

**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. WC/06/ND/17 | 289.

Date: 28/08/2023.

IN THE MATTER OF:

**Sh. Dilip Kariyare S/o Sh. Shiv Prasad**

R/o Village – Saragaon, Po – Saragaon,  
Thana – Saragaon, Zilla – Zaandagi, Chattisgarh

**C/o Azad Hind Mazdoor Union,**  
L-256, J.J Colony, Wazirpur, Delhi

...Applicant/Claimant

V/s

**The Ex. Engineer, PWD**

Division No. 322, under main Flyover Bridge,  
Kashmere Gate, PWD Office, Delhi – 110006

.....Respondent No. 1

**The Assistant Engineer, PWD**

PWD, Enquiry Office, Gulabi Bagh, Delhi-110007

.....Respondent No. 2

**Sh. S.B Mittal**

Govt. Contractor,  
D-123, Anand Vihar, Delhi – 110092

.....Respondent No. 3

**ORDER**

1. This claim petition was disposed of vide order dated 30/08/2022. Aggrieved by this order the claimant filed FAO bearing No 277/2022 and CM APPL No 47737/2022 through his counsel before the Hon'ble high Court of Delhi. Hon'ble High Court of Delhi vide order dated 01/02/2023 set aside impugned order dated 30/08/2022 and remanded back the same and directed the parties to appear before this said forum on 15/02/2023. As per direction of Hon'ble High Court only petitioner and respondent no. 1, 2 present only on 02 dates and for respondent no 3 appeared only for 01 date and thereafter despite



sufficient opportunities no respondents appeared in the proceedings as such on the basis of pleadings of the parties and documents available on record I am deciding the case accordingly.

2. In view of order of Hon'ble High Court as discussed above, I will dispose of the claim application dated 10/07/2015, under the provision of Employee's Compensation Act, 1923 for seeking injury compensation.
3. The case of claimant is this that he was employed as a mason with the respondent and was getting Rs. 500/- on daily basis. The claimant further stated that on 16/03/2015 (as clarified that inadvertently date of accident has been mentioned as 16/6/2015, which the Hon'ble High Court has allowed to the extent of date of accident, hence date of accident of claimant has been taken as 16/3/2015 instead of 16/6/2015), the respondent forced the claimant to work on faulty grinder Machine, as a result the claimant met with an accident and got injury below his knee joint in left leg, the injury caused a cut in his bone also. After that the claimant was treated in Deep Chand Bandhu Hospital and Bada Hindu Rao Hospital till 23/04/2015 (Before 13/04/2015 the claimant was treated in Deep Chand Bandu Hospital and from 13/03/2015 to 23/04/2015 the claimant was treated in Hindu Rao Hospital). The claimant further stated that due to the said accident he has lost his 100% earning capacity. The claimant further stated that the respondent inspite of receiving the legal notice has not paid any amount of compensation to the claimant. In the last claimant prayed that he was employed as a mason and the accident caused out of and during the course of his employment. He is entitled to compensation to the extent of 100% disability along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%.
4. Summon were sent to the respondents with direction to appear before this Authority to file reply in the defence of the matter.
5. Respondent No 1 & 2 (M/s PWD) appeared and filed reply in this matter and stated that in connection to this matter it is submitted that after verification of records of their office (M/s PWD Resp. 1 & 2) it is found that the said agency i.e. Sh. N.C. Mittal , 27/44, Mittal Bhawan, Vishwas Nagar, Gali No. 5, Shahdara, Delhi, have not executed any work under this division during last three years and no complaint with respect to any





dispute received from Sh. Dalip Kanyare worker till date. The respondent further submitted that the dispute is not concerned with the undersigned and notice sent to them wrongly.

