

**OFFICE OF THE COMMISSIONER EMPLOYEE'S COMPENSATION
UNDER EMPLOYEES' COMPENSATION ACT, 1923)
DISTRICT WEST, LABOUR WELFARE CENTRE, F-BLOCK,
KARAMPURA, NEW DELHI-110015**

No. CEC/WD/1/43/2023/ 591-92

Dated: 21/3/25

In the matter of:-

Sh. Vijay S/o Sh. Dharam Veer,
R/o H. No. 159, Gali No. 3, Hind Vihar,
Prem Nagar – III, Kirari Suleman Nagar,
Delhi-110086 :Claimant

Permanent resident: Raghwa Pur,
Devaria, U.P. – 274001.

Represented by: -

Sh. D.K. Chauhan, Advocate,
(Mob. No. 9555568697),
93, Deep Enclave, Part-1, Vikas Nagar,
West Delhi-110066.

VERSUS

Sh. Ram Sumer Burushwala,
(Mob. No. 9899233724),
Factory Known as Dana Katne Wali Factory,
Plot No. 144, Khasra No. 50/21, Swarn Park,
Udhyog Vihar, Mundka, New Delhi-110041 :Respondent

Represented by: -

Sh. Shesh Nath Shukla, Advocate,
(Mob. No. 9415219726),
Civil Court Rajnagar, Ghaziabad

ORDER

1. By this order, I shall dispose of the claim application dated 20.09.2023 filed by Sh. Vijay S/o Sh. Dharam Veer under the provisions of the Employees' Compensation Act, 1923 (here in after referred to as the Act) for claiming



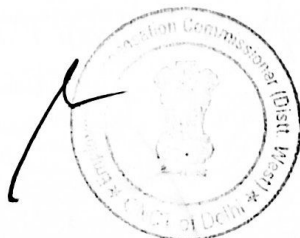
compensation on account of injury stated to have occurred in the course out of his employment with Respondent on 25.11.2021.

2. The claimant has stated in the claim application that the Respondent Sh. Ram Sumer is known by his factory named as Ram Sumer Brushwala Factory @ Dana Katne Wali Factory, which employed approx. 100 to 125 workers on daily basis, without providing any ESI, EPF and many other relevant facilities and he does not know the exact name of the factory as there is no Board on either entrance of the gate or anywhere inside the factory premise. That he was employed as Helper and was being paid approx ₹13,000/- to ₹15,000/- p.m. on daily production basis. That he alongwith his wife, minor daughter and brother in law had worked with Respondent for one year till the date of accident i.e. on 25.11.2021. That he was never provided any ID Proof relating to employment, as Respondent only maintains a rough register, in which he maintains the record of production and payment made to the employees against it. That on 25.11.2021, the Respondent asked him to work on the Grinder Machine but he refused for the same as he was not having any experience to work on it. But the Respondent forced him to work on the said machine and during working on the said machine, a small piece of iron injured his left eye. He was taken for treatment by the son of Respondent. Respondent had assured him to bear all the medical expenses but after few days, failed to pay the same and even terminated his services and also the services of his wife, daughter and his brother in law. That he filed a police complaint in Nangloi PS on 27.04.2022, Respondent was called by concerned PS on next day i.e. 28.07.2022 but no action was taken against the Respondent thereafter. That due to being less educated person, he could not immediately take legal action against the Respondent. That he sent a legal notice dated 01.09.2023 to the Respondent which was duly served upon him on 02.09.2023. The claimant has claimed that he is entitled for due compensation, interest and penalty as his accident leading to disablement had



occurred in the course out of his employment and the due compensation has not been paid to him within time as stipulated under the Act.

