

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. ECI/92/NW/18/ 194.

Date: 31/05/2023.

IN THE MATTER OF:

Sh. Birender Kumar Tiwari S/o Prithvi Nath Tiwari
Subikhar Bairauna Deoria,
Uttar Pradesh - 274001

.....Applicant/Claimant

V/s

M/s Akash Ganga Infra Ventures India Ltd.
Unit Off. 31, 1st Floor, CSC Market,
Block-A, Saraswati Vihar, Pitampura, ND – 110034

.....Respondents No.1

M/s National Insurance Co. Ltd
C-3, Pooja House, 1st Floor, Karampura, ND - 110015

.....Respondents No.2

ORDER

1. Vide this order, I will dispose of the application dated 05/09/2018 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that he had joined the services of the management in the year 2007 as a mechanic and the last drawn salary was Rs. 14,000/- per month. It is further submitted by the claimant that the said management is in the business of construction and therefore the management deployed him for the work of mechanic for their ongoing construction sites. It is further submitted by the claimant that his job was transferrable job and management time to time transferred his job as per the needs of the management for their ongoing construction sites. It is further submitted by the claimant that on 18/05/2013 he was doing his job in Sarojini Nagar Metro construction site in front of Post Office Sarojini Nagar and thereafter at around 2.30 PM due to the negligent act of the company officials the main rope of the Kelly was broken due to extensive loading/jerking and the said heavy object was fall on his body. It is further submitted by the claimant that in the said accident he had received multiple injuries like injury in spinal cord, injury in both legs and inability to use lower limbs and back pain, bleeding wound tight ankle/left knee and pain in chest and he had gone through number of operations of spinal cord and legs. It is further submitted by the claimant that one FIR has been registered in the matter vide FIR No. 137/13, U/s



287/388, against the company. It is further submitted by the claimant that the management terminated his services w.e.f. 23/07/2018 without any valid reason. It is further submitted by the claimant that the management had also withheld the earned wages of the workman w.e.f. 01/06/2018 to 23/07/2018. The claimant also filed disability certificate issued by Medical Board – Aruna Asaf Ali Government Hospital wherein he has been assessed 41% disabled. In the last the claimant prayed that respondent may be directed to pay the compensation of Rs. 15,00,000/- towards harassment, accident, mental trauma and also direct the management to clear all arrears of his earned wages and other benefits and any other relief Authority will deem fit.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply in the matter.
4. Respondent no. 1 in its reply submitted that the contents of the application filed by the claimant/petitioner are concocted, contrived and are specious. The answering respondent further submitted that the claimant/petitioner has not come to this Hon'ble forum with clean hands and has concealed the true and correct material facts from the Hon'ble forum and hence prayed that the petition is liable to be rightly dismissed with heavy cost. The answering respondent further submitted that the claim petition of the claimant is not maintainable against them as it is barred under section 10 of the EC Act, 1923. It is further submitted by the respondent that since the date of accident all the medical expenses and other expenses including ambulance expenses, fooding expense and his family expenses were purely Bourne by them and also the they had paid the monthly salary when the claimant was at bed rest and his ambulance expenses costing Rs. 25,000/- per visit to hospital for taking him to hospital were paid by the answering respondent. It is further submitted by the answering respondent that they have already purchased Employees Compensation Insurance Policy vide policy no. 360300/41/12/8600000055 from National Insurance Company Ltd. amounting to Rs. 29,40,000/- for Sarojini Nagar, New Delhi. It is further submitted by the respondent that at the time of accident the respondent suggest the workman to take advantages of the said policy, but the workman desired that he does not want to enter in the process of claiming the policy benefits, as it takes long and require continuous efforts and follow ups to claim this policy and hence the claimant refused and insisted that he does not want any claim and requested to the answering respondent to let him remain in the company and help him financially. It is further submitted by the respondent had spent over 3.50 lakh approx on account of medical expenses and other miscellaneous expenses on humanitarian ground. Further respondent denied rest of contents of claim petition in toto and prayed that the claim petition deserve to be dismissed and if this authority comes to this conclusion regarding the payment of compensation that should be



awarded against the respondent no 2 insurance company as on the day of accident claimant was covered with the insurance policy as discussed above.

5. Further Respondent no. 2 in its reply submitted that the present claim of the claimant is without any cause of action and is liable to be rejected and also the claimant has not approached this Hon'ble Court with clean hands and has suppressed the most material facts. It is further submitted by the respondent no 2 that they are neither a necessary party nor has any concern with the alleged termination of the workmen by the respondent no 1. It is further submitted by the respondent no 2 that no accident took place nor the claimant is entitled to any compensation. Further respondent did not inform to the respondent regarding any accident took place at any time as such claim petition is not maintainable against the respondent. Further respondent denied rest of contents of claim petition in toto and prayed that the claim petition deserve to be dismissed with heavy cost.
6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. Vide order dated 13/12/2019 the then Ld. Commissioner has already allowed condonation application of claimant.
8. On 10/01/2020 following issues were framed for adjudication:
 1. Whether the claimant is entitled for compensation on account of accident occurred on 18/05/2013, in the course out of his employment with respondent no 1 and if so?
 2. To what amount of injury compensation is he entitled?
 3. Whether the claim is time barred?
 4. Whether respondent are liable to pay penalty and upto what extent and what amount?
 5. Any other relief?
9. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. CW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. CW1/1 to CW1/3 and mark C/1 i.e. copy of ID proof issued by the Delhi Metro Project Phase-II valid upto 31/12/2008, copy of FIR, Copy of discharged summary, copy of legal notice, Disability certificate in original. His statement was also recorded on 05/10/2021 and was also cross examined by counsels of respondent No. 1 & 2 on 05/10/2021.



