

**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. ECI/48/NW/2020/ **158.**

Dated: **12/11/2024.**

IN THE MATTER OF:

Aarif @ Asif S/o Sh. Usman
R/o. H. No. A-87, J. J. Colony,
Sector - 24, Rohini, New Delhi -110085

.....Applicant/Claimant

Versus

1. Sh. Rajesh Kumar
R/o. H. No. 66, 3rd Floor,
Pocket - 18, Sector - 24,
Rohini, New Delhi - 110085

ALSO AT:

A-77, J.J. Slum Colony,
Sector-24, Rohini, New Delhi-110084
(Battery Rickshaw Workshop)

ALSO AT:

H. No. 22, B-Block, Shiv Colony,
Budh Vihar, Phase-2, Delhi-110086
(Near Citizen Public School)
Famous as Generator Wale

2. TATA Power - DDL

Through its CEO,
Corporate Office:-
Hudson Lane, GTB Nagar, Delhi-110009
(Deleted on 07.04.2021 by the CEC)

.....Respondents



ORDER

1. Vide this order, I will dispose of claim application filed on 11.09.2020 before this Authority under section 10 of the Employee's Compensation Act, 1923 for seeking injury compensation.
2. In the claim application claimant submitted that he is 21 years old and residing at the above address and was working as a carpenter. He was hired by Respondent No. 1 to perform the function of carpenter in his house no. 66, 3rd Floor, Pocket-18, Sector-24, Rohini, New Delhi-110085. He has further stated that he worked in the house of Respondent No. 1 as a carpenter for around one month and Respondent No. 2 is the main service provider of Electricity for consumers by supplying electricity through underground electricity wiring by ensuring complete safety towards any unforeseen circumstances which might arise from electric wires left open or in unsafe condition. It is further submitted that on 12.12.2019 claimant was asked by the Respondent No. 1 to take 12 feet long slide channel from the Ground Floor to Top Floor to perform the task at the above mentioned address. While taking the slide the petitioner got stuck at the Second Floor stairs and sought for help. The claimant open the window and on opening he found high voltage open wires and he expressed his anxiety on the possibility of him getting electrocuted. The Respondent forcefully asked and compelled the claimant to take the slide channel through window by line that wires have no electricity as the Respondent has checked the same and on his assurance and compelling circumstance when the petitioner tried taking the slide channel up through the window of Second Floor, he was electrocuted when the slide channel touched the high voltage open wires and fell on the railing and then on the stairs unconscious. The accident happened at the resident House No. 66, 3rd Floor, Pocket-18, Sector-24, Rohini, New Delhi-110085. It is further submitted that on 28.05.2018 a letter was written by the RWA Pocket-18, Sector-24, Rohini, New Delhi-110085 to MP of North West District - Sh. Udit Raj expressing their concerned with respect of high voltage open wiring in the residential area. In the letter it was requested for the replacement of high voltage open wiring with insulated wiring since responsibility upon Respondent No. 2. After the incident claimant was taken to BSA Hospital for treatment and thereafter on basic treatment claimant regaining consciousness then was referred and shifted to Safdarjung Hospital and at Safdarjung Hospital both the forearms of the petitioner was imputed in order to save his life and he is still undergoing treatment for which his family has to incurred heaving expenses on monthly basis. It is further submitted that since the claimant was sole bread earner in his family and was/is skilled carpenter and now cannot do longer work as one and his regular treatment, medicine, dressing, hospital visit etc. are proving to be a heavy mental and financial burden on the family of the claimant. An FIR bearing No. 0040/2020 was registered on 07.02.2020 at PS-Budh Vihar, Delhi under section 288/338 IPC. The claimant has further submitted that Respondent No. 1 has assured him that he would bear the entire expenses of his treatment and will also pay compensation as per Employees Compensation Act, 1923 but



Respondent No. 1 did not fulfill his promise and let the claimant suffer in poverty and pain just by pay Rs. 5000/- as cost of treatment. In this accident as per disability certificate issued by Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Govt. of India, claimant become 89 percent permanent disabled in relation to his both upper limb as per certificate No. DLO140619990036704 Dated 30.10.2021 In the last claimant submitted that since he met with an accident out of and in the course of him employment with Respondent No. 1 and caused permanent total disablement resulting into 100 % lose of earning capacity as per the provision of the Act being the skilled carpenter by losing hole arms in this accident. Before the accident he was earning 700/- per day which culminates into Rs. 20,000/- per month. It is further stated that since accident of the claimant was occurred due to reckless attitude and negligence of the Respondent No. 1 due to this accident claimant has lost both his forearms which has rendered him incapacitated to perform his work as carpenter. In the last claimant prayed that directions to be issued to the respondent to pay injury compensation to the claimant as per provisions of the Act alongwith 50 % penalty and the interest. Alongwith claim application claimant filed legal demand notice dated 04.08.2020, postal receipt, FIR, Photographs, treatment documents of Safdarjung Hospital and medical bills etc.