3. The claimant filed an application dated 22.09.2023 for assessment of disability and accordingly he was sent to Dr. K.S. Bhagotia, Indira Gandhi Hospital, Sector-09, Dwarka, New Delhi-110077 for assessment of disability. Dr. K.S. Baghotia, Certifying Surgeon (West) vide his letter No. F.No.12/3/2(13)/OSH/CS/2023-IGH/15248 dated 27.09.2023 assessed the loss of earning capacity of the claimant as 40% in relation to his Vision (Left Eye).
4. The summon was sent to the Respondent with the direction to appear in proceedings and to file written statement/ documents, if any, in his defense.
5. Respondent appeared in proceeding and filed written statement denying all the contents of claim application and even denied any employer – employee relationship with the claimant. He further stated that the claimant has never worked with him and even there is no grinder installed in his premise as only sorting/segregation work of old tooth brushes is carried in his premise hence there is no possibility of occurrence of any such accident as claimed by the claimant. However, he admitted that Smt. Neetu W/o claimant used to work with him. The wife of claimant had informed him that her financial condition is very critical and her husband had got injured while slipping at the residence. Therefore considering the request of his wife, he gave money to her for the treatment of her husband, which was to be repaid. He further stated that this claim has been filed by the claimant just to harass him and to avoid the payment made by him to the wife of claimant for his treatment.
6. Claimant filed rejoinder refuting to the contents of written statement filed by the Respondent and reiterated the contents of his claim application.

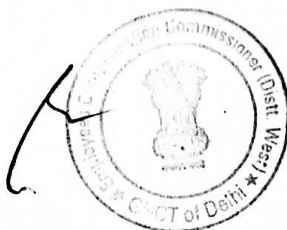


7. The claimant filed an application for summoning of muster roll/attendance register, payroll register of Respondent factory. But the Respondent neither replied to it nor produced the records.
8. On the basis of pleadings, the following issues were framed:-
 - (i) Whether employee – employer relationship between the claimant and Respondent and if so?
 - (ii) Whether the accident leading to disablement of claimant had occurred in the course out of his employment? If so whether the claimant is entitled for compensation? and if so to what amount?
 - (iii) Any other relief?
 - (iv) Whether the Respondent ^{is} ~~are~~ liable for penalty under section 4A of the Act and if so to what extent and what amount?
9. The claimant filed his evidence by way of affidavit duly attested by Oath Commissioner on 23.02.2024 exhibited as Ex.CW1/A, which was tendered by him on 18.03.2024. He relied upon the following documents:-

Ex.CW1/1	Copy of police complaint dated 27.04.2022 (Colly 02 pages)
Ex.CW1/2	Copy of medical documents (Colly 08 pages)
Ex.CW1/3	Copy of photographs about interior working of respondent factory (Colly 02 pages) alongwith 65B certificate
Ex.CW1/4	Copy of Aadhar Card
Ex.CW1/5	Copy of photograph of private doctor clinic where deponent get first aid.
Ex.CW1/6	Copy of DVD of about use grander/glander in the factory.

He was cross examined by AR of Respondent and in cross examination, he stated as under: -

"I am 30-35 years old. I am residing in Delhi for last 10-12 years. I have placed my Aadhaar card on record. I have studies upto 8th class. My date of birth as recorded in Aadhaar is correct. I do not have the Voter ID card. I have Ration card. I do not have any bank account. I do not have any other identity proof





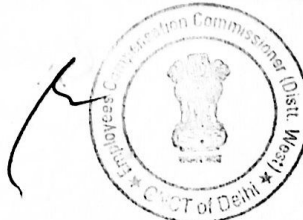
except Aadhaar. Initially when I came to Delhi, I worked in company located at Udyog Vihar, there I worked for 07 months. Thereafter I worked in company located at Mangol Puri. I cannot recollect for how much time I worked over there. I cannot recollect the name of both companies. I worked in various companies located at Tikri Border and Prem Nagar. I have worked in around 15 companies in Prem Nagar. I did not work on contract basis. I used to work on piece rate. Immediately after the accident I was taken for treatment in a small hospital/clinic in swarn park area by the son of respondent. I cannot recollect the name of the hospital or the son of respondent. I was not referred for treatment to AIIMS but I on my own went there. I cannot recollect whether I submitted any ID proof at the time of registration at AIIMS. I have submitted all my medical records on file. When I was being taken to OT of AIIMS, someone came there and inform that my operation has been cancelled. At that time the corona cases on peak, so I left for my native place i.e. Devariya. Thereafter I went Nepal for my treatment. I do not know any person namely Vijay Makan who is around 35 years of age. I sold my agriculture land for a sum of Rs. 17 Lacs for my treatment. I cannot recollect its complete address however I can submit the same. I got my affidavit attested in Tis Hazari Courts. My wife was also residing with me at the time of incident. I do not have any documentary proof of my working with the respondent. Vol The respondent used to mark my attendance in a diary which was in his possession. Presently I am working in Vicky Plastic in Prem Nagar area. I did not receive any reply of my demand notice. I had shifted from the address i.e H No.159, Gali No. 3, Hind vihar, Prem Nagar III, Kirari Suleman Nagar, Delhi-110086, however I had sent the demand notice with the said address. I cannot tell why the reply at my native place was not received, however my address of native place is correct. My father's name is Dharam Dev and his name in my affidavit and the Aadhaar card to this extend is wrong. I do not have any proof of my working with the present management. Wages paid there to me in cash. I am getting around Rs.10,000/- per month as salary. There are about 50 workers working over there, all are being paid in cash. I cannot tell the reason why I did not wait for the reply of respondent as per time given in demand notice and filed the claim before the expiry of the same. I had never been provided any proof of Employee-Employer relationship by any of the company in which I worked. None of the company paid me my salary in my account. It is wrong to suggest that I have filed false case against the respondent and I am not entitled for compensation as claim. It is wrong to suggest that I am deposing falsely."



