

**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. WC/78/NW/2016/ 95.

Dated: 31/07/2024.

IN THE MATTER OF:

Sh. Harish Chand S/o Sh. Divan Singh
R/o- 7, Jahariyapura, Garhi Chatola,
Gari Chatola, Dholpur, Sepau, Rajasthan-328030

.....Applicants/Claimants

Versus

1. Sh. Ashwani Jain
Owner of A-15, Mahender Enclave,
Model Town, Delhi-110009

.....Respondent No. 1

2. Sh. Satish Kumar S/o Sh. Tej Pal Singh
R/o – A-21, Sawan Park, Delhi-110052

.....Respondent No. 2

ORDER

1. Vide this order, I will dispose of EAR Report dated 08.09.2016 filed by P.S. – Model Town (bearing no. WC/NW/78/2016) and subsequently claim filed by the claimant.
2. On the information received through EAR Report dated 08.09.2016 by P.S. – Model Town, Delhi The commissioner Employees Compensation had issued notice u/s 10A(1) of Employees Compensation Act, 1923 to the respondents directing him to submit his reply as the claimant Sh. Harish Chand S/o Sh. Divan Singh had received injuries out of and during in the course of employment while working at A-15, Mahender Enclave, Model Town, Delhi with the employer. In this regard an FIR was lodged against the owner of the property. In response to notice dated 20.09.2016 of Commissioner Employees Compensation owner of the property in question had filed reply and denied all the contents of EAR Report as filed by the Police on the ground that the claimant was not the employee of the Respondent No. 1. Respondent No. 1 had given contract to a contractor Sh. Satish Kumar, Respondent No. 2 for doing the work of stone in his house and will have might the contractor Respondent No.2 had engaged claimant for the work. Since there is no negligence on the part of Respondent No. 1 hence is not liable to pay any injury compensation to the claimant.



3. In view of reply of Respondent No.1 claimant filed detailed claim on 14.03.2019. In the claimant petitioner claimant stated that he is living at the address given in the claim with the family and as workers by profession, as a machine man/employee. His last drawn salary was Rs. 11,622/- per month with the respondents. It is further submitted that he was doing his work with full honesty and had not given any chance of complaint during his service tenure to the respondents. During the tenure of his work the claimant has received the injuries in his back and he was admitted in Lok Nayak Hospital, Jawahar Lal Nehru Marg, New Delhi. It is further stated that respondent had not given any joining letter as well facility of over time, ESI, PF and never provided any other service benefit so far. The management has taken the signature of the claimant on some blank papers and never maintained any service record. It is further stated that accident was caused due to the negligence of respondent so he fully responsible for the same. There are 04 persons dependents – wife and 03 daughters. Daughters are minor and the wife is house wife. The accident was occurred on 18.06.2016 at that time claimant was 36 years of age. In the last claimant stated that since accident was occurred out of and in the course of his employment with Respondent No.1 as such he is entitled to receive injury compensation from the Respondent. Claim is supported with the affidavit of claim and also claimant filed documents i.e. Discharge Slip from Lok Nayak Hospital, Medical Bills.
4. On 21.11.2019 respondent was proceeded Ex-parte by my predecessor when the respondent did not file his reply despite given sufficient opportunities and on 16.01.2020 on file application by respondent for recall order dated 21.11.2019 after hearing the application was allowed and order dated 21.11.2019 was set aside.
5. Respondent No. 1 filed his reply wherein he had denied all the contents of claim application on the ground that he had awarded the paving of the stone work to the respondent no. 2 and advance some amount and since the matter relates back to the year 2016 the respondent could not recollect the exact amount paid to the respondent no. 2 towards advance. It is further stated that after the execution of the agreement, the Respondent No. 2 had deployed few labourers, under his direct supervision for he acting as the contractor and Pr. Employer simultaneously who started the work at the site. Since Respondent No. 1 had given contract to Respondent No. 2 for the work as such it is upon the Respondent No. 2 to maintain all the records of labourers employed by him viz attendance register, payment register etc. Respondent No.1 used to visit the site only to inspect the manner under which work was being executed by different agencies viz Flooring, false ceiling and wood work etc. and there was no control and supervision over the labourers deployed by all the contractors. During the intervening night of 18.06.2016 and 19.06.2016 Respondent No.1 through a telephonic call, got appraised on the unfortunate accident of the petitioner, who was informed to had fallen from the staircase in the site and had sustained injuries. It is further stated that Respondent No. 1 appraised about the incident that petitioner after finishing his work at about 05:20 PM on the



