

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/108/NW/2021/352.

Date: 18/10/2023.

IN THE MATTER OF:

✓ **Smt. Anita Devi**

H.No – A-39A, Gali No – 3,
Near Transformer, Pratap Vihar,
Phase-3, Kirari, Aman Vihar, Delhi -

.....Applicant/Claimant

V/s

Sh. Nawal Jha S/o Sh. Jai Narayan Jha

Khasra No. 24/28, Khajoor Wali Gali,
Village Nithari, Delhi – 110086

.....Respondent

ORDER

1. By this order, I will dispose of the EAR report filed from P.S – Prem Nagar and application for claim (in single page) filed by the claimant on 07/10/2020 for seeking injury compensation under the Employees Compensation Act, 1923.
2. Claimant in application stated that on 26/06/2020, while working in the factory and due to non working condition of the machine as such her 04 fingers of right hand has been cut down. That police has lodged an FIR in this regard and sealed the machine. In the last the claimant prayed that she is entitled to receive the injury compensation from the respondent. Along with application claimant filed copy of FIR bearing No. 0365/2020 dated 12/08/2020, copy of complaint dated 01/08/2020 addressed to SHO-PS Prem Nagar, Discharge Summary of Sonia Hospital.
3. Summon was sent to the respondent with direction to appear before this Authority to file reply in the matter.
4. Respondent in its reply submitted that respondent is a self employee and use to run his machine without any employees with the help of family members. That he is not an industrial establishment defined under the Employees Compensation Act,



1923, therefore the provision of the Act are not applicable on him. It is further submitted by the answering respondent that Smt. Anita Devi (claimant) is well known to his family and used to do work of floor cleaning once in the day for which she used to receive Rs. 6,200/- as her incentive, but despite of clear cut instruction given by the respondent not to go near machine for any purpose, on the day of the said accident she went near the machine in absence of the respondent and tease the machine without any instruction or direction and behind the respondent she teased the machine and pushed her hand in the machine and in this way the claimant has done negligence on her part and lost some part of her fingers of right hand. Hence she could not get benefit of her own negligence. It is further submitted by the answering respondent that the FIR lodged by the claimant on the instance of some litigant after about 1 month with false facts, and the police officials taking some statement with bluffing the answering respondent that if they give the statement there case shall be finished and the government shall pay some money to Smt. Anita (Claimant). Further respondent denied rest of contents of claim petition in toto and prayed that the answering respondent is not responsible for the accident and not liable to pay the amount of compensation.

5. Claimant filed rejoinder by which she denied contents of reply filed by respondent and reiterated the contents of her claim application.
6. On 21/09/2021 following issues were framed for adjudication:
 1. Whether the claimant entitled for injury compensation from the respondent?
 2. Whether the accident of the claimant happen during in course of and employment with respondent?
 3. Whether the claimant is entitled for interest and penalty under sec 4A?
 4. Any other relief including medical expenses reimbursement?
7. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. AW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Mark A to Mark C and Ex. AW1/1 to Ex. AW1/5 i.e. copy of FIR No. 0365/20, PS Prem Nagar and site map (colly 4 pages), Copy of final report u/s 173crpc (colly 7 pages), copy of medical documents (colly 7 pages), original medical documents (colly 5 pages), medical bills (colly 13 pages), disability certificate of claimant, copy of Aadhar card of claimant, copy of complaint made to SHO P.S. Prem Nagar. Her statement was also recorded and was also cross examined by counsel of respondent on 05/08/2022.



Further claimant examined another witness i.e. Sh. Abhishek Kumar S/o Sh. Shambhu Nath Jha and further tendered the evidence on 23/11/2022 and was also cross examined by counsel of respondent on 09/02/2023. The matter was fixed for respondent evidence.

8. For respondent Sh. Naval Jha – filed his evidence by way of affidavit Ex. RW1/A. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 01/08/2023.
9. Written arguments were filed by the respondent and counsel for claimant and oral submission was also heard in detail.
10. On the pleading of the parties, documents available on record, evidence adduced by the parties 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 on 26/06/2020, while working in the factory and due to non working condition of the machine as such her 04 fingers of right hand has been cut down. That police has lodged an FIR in this regard and sealed the machine. Since respondent did not pay injury compensation as such she filed application for compensation. On the other side in reply respondent denied contents of application in toto and submitted that respondent is a self employee and used to run his machine without any employee with the help of family members and the respondent is not a industrial establishment as defined under the employees compensation Act, 1923. Further respondent submitted that since Anita Devi is well known to the family the respondent and used to do work of floor cleaning once in a day for which she used to receive the sum of Rs. 6,200/- as her incentive. Respondent had given instruction to the claimant that she do not go near the machine but despite instruction she went near to machine in the absence of respondent and teased the machine without any instruction or direction and pushed her hand into machine as such due to negligence on the part of claimant she lost some part of her fingers of her right hand. To prove her case the claimant examined herself as Ex. AW1/A and another witness Sh. Abhishek Kumar Ex. AW2/A. respondent examined himself Ex. RW1/A.