10. The claimant further examined Smt. Lilawati Devi as his witness CW2, who filed her affidavit in evidence duly attested by Oath Commissioner on 19.07.2024 exhibited as Ex.CW2/A, which was tendered by her on 05.09.2024. She was cross examined by AR of Respondent and in cross examination, she stated as under: -

"My name is Lilawati Devi and I am also known as Neetu which is my nick name. I am not known by any other name except mentioned above. I used to work with the Respondent on contract basis. I used to get Rs. 2.50 per kg for cutting the brush. My father's name is Sh. Sudarshan Prasad and my mother's name is Smt. Dulari Devi. My maternal home (Maiyka) is at Village Jogapur Tiwari, District Salempur, Near Deoriya, U.P. I got married in Village Raghupur, District Deoriya. I do not know in how many companies my husband had worked. I alongwith my husband only lived at two places. My husband is residing in Delhi for last 15 years. I had come alongwith my husband since when he is residing in Delhi. My youngest son is 12 years old. When I used to go for work my children used to go for study in the school. My eldest daughter is 18 years old. When my children had not started their schooling they were being looked after by my sister in law (Bhabhi) and my eldest daughter. I and my husband were working on different sites/employers. We worked together only with the Respondent. Earlier I had worked with Vicky Plastic where the work of shoes was being carried out. I worked there about 1 ½ month. I am not working anywhere now. When my husband got injured, he was taken for treatment locally by the son of Respondent Sh. Ram Sumer. After two days, when the condition got worse I took my husband for treatment to AIIMS. Due to lockdown my husband was not got admitted there. Therefore, I was compelled to take my husband to Nepal alongwith my mother and my mother in law, where he was got operated. The photographs at page no. 13 of my rejoinder, were taken by me as I alongwith my husband had gone at that place after the accident.

The witness identified the person circled as A "Uncle" and could not identified the another person circled as B. Both of them are old workers of Respondent. At the time of accident, there were 5 employees working with the Respondent. Photographs of Glander Machine at C & D are of the same premise where the accident had occurred. I had to ~~show~~^{sell} one kattha of my land for treatment. I had





taken loan from my relatives and friends which I got repaid by selling the said land. The Respondent used to mention the work which I used to perform on a passbook I am having the said passbook. The Respondent did not use to provide any passbook to the claimant and he used to mention his record in his Diary. The Respondent did not use to provide any passbook to any of the male employee. Only female employees had been provided the passbook. I am not willing to join my duties with the Respondent at this stage. I alongwith my brother, my younger daughter and my husband used to work with the Respondent. At this time, none of them is working with the Respondent. When my FIR was not got lodged by the police I had complained it with Senior Officer but I cannot recollect who was he. After that police had gone to Respondent for making enquiry. Presently I am residing alongwith my husband and children at H. No. 11, Prem Nagar-III, which is owned by Sh. Lakhan. It is wrong to suggest that I am deposing falsely."