relevant day had conceivably and neglect full manner had consume liquor subsequent to which he had gone to sleep at the site only with the consent/convenience of the guard. Further the petitioner at about 09:45 PM woke up to attend nature's call and for he is in a state of inebriety had fallen from the staircase. Subsequently the P.S. – Model Town, Delhi registered FIR bearing No. 0356/2016 under section 288/337 IPC. It is further stated that since the petitioner himself admitted for he being under the influence of the alcohol and his unjustifiable presence at the site after completion of his work. It is further stated that the petitioner and the Respondent No.2 arrived at the settlement on the request made by the petitioner's family. It was agreed between petitioner and Respondent No.2 that Respondent No.2 shall pay a sum of Rs. 1 Lakh towards full and final compensation to the petitioner besides the expense borne by the Respondent No.2 for the treatment of petitioner, copy of agreement dated 10.07.2016 wrongly written as 10.06.2016 executed between the petitioner and Respondent No.2 is placed on record. In view of above submission Respondent No.1 denied all the contents of claim application and his liability towards payment of any compensation towards petitioners and on this ground Respondent No.1 paid that claim is liable to be dismissed.

6. Respondent No.2 also filed reply wherein he has denied contents of the claim application on the ground that claimant was not the employee of Respondent No.2 and he was not getting any salary from him. Respondent No.2 is a contractor who hire the labour on daily basis. Respondent No.2 started work in the house of Respondent No.1 and hired the labour including the claimant. It is further stated that the labour work used to complete at 6 PM and after 6 PM the labour was free to do anything. On the day of incident after 6 PM the claimant was in heavy drunken condition and due to this he slept from the staircase and sustained injuries. After this Respondent No.2 and brother-in-law of claimant took at Hospital and bear the treatment, special diet etc. expenses. It is further contented that claimant demanded money from respondents and agreement dated 10.06.2016 was executed between and claimant and respondent no. 2 in which claimant had admitted that on the day of incident he was in drunken condition and when was going natural call then he slept from the stairs. Through legally the Respondent No.2 was not liable to pay anything to the claimant but on humanitarian ground with sympathy to help him the Respondent No.2 gave Rs. 1 Lakh to the claimant. But in greed to extort money from the Respondent No.2 the claimant made party to the Respondent No. 2 in this case. In the last Respondent No.2 submitted that the claimant is not liable to get any compensation from the Respondent No.2 as the claimant sustained injuries due to his own negligency. During the incident period, the hole responsibility and liability goes to the Respondent No. 1 as he is the owner of the building which was under construction. On these grounds Respondent No. 2 denied his liability and prayed that case to be dismissed with the cost.



7. Claimant filed rejoinder against the reply of respondents.
8. On 13.03.2020, on the basis of pleadings of the parties and documents available on record following issues were framed for adjudication.
- Whether employee employer relationship existed between the claimant and the respondent on the day of accident ? and if so
 - Whether the accident leading to injuries caused to claimant occurred in the course out of his employment with respondent ? and If so
 - Whether claimant is entitled for compensation ? and If so to what amount? Any other relief?
 - Whether the Respondents are liable for penalty? And if so to what amount ?
9. Matter was fixed for the evidence of the parties. Claimant filed his statement by way affidavit Exhibit PW1/A. The contents of affidavit are corroborative those claim petitioner. Claimant also filed documents Ex. PW1/1 to PW1/6 i.e. copy of ID card, copy of the medical bills (Colly), copy of FIR, copy of Attendance Card (Colly 03 Pages), copy of the Bank Account Passbook and copy of disability certificate. His statement was also recorded on 23.03.2023 before this Authority and was cross examined by the counsel for Respondent No. 2. Respondent No.1 also cross examined to the claimant.
10. For Respondent No.1 Sh. Ashwani Jain S/o Sh. Rajan Jain filed his statement by way of affidavit Ex. RW1/A. The contents of affidavit are corroborative those reply. His statement was also recorded on 06.09.2023 before this Authority and was cross examined by Counsel for Respondent No.2. Counsel for claimant also cross examined to RW1/A on 30.11.2023.
11. Respondent No. 2 Sh. Satish Kumar S/o Sh. Tejpal Singh examined himself by way of filing affidavit Ex. R2W1/A. The contents of affidavit are corroborative those reply. He was also cross examined by counsel for claimant. Respondent No.1 also cross examined R2W1/A on 02.04.2024.
12. Claimant and Respondent No.1 filed written arguments/submissions on record. Respondent No.2 (Contractor) did not file written submission on record.
13. On the basis of the 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 & 2

The case of claimant is this that he had worked on the premises of the Respondent No.1 through Respondent No. 2 (Contractor) for the work of paving stone in the premises of the Respondent No.1 on last drawn salary Rs. 11,622/- per month he was doing his job with honesty and not given any chance of complaint during his service tenure to the Respondents. During the tenure of his work the claimant had received injury in his back resulting thereby he had received 40% disability as per disability certificate bearing no. F1(1)/DDU/MB/2020/10480 dated 24.01.2020 issued by DDU Hospital, Govt. of NCT of Delhi, an FIR was also lodged in this case (FIR No. 0356 dated 18.06.2016) under section 288/337 IPC. It is further alleged that he had not provided any joining letter or facility of ESI and PF. His signature was also taken on blank papers. After the incident claimant was not given any compensation from the respondents.