The issue regarding employee employer relationship with respondent, respondent in his cross examination admitted that applicant was working with him but accident was occurred due to her own negligence as she was not instructed to operate the machine, meaning thereby claimant was working with respondent and



accident was occurred out of and in the course of her employment on 26/06/2020. The main issue in this case is this that claimant in her cross examination stated that her first accident occurred on 06/05/2016 in that she lost index finger and thumb of her left hand as stated in her affidavit, but neither in claim application which is single page filed before the Commissioner Employees Compensation nor in affidavit same has been mentioned. About second incident respondent is not denying which occurred on 26/06/2020. Further respondent has submitted in argument that allegation leveled against him that first accident was occurred on 06/05/2016 of claimant does not arise since management come into existence w.e.f. 04/01/2018 as per Ex. MW1/1 (Registration Certificate). As such the contention of the claimant is not considerable that she met with an accident on 06/05/2016 in which she lost index finger and thumb of her left hand. The medical board of Sanjay Gandhi Memorial Hospital, GNCTD assessed 60% permanent disabled in relation to both upper limb. The certificate issued by the Sanjay Gandhi Memorial Hospital is not considerable, since claimant has nothing discussed about her first incident which occurred on 06/05/2016 merely stating in cross examination that her first accident was occurred on 06/05/2016 wherein she lost index finger and thumb of her left hand. The treatment documents placed on record are also pertaining to the period 26/06/2020. The medical board has assessed on the basis of presentation of the claimant. Regarding accident occurred on 26/06/2020 respondent failed to establish negligence on the part of claimant due to which she met with an accident and 04 phalanx of the four fingers has been amputated. For considering the disability of the clamant in respect of amputation of 04 fingers of right hand, the provision mentioned in schedule 1 sections 2 (1) and (4) part II has been taken into consideration for calculation of compensation. According to schedule 1 part II the percentage of loss of earning capacity is as under:

Part II of Schedule 1	Fingers	Description of injury	Percentage of loss of earning capacity
Sl. No. 29	Index Finger	1 Phalanx	9%
Sl. No. 33	Middle Finger	1 Phalanx	7%
Sl. No. 37	Ring Finger	1 Phalanx	5%
Sl. No. 37	Little Finger	1 Phalanx	5%
		Total	26%

In view of above discussed position claimant received 26% percentage of loss of earning capacity in relation to her right hand. Hence, she is entitled to receive compensation from the respondent.



ISSUE No. 3 & 4

12. As made discussion above for relief I am taking age of claimant as 50 years (as per Aadhar Card No.972690306631) and relevant factor 153.09 and 60% of last drawn wages restricted w.e.f 03/01/2020 to 15,000/- and 26% disability. Since as per submission of both the parties claimant was working as a unskilled worker as such Minimum Wages prevailing at that time i.e. on 26/06/2020 for unskilled category Rs. 15,492/- has been taken as last drawn wages as such calculation is made as under:

$$\frac{153.09 \times 9000 \times 26}{100} = \text{Rs. } 3,58,230/-$$

As per above calculation claimant is entitled to receive injury compensation from respondent of **Rs. 3,58,230/-**. Regarding the interest since respondent has not deposited compensation within the period, the applicant/claimant is entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident on awarded amount. Regarding reimbursement of actual medical expenditure incurred by claimant for treatment of injuries caused during the course of employment and after examining the medical bills placed on record she is entitled to receive the same as per section 4 (2A) of the Act amounting **Rs. 46,970/-**.

13. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly **I direct Respondent to deposit Rs. 3,58,230/- (Rupees Three Lakh Fifty Eight Thousand Two Hundred Thirty Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 25/07/2020 till its realization and further an **amount of Rs. 46,970/- (Rs. Forty Six Thousand Nine Hundred seventy Only)** towards medical expenses 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.

14. Given under my hand and seal of this Authority on this 18th day of October, 2023.

(S.C. Yadav)
Commissioner

Employee's Compensation Act, 1923