3. Summon was issued to the respondent with directions to appear before this Authority to file reply/defense in the matter. Respondent appeared and file reply wherein it is stated that claimant have not come before this Authority with clean hands and willfully and with malafied intentions concealing the true and correct facts and circumstances of the present case. It is further submitted that no cause of action has ever arose against the Respondent No. 1 and moreover, no cause of action for approaching the Hon'ble Court by filing the present petition has been shown in the claim petition as such the claim petition of the claimant is liable to be dismissed. It is further stated that the accident in question was occurred due to sole negligence and disobeying the instruction of the Respondent No. 1. Claimant did not keep the advice of the Respondent No. 1 that such a big 12 feet height long slide channel could not able to go from stairs, since there is a less space and it will get stuck in between the stairs and moreover white wash was already going on and labour/painters are already working and the same action will destroy / damage the white wash of walls and thus, the Respondent No. 1 being the responsible person had specifically advised and instructed the claimant to cut the slide into 2-3 pieces from cutting machine and then to take the same from stairs. But claimant ignored all his instructions and did according to his will. It is further submitted that at the time incident Respondent No. 1 was not present at the spot hence question does not arise to force the claimant to take the slide channel from the window rather, it is Respondent No.1 to instruct claimant not to take slide channel from window despite that the claimant was fully knowing the risk that there is high voltage open wires that same may cause any injury



and damage to life but claimant ignored all the instructions/advice. All the incident had happened and occurred due to negligence, willful mistake and overconfidence of claimant wherein despite knowing threat and risk, he had taken a chance but putting his life on risk of death. Rest of other contents of claim application is denied except which is the matter of record. In the last Respondent No. 1 prayed that claim of claimant is to be dismissed being false and being devoid merits in the interest of justice.

4. Claimant filed rejoinder by which he denied all the contents of reply of the Respondent No. 1 and reiterated contents of his claim petitioner. Claimant also filed Disability Certificate issued by Medical Authority North West Delhi vide Certificate No. DLO140619990036704 dated 30.10.2021 wherein, he was assessed 89 % permanent disability in relation to his both upper limb.
5. On 07.04.2021 on the submission authorized representative of claimant – Respondent No. 2 was deleted by the then Authority.
6. On 29.10.2021 and 23.12.2021 following issues were framed for adjudication :-
 - i. Whether the claimant is entitled to compensation due to the injuries suffered in the course of his employment ? If so, to what amount ?
 - ii. Any other relief ?
 - iii. Whether the respondent is liable to pay penalty u/s 4 A of the Act ? and If so, to what extend and to what amount ?
7. Matter was fixed for the evidence of the claimant. Claimant filed his evidence by way of affidavit Exhibit CW1/A. The contents of affidavit are corroborative those claim petition. His statement was also recorded on 27.05.2022 and was cross examined by Counsel for Respondent. Claimant also filed documents exhibit CW1/A, CW/B marked, CW1/C to CW1/O i.e. Copy of legal demand notice dated 04.08.2020, Copy of FIR bearing No. 0040/2020, Photographs of claimant, Photographs of the Flat of the respondent, treatment papers of Hospital (Colly), Copy of medical bills (Colly), Copy of Aadhaar Card of claimant, Aadhaar card of father of claimant, Copy of News Paper cutting dated 13.02.2022, Copy of Voter List and Address of respondent , copy of Bank passbook, Photo of Mother and Father of claimant, Copy of transport/ vehicle bills (Colly), Copy of medical Bills (Colly) and copy of discharge summery, Prescription, Lab Report, Disability Certificate and OPD reports of claimant from Safdarjung Hospital (Colly) respectively.



8. For respondent Sh. Rajesh Kumar appeared in witness box and filed his evidence by way of affidavit Exhibit RW1/A. The contents of the affidavit are corroborative those reply. His statement was also recorded on 25.10.2023 before this Authority and was cross examined by Counsel for Claimant.
9. Respondent also examined co-worker Sh. Dinesh S/o Sh. Banarsi R/o. Bella Bujurg, Bella Sukhroli, Gorakhpur, Uttar Pradesh as a witness in his favor. He was also cross examined by Counsel for Claimant. From the statement of the witness it proves that claimant Aarif @ Asif had ignored the advice of the respondent as well his also and acted according to his will thereby accident of the claimant was occurred due to his own negligence. In cross examination of witness nothing has come as new facts of the case.
10. Respondent also examined as a witness to Sh. Satyaveer @ Satbir as a summoned witness who had deposed that on 12.12.2019 he had informed to Sh. Rajesh at his Shop about the incident of the claimant as he was also working as a grinder of the floor. Both Satyaveer and respondent had took him to BSA Hospital in emergency ward and his statement was recorded by the Police and the FIR was registered Exhibit RW3/1. He was also cross examined by Counsel for claimant on 28.02.2024.
11. Written submission have been filed by both the parties and despite opportunity did not adduced oral submission.
12. On the basis of pleadings of the parties and documents available on record I am giving my finding on the issues framed in the matter as under:

