

**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. CWC/CD/8/2017 /142

Date: 28/04/2023

IN THE MATTER OF:

**Smt. Seema Sharma W/o Sh. Sukhpal Sharma**  
R/o H.No 178, Sector – A-5,  
Pocket – 14, Narela, Delhi - 110040

...Applicant/Claimant

V/s

**M/s North Delhi Municipal Corporation**  
**Through its Commissioner**  
Dr. S.P. Mukharjee Civic Centre,  
Jawahar Lal Nehru Marg,  
Minto Road, New Delhi - 110002

.....Respondents

**ORDER**

1. Vide this order, I will dispose of the application dated 05/08/2017 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that she joined the aforesaid management in the year 2000 on the post of Ward Aya at Sadar Bazar Polyclinic. The claimant further submitted that she was treated as a daily wager employee and was paid wages as fixed and revised from time to time under the Minimum Wages Act, while her counter parts were getting their salary in proper pay scale and allowance. It is further submitted by the claimant that she was discharging her duties to the entire satisfaction of her superiors and has unblemished and uninterrupted record of service to her credit and consequently she was regularized in job in the year, 2006. It is further submitted by the claimant that in the mid of year, 2015 she was transferred to Hindu Rao Hospital and at the time of filing of claim also she was posted in Hindu Rao Hospital as Ward Aya. It is further submitted by the claimant that on 06/01/2017 she was on duty and a Nurse/Sister namely Smt. Asha asked her to open an Oxygen Gas Cylinder as Oxygen was to be administered to some patient. The claimant further submitted that she told the nurse/sister namely Smt. Asha that she do not know how to open an oxygen gas cylinder and also told that it is not her duty and requested her to depute someone else, but the sister namely Smt. Asha



compelled her to open the oxygen gas cylinder and put a key in her hand to open the cylinders. It is further submitted by the claimant that as soon as she put in the said key, some blast took place and the employee/applicant concerned became unconscious and after sometime she found herself in the casualty of Hindu Rao Hospital and the doctor was asking her as to whether she is able to see or not, at that time the claimant could not see properly and furthermore bleeding was also going on from various organs of her and consequently she was referred to AIIMS Hospital. It is further submitted by the claimant on 06/01/2017 she was taken AIIMS hospital where some x-rays and scans etc were done and doctors said it is very difficult to save her life and further as she belonged to a very poor class and had no money for operation, she came back to her house alongwith her brother. It is further submitted by the claimant that an MLC bearing No. 89/17 was also done on 06/01/2017. In the last the claimant submitted that due to the grievous injuries she has suffered permanent disability, hence respondent is liable to pay compensation of Rs. 3,42,700/- along with interest and penalty to the extent of 50%.

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 application filed by the claimant for compensation is not tenable in the eyes of the law as the alleged accident had occurred due to sheer negligence of the claimant as the work of operating gas cylinder was not the part of her job/duty. The claimant's duty was asked to put the cylinder near the patient from the pantry, hence the present claim is liable to be dismissed on this ground alone. It is further submitted by the answering respondent that the amount of compensation as claimed in the present application is highly exorbitant. The amount of compensation has been calculated by the claimant on the basis of 40% disability (as a whole) whereas as per Medical certificate filed with the application she lost vision of her left eye only to the extent of 40% which does not mean that she has become 40% disabled. It is further submitted by the answering respondent that the claimant was required to produce the disability certificate from the hospitals where she got herself treated for alleged injury i.e. either AIIMS or Hindu Rao Hospital. Further respondent denied rest of contents of claim petition in toto and prayed that the claim petition deserve to be dismissed.
5. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.





6. On 25/07/2018 following issues were framed for adjudication:
1. Whether the claimant has suffered injury during in course of employment?
  2. Whether the claimant is entitled to relief under the EC Act considering disability connected with a accident?
  3. Whether claimants are also entitled for interest and penalty amount under section 4(A) of the Act?
  4. Any other relief?
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 WW1/10 i.e. copy of legal demand notice, copy of receipt, copy of disability certificate, copy of emergency card issued by Hindu Rao Hospital, copy of admission card issued by J.P.H. Apex Trama Center, copy of discharge slip, copy of emergency card dated 16/01/2017 issued by The Dr. Rajender Prasad Centre for ophthalmic Science, ND, copy of emergency card issued by The MO, Hindu Rao Hospital, copy of salary slip, copy of the letter written to the management. Her statement was also recorded on 26/09/2018 and was also cross examined by counsel of respondent on 22/10/2018, 20/03/2019 and completed on 27/08/2019.
8. Respondent filed evidence by way of affidavit of Dr. Anurag Anand, CMO (legal) vide Ex. RW1/A. The contents of affidavit are corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 17/12/2019 and completed on 28/01/2020.
9. The matter was fixed for arguments. Written arguments were filed by both the parties.
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:**

