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GOVT OF NCT OF DELHI
BEFORE COMMISSIONER- EMPLOYEES' COMPENSATION
(UNDER THE EMPLOYEES' COMPENSATION ACT, 1923)
LABOUR DEPARTMENT, DISTRICT: EAST/NORTH EAST
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

File No. CEC-D/ED/13/2019 8068 Dated: 11.11.21

In the matter of :

Sh. Alisekh S/o Sh. Jahiruddin
B-408, first Floor, West Vinod Nagar,
(Brother of deceased Sh. Nasaruddin)
Mandawali, Fazal Pur, Delhi-110092
Mob. No. 9891484942

And

Sh. Jahiruddin (Father of the deceased Nasaruddin)
H.No. 33, Himalaya Enclave, Khoda Colony,
Ghaziabad, U.P-201309 .....Claimant

Vs

Sh. Sanjeev Kumar (Owner)
26, Shivaji Enclave, Village Kondli,
Ram Kishan Building, Delhi-110051
Also at:

H.No. A-159, Main Road, West Vinod Nagar,
Delhi-110092 .....Respondent

Proceeding-cum-Order Sheet

Date-11.11.2021

Present:

For Claimant - None present

For Respondent - Sh. Rajesh Narang, Advocate along with Respondent

Whereas the matter was listed for filing of claimant evidence and on the last three dates, neither anyone appeared on behalf of claimant nor any evidence has been filed. Therefore, notice to the claimant was

directed to be sent by speed post. On checking delivery status of notice dated 25.10.2021 issued to father of deceased Sh. Nasaruddin, the India Post Site is showing same has been delivered. The claimant is awaited till 3:00 P.M. and the matter has been called several times since morning today but neither the claimant nor the l.d. Advocate for the claimant have come and put in their appearance. No evidence has been filed despite more than three opportunities already given. Hence, there is no point in further keeping the matter pending and accordingly the matter is disposed off as dismissed in default by order as under:

1. Whereas the predecessor authority admitted this matter of claim on the basis of a photocopy of complaint dated nil addressed to Police Commissioner Delhi, complaining against Sh. Sanjay and A.S.I Sh. Subhash Chandra has been made by complainant Sh. Alisekh R/o B- 408, First Floor, West Vinod Nagar, Madavali, Faizalpur, Delhi-110092. In the complaint, it is mentioned that complainant is the elder brother of Sh. Nasaruddin. It has also been mentioned in the complaint his elder brother Sh. Nasaruddin was working in a helmet manufacturing factory at 26, Shivaji Enclave, Village Gondli, Delhi-110051, Ram Kishan building owned by Sh. Sanjay. It has also been mentioned in the complaint that he received a call from Sh. Sanjay at approximately 8:00 P.M. on 03.06.2019 that his elder brother is sick and asked him to come to Head Gawar Hospital and when he reached at the hospital, his brother had expired. The complainant has stated that he has a doubt that his brother got expired during working and there is no facility of primary treatment with the owners due to which his brother expired. The complainant has further stated that he inquired regarding the death of his brother from police, the police officials misbehaved with him and make him run away and they have been visiting the police officials and owners. It has also been stated by the complainant that the deceased is survived by two small children aged one year and five year and there is some nexus between the owner Sh. Sanjay and I.O Sh. Subhash Chandra and has requested to initiate action against the Sh. Sanjay, owner and Subhash Chandra, A.S.I.
2. That on the basis of the complaint, a notice dated 19.06.2019 for 15.07.2019 was issued to both the parties but none appeared from both the parties on 15.07.2019. Thereafter, another notice dated 17.01.2019 for appearance of both the parties on 25.07.2019 was served through S.H.O. and on 25.07.2019 Sh. Subhash Chandra, A.S.I. appeared and told the address of employer and employee during the proceedings and the matter was fixed on 29.08.2019 none of the parties appeared on 29.08.2019 also and the matter was fixed on 19.09.2019. The complainant side did not appear on 19.09.2019, 21.10.2019, 11.11.2019, 19.11.2019, 02.12.2019 and 27.01.2020 in the meantime a notice under Section 10 (A)(1) of

the Act was issued to Sh. Sanjeev Kumar and in response of the above said notice an application has been filed by Sh. Sanjeev Kumar mentioning therein that the complaint has been filed against some Sh. Sanjay and otherwise also this matter does not relate to them as in no manner, he is related to Sh. Alisekh or anyone else during the proceedings on 02.03.2020 Sh. Alisekh younger brother of the deceased appeared during the proceedings and stated that he does not have clarity about the name of the owner and he was directed to call the wife and father of the deceased with their identity cards. Sh. Alisekh brother of the deceased was directed to ensure the presence of father and wife of the deceased but he neither called father and wife of the deceased nor presented himself on 14.10.2020, 21.10.2020, 09.11.2020, 25.11.2020 and 04.12.2020 and appeared on 22.12.2020 and requested for time to file proper statement of claim. Thereafter a statement of claim was filed by Sh. Narender Thakur, Adv. (without signatures of legal heirs of deceased) mentioning therein that the deceased Sh. Nasaruddin was working with the respondent at the last drawn wages of Rs.9,000/- per month and expired on 03.06.2019 during the course of employment, his age is stated to be 34 years and DD No. 69A dated 03.06.2019 has been filed in the police station Krishna Nagar, Delhi.

3. That reply to the claim filed by the claimant was not filed on successive three dates and therefore cost was imposed on the respondent. The respondent moved an application for weaver of cost and paid cost of Rs. 5,000/- to the counsel of respondent. The respondent filed reply to the main claim application mentioning therein that the deceased was a self-employed person and is known to him for last two months before his death and was infirm, unfit for employment due to suffering from disability in his leg and use to keep doings odd jobs by profit sharing and commission. It has been stated by the respondent that the deceased was sitting and suddenly fainted around 6 to 7 p.m. and he tried to give him first aid and took him nearby clinic and thereafter to Dr. Hedgwar Aarogya Sasthan where he was declared got dead. It is also stated by the respondent that the matter was reported to police from Hospital vide MLC No. 2161/2019 and as per his information the police has closed this matter stating that it was natural death and there was no accident and has denied the rest of the contents of the application.
4. Rejoinder was filed by the claimant side denying the contents of reply.
5. That on pleadings of the both the parties following were issues framed on 30.07.2021 as agreed by both the parties:

(i) Whether the employer-employee relationship existed between the deceased Sh. Nasaruddin and respondent?

(ii) And if yes, whether the deceased Sh. Nasaruddin expired during the course of employment, arising out of course of employment?

(iii) And if so, whether the claimant is entitled for death compensation on account of death of Sh. Nasaruddin?

(iv) And if so, to what amount ?

(v) Any other relief ?

6. That thereafter the matter was fixed for filing evidence from claimant side on 02.09.2021, 20.09.2021, 04.10.2021, 18.10.2021 and today i.e on 11.11.2021 but the claimant requested for time to file evidence on 02.09.2021 and did not appear thereafter on any dates.
7. Since the claimant/complainant and his advocate is not appearing in the matter, despite several notices and not even appeared today, therefore the matter is dismissed by default. However, in the interest of justice liberty, as available under Employee's Compensation Act, 1923 if any, is granted to claimant to get the matter reopened on making application within limitation and reasonable grounds.
8. File be consigned to record room with instructions that it may be preserved till such time as mandated in EC Act, 1923.These orders may be uploaded on the website in terms of directions dated 24.12.2020 of Delhi High Court in WP(Civil) No. 11145 of 2020.

Given under my hand and seal on 11th November, 2021.

(K.M. SINGH)
Commissioner Employee's Compensation