

**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.ECI/213/NW/17/ 1244.

Dated: 29/11/2021.

IN THE MATTER OF :

Abdul Wahab Shaikh Siddiqui S/o Mohd. Abbass  
R/o Kh-12/21, Gali no. 08,  
Nathu Colony, Nathupura  
Burari, North-Delhi, Delhi – 110084

.....Applicant/Claimant

VERSUS

1. M/s Just Need Retail Pvt. Ltd.  
Kh no. 343, Plot no. 5, Main School Road,  
Village- Mukhmelpur,  
New Delhi – 110036

2. Shri Ram General Insurance Co. Ltd.  
1001, GF Arya Samaj Road,  
Naiwala, Karol Bagh,  
New Delhi 110005

.....Respondents

ORDER

1. By this order, I will dispose of the application of the applicant/claimant seeking injury compensation dated 27.07.2017.
2. In the application, filed by the applicant/claimant, it has been stated that he was employed as a helper on the vehicle bearing no. DL-1LW-5165 (Tata Ace) owned by respondent no. 1. On 15.01.2017 he met with an accident out of and during the course of employment resulting thereby he sustained grievous injuries all over body especially on right hand & shoulder which were rendered dislocated. At about 1:00 PM the vehicle was on its business trip and the applicant was posted as helper. He was employed and posted on the vehicle bearing no. DL-1LW-5165, and when it reached Hiranki Bandh, Thokar no. 24, suddenly an animal –Neelgai emerged just in front of the vehicle and driver Rajender @ Raju, S/o Sh. Anand Mani, who was driving the vehicle turned the vehicle on the left side to avert a crash in the Neelgai. With the turn of the vehicle, front wheel of it went in a pit near the



road and the vehicle got overturned and it had a damage and the applicant sustained grievous injuries. People around thereby came & took the applicant to Trauma Centre LNJP Hospital. The applicant remained admitted there for 19 days and took treatment for long. After this accident the applicant has been disabled and he is not in a position to do any physical work with his body. He has become 100% disabled for the purpose of his employment as a labourer/helper as his body has become disabled to do any physical work to continue his employment.

3. Summons were sent to the respondents. Respondent No. 1 did not come after service of summons as such he was proceeded ex parte on 08/10/2020 by the then Ld. Commissioner. Respondent No. 2 – M/s Shri Ram General Insurance co. Ltd. Responded and filed their written statement.
4. In the written statement filed by the said respondent, it has been stated that the claim application is not maintainable due to non-joinder of necessary parties as the driver of the vehicle has not been impleaded as a party. The liability of the insurance company, if any, would be strictly in accordance with the terms and conditions of the policy. That too in case the Driver of the vehicle was having a valid driving license. The insurance company is not liable for interest and penalty. The facts were denied, however, it was admitted that the vehicle bearing No. DL-1LW-5165 was insured with respondent No. 2 vide policy No. 101047/31/17/014231 for the period 19.11.2016 to 18.11.2017. It was prayed that the applicant is not entitled to compensation and the claim application be dismissed with cost.
5. On 08/10/2020 on the basis of the pleading of the parties and documents available on record the following issues were framed for adjudication:
  - i) Whether employee employer relationship exists between the parties?
  - ii) Whether accident resulting into injury to claimant is caused out of and during the course of employment and if so what amount of injury compensation the claimant is entitled too?
  - iii) Relief, if any?
  - iv) Whether claimant is entitled for penalty u/s 4A of the Act and if so what amount and from whome?



6. The respondent/s was directed to file their response to the show cause notice under Section 4A (3)(b) of the Employee's Compensation Act, 1923 as to why penalty under the said section be not imposed on them.
7. The said respondent filed its response to that effect and they denied to be liable for any penalty. The matter was fixed for evidence of the parties.
8. The applicant claimant filed his evidence by way of his affidavit Ex.AW1/A. He filed documents along with the affidavit - copy of F.I.R., copy of detailed accident report (DAR) prepared by the police authorities of the concerned police station – covering statements of the witnesses. Final report pertaining to the case. Disability certificate of the applicant as to his disablement. Also filed his adhaar card and medical bills. He has tendered his affidavit on 16/02/2021 before this Authority and was also cross examined by the counsel for the respondent No.2. Two witnesses Najni D/o Lt. Md. Abbas Ex.AW3/A and Saurabh Sharma Ex.AW2/A also came and adduced their evidence in support of claimant. Those witnesses were also cross examined by the counsel for respondent No. 2.
9. The matter was fixed for respondents' evidence. No evidence was adduced on behalf of respondent No. 2. The matter was fixed for arguments. The written arguments were filed on behalf of applicant and respondent No. 2. Oral arguments were also addressed.
10. On the pleadings of the parties, evidence adduced therein and arguments addressed, I am giving my findings on the issues framed in the matter as under.

