

**BEFORE SH. S. C. YADAV, COMMISSIONER
(UNDER EMPLOYEE'S COMPENSATION ACT, 1923)
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI
5 – SHAM NATH MARG, DELHI-110054**

No. WC/06/ND/17/ 140.

Dated: 09/10/2024.

IN THE MATTER OF :

Sh. Dilip Kariyare S/o Sh. Shiv Prasad
R/o. Village - Saragaon, PO-Saragaon,
Thana – Saragaon, Zilla, Zaandagi, Chattisgarh-

C/o Azad Hind Mazdoor Union,
L-256, J.J. Colony, Wazirpur, Delhi-

.....Applicant/Claimant

Versus

The Ex. Engineer, PWD
Division No. 322, under main Flyover Bridge,
Kashmere Gate, PWD Office, Delhi-110006

.....Respondent No. 1

The Assistant Engineer, PWD
PWD Enquiry Office, Gulabi Bagh, Delhi-110007

.....Respondent No. 2

Sh. S.B. Mittal
Govt. Contractor,
D-123, Anand Vihar, Delhi-110092

.....Respondent No. 3

ORDER

1. Vide this order, I will dispose of application filed on 09.10.2023 by Respondent No. 3 i.e. Sh. S.B. Mittal, Govt. Contractor, for setting aside order dated 28.08.2023.
2. The brief facts of the case is this that claimant he was employed as a mason with the respondent and was getting Rs. 500/- on daily basis. On 16.03.2015 the respondent forced the claimant to work on faulty grinder machine, as a result the claimant met with an accident and got injury below his knee joint in left leg, the injury caused a cut in his bone also. After that the claimant was treated in Deep Chand Bandhu Hospital and Bada Hindu Rao Hospital and from 23.04.2015 (before 13.04.2015 the claimant was treated in Deep Chand Bandhu



Hospital and from 13.03.2015 to 23.04.2015 the claimant was treated in Hindu Rao Hospital) and due to the said accident he has lost his 100 % earning capacity. The claimant further stated that the respondent inspite of receiving the legal notice has not paid any amount of compensation to the claimant.

3. This claim petition was disposed of vide order dated 30.08.2022. Aggrieved by this order the claimant filed FAO bearing No. 277/2022 and CM APPL. No. 47737/2022 through his counsel before the Hon'ble High Court of Delhi. Hon'ble High Court of Delhi vide order dated 01.02.2023 set aside impugned order dated 30.08.2022 and remanded back the same and directed the parties to appear before this forum on 15.02.2023 during the proceedings claimant had filed application on 18.02.2021 requesting to this Authority that in place of Respondent No. 3 i.e. M/s Magwan Mittal, 123, D-Block, Anand Vihar, Delhi, M/s S.B. Mittal (Government Contractor), D-123, Anand Vihar, Delhi be impleaded as a necessary party Respondent No. 3 replacing to M/s Magwan Mittal as Respondent No. 3. The application of the claimant was allowed and M/s S.B. Mittal, Government Contractor impleaded as necessary party as a Respondent No. 3 in this case. Despite given sufficient opportunities Respondent No. 3 i.e. S. B. Mittal, Government Contractor did not appear to file defense in the matter as claimant had alleged that he had worked with Respondent No. 3 when he met with an accident resulting thereby he become 9 % disabled as per disability certificate issued by medical board vide order dated 07.11.2019 of Aruna Asaf Ali Hospital, Rajpur, Delhi, Respondent No. 3 despite given sufficient opportunities neither appeared nor filed any defense in the matter as such he was proceeded Ex-Parte and an order dated 28.08.2023 passed against him directing him to pay Rs. 85,130/- as a compensation alongwith 12 % interest w.e.f. 15.04.2015 till its realization alongwith 25 % penalty of awarded amount.
4. Respondent No. 3 filed application for setting aside Ex-parte proceedings dated 30.01.2020 and Ex-Parte order dated 28.08.2023 under order 9 Rule 7 and Rule 13 of Code of Civil Procedure in central diary on 27.09.2023 which was received on 04.10.2023 in the Branch of CEC (HQ) and was marked on 09.10.2023 for taking on record and issuing summons to all the parties. Respondent No. 3 now petitioner has submitted that the earlier notice before passing ex-parte order was not received by them as they have already moved out from the said premises in the year 2010. However, they have received order dated 28.08.2023. It is further stated that during the proceedings on 20.01.2016 the AR of claimant Sh. S.K. Shukla had informed the CEC that claimant is not in his contact and accordingly the case was dismissed as withdrawn. On 17.08.2016 on the request of claimant the case was reopened vide order dated 24.07.2018 with the direction to the claimant to file new address of Respondent No. 3 till the time, Respondent No.3 was aware about the proceedings going on before the CEC. Notice dated 12.03.2019, 22.08.2019, 24.09.2019 and 27.11.2019 was issued at new address of Respondent No. 3 at 123, D-Block, Anand Vihar, Delhi-110094 however, none of these notices were received, due to this Respondent No.3 could not appear



