

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-D/ED/18/2018/1254.

Dated: 03/12/2021.

IN THE MATTER OF :

1. Mrs. Soni W/o Lt. Md. Gulfam
2. Master Farhan S/o Lt. Md. Gulfam
3. Master Arslaan S/o Lt. Md. Gulfam
4. Ms. Sadaf D/o Lt. Md. Gulfam

All resident of:-
E-20, B/112, Shastri Mohalla,
Patparganj, East Delhi,
Delhi - 110091

.....Applicants

Versus

1. M/s S.N Logistics
2. Mr. Ishwar Jangra (Partner M/s S.N Logistics)
3. Mr. Naresh Jangra (Partner M/s S.N Logistics)

Having office at:
Ridhi Arcade, Shop No. 54,
Ground Floor, Plot No. 857,
Sector-KWC, Kalamboli,
Navi Mumbai - 410218

4. M/s Bajaj Allianz Insurance Company
BAGIC, DLF Tower
Moti Nagar,, Delhi

..... Respondents

ORDER

1. By this order, I will dispose of the application dated 26/04/2018 filed on 29/05/2018 before Commissioner Employees Compensation by the claimants for seeking death compensation under Workmen's Compensation Act now Employee's Compensation Act 1923.



2. The claimants Smt. Soni submitted that the deceased workman Md. Gulfam was her husband and was employed with respondent no 1 to 3 (same are 01 respondent) as a driver on last drawn wages Rs. 10,000/- per month. She further submitted that she is the widow of deceased Md. Gulfam and claimant No 2, 3 and 4 are the minor sons and daughter of the deceased. She further submitted that the respondent is a partnership/prop. Concern in the name and style of S.N Logistics. Who is engaged in transport business and is being run by 02 persons namely Ms. Ishwar Jangra and Sh. Naresh Jangra. The said concerned is engaged in transportation business by including ODC (Over dimension cargo) and container handling in various states in India and to fulfil their business operations the said concerns employer drivers. The deceased workman namely Md. Gulfam was recruited as a driver by the said concern under their employment to drive their containers in various States in India at a monthly wages of Rs. 10000/- per month. On 13/10/2017 the deceased workman/employee in the course of his employment with the respondents 1 to 3 was driving the container bearing No MH-46-AR-5077 in the State of Rajasthan. On 13/10/2017 the vehicle in question met with an accident near NH-4, Culvert (Pulia), District Bhilwada, Rajasthan in which the said employee Md. Gulfam sustained fatal injuries resulting in death of the workman on 14/10/2017 while under treatment at SMS Medical College at Jaipur, Rajasthan. The FIR bearing No 0137 dated 15/10/2017 was lodged in Police Station Pur District, Bhilwada, Rajasthan and Post mortem was also conducted on 15/10/2017. After the accident which resulted in death respondents did not pay any compensation to the claimants. In the last claimant has submitted that since death of deceased Md. Gulfam was occurred out of and in the course of his employment with respondents as such respondents are liable to pay compensation as per provision of the Employees Compensation Act, 1923 of Rs. 823800/- along with interest and penalty to the extent of 50% and to pay accumulated salary of Rs. 95000/- to the claimants. Legal demand notice dt. 29/12/2017 was sent to the respondents vide speed posted t. 02/01/2018. The claim is supported by affidavit of Soni w/o Deceased Gulfam.
3. Summons were sent the respondent with direction to appear before this Authority to file reply in the matter. Respondent no 1 to 3 appeared and filed reply on record. Wherein it is submitted that the claimant does not disclose the fact that the deceased has suffered such injuries in a road accident where



he was failed to maintain proper distance with the other vehicle and on the sudden break taken by his fellow driver/rider who was driving some other heavy vehicle which belongs to the same category of vehicle that the deceased was driving and that vehicle was ahead of this vehicle and he had applied emergency break to stop his vehicle and the deceased was driving the vehicle carelessly without maintaining proper distance with other vehicle and that's why the accident was occurred due to negligence of the deceased as he has sustained the fatal injury and also has damaged the vehicle of S.N Logistics very badly. The rest of other contents have been denied in toto. Further submitted that vehicle in question was insured with Bajaj Allianz General Ins. Co. valid from 06/07/2017 to 05/07/2018, hence the insurance company is liable to compensate the claimants. The claimant has concealed this fact in his claim. In the last respondent prayed that claim is deserved for disposal on the facts given above as the accident was occurred due to the negligence of the deceased employee.

4. Insurance company (Resp. 4) also filed reply and denied all the contents of claim application as well as reply of respondent. Though the insurance company has not said anything regarding the coverage of vehicle under the insurance policy, though the management has taken stands that vehicle in question was insured with respondent no 4 on the day of accident under policy No GG-18-1934-1803-00002332 for the period from 06/07/2017 to 05/07/2018 midnight in the favour Sh. Ishwar Omprakash Jhangra at shop No 34, Ridhi Arcade Complex, Panvel, Plot No 857 AWC, Kolabi, Raigarh, 410206. The copy of certificate has been placed on record.
5. Claimant filed rejoinder by which he denied contents of reply filed by respondent and reiterated the contents of her claim application. Show cause notice under section 4A(3) of the Act has been issued on 27/03/2019 to the respondents to show cause as to why the penalty be not imposed upon them.
6. On 29/04/2019 following issues were framed for adjudication:
 1. Whether the claimant Smt. Soni & Ors. Are entitled for death compensation of deceased Gulfam?
 2. Whether the deceased Gulfam has met with an accident during the course of employment?