6. On 30/01/2020 respondent no. 3 (as per the claim petition of the claimant) i.e. M/s Magwan Mittal, 123, D- Block, Anand Vihar, Delhi – 110094 was proceeded ex-parte by the then authority. But on 18/02/2021 the claimant filed an application requesting the authority to implead M/s S.B Mittal (Govt. Contractor), D-123, Anand Vihar, Delhi – 110094 as respondent no 3 replacing the previous respondent no 3 i.e. M/s Magwan Mittal, 123, D- Block, Anand Vihar, Delhi – 110094. The same was taken on record and notice was sent to the respondent to appear before this Authority to file reply in the defence of the matter. Despite the receipt of the summon by R3 M/s S. B Mittal did not appear, hence on 06/04/2021 respondent no 3 M/s S.B Mittal was proceeded ex-parte.
7. Petitioner rebutted all the contents of Respondents as stated in their reply and reiterated contents of the claim petition in his rejoinder.
8. On the pleadings of the parties, the following issues were framed on 18/08/2021 for adjudication:
  1. Whether applicant has met an accident out of and in the course of his employment with respondents?
  2. And if so what relief is he entitled and from whom?
  3. If so what direction are necessary in this regard?
9. Matter was fixed for the evidence of the parties. Claimant examined himself by way of filing his affidavit Ex. WW1/A. The contents of affidavit are corroborated to those claim petition. Claimant also filed documents Ex. WW1/1 to Ex. WW1/6 i.e. Copy of demand notice, copy of attendance card issued by Resp. No3 M/s SB Mittal, copy of Emergency registration card of Deep Chand Hospital, copy of OPD card of Deep Chand Hospital, Copy of OPD card of Hinu Rao Hospital. Claimant has tendered his evidence on 21/09/2021.
10. Despite opportunities provided to the respondents to cross examine the claimant. The respondent failed to appear and cross examine the claimant. Hence on 29/03/2022 right



of respondent to cross examine the claimant was closed and further on 21/04/2022 despite given sufficient opportunities the respondent failed to lead evidence in the matter, hence right of respondent to file / lead evidence was closed.

11. The case was fixed for arguments. The claimant filed written submission on record, and further Respondent failed to file arguments, therefore oral submission adduced by the claimant was heard in detail.

12. On the pleadings of the parties, documents filed therein and the evidence adduced on their behalf, I have to give my findings in the case as under:

**Issue No. 1, 2 & 3**

13. The case of claimant is this that he was employed as a mason with the respondent on daily wages. And on 16/03/2015 (as clarified that inadvertently date of accident has been mentioned as 16/6/2015, which the Hon'ble High Court has allowed to the extent of date of accident, hence date of accident of claimant has been taken as 16/3/2015 instead of 16/6/2015) he met with an accident while he was working on Grinder Machine which was defected due to this he got 4 inch grinder cut in his left leg below the knee and was admitted for treatment on 23/04/2015 in Deep Chand Bandhu Hospital and Bada Hindu Rao Hospital thereafter. Before 13/04/2015 the claimant was treated in Deep Chand Bandu Hospital and from 13/03/2015 to 23/04/2015 the claimant was treated in Hindu Rao Hospital. Respondent did not pay compensation as such the claimant has filed the claim against the respondent. After considering the pleadings of the parties and reply of respondent no 1 and 2 M/s PWD claimant has not filed any documents which shows that respondent no 2 has performed the work as executed by the PWD as such no order can be passed against the PWD. However, from the pleadings of the claimant it is established that claimant has worked with respondent no 3 M/s S.B Mittal and out of in the course of his employment he met with an accident resulting thereby he became 9% disabled as per disability certificate issued by Medical Board vide letter dated 07/11/2019 of Aruna Asaf Ali Hospital, Rajpur Road Delhi – 110054. Respondent no 3 despite given sufficient opportunity did not file any defence in the matter. As such I hold that claimant met with an accident with respondent no. 3 out of and in the course of his employment as such claimant is entitled for injury compensation from respondent no 3. Accordingly this issue is decided in favour of claimant and against the respondent.





14. As made discussion above for relief I am taking age of claimant as 35 years (as per Emergency Registration Card of Deep Chand Bandhu Hospital) and relevant factor 197.06 and 60% of last drawn wages restricted to 8,000/- and 9% disability (as per disability certificate issued by Medical Board – Aruna Asaf Ali Government Hospital), as such calculation is made as under:

$$\frac{197.06 \times 4800 \times 9}{100} = \text{Rs. } 85,130/-$$

The applicant/claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent.

15. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent No. 3 M/s S.B Mittal (Contractor) being the employer as per section 3 of the Act. Accordingly I direct Respondent No. 3 to deposit **Rs. 85,130/- (Rupees Eighty Five Thousand One Hundred and Thirty Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 15/04/2015 till its realization and **the respondent No. 3 is also further directed to deposit 25% penalty of awarded amount i.e. Rs. 21,282/- 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.

16. Given under my hand and seal of this Authority on this 28<sup>th</sup> day of August, 2023.

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