11. The claimant also examined Sh. Baliram Kumar as his witness CW3, who filed his affidavit in evidence duly attested by Oath Commissioner on 16.03.2024 exhibited as Ex.CW3/A, which was tendered on 26.06.2024. He was cross examined by AR of Respondent and in cross examination, he stated as under: -

"I do not have any proof to prove that I was working with Vicky Plastic Factory at the time of incident. I am working somewhere else in other line. I am working in gatta line. I cannot bring any document on record to show that I was working with Vicky Plastic Factory at the time of incident. It is wrong to suggest that I am a planted witness who has come here to depose on the behest of claimant. I am not an eye witness. There was no power in the vicinity including in my factory at the time when the accident had occurred. I heard the noise from outside. On hearing the noise I reached the spot. It is true that I am not the eye witness. I saw the claimant in injured condition, blood was coming out from his right eye and he was unconscious. I did not do anything after the seeing the injured and returned to my work place. I am not the relative of the claimant. I have studied upto 10th. I cannot recollect my date of birth in the marks sheet. I am residing in Prem Nagar area for last 03 years. I have shifted my residence 04 times in Prem Nagar area. I cannot even tell any of the address where I resided. I do not know the address where I am presently residing. I worked in Vicky Plastic Factory for 04 months i.e. September, 2021 to December, 2021. I

cannot tell the address of Vicky Plastic Factory. Vicky Plastic Factory was my first factory where I worked after coming in Delhi. Thereafter I worked in two more factories in which work of gatta was being done. One was owned by Sh. Saurabh and I do not know the owner of other factory. Both the factories are situated in Mundka but I cannot tell even the address of any of the factory. I cannot even inform the mobile no. of Sh. Saurabh with whom I am working now. In previous company I worked from January, 2022 to February, 2023, I do not know address of this company. I do not know the address of the company where the accident of claimant had occurred. The distance between Vicky Plastic Factory and the factory of claimant is about 300-400 meter. I know the claimant prior to joining Vicky Plastic Factory. The residence of claimant was about half kilometer from my residence when I was working with Vicky Plastic Factory. I used to visit the claimant occasionally even before the joining Vicky Plastic Factory. Presently I am residing close to the residence of claimant. Claimant is known to me for last 03 years. It is wrong to suggest that I am deposing falsely."

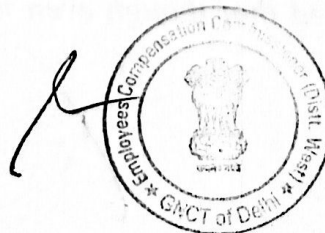
12. Respondent did not lead any evidence in defense and therefore his opportunity was closed on 02.01.2025 and the matter was adjourned for leading arguments.
13. The claimant filed his written arguments, however no arguments were adduced by the Respondent. Thereafter, the proceedings were concluded for orders on 10.03.2025.
14. I have gone through the pleadings, evidence led by the claimant and the arguments and the records available on file and my findings in the case are as under:-

Issue No. (i), (ii), (iii) & (iv): - The claimant has claimed that he was working with Respondent Sh. Ram Sumer but he is not aware of the exact name of his factory as there was no board containing the name of factory affixed on the gate or inside the factory. However, his factory was known as Ram Sumer Brushwala Factory @ Dana Katne Wali Factory. Respondent used to employ about 100 to 125 workers on daily basis but workers were not being providing

any ESI, EPF and or other legal facilities. That he was employed as Helper and was being paid approx ₹13,000/- to ₹15,000/- p.m. on daily production basis. That he alongwith his wife, minor daughter and brother in law was working with Respondent for one year till the date of accident i.e. on 25.11.2021. That he was never provided any ID Proof relating to employment. That on 25.11.2021, the Respondent forced him to work on the Grinder Machine which caused accident as a small piece of iron hit his left eye. The claimant has therefore claimed for due compensation and other relief i.e. interest and penalty as the accident leading to his disablement had occurred in the course out of his employment.

On the other hand, the Respondent has denied the claim stating that the claimant had never worked with him at any point of time and no such alleged accident as claimed had ever occurred in his factory, even he has denied of having installed any grinder in his factory as only sorting/segregation work of old tooth brushes is carried out in his premise. However, he has admitted that wife of claimant used to work in his factory and he had helped her out of sympathy as she was in need of money for treatment of her husband/claimant who had got injury in his eye due to slipping at his residence.