10. For Respondent no 1 Sh. Vinod Kumar (Asst. Manager, HR) filed evidence by way of affidavit 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 and respondent no 2 on 22/06/2022.
11. For Respondent no.2 Shri P. Krishna Kumar (Dy. Manager) filed evidence by way of affidavit vide Ex. R2W1/A. The contents of affidavit are corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant and respondent no 1 on 17/11/2022.
12. The matter was fixed for arguments. Written arguments were filed by both the parties.
13. On the pleading of the parties, evidence adduced on their behalf, judgements of Hon'ble Supreme Court and other apex courts and the arguments addressed thereon, I have to give my findings as under:-

ISSUE No. 1:

14. The case of claimant is this that he was working with respondent no. 1 as a mechanic and the last drawn salary was Rs. 14,000/- per month. The respondent is in the business of construction and therefore the management deployed him for the work of mechanic for their ongoing construction sites. It is further submitted by the claimant that on 18/05/2013 he was doing his job in Sarojini Nagar Metro construction site in front of Post Office Sarojini Nagar and thereafter at around 2.30 PM due to the negligent act of the company officials the main rope of the Kelly was broken due to extensive loading/jerking and the said heavy object was fall on his body. It is further submitted by the claimant that in the said accident he had received multiple injuries like injury in spinal cord, injury in both legs and inability to use lower limbs and back pain, bleeding wound tight ankle/left knee and pain in chest and he had gone through number of operations of spinal cord and legs. It is further submitted by the claimant that one FIR has been registered in the matter vide FIR No. 137/13, U/s 287/388, against the company. It is further submitted by the claimant that the management terminated his services w.e.f. 23/07/2018 without any valid reason. In reply respondent management admitted the factum of employment and accident occurred out of and in the course of his employment but denied that the accident has occurred due to the negligence of respondent. At the time of accident claimant was insured under workman compensation policy with respondent no 2 as per the policy bearing No. 360300/41/12/8600000055 which was valid on the date of accident. In principle respondent no 2 admitted the factum of coverage of claimant under the said policy but rest of contents of the claim petition were denied by the respondent no 2. Since the claimant had met with an accident out of and in



the course of his employment with respondent no 1 as such claimant is entitled to receive compensation as per provision of the Act from respondents jointly or severally. Accordingly issue no. 1 is decided in favour of the claimant and against the respondents.

Issue No. 2

15. As made discussion above for relief I am taking age of claimant as 39 years (as per disability certificate No. UP5910619730039693 issued by Medical Authority, Deoria, Uttar Pradesh) and relevant factor 186.90 and 60% of last drawn wages restricted to 8,000/- and 41% disability (as per disability certificate issued by Medical Board – Aruna Asaf Ali Government Hospital), as such calculation is made as under:

$$\frac{186.90 \times 4800 \times 41}{100} = \text{Rs. 3,67,819/-}$$

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

Issue No. 3

16. Since the question of time barred application of claimant has already been already considered by my predecessor Commissioner vide its order dated 13/12/2019, hence no comments is required on this issue.

Issue No. 4

17. Regarding the issue of penalty show cause notice was issued to the respondents and respondents submitted their reply. As per objection of respondent no 2 respondent did not inform about the accident to respondent no. 2 hence liability of penalty cannot be imposed upon them. On the other hand respondent no 1 in his reply of show cause notice u/s 4A has submitted that insurance company was informed vide his letter dated 21/05/2013 which was received on 21/05/2013 by the respondent no 2. Copy of letter dated 21/05/2013 is placed on record. As such contention of respondent no 2 is not acceptable to the extent that respondent no 1 did not inform them about the accident. Respondent no 2 failed to discharge his legitimate duties towards payment of compensation to the claimant as such respondent no 2 is liable to pay 50% penalty of awarded amount to the claimant. Keeping in view the facts and circumstances, I impose a penalty of 50% of the principal amount on the respondent No. 2.



Issue No. 5

18. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent No. 2 to deposit **Rs. 3,67,819/- (Rupees Three Lakh Sixty Seven Thousand Eight Hundred and Nineteen Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 17/06/2013 till its realization and **the respondent No. 2 also is further directed to deposit 50% penalty of awarded amount i.e. Rs. 1,83,909/- 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.
19. Regarding other prayers of the claimant, such as compensation for harassment, mental trauma and all arrears of their earned wages and other benefits cannot be decided under this Act, remedies available in other Acts, which claimant can avail.
20. Given under my hand and seal of this Authority on this 25/5 day of May, 2023.

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

