

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/91/NW/18 / 386.

Date: 30/11/2023

IN THE MATTER OF:

Sh. Shivnath Singh S/o Sh. Sahdev Singh
C/o Rashtriya Udhog Mazdoor Union (Regd.)
R/o Z-36, Gali No. 3, Naryan Vihar,
Prem Nagar-II, kirari Suleman Nagar,
Delhi - 110086

...Applicant/Claimant

V/s

M/s Nirankari Engineering Works
T-82, Gali No. 9, Prem Nagar-II,
Kirari, Delhi - 110086

.....Respondent

ORDER

1. Vide this order, I will dispose of the application dated 07/08/2018 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that he was employed as a Latheman (Kharadiya) with the respondent since 01/01/2008. That the last salary drawn by him was Rs. 7,000/- per month which was less than the minimum wages. That the respondent had not given any kind of appointment letter. That on 13/07/2015 when he was posted at his work as usual, he was told by the management that construction work was going on the third floor where the contractor was short of manpower and cement sheet has to be put on top, on this the claimant showed his inability, but by threatening the job the respondent forcibly forced him to take the cement sheet on the third floor. That in order to save his livelihood the claimant took the sheet on the third floor and at that time it was around 10:00 AM and when the claimant reached the second floor suddenly his foot slipped and he fell down from the second floor carrying the sheet and he got badly injured after which brother in law of the manager Sh. Ajay Kumar and foreman Ram Khilawan immediately took him to Sanjay Gandhi Hospital, Mangolpuri where the doctors gave first aid and referred him to Safdarjung Hospital, New Delhi as the injury was serious. Where the doctors treated the claimant and did various test and when the claimant was still in critical condition, the respondent took him from there to Balaji Hospital and assured him of proper treatment but only after few days of treatment the respondent backed



off from their responsibility. The respondent called the claimant to the factory for taking his care and started taking work from him. That the claimant for his treatment and for livelihood of his family somehow started going to the factory and further due to expensive treatment the claimant was in debt of Rs. 3,00,000/- and because of that the claimant requested the management to increase his salary. The respondent refused the same and terminated him from duty on 18/06/2018. That after 1 week of the incident Vikas son of the owner of the factory along with a police official Sh. Ravinder visited his house and took his signatures on a paper. In the last the claimant submitted that the accident had occurred arising out of and during his course of employment and hence respondents are liable to pay compensation under EC Act, 1923 to the extent of 100% disability along with interest and penalty.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent in its reply submitted that the claim presented by Sh. Shivnath Singh is baseless and based on unethical facts. That the respondent neither know nor known any person of this name and no one in the name of Sh. Shivnath Singh had ever worked in the establishment. Further respondent denied rest of contents of claim petition in toto and prayed that the claim petition is liable to be rejected and may be dismissed against the answering respondent.
5. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
6. On 12/09/2019 following issues were framed for adjudication:
 1. Whether employer-employee relationship exist between the parties?
 2. Whether accident resulting into injury to the claimant is caused out of and during the course of employment and if so to amount of injury compensation the claimant is entitled to?
 3. Relief, if any?
 4. Whether penalty is imposable u/s 4-A(3) and if so the quantum thereof?
7. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. WW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. WW1/1 to WW1/7 and Mark 'A' i.e. copy of Aadhar Card of claimant, copy of Legal notice, copy of postal receipt, copy of police complaint, copy of complaint filed before Labour Department, Copy of Medico Legal register of Sanjay Gandhi Hospital, Copy of Medical Documents. His statement was also recorded on 23/08/2023.
8. Further despite sufficient opportunities provided to the respondent/management. Respondent failed to appear in the matter for cross examining the claimant and for further leading the respondent evidence, hence on 09/08/2023 the respondent was proceeded ex-parte.



9. Written argument was filed by the claimant and oral submission was also heard.
10. On the pleading of the parties, evidence adduced on their behalf and the arguments addressed thereon, I have to give my findings as under:-

ISSUE No. 1 & 2:

11. The case of claimant is this that he was employed as a Latheman (Kharadiya) with the respondent since 01/01/2008. That the last salary drawn by him was Rs. 7,000/- per month which was less than the minimum wages. That the respondent had not given any kind of appointment letter. That on 13/07/2015 when he was posted at his work as usual, he was told by the management that construction work was going on the third floor where the contractor was short of manpower and cement sheet has to be put on top, on this the claimant showed his inability, but by threatening the job the respondent forcibly forced him to take the cement sheet on the third floor. That in order to save his livelihood the claimant took the sheet on the third floor and at that time it was around 10:00 AM and when the claimant reached the second floor suddenly his foot slipped and he fell down from the second floor carrying the sheet and he got badly injured after which brother in law of the manager Sh. Ajay Kumar and foreman Ram Khilawan immediately took him to Sanjay Gandhi Hospital, Mangolpuri where the doctors gave first aid and referred him to Safdarjung Hospital, New Delhi as the injury was serious. Where the doctors treated the claimant and did various test and when the claimant was still in critical condition, the respondent took him from there to Balaji Hospital and assured him of proper treatment but only after few days of treatment the respondent backed off from their responsibility. The respondent called the claimant to the factory for taking his care and started taking work from him. That the claimant for his treatment and for livelihood of his family somehow started going to the factory and further due to expensive treatment the claimant was in debt of Rs. 3,00,000/- and because of that the claimant requested the management to increase his salary. The respondent refused the same and terminated him from duty on 18/06/2018. That after 1 week of the incident Vikas son of the owner of the factory along with a police official Sh. Ravinder visited his house and took his signatures on a paper.

The respondent appeared in the matter and filed its reply on a single piece of paper stating therein that there was no employee-employer relationship between the management and the claimant. But after filing the reply the respondent stopped appearing in the proceedings and despite given opportunities respondent failed to appear to cross examine the claimant and further nor lead any evidence in their defence. Hence as a result the respondent was proceeded ex-parte in the matter. Hence I have left no option except to consider claim of the claimant. Accordingly issue no. 1 & 2 are decided in favour of claimant.



ISSUE No. 3 & 4

12. As made discussion above for relief I am taking age of claimant as 36 years (as per Aadhar Card No.610294635492) and relevant factor 194.64 and 60% of last drawn wages restricted to 8,000/- and 21% disability, as such calculation is made as under:

$$\frac{194.64 \times 4800 \times 21}{100} = \text{Rs. } 1,96,197/-$$

The applicant/claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident.

13. Further during the proceedings the Commissioner Employee's Compensation on 12/09/2019 framed the issues and accordingly directed the respondent to show cause as to why penalty should not be imposed upon them, but the respondent failed to file any justification regarding as to why penalty be not imposed upon them. Hence, I have left no option except to keeping in view the facts and circumstances; I impose a penalty of 25% of the principal amount on the respondent.
14. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent to deposit **Rs. 1,96,197/- (Rupees One Lakh Ninety Six Thousand One Hundred and Ninety Seven Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 12/08/2015 till its realization and **Rs. 49,049/- as 25% penalty of awarded amount within 30 days** through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of the order before this Authority.
15. Given under my hand and seal of this Authority on this 25th day of November, 2023.

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