before the CEC and he was proceeded Ex-Parte. It is further submitted that on 30.01.2020 the Hon'ble Authority has proceeded Ex-Parte against Respondent No.3 on the basis of service report of consignment No. ED332263783IN and the said consignment as per delivery report the address was incomplete and item was not delivered at the addressee.

5. Again when this matter transferred to CEC (HQ) again on the basis of said notice Respondent No. 3 proceeded Ex-Parte on the basis of service report of consignment no. ED747471426IN, it is submitted that the delivery report is incomplete as the item has not been shown as delivered to the addressee. The Respondent No.3 further submitted that due to non service of summon he could not appear before this Authority to defend his case. On this ground Respondent No. 3 prayed that in the interest of principal of natural justice order dated 28.08.2023 may be set aside and opportunity to be given to the Respondent No.3 in the interest of principal of natural justice to decide further the case.
6. Accordingly summon dated 11.10.2023 was issued to all parties. Claimant filed reply in response to the application in question and denied the contents of the application and reiterated the contents of his claim application.
7. On the basis of submission of Respondent No.3 and claimant order in question was set aside vide order dated 11.12.2023 and the opportunity was granted to Respondent No. 3 to file reply in detail in the matter. Wherein it is stated that the claim of claimant is liable to be rejected against Respondent No. 3 as it is not maintainable under EC Act, 1923 on the ground that Respondent No. 3 has not executed the work at the site mentioned in the claim application by the claimant. The claimant has wrongly impleaded the Respondent No. 3 in the array of the parties. As such there is no employer employee relationship exists at the relevant point of time i.e. 16.03.2015 hence the claim petition is liable to be rejected. Rest of other contents of claim application is denied in toto.
8. The claimant moved an application and filed on 13.06.2024 reiterating the contents of the claim application.
9. Authorized representative of Respondent No. 2 i.e. PWD appeared and filed certified copy of agreement alongwith letter dated 08.05.2024. As per agreement repair work of SKV Gulabi Bagh was given to Sh. Kishan Kumar, 119, Ravish Vihar Apartment, I.P. Extension, Delh-110092 vide letter no. 54(242)/PWD/M-322A-1/14-15/1330. Copy was given to Respondent No. 3 and the claimant. Further claimant was directed to file any submission in this regard. After examining the agreement placed on record and found that as per award dated 01.08.2014 Respondent No. 3 i.e. S. B. Mittal, Government Contractor whom the claimant has made array of the parties is no where stand in this agreement. From this it is clear that PWD has not awarded any work to Respondent No. 3 as alleged by the claimant in his claim and as such there is no any role of S.B. Mittal, Government Contractor -



Respondent No. 3 in this case. Various opportunities were granted to the claimant to prove his case against the Respondent No. 3 but he failed as such claim of claimant is not considerable under the provision of Employee's Compensation Act, 1923 thus claimant is not entitled for any relief as he failed to establish employee employer relationship with Respondent No. 3 and accident occurred out of and in the course of his employment. Accordingly matter is disposed of.

10. Given under my hand and seal of this Authority on this 9th day of October, 2024.

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