Issue No. 1

The claim of claimant is this that he was 21 years old at the time of accident and working as a carpenter. He was hired by Respondent No. 1 to perform the function of carpenter in his House No. 66, 3rd Floor, Pocket-18, Sector-24, Rohini, New Delhi-110085. He had worked in the house of Respondent No. 1 as a carpenter for around one month and Respondent No. 2 is the main service provider of Electricity for consumers by supplying electricity through underground electricity wiring by ensuring complete safety towards any unforeseen circumstances which might arise from electric wires left open or in unsafe condition. That on 12.12.2019 claimant was asked by the Respondent No. 1 to take 12 feet long slide channel from the Ground Floor to Top Floor to perform the task at the above mentioned address. While taking the slide the petitioner got stuck at the Second Floor stairs and sought for help.



The claimant open the window and on opening he found high voltage open wires and he expressed his anxiety on the possibility of him getting electrocuted. The Respondent forcefully asked and complied the claimant to take the slide channel through window by line that wires have no electricity as the Respondent has checked the same and on his assurance and compelling circumstance when the petitioner tried taking the slide channel up through the window of Second Floor, he was electrocuted when the slide channel touched the high voltage open wires and fell on the railing and then on the stairs unconscious. Resulting thereby in this accident during the treatment his both hands above the elbow was imputed. An FIR was registered in this. Photographs of the injured claimant has been placed on record Exhibit CW1/C. To prove case claimant examined himself and was cross examine by the Counsel for Respondent. The respondent has denied his liability towards payment of compensation on the ground that accident was occurred due to the negligence of the claimant and disobeying instructions given to him to work safely. Respondent examined himself as a witness RW1/1 and 02 other witness Sh. Dinesh S/o Sh. Banarasi and Sh. Satyaveer @ Satbir. These witnesses deposed that accident was occurred due to negligence of the claimant his own.

I have gone through the pleadings of the parties and documents available on record and found that accident is not disputed by the respondent as narrated by the claimant. I have seen accident photographs on record and found that accident was occurred due to electrocution resulting claimant met with an accident and lost his both hands above the elbow. Photographs/Seen site of accident express that there was high voltage wire near the balcony and was apprehended any unwanted situation like touching of electric wires with the goods which was proposed to shift from Ground Floor to Top Floor in this risky / dangerous situation more caution was required and safety measure needs to be taken and safety equipments was also required to provide to the workers. In this kind of situation respondent was required to be present at the accident place when work was carried out to monitor that workers are doing work with safely to avoid further any unwanted situation. Merely giving instruction to workers by respondent is not sufficient. If at the time of shifting of goods/slide channel from Ground Floor to Top Floor which was 12 feet height if respondent was there then under his instruction workers could shift the slide channel from Ground Floor to Top Floor. Even respondent has not provided any gloves or safety tools to workers so this accident was happened. Merely producing 02 witnesses as discuss above in his favor is not considerable to established negligence on the part of claimant. Here in my view respondent is responsible for negligence and for not providing safety tools to workers for shifting goods. As such respondent can not escape from his legal responsibility/liability for the payment of compensation under the EC Act, 1923 to the claimant because hole life of claimant has been ruined in this accident and further he will be not able to perform his work as a carpenter as he lost his both hands in this accident. As such claimant has become 100 % disabled for his work



as a carpenter as he is unable to perform his work as he was doing before the accident. In view of this I hold that the claimant has met with an accident out of and in the course of his employment with respondent and is liable to receive injury compensation from the respondent. Accordingly Issue No. 1 is decided in favor of claimant and against the respondent.

Issue No. 2 & 3

As discussed above in Issue No. 1 for calculation of compensation age of claimant has taken as 20 years 04 months on the basis of his Date of Birth – 05.08.1999 as mentioned in his Aadhaar Card, and relevant factor 224.00 and 60 % of Rs. 8000/- restricted under the Act.

Accordingly, compensation is calculated as under:

60 % of Rs. 8000/- = Rs. 4800/-

Relevant Factor – 224.00

4800 x 224.00 = Rs. 10,75,200/-

In view of above calculation claimant is entitled to receive injury compensation **Rs. 10,75,200/- (Rupees Ten Lakhs Seventy Five Thousand Two Hundred)** along with 12 % interest per annum from the date of accident i.e. 12.12.2019 till its realization from the respondent. Respondent is also liable to pay 25 % penalty on ordered amount under section 4A of the Act, which comes to **Rs. 2,68,800/- (Rupees Two Lakhs Sixty Eight Thousand Eight Hundred)**. In view of this respondent is directed to deposit the ordered amount alongwith interest and penalty with Commissioner Employees Compensation by way of demand draft/cheque within 30 days from the date of order.

12. Given under my hand and seal of this Authority on this 12th day of November, 2024.

(S.C. Yadav)
Commissioner

Employee's Compensation Act, 1923

