at rented house of the claimant against the guidelines of the IOC while after loading the LPG gas cylinder delivery boy has to deliver cylinder of the residence of the customer. For this incident as FIR was lodged by the police. As such it cannot be termed injury out of and in the course of his employment.

In view of above discussion claimant has failed to establish employee-employer relationship with the respondent. From the above facts it is also not considered that accident was occurred out of and in the course of his employment.

16. In view of above claimant is not entitled for any relief under Employees Compensation Act, 1923, as such claim is rejected.

Issue No. 3 & 4

17. In view of discussion made in issue No. 1 & 2, issue no. 3 & 4 are not required for any answer.
18. Given under my hand and seal of this Authority on this 27 day of April, 2023.

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

