

IN THE COURT OF 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.EC/224/NW/17/ 312.

Date: 20/09/2023.

IN THE MATTER OF:

Sh. Deepak S/o Sh. Lal Mohan
H.No. A-2922, Metro Vihar, Phase-2,
Sector – 5, New Delhi – 110082

.....Claimant

V/s

M/s Amit Footwear
O-74, Pocket-O, Sector-5, DSIIDC Complex,
Phase-II, Bawana Indl. Area,
New Delhi – 110039

....Respondent

ORDER

1. Vide this order, I will dispose of the application dated 14/08/2017 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that he was employed with the respondent since 15/02/2015 on the post of helper and was getting Rs. 8,500/- per month. That the respondent did not issue any appointment letter while recruiting him nor did they issue any identity card. It is further submitted by the claimant that on 20/10/2016 like before, when the employee was doing the work of loading the vehicle at 02:00 PM, due to excess weight in the vehicle he lost his balance and he along with the cartoon fell into the drain outside the respondent premises due to which his left hand got fractured and he also suffered serious injuries in his stomach. It is further submitted by the claimant that the management neither took the employee to any hospital nor did he got any kind of treatment and it was his family members who took him to the hospital and further the doctors plastered the employee's left hand and discharged the employee. But on 28/10/2016 he started having severe pain in the stomach on which his parents took him to Raja Harish Chandra Hospital, Narela, New Delhi where the doctors also referred him to Dr. Bhim Rao Ambedkar Hospital, New Delhi – 110085, but as there was no benefit there he was taken to Saroj Hospital, Rohini, a private hospital located in front of Dr. Bhim Rao Ambedkar Hospital. It is further submitted that the doctors at Saroj Hospital refused to treat him, but seeing his present condition his mother called 100 and when the police arrived the doctors did X-rays and other tests in the hospital and found that he had



suffered serious stomach injuries due to the fall, due to which his intestines were damaged, but his parents did not had money and due to this he could not be treated in the hospital and he was given medicine and discharged from Saroj Hospital. It is further submitted that on 11/11/2016 again he started having severe stomach pain on which his parents took him to J.B Pant Hospital, New Delhi – 110002, where the doctors treated the employee on 12/11/2016 and a major operation was done of his stomach. That due to damage to his intestine he is not able to do any kind of heavy work and till now he has incurred Rs. 2,00,000/- on his treatment and the said expenses are being borne by his parents, relatives and friends. It is further submitted by the claimant that in this regard he has given a written complaint on 17/10/2017 to the Commissioner of Police, Delhi Police Headquarters, IP Estate, New Delhi and other concerned departments. In the last the claimant submitted that the accident had occurred arising out of and during his course of employment and after the said accident he is unable to perform any job/work, which he was doing/performing prior to the accident, hence respondents are liable to pay the compensation under EC Act, 1923 of Rs. 8,66,252/- along with interest and 50 % penalty.

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 the applicant was not in employment with the answering respondent and therefore there is no employer-employee relationship between the applicant and the respondent, thus the claim of the claimant is not legally maintainable against the answering respondent and is liable to be rejected. It is further submitted by the respondent that it is evident that the applicant has been raising frivolous claims as there is neither a police complaint nor any other complaint before any authority and this clearly shows that the applicant has been trying to implicate the respondent. Further respondent denied rest of contents of claim petition in toto and prayed that the answering respondent is not liable to pay the amount of compensation and claim may kindly be rejected.
5. Claimant filed rejoinder by which he denied contents of reply filed by respondent and reiterated the contents of his claim application.
6. On 12/11/2021 following issues were framed for adjudication:
 1. Whether there exists employee-employer relationship between the claimant and respondent?
 2. Whether the accident occurred during and in the course of employment and if so?
 3. What amount of compensation is the claimant entitled to? Relief if any. Is the respondent liable for penalty and to what extent?



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 WW1/51 i.e. copy of medical documents of Saroj Hospital, copy of medical documents of Satyawadi Raja Harishchand Hospital, New Delhi, copy of medical documents of GB Pant Hospital, copy of medical bills, copy of police complaint, copy of complaint to Labour office - Nimri Colony, copy of Demand notice dated 04/02/2017, copy of postal receipt. His statement was also recorded on 26/04/2018 and was also cross examined by counsel of respondent on 11/06/2018. The matter was fixed for respondent evidence.
8. For respondent Sh. Amit Bansal - Proprietor – filed his evidence by way of affidavit. The contents of affidavits were corroborative to those reply. His statement was also recorded on 17/9/2018 and was also cross examined by counsel of claimant on 06/09/2019 and completed on 07/11/2018.
9. It is to mention that on the application of claimant/applicant the Authority have referred the claimant to GB Pant Hospital, GNCTD for assessment of his disability. The medical board of G.B Pant Hospital, GNCTD after conducting the assessment sent a report with remark '*as per present guidelines no Gastrointestinal surgical problems is included in disability*'.

Further the claimant filed another application on 13/10/2022 seeking second reference to another hospital for assessment of disability suffered by the claimant, the application was allowed and the claimant was further referred to Satyawadi Raja Harish Chandra Hospital for assessment of his disability. The medical board of Satyawadi Raja Harish Chandra Hospital after conducting the assessment sent a report with remark '*no disability*'.

Further after receiving the copy of disability certificate the claimant through his counsel moved an application seeking opportunity for cross examining the Doctor/chairman of Medical Board in reference to the disability certificate issued. A notice was issued to the concerned hospital. For Satyawadi Raja Harish Chandra Hospital Dr. Vinod Dahiya, Chairman Disability Board appeared and his statement was recorded on 19/04/2023 and he was also cross examined partially and a further adjournment was given to complete the cross examination of the said witness, but despite opportunity given counsel for claimant failed to appear and complete the cross examination hence on 14/06/2023 the said team of doctors / Medical Board team was discharged for further appearance and the matter was kept for filing of arguments.

10. Written argument was filed by the respondent and counsel for claimant.



11. 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:

12. The case of claimant is this that he was employed with the respondent since 15/02/2015 on the post of helper and was getting Rs. 8,500/- per month. That the respondent did not issue any appointment letter while recruiting him nor did they issue any identity card. It is further submitted by the claimant that on 20/10/2016 like before, when the employee was doing the work of loading the vehicle at 02:00 PM, due to excess weight in the vehicle he lost his balance and he along with the cart fell into the drain outside the respondent premises due to which his left hand got fractured and he also suffered serious injuries in his stomach. During the trial of the case this Authority has referred the claimant for medical examination to assess the percentage of disability in 02 hospitals (1) GB Pant Hospital, GNCTD (2) Satyawadi Raja Harish Chandra Hospital. As disability certificate bearing no F.5(67)/SRHC/H&FW/MRD/Court Matter/(4309/15213) dated 01/12/2022 received from medical board - Satyawadi Raja Harish Chandra Hospital, GNCT of Delhi, the claimant had not been assessed any disability. On the application of the claimant doctors of medical board who had examined the claimant to assess the disability was summoned in witness box, part examination was conducted by the counsel for claimant but despite given sufficient opportunities further counsel for claimant not present to complete the cross examination of the doctors to prove his case, since claimant could not prove his case on merit, as such his claim is not considerable for injury compensation under the Employees' Compensation Act, 1923. Hence in view of this claimant is not entitled for any compensation, accordingly issue no. 1 & 2 are decided against the claimant.

ISSUE No. 3

13. In view of discussion made in issue no. 1 & 2 claimant is not entitled for any relief.

14. Given under my hand and seal of this Authority on this 20th day of September, 2023.

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

