

**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. CEC/I/37/ND/2022/ 114.

Dated: 04/09/2024.

IN THE MATTER OF:

Sh. Ram Lakhan S/o Sh. Gaya Prasad Sharma
R/o L-68, Krishna Vihar,
Sultan Puri, Delhi-110086

ALSO AT:

45/705, Kashiram Kaloni,
Shahjahanpur, Uttar Pradesh-242001

.....Applicant/Claimant

Versus

Sh. Bhupender Singh
Owner of Factory at:
P-41, Krishan Vihar, Sultanpuri, Delhi-110086

ALSO AT:

R/o – P-81, Krishna Vihar, Sultanpuri, Delhi-110086

.....Respondent

ORDER

1. Vide this order, I will dispose of claim application dated 17.09.2019 filed on 17.09.2019 before this Authority under section 22 of the Employee's Compensation Act, 1923 for seeking injury compensation.
2. In the claim application claimant stated that he was working with respondent factory at P-41, Krishna Vihar, Sultanpuri, Delhi-110086 as a labour on last drawn wages Rs. 11,000/- per month. It is further stated that respondent is a owner of the factory and in the factory metal gas stove and burners are being manufactured and the respondent being the employer is fully responsible for the day to day affairs of the factory as the entire work is being carried out under the supervision and control of respondent. It is further stated that claimant was assigned to work on a grinding machine in the factory but the claimant had complaint many times to respondents about the malfunctioning of the machine placed in the factory as they were need urgent servicing but respondent had not given any heed on his request/complaint rather the complaint was threatened to work or he will be thrown out from the job. Even respondent had not provided any safety kits to work on the



machine to the workers. Since the claimant is the only earning member of his family, hence he had to compromised this situation and was compelled to work on such faulty and malfunctioned machines placed in the factory. It is further stated that on 14.07.2018 at about 09:30 AM when the claimant was working on the grinder machine in the factory then suddenly a loud noise starting coming out of the machine and before the claimant realize anything then in the mean time the right hand came inside the machine and due to which his right hand got sustained grievous injuries as it got broken and due to which the claimant was bleeding profusely and he was immediately taken to the nearby Sanjay Gandhi Hospital where his MLC bearing no. 13715/2018 was prepared by the doctors. During the treatment the right hand of the claimant was operated and a plate was fixed in his right hand but during this time no one was present on behalf of respondent to pay any amount or compensation to the claimant. In this case an FIR bearing no. 671/2018 under section 287/337 IPC was registered at P.S. – Sultan Puri, Delhi. Despite given assurance respondent did not pay single penny towards treatment expenses. In this accident due to injuries suffered in right hand of claimant is totally damaged and is not working and was asked to leave the job even his outstanding salary alongwith other perks have not been paid. In the last it is stated that since accident was occurred out of and in the course of employment of claimant as such claimant is entitled to receive the injury compensation from the respondent. Alongwith claim application claimant filed documents such as Aadhaar Card, Photocopy of medical treatment, photocopy of FIR, Original medical bills and photograph of injured.

3. Summon was sent to the respondent with direction to appear before this authority and filed reply/defense in the matter. Respondent appeared and filed reply wherein he has taken preliminary objection that the defendant is neither the owner at the address of the factory addressed at notice served to the defendant at P-59, Krishna Vihar, Sultan Puri, Delhi nor the owner of address copy of memo of complainant/claimant i.e. P-41, Krishna Vihar, Sultan Puri, Delhi. Further claimant did not disclose the name of the factory or the father name of the defendant to established the identity of the defendant. Further it is stated that defendant/respondent is running his factory at address P-81, Krishna Vihar, Sultan Puri, Delhi-110086 for last many years. Further respondent denied employee employer relationship on day on 14.07.2018. The claimant has concealed the material facts and filed the present claim in lure to extort the money / compensation from the respondent. Even claimant did not file any documents which establish relationship as a employee with respondent and in regard monthly salary of Rs. 11,000/- per month. Respondent has also objected FIR on the ground that false FIR was lodged against the respondent and the court has not taken any cognizance against the respondent. It is further submitted that the report of the doctor opinioned different nature of injury then as natural of injury explained by the claimant in FIR. As the alleged machine did not sufficiently injured any one as per nature of injury stated by the claimant. On the merit reply respondent denied employee employer relationship and accident on 14.07.2018. In the last respondent prayed that on the ground as given in reply claim petition is liable to be dismissed.