The case of claimant is this that she had joined into the employment of respondent in the year 2000 on the post of ward Aya and posted at Sadar Bazar Polyclinic at that time she was treated as daily wage employee and was being paid Minimum Wages as notified by the Government. Her services were regularized in the year 2006, since then she is continuously discharging her duties in unblemished and uninterrupted record of service.



In the mid of year 2015 she was transferred to Hindu Rao Hospital as a Ward Aya, since then she is working there. On 06/01/2017 she was on duty and nurse/sister namely Smt. Asha asked her to open oxygen gas cylinder as oxygen was to be administered to some patient. At that time she told the Smt. Asha Sister/nurse that she do not know how to open as oxygen cylinder and furthermore it is not her duty and requested her to depute someone else, but the sister namely Smt. Asha compelled her to open the gas cylinder and keep a key in her hand to open the cylinder. As soon as she put a key in gas cylinder, some blast took place and employee concerned became unconscious thereafter she was treated in casual ward and thereafter, she was shifted to AIIMS hospital for further treatment. An MLC bearing no 89/2017 was also done on 06/01/2017. In this incident she lost 40% eye vision in left eye and became permanent physical impaired as per disability certificate dated 03/06/2017 Ex. WW1/3 issued by Satyawadi Raja Harishchand Hospital, GNCT, Narela. Since the respondent did not pay the compensation hence she filed this claim under the provision of EC Act, 1923.

On the other side respondent denied the contents of claim application to the extent that accident was occurred due to the sole negligence of the claimant as operative of gas cylinders was not the duty of the claimant. The contents of claimant are false that she was compelled by Smt. Asha sister/nurse for operating the gas cylinders. Further respondent also denied that the claimant became 40% disable in this incident. To prove the case claimant examined herself by way of affidavit examined as Ex. WW1/A. For the respondent Dr. Anurag Anand Ex. RW1/A appeared as a witness who gave his statement on oath. Arguments adduced by both the parties heard in detail. After considering the pleadings of the parties and documents available on record. Respondent management did not conduct proper enquiry to prove that incident was happened due to sole negligence of the claimant. As per evidence of the respondent that for preliminary enquiry committee was constituted by respondent for enquiry, but nothing has been mentioned therein regarding the negligence on the part of the claimant. Even preliminary enquiry committee neither took the statement of the claimant nor the sister/nurse Ms. Asha on whom claimant has alleged that she forced to open the gas cylinders even that was not in her duty. Committee did not even called the claimant to depose her statement. Preliminary enquiry committee has also violated the principle of natural justice. As such statement of respondent evidence RW1/A is not considerable since negligence on the part of claimant was not proved. Further respondent has also not testified before this authority to Ms. Asha sister/nurse on whom it was alleged that she had compelled the clamant to operate the gas cylinder. In view of this respondent failed





to prove his case, as such I hold that claimant suffered injuries during in the course of her employment; hence she is entitled to receive injury compensation from the respondent as per provision of Employees Compensation Act, 1923. As such Issue No. 1 & 2 are decided in favour of claimant and against the respondent.

**Issue No. 3 & 4:**

As made discussion above for relief I am taking age of claimant as 40 years on the basis of DOB as mentioned in Adhar Card and relevant factor 184.17 and 60% of last drawn wages restricted to 8,000/- and 40% disability, as such calculation is made as under:

$$\frac{184.17 \times 4800 \times 40}{100} = \text{Rs. } 3,53,606/-$$

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

11. Keeping in view the facts and circumstances since respondent did not pay compensation within 30 days from the accident to the claimant as per provision of the Act as such I impose a penalty of 25% of the principal amount on the respondent.

12. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent to deposit **Rs. 3,53,606/- (Rupees Three Lakh Fifty Three Thousand Six Hundred and Six Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 05/02/2017 till its realization and the respondent is further directed to **deposit 25% penalty of awarded amount i.e. Rs. 88,401/- 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.

13. Given under my hand and seal of this Authority on this 29<sup>th</sup> day of April, 2023.

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