### ISSUE NO. 1 & 2

The case of the applicant is that he was employed as a helper on the vehicle bearing no. DL-1LW-5165 (Tata Ace) owned by respondent no. 1. On 15.01.2017 he met with an accident out of and during the course of employment resulting thereby he sustained grievous injuries all over body especially on right hand & shoulder. At about 1:00 PM when he was on business trip on the vehicle bearing no. DL-1LW-5165, it reached at Hiranki Bandh, Thokar no. 24, suddenly a Neelgai came in front of the vehicle and





driver Rajender @ Raju, S/o Sh. Anand Mani, turned the vehicle on the left side to avert the hit in the animal. When the vehicle took turn, the front wheel of the vehicle fell in a pit near the road and the vehicle got overturned. People around there came & took the applicant to Trauma Centre, LNJH Hospital. The applicant remained admitted there for 19 days and he took treatment for a long time. He filed evidence by way of filing a copy of detailed accident report (DAR). It covered the statement of the person who was driving the vehicle at the time of accident. He has categorically stated that the accident took place while he was driving the vehicle bearing No. DL-1LW-5165 and along with him, the applicant was posted as helper. It has been stated that the applicant sustained grievous injuries. After perusal of the accident report there remains no doubt about the occurrence of accident and injury to the applicant. All the testimonies of the applicant, witnesses and documents filed, I am of the view that the accident did take place and in the said accident the applicant sustained grievous injuries which left permanent disablement in his body. As per certificate for the persons disabilities issued by Aruna Asaf Ali Govt. Hospital, 5 Rajpura Road, Delhi - 110054 vide certificate No 798, claimant becomes 65% physically disabled permanent (physical impairment) in relation to his both upper limbs. Hence I hold that the accident of the applicant has been caused out of and during the course of his employment with respondent No. 1 the owner of the vehicle. Thus the issues No 1 & 2 are decided in favour of the applicant and against the respondents.

### Issue No 3:

In the claim application it has been stated that the applicant was aged 20 years at the time of accident. After occurrence of accident he was immediately taken to hospital in Trauma Centre, I.S.B.T. Matcaf House, in the medical documents his age has been shown that he was 20 years. In his adhaar card his date of birth has been shown 15.09.1996. By this his age comes to 20 years. Hence it is held that the applicant was aged 20 years at the time of his accident. It has been stated that the applicant was drawing wage @ Rs. 10,000/- per month and the same has been averred in the affidavit filed in evidence. But as per the notification issued by Govt. of India pertaining to the wage to be taken under the Act is Rs. 8,000/- per month which was made applicable w.e.f. 31.05.2010. Hence his wage is