4. Claimant filed rejoinder by which he denied all the contents of reply and reiterated contents of his claim.
5. On the basis of pleadings of the parties and documents available on record following issues are framed on 24.09.2021 for adjudication -
 - i. Whether employee employer relationship exists between claimant and respondent?
 - ii. Whether accident resulting injury to claimant occurred during and in the course of employment, if so, what amount of injury compensation claimant is entitled ?
 - iii. Any other relief ?
 - iv. Whether the respondent are liable for penalty under section 4A of the Act and if so, to what extent and what amount ?
6. Matter was fixed for the evidence of the parties. Claimant filed his statement/evidence by way of affidavit exhibit CW-1/A his statement was also recorded on 26.05.2022 and was also cross examined by Sh. Arun Bansal, AR of Respondent. Claimant also filed documents exhibit CW1/1 to CW1/4 and mark-A and mark-B i.e. Copy of Aadhaar Card, Original Medical treatment papers, original medical bills, photograph of injured claimant and Mark-A Copy of FIR and Mark-B copy of attendance card of injured.
7. For respondent Sh. Bhupender Singh, owner of the factory examined himself as a witness and his statement was also recorded on 17.07.2023 and was cross examined by counsel of claimant. Respondent also examined to Dr. Jitender, Senior Resident in Orthopedic Department, Dr. BSA Hospital, Govt. of NCT of Delhi, Rohini, Delhi and was also cross examined by counsel for claimant on 12.09.2023. The letter dated 06.12.2018 signed by Assistant Director (ISH), Labour Department, Govt. of NCT of Delhi was sent to SHO, P.S.- Sultanpuri, Delhi-110086 regarding inspection of machine in case FIR No. 671/2018 dated 24.08.2018. The report of ISH indicates that joint inspection of Assistant Director (ISH) was conducted on 12.11.2018 at 15:00 PM of the establishment in question in the presence of I.O. Sh. Vikram, Asstt. Sub. Inspector in relation to FIR in question. Report disclosed the statement of the owner of the factory that the claimant Sh. Ram Lakhan S/o Sh. Gaya Prasad Sharma was not working with respondent on grinder machine as alleged on 14.07.2018 at 09:30 AM and had met with an accident in the employment of him. Report also indicates that the machine in question was sealed by the Police.
8. The Respondent has examined one more witness in his favor to Sh. Deepak Kumar, Head Constable, P.S. – Paschim Vihar, West Delhi, Delhi. He was also cross examined by Counsel for claimant on 12.10.2023. Sh. Deepak Kumar, Head Constable stated in his cross examination conducted by counsel for claimant that he had investigated the present case and informed by factory labour that the claimant Sh. Ram Lakhan was working in the factory and had met with an accident. On this statement counsel for respondent raised the objection on the ground that I.O. witness who had investigated matter and come to the conclusion that claimant Sh. Ram Lakhan was working with respondent and had met with



an accident on 14.07.2018 on the basis of information given by factory workers but I.O. did not able to disclosed the name of the factory workers from whom he had informed about working of the claimant.

9. Both the parties have filed written submissions on record.
10. On the basis of pleadings of the parties and documents available on record and considering the witness who appeared in this case, I am giving my findings on the issues framed in the matter.

Issue No. 1

Case of claimant is this that he was employee of the respondent and was working as a laborer on last drawn wages Rs. 11,000/- per month. The claimant was assigned to work and operate over a grinding machine in the said factory but the machine was not properly functioning there was technical defects regarding that he had informed to the respondent to get in order but all was vain and on 04.07.2018 at 09:30 AM when he was working over the said machine but suddenly the machine started producing loud noise but before the claimant could understand the right hand of claimant came inside the machine and sustained grievous injuries and the right hand was bleeding profusely and he was taken to Sanjay Gandhi Hospital where MLC No. 13715/2018 was prepared and the police was called upon which a case FIR No. 672/2018 was registered with P.S.- Sultanpuri, Delhi and on the recommendation of CEC claimant disability was assessed by Dr. BSA Hospital, GNCTD, by the medical board wherein claimant was declared 75 % disabled in relation to right upper limb.

The respondent has denied employee employer relationship and accident caused out of and in the course of his employment. The respondent has also taken the grounds that the claimant did not produced any service records regarding working with the respondents. Even claimant did not examine any co-workers to prove his case moreover claimant was not known to correct address of the factory where he was working which is very strange on the part of claimant. Even the doctor who had conducted examination of claimant regarding issuing disability certificate was not able to tell that whether injury caused to the workers are in single nature or multiple natures. Further the doctors informed in his examination that on the recommendation of the CEC he had conducted the examination of the claimant regarding assessing disability. Even Head Constable Sh. Deepak Kumar was also not able to disclosed the name of workers whom he had asked about the claimants and his accident. On the basis of this nothing has come on record which goes in favor of claimant. It was the onus upon the claimant to prove his case by way of proof of service/documents and by way of other witness like co-workers in his favor to prove his case. Merely on the basis of statement of the claimant the case is not proved. The main witness of this case was I.O. of P.S. – Sultan Puri, Delhi was but he was also not able to say proper investigation of this case merely that some worker of the factory informed



about the working of the claimant and accident occurred in the factory is not considerable. In view of this claimant failed to prove his case as such issue no. 1 is decided against the claimant.

Issue No. 2 to 4

In view of above discussion made in issue no. 1 issue no. 2-4 are not required for further any answer.

11. Given under my hand and seal of this Authority on this 4th day of September, 2024.

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

O/L.