Respondent No.1 denied employee employer relationship with the claimant on the ground that he had hired Respondent No.2 (Contractor) on contractual basis for the purpose of paving stone at the site. Respondent No.1 had already paid in advance to Respondent No. 2 for labour charges. The overall supervision was of Respondent No.2 on the labourers whom he had hired for this work. Respondent No.1 also denied any accident took place in his premises. On this ground he has denied his liability towards payment of any compensation. On the other hand Respondent No.2 (Contractor) in reply denied employee employer relationship with claimant. Being the Thekedar Respondent No.2 hire the labourers on daily wages. It is also admitted that Respondent No.2 started work in the house of Respondent No.1 and hired the labour including the claimant. Further Respondent No. 2 taken ground that the labour work used to complete at 6PM and after 6 PM the labour was free to do anything. On the day of incident, after 6 PM the claimant was in heavy drunken condition and due to this he slept from stairs and sustain injuries after that he was taken to the hospital for medical treatment. In cross examination Respondent No.2 admitted that timing of work was from 10 AM to 9 PM and the claimant was worked on the day of incident and he was taken hospital after the incident. And Rs. 1 Lakh was paid to the applicant for full and final settlement by way of Cheque and Cash. Since Respondent No.2 admitted that on the day of incident claimant had worked with him and he had settled his case in the sum of Rs. 1 Lakh as such employee employer relationship was existed on the day of accident with claimant and Respondent No.1. Since it is not disputed by the Respondent No.1 that claimant was not hired as such in this case Respondent No.1 is the employer of claimant under section 3 of the Act because he had overall supervision and control on the claimant.

From the evidence available on record it is not proved any negligence on the part of claimant as alleged by the Respondent No.2 that on the day of incident claimant was under drunken condition. No evidence in this regard has been filed by Respondent No.2.



The FIR states that claimant had received injury due to fallen from the roof while he was working with the premises of Respondent No.1 wherein renovation of work was going on as such it is proved that claimant had received injury out of and in the course of his employment with respondents. As such Issue No. 1 & 2 are decided in favor of claimant and against the respondent.

Issue No. 3 & 4

In view of above discussion made in issue no. 1 & 2 it is proved that claimant had received injuries out of and in the course of his employment with respondents resulting thereby as per medical board opinion of DDU Hospital, Hari Nagar, New Delhi (bearing certificate no. F1 (1)/DDU/MB/2020/10480 dated 24.01.2020 that the patient/claimant in case of post traumatic fracture left with weakness lower limbs with permanent physical disability of 40 % in relation to Spine and Lower Limb. As such claimant is entitled to receive injury compensation from the Respondent No. 1.

For calculation of compensation age of claimant has taken as 41 years as per his date of birth 01.01.1975 as mentioned in his Aadhaar Card on the day of accident i.e. 18.06.2016 and 60 % of wages Rs. 8,000/- which comes Rs. 4,800/- and relevant factor 181.37. Accordingly injury compensation is calculated as under:

$$\frac{4800 \times 60 \times 181.37}{100} = \text{Rs. } 5,22,346/-$$

In view of above calculation claimant is entitled to receive **Rs. 5,22,346/- (Five Lakhs Twenty Two Thousand Three Hundred Forty Six Rupees Only)** as a compensation alongwith 12 % interest from the date of accident till its realization from the Respondent No. 2. Regarding penalty respondent no. 2 despite having notice of occurrence of accident did not pay compensation to the claimant. As such Respondent No. 2 is also liable to pay 25 % penalty of awarded amount. Therefore, I direct Respondent No. 2 to deposit **Rs. 5,22,346/- (Five Lakhs Twenty Two Thousand Three Hundred Forty Six Rupees Only)** alongwith 12 % interest P.A. from the date of accident till its realization and 25 % penalty of Rs. 5,22,346/- in favor of Commissioner Employees Compensation by way of Demand Draft/Cheque within 30 days from the date of order. Failing which ordered amount shall be recovered as land revenue under the Act.

14. Given under my hand and seal of this Authority on this 31st day of July, 2024.

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