taken Rs, 8,000/- per month. The applicant was directed to have him medically examined as to his disablement. He was examined by the Medical Board, Aruna Asif Ali Hospital, Govt. of N.C.T. he has been assessed to have physical disablement to the extent of 65% - showing head injury # clavicle (L) # humerus @ rendering impairment in his both upper limbs. The counsel for applicant has vehemently argued that the applicant was doing the work of helper on a transport vehicle which could be performed by the usage of his physical body. Given the disability and having extensive restrictive use of his body he is no more in a position to do any physical work more so doing cleaner work on motor vehicle which requires lot of labour while doing roping of goods, covering tarpaulin and removing tyres in case of it being punctured which requires promptness in boarding and disboarding the vehicle when it is on its business trip. On the other side the counsel for respondent No. 2 has argued that the hearing impairment which the claimant has shown does not exist. He was hearing and responding hence it is not a case of loss of any earning capacity. The counsel for the applicant has relied on the case law as given by the Hon'ble Supreme Court and High Courts and in bed roll of judgments it is a case of total loss of earning capacity. He has placed his reliance on *Pratap Narain Singh vs. Srinivasa Sabata* cited at 1976 ACJ 141 whereby the Apex Court has held that the workman was no more in a position to take up and do that work which he was doing hence the disablement was assessed 100%. The Ld. Counsel of the claimant has drawn my attention and has placed the judgment of Hon'ble High Court of Delhi in the case titled as *National Insurance Co. vs. Pappu & Anr.*, FAO 289/2004 - Pappu was working as cleaner and in the case partial physical disablement he was held entitled for 100% loss of earning capacity. In another judgment of Hon'ble High Court Andhra Pradesh (per Hon'ble Justice N.V. Ramana) in the case titled as *Rayapati Venkateswara Rao vs. Mantai Sambasiva Rao & Anr.*, cited at II (2001) ACC 300, decided. Hon'ble Mr. Justice N.V. Ramana, in his Judgment held that the applicant was employed as cleaner on the truck and because of his injury on leg due to fracture he would not be able to do cleanery on a transport vehicle/ truck and he was held entitled for 100% loss of earning capacity. In the matter in hand, the applicant has disablement in his upper limbs. He is not able to walk with full confidence of his body would certainly be not able to do the physical work requiring lot physical work with the present state of body hence I hold that this is case of total loss of his earning capacity.





11. In the given wage, age and loss of earning capacity the applicant/claimant is entitled to compensation as under:

- |      |  |   |                  |
|------|--|---|------------------|
| i)   | Relevant factor of 20 years                | : | 224.00           |
| ii)  | 60% of wages @ Rs. 8000/- pm               | : | Rs. 4800/-       |
| iii) | Amount of compensation                     |   |                  |
|      | $\frac{224.00 \times 8000 \times 60}{100}$ | : | Rs. 10,75,200/-- |

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 4:

That as regards to the prayer of the claimant for imposing penalty upon the respondents, the matter is discussed and argued by the parties. After hearing the parties and in view of the facts, it is found that this is a case where the accident has been reported and criminal case has also been registered. Detailed accident report has been prepared, the insurance company is having the notice of accident with the preparation of D.A.R. but they have not taken any step in making the payment of the injury compensation. It seems convincing the version of the respondent that they could not contact the person in whose favour they had issued insurance policy but there is other material such as DAR report and other details about the accident involving the insured vehicle and age, wage of the applicant. The counsel for respondent No. 2 has vehemently argued that as far penalty is concerned the insurance company cannot be made liable as this is the law by the Hon'ble Supreme Court in Ved Parkash Garg vs. Premi Devi – 1998 ACJ 1. While countering this argument the counsel for the applicant has drawn my attention towards the cited case wherein it has been held that the insurance company in that case - United India Insurance Co. Ltd. v. Roop Kanwar & ors - 1991 ACJ 74, a learned Single Judge of the Rajasthan High Court had to consider a situation where on payment of additional premium the insurance company had agreed in the light of endorsement no.16 of the Policy to cover all liabilities incurred by the insured under Workmen's Compensation Act. In view of this contractual coverage of liability the insurance company in that case was held liable to meet the claim of penalty and interest as imposed upon the insured under Section 4A(3) of the Compensation Act. This judgment proceeded on its



own facts and was concerned with a situation converse to the one as was examined by the Karnataka High Court in Oriental Insurance Co. Ltd. v. Raju & Ors. (supra).

- on the payment of additional premium paid to the insurance company under W.C. Act, 1923. The insurance policy was shown the premium paid shows the additional premium paid under W.C. Act. It has been further argued that the Hon'ble High Court while dealing with the issue in some case has held that insurance company to be liable for penalty as well. The instant case is identical to the one cited above and the facts of the case dealt by the Hon'ble High Court cited hereinabove. Hence I am of the view that the insurance company is liable for penalty as well. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the insurance company.

12. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent no. 1 but as the said respondent no. 1 has taken an insurance coverage hence in spirit of indemnifying the insured, the respondent no. 2 i.e. M/s Shri Ram General Insurance Company Ltd. is directed to deposit before this Authority an amount of **Rs. 10,75,200/-- (Rupees Ten Lakhs seventy five thousand two hundred Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 15.02.2017 till its realization and penalty of Rs. 2,68,800/ 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 22 day of November 2021.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