The burden to prove his claim was upon the claimant. He has not placed anything on record that there existed any employee – employer relationship between him and the Respondent. The claimant had filed an application for summoning of records from the Respondent of his employees but the same were not produced and even the application was not replied by the Respondent. The claimant has argued that in such case of failure of producing the of service records, adverse inference shall be drawn against the Respondent. But I am not inclined to accept the argument of the claimant in view of the judgment dated 07.11.2005 of Hon'ble Supreme Court in case titled as "R.M. Yellatti v/s The Asst. Executive Engineer" in which it has been held that: -



"Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore stated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

The adverse inference can also not be drawn in this case as the claimant could not primarily establish that he was in the employment of Respondent as nothing has been placed on record by him to prove the same and my reliance is based upon the judgment dated 05.12.2024 of Hon'ble Madhya Pradesh High Court in W.P.(C) 5844 of 2018 in case titled as "Ashok Singh Tomar v/s The Forest Rang Officer & Ors." wherein the court has observed that ".....Further Labour Court has observed that though even upon directions issued to the department





the record was not submitted, but when the petitioner himself could not primarily establish that he was in employment of the respondent no.1 and 2 no adverse inference can be drawn against the department as the initial burden of proving the facts could not be discharged by the petitioner which could have led the respondent no.1 and 2 to disprove the factum of his employment."

In this case, nothing has been placed on record by the claimant that he was working with the Respondent. His wife, whom the Respondent has admitted as her employee is an interested party and not an independent witness. Further, another witness Sh. Baliram (CW-3) is also not an eye witness or the reliable witness as there are many contradictions in his statement. He had stated in his cross examination that there was no power in the vicinity, then how grinder machine of the Respondent was in operation causing injury to eye of claimant. CW-3 stated that blood was oozing out from right eye of claimant hence as per him, the right eye of the claimant had got injured but actual injury is in left eye of the claimant. The witness does not seem to be as reliable witness as he heard the noise from outside and the factory of claimant was 300-400 meter away from his factory, how it was possible. He stated that he was working with Vicky Plastic but could not even tell the address of his factory. He could not even reveal his present address or the past address where he resided earlier. He could not even tell the address of his other factories where he worked after Vicky Plastic. He could not tell the address of factory of claimant where accident had occurred.

Further, the claimant has claimed that the accident causing injury to him, had occurred on 25.11.2021 and he was taken for treatment at nearby small hospital/clinic in Swarn Park area by the son of Respondent but he could not even tell the name of that hospital or the son of Respondent. Further, no efforts were made by him to summon anyone from that hospital. His wife/witness CW-



2 in her cross examination has stated that son of Respondent had taken the claimant for treatment locally but after two days, when the condition got worse, she took her husband for treatment in AIIMS. As per claim, the accident had occurred on 25.11.2021 and as per record of AIIMS, he got himself registered on 27.12.2021. Further, the document records that "H/o trauma to LE i metal stick 15 days back", which itself does not prove that the injury to claimant had been caused on 25.11.2021. Further, CW-2 had stated in her statement that there were 5 employees working with the Respondent but the claimant has claimed that about 100 – 125 workers were working with the Respondent. Further, the claimant failed to summon any other witness in support of his claim.

Further, the accident of the claimant as claimed had occurred on 25.11.2021 but no police complaint or MLC was got made regarding the accident. The complaint has even been lodged by him only 27.04.2022 i.e. after a period of more than 5 months. CW-2 has stated that when police did not lodge her FIR, she complained it to Sr. Officers but she could not place anything on record to substantiate her statement. Even no efforts were made by the claimant to examine the police official on his said complaint, the reason best known to him. The claimant has claimed that he incurred huge amount on his treatment and even had to sell his agricultural land of ₹ 17 lac for the same but not a single bill except the medical prescription has been placed on record by him.


It is true that such cases filed under the said Act are decided on the preponderance of probabilities and the claimants are not required to prove their cases beyond doubt but it does not mean that the claims of claimants can be allowed merely on basis of conjectures and surmises. The claimant has thus failed to prove the relationship of employee – employer between him and the Respondent and further that any accident leading to any injury as alleged had

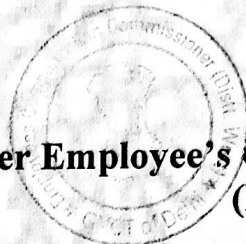




caused to him in the course out of his employment with the Respondent, hence he is not entitled for any relief as claimed and the claim is accordingly dismissed.

Given under my hand and seal of this court on^{21st} day of March 2025.


(S.K. Gupta)
Commissioner Employee's Compensation
(District-West)



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