

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/76/NW/10/ 207.

Dated: 31/01/2025.

IN THE MATTER OF :

Sh. Naresh Kumar @ Pappu S/o Late Sh. Hukum Singh
R/o L-111, JJ Colony,
Wazirpur, Delhi-110052

.....Applicant/Claimant

Versus

Sh. Mahender Singh
Proprietor of M/s Mahender Steel Works
R/o. J I/130, J.J. Colony,
Wazirpur, Delhi-110052

..... Respondent

ORDER

1. Vide this order, I will dispose of claim application dated 25.05.2010 filed on 02.08.2010 before this Authority under Employees Compensation Act, 1923 for seeking injury compensation.
2. In the claim petition claimant stated that the he was working and was gainfully employed with the respondent in his proprietorship concern, which is being run in the name and style of Mahender Steel Works. Claimant further stated that on the unfortunate date of 24.07.2009 claimant in course of his duty under the employment of respondent, met with the accident and thereby his eyes were badly damaged. It is further stated that the said accident took place on account of the negligence on part of the respondent as the carrying of the business by his was in total disregard of the norms place in this regard by the competent authority and all the labours have complained about the same to respondent several times but he did not pay any heed to them. The work place of the respondent was pretty small and congested. Claimant further stated that he was working for the respondent on full time basis as a skilled 'Mistry' and was dealing in welding, cutting, procuring structures etc. and has worked for the respondent for 4 years approximately, and the respondent also used to maintain a duty register in this regard. It is further stated that claimant was also drawing a basic salary with the respondent and his last drawn salary was Rs. 3800/-



apart from other benefits i.e. overtime, medical expenses etc. It is further stated that after the said accident claimant was rushed to the hospital by the respondent but the respondent did not visit the reputed Hospital instead chose a clinic that was not having facilities to take care of serious eye injury and persisted with the clinic inspite of the suggestion by the clinic for referral to abled hospital. It is further stated that the preliminary check up, the respondent did not paid any heed to the medical requirements of claimant and when claimant asked the respondent for monetary support, he dissociated himself from claimant and even did not disburse the wages of claimant. It is further stated that claimant then lodged his protest with the labour union which approached the respondent and finally a settlement was arrived at between respondent and claimant, wherein the respondent has undertaken voluntarily to look after the medical expenses of claimant and in this regard one compromise deed was executed in presence of witnesses. (Copy of the compromise deed is attached with claim petition). Claimant further stated that respondent, however, in a well planned and designed conspiracy conceded to that agreement, however, respondent never discharged his part of the bargain and not reimbursed neither paid any amount towards past and future expenses, which claimant bore in course of his treatment. It is further stated that due to non payment and non treatment of the ocular defects as aforesaid claimant's right eye has been permanently damaged and therefore has caused the loss of vital organ of claimant. It is further stated that claimant is a employee within the meaning of Industrial Disputes Act and other concerned labour laws in this regard and claimant is therefore entitled to seek the redressal of the same with the present tribunal. It is further stated that claimant has already sent the legal notice to respondent therein the claimant has asked the respondent to follow the agreement but the respondent has not paid any heed to that. (Copy of the legal notice is attached with the claim petition). It is further stated that the claimant has lost his eye in course of the employment and the same is 100 % disablement and this Hon'ble Authority has the jurisdiction to try the case as the workmen as well as factory is situated in the territorial jurisdiction of the Authority and the claimant is entitled for all the privilege and benefit under the Act. In the last claimant prayed this Authority to pass an order for Rs. 10,00,000/- as compensation alongwith Rs. 35,000/- towards the medical expenses and Rs. 30,000/- towards the pending wages alongwith interest @18 % per annum from the date of filing of the petition to the actual realization. Claimant attached copy of his medical treatment documents, copy of legal notice which was sent to the respondent.

3. In this case an order was passed by my Predecessor vide No. WC/76/NW/10/988 dated 31.12.2018 directing Respondent to deposit an amount of Rs. 4,23,339/- alongwith simple interest @ 12% p.a. w.e.f. 05.12.2018 till its realization.



4. In response to order passed by the then Authority Claimant filed application dated 07.01.2019 requesting therein to issue recovery proceedings against the respondent and the same was allowed and Recovery Certificate was issued vide no WC/76/NW/10/58 dated 25.02.2019.
5. After issuance of Recovery Certificate, Respondent filed application dated 15.07.2021 for setting aside Ex-Parte order dated 04.12.2018. The same was allowed and summons were issued to the parties for filing reply. Accordingly respondent filed reply and after hearing the parties the same was set aside vide order No. WC/76/NW/10/269 dated 19.10.2022 directing parties to file written argument/submissions in the case.
6. Respondent filed reply stating therein that the claimant has not approached before this Authority with clean hands and has suppressed the true and correct facts from the Authority. It is further stated that the claimant was never employed with the Respondent at any post and no relationship of employer and employee ever existed between the Respondent and the Claimant. The claimant has suppressed the aforesaid true and correct fact from this Authority. Thus no liability can be fastened upon the Respondent and the claim of the claimant is liable to be dismissed on this ground alone. It is further stated that claimant was never employed with Respondent which is writ large from the contentions of the claimant as made in the claim/petition since the claimant has neither given any day, date, month or year of his alleged employment with the respondent nor has stated as to at which post he was allegedly working with the Respondent and at what salary. Mere claiming that he was allegedly gainfully employed with the Respondent is an unsustainable contention. As such, it is abundantly clear that no cause of action accrued in favor of the claimant and against the respondent to file the present claim. It is further submitted that the claimant has filed the present claim only with the motive to extort money from the respondent by misusing the process of Law. Respondent further stated that without prejudice to the above, it is submitted that as per the allegation of the claimant, the alleged accident occurred on 24.07.2009 whereas the present claim has been filed in the year 2018 i.e. after an unexplained inordinate delay of about 9 years. It is further stated that since the claim of the claimant is hopelessly barred by limitation, as such the same is liable to be dismissed at the threshold. In the last respondent further denied contents of the claim petition of the claimant.
7. Claimant filed rejoinder by which he denied all the contents of reply of Respondent and reiterated contents of his claim application.



8. Matter was fixed for the evidence of the parties but despite given sufficient opportunities to claimant to lead evidence but he failed to prove his case by way of evidence as such right of claimant was closed on 20.12.2023. Thereafter matter was fixed for Respondent Evidence.
9. For Respondent Sh. Mahinder Kumar Singh filed his evidence by way of affidavit exhibit RW1/A. His statement was also recorded on 10.04.2024 before this Authority. The contents of the affidavit are corroborative those reply. Opportunities were granted to the claimant to cross examine witness of respondent but again he failed as such right of claimant was closed on 06.06.2024 and matter was fixed for the arguments.
10. Respondent filed arguments on record and oral submissions was also heard. But claimant again failed to lead any arguments.
11. In view of above discussion since claimant workman did not come forward to prove his case despite given sufficient opportunities by way of leading evidence and further to cross examined respondent witness as such I have left no option to disallow claim of claimant. Accordingly claim is dismissed due to non prosecution.
12. Given under my hand and seal of this Authority on this 31st day of January, 2025.

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