3. Whether the respondent no 1 or 2 is liable to pay death compensation to the claimant?
 4. Whether the claimant is also entitled for interest and penalty from Respondent no 1 & 2?
 5. Any other relief?
7. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. CW1/N. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. CW1/A to CW1/I. i.e. Aadhar Card & Driving Licence of the deceased, Copy of the Post mortem Report, copy of the FIR, Postal receipt of demand notice dated 08/03/2018 and postal receipts, copies of the returned envelop, tracking report of postal department. Her statement was also recorded on 12/07/2019 and was also cross examined by counsel of respondent no 1 & 2 on 12/07/2019 and 13/03/2020 respectively. Respondent did not lead any evidence as such matter was fixed for arguments on 10/03/2021. The claimant filed written submission on record but other respondent did not file. However on 29/11/2021 counsel for respondent no 1 adduced oral submissions which was heard in detail.
8. On the basis of pleadings of the parties and documents available on record i am giving my findings on the issues framed in the matter as under:

Issue No.1, 2 & 3

The case of claimant is this that her deceased husband Md. Gulfam was employed with respondents as a driver on vehicle bearing No MH-46-AR-5077 on last drawn wages Rs. 10000/-. On 13/10/2017 deceased was driving container No MH-46-AR-5077 in the state of Rajasthan and vehicle in question met with an accident near NH 4 Bhilwada, Rajasthan resulting thereby he received grievous injuries and died on 14/10/2017 during the treatment as SMS College Hospital at Jaipur, Rajasthan. The accident took place out of and in the course of his employment with Respondents No 1 to 3. An FIR bearing No 0137 was registered at PS Pur, Distt. Bhiwada, Jaipur, Rajasthan and post-mortem was also conducted at Jaipur on 15/10/2017 Ex. CW1/C. In reply respondent no 1 to 3 in principal admitted employee employer relationship and accident caused out of and in the course of his



employment of deceased. The main denial point was this that accident was occurred due to the negligence of deceased employee Md. Gulfam, but except statement no documents or enquiry report has been placed on record by respondent no 1 to 3 to show that the accident has occurred due to the negligence of deceased Md Gulfam, as such this contention of the respondent is not considerable. As per statement of the respondent vehicle in question was insured with resp. No 4 vide policy No GG-18-1934-1803-00002332 on the day of accident. Policy certificate has been placed on record by resp. no 1. In reply resp. no 4 has denied the contents of reply in general. To prove the case claimant examined herself Ex. CW1/N and was also cross examined by counsel of resp. no 1 & 2. But during the cross examination nothing has come on record which goes against the claimant. Respondent did not examine any witness. In view of this from the narrated facts as above. It is proved that death of deceased Md. Gulfam was occurred out of and in the course of his employment with respondents as such claimant are entitled for death compensation form the respondents and accordingly respondents are liable to pay death compensation to the claimants. Therefore issue No 1, 2 & 3 are decided in the favour of claimant and against the respondents. In view of this for calculation of compensation age of deceased Md. Gulfam has been taken as 31 years as on his death as per his date of birth 19/04/1986 mentioned in DL No MH0420080024096 and relevant factor 205.95 and 50% of Rs. 8000/- as restricted under notification No SO 1258 issued by Ministry of Labour & Employment on 31/05/2010. Accordingly compensation is calculated as under:

50% of Rs. 8000/- : 4000/-

Relevant factor : 205.95

4000*205.95 : 8,23,800/-

In view of this calculation claimant is entitled to receive Rs. 8,23,800/- as compensation from the respondents jointly and severally. Since vehicle in question was insured with respondent no 4 M/s Bajaj Allianz, on the day of accident of deceased hence respondent no 4 is liable to indemnify to claimants on behalf of respondents.



Issue No 4

As discussed above in issue No 1, 2 & 3 respondents are held liable for payment of compensation to claimants. As per section 3 of the EC Act 1923 being the employer respondent No 1, 2 & 3 were liable to pay compensation as per section 4 of the Act but they failed to discharge their responsibility as such respondents are also liable to pay 12% interest per annum on awarded amount to the claimant. Further as per section 4A(3) of the Act show cause notice was issued to the respondent to show cause as to why penalty be not imposed upon them but none respondents file any response in this regard as such respondents are also liable to pay 25% penalty on awarded amount. Since respondent no 123 has not brought anything on record to show that they have intimated insurance company regarding accident of the deceased within time immediately after the accident as such respondents M/s S.N Logistics is liable to pay 25 % penalty of awarded amount i.e. Rs. 8,23,800/- which comes Rs. 2,05,950/-. Regarding prayer of claimants to issue direction to the opposite party to pay the accumulated salary of Rs. 95,000/- to claimants cannot be considered under the provision of Employees Compensation Act, 1923, hence same is not allowed. If claimant wants to file claim in this regard he may file before appropriate authority.

9. In view of above discussion, I direct respondent no 4 **M/s Bajaj Allianz Ins. Co. Ltd. to deposit Rs. 8,23,800/- as compensation along with 12% interest from the date of accident till its realization** and **M/s S.N Logistics** being the Principal Employer as per section 12(1) of the EC Act, 1923 is directed to **deposit 25% penalty of awarded amount i.e. 2,05,950/- within 30 days** from the date of order by way of Demand draft in favour of "Commissioner Employees Compensation", failing, which same shall be recovered as per provision of the Act.

10. Given under my hand and seal of this Authority on this 05 day of December, 2021.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

