

**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.ECD/121/NW/18/1188.

Dated: 07/10/2021.

In the matter of:

**Mrs. Kanta W/o Lt Balwan Singh**

R/o A-82, Block-A,  
Gulab Bagh, Uttam Nagar,  
D.K Mohan Garden, West Delhi - 110059

.....Claimant

Versus

**1. Sh. Gurvinder Kapoor S/o Kulwant Singh**  
R/o C-73A, Majlish Park,  
Delhi - 110033

**2. M/s Universal Sampo Gen. Ins. Co. Ltd.**  
Plot No EL-94, KLS Tower,  
TTC Industrial Area,  
MIDC Mahape, Navi Mumbai - 400710

.....Respondents

**ORDER**

1. Vide this order, I shall dispose of claim application dated 26/09/2018 filed by claimant for seeking death compensation under section 22 of The Employee's Compensation Act, 1923.
2. The claimant Mrs. Kanta w/o Lt. Balwan Singh submitted that her deceased husband was working as a driver with respondents transport for last more than 10 years and was receiving Rs. 15000/- per month from the respondent. On 25/09/2018, the deceased was driving the vehicle bearing no. HR-55N-8384 which was loaded for B-91A, Mansaram Park, Uttam Nagar, Delhi. On the way of journey an accident had occurred near P.W. Rest House, Gharonda. The deceased Lt. Balwan Singh s/o Risal Singh has stopped his vehicle to help the victim of the said accident and while returning to his vehicle an unknown vehicle, coming in very high speed in rash and negligent manner, had done accident thereby the deceased has got grievous fatal injuries and one driver namely Sh. Raj Kumar had taken the deceased to the Aparna Hospital by three wheeler where the doctor had declared him dead due to injuries sustained by the deceased in the said accident. An FIR bearing no 411/2018 under section 279/304A also registered at PS Gharonda on 25/09/2018 regarding the said accident which resulted into death of



deceased Balwan Singh. It is further contented that respondent, considering the employee employer relationship has paid Rs. 30,000/- through cheque No. 000765 as a compensation to the claimant as legal heir of the deceased and has also promised to pay rest compensation amount after calculation. Despite claimants requests for compensation respondent has avoided same for one or other reasons. Claimant had sent a legal notice dated 27/10/2018 to the respondent on behalf of all claimants but the respondent neither made payment of compensation nor replied the same. In the last claimant prayed that direction to be given to the respondent to pay the death compensation to the claimant since death of deceased employee Balwan Singh had occurred out of and in the course of his employment as such claimants are entitled to receive death compensation under the provisions of Employees Compensation Act 1923. Since respondent was liable to pay compensation within 30 days from the date of accident but respondent failed to do co. As such he is liable to pay interest and 50% penalty beside the compensation. Along with claim on record claimant filed her and her deceased husband's Aadhar Card, Police Information Report 24/06/2018, Post Mortem Report dated 25/06/2018, medical treatment documents, A copy of FIR bearing No 0411/2018, legal notice dated 27/10/2018 and driving licence of deceased employee Balwan Singh.

3. On the basis of claim notice dated 27/11/2018 was sent to the respondent to reply claim on 10/12/2018. On 09/01/2019 respondent filed reply on record wherein it is contented that there was no employee employer relationship between deceased employee Lt. Balwan Singh and respondent claim has been filed on concocted facts and false facts with only view to extort money from the respondent. Respondent has further submitted that deceased Lt. Balwan Singh was operating trucks on (trip basis) depending upon his availability to drive the truck. Further it is submitted that on 25/06/2018 he was assigned the vehicle wilfully and negligently parked the vehicle of the respondent on the road and jay-walking to other side of the road by increasing the peril and was hit by some vehicle resulting into his death. On humanitarian ground respondent had paid Rs. 30,000/- to the claimant widow of the deceased Balwan Singh to meet out expenses of last rites ceremonies. It is further contented that merely because amount was paid after death, claimant with a view to fasten the liability upon respondent has wrongly treated the same as part compensation. It has further submitted that Lt. Balwan Singh was never under regular employment with respondent and was only a casual worker who was called to drive the vehicle depending upon his availability and trip basis. Further resp. submitted that vehicle in question was duly insured with insurance company, hence ins. Company is liable to pay compensation to claimant and on the request of respondent M/s Universal Sompo Gen. Ins. Co. Ltd. has been impleaded as a array of party respondent no 2 in the matter. Further respondent submitted that as per Date of Birth record available with respondent deceased was about 59 years 10 months on the date of his death and was to attain the age of 60 years in the month of August 2018. Rest of other contents of claim petition has





been denied by the respondent and prayed that claim to be dismissed as respondent is not liable to pay any compensation to the claimant.

4. Claimant filed rejoinder by which she denied all the contents of reply of respondent no 1 and reiterated contents of her claim application.
5. Respondent no 2 Ins. Co. has also filed reply wherein employee-employer relationship between claimant and resp. No 1 has been denied as deceased Sh. Balwan Singh S/o Rishal Singh was not the employee of respondent no 1 on vehicle bearing No. HR-55N-8384 (Truck) as such he was not a workman within the provision of Sec 2(1)(n) of the Workmen's Compensation Act, 1923. It is further contended that the said vehicle was neither insured with resp. No 2 nor involved in alleged accident, as such under these circumstances the deceased employee Sh. Balwan Singh was not a workman under Section 2(1)(n) of the WC Act, 1923. Therefore no cause of action arise against respondent no 2. Claimant have wrongly impleaded resp. no 2 in the claim petition. On this ground the application of the applicant is liable to be dismissed with heavy cost. The claimant has filed this claim with malafied intention and to grab compensation by misusing the provision of the Act. As such resp. no 2 is not liable to indemnify any loss to insure or to pay compensation to claimant since the vehicle in question was not insured with them at the time of incident. Further respondent no 2 submitted that claimant has not filed any documentary evidence in respect of his employment with respondent no 1. In the last resp. no 2 prayed that claim to be dismissed accordingly.
6. On 17/10/2019 following issues were framed for adjudication by the then Ld. Commissioner:
  - 1) Whether employer-employee relationship has been existed between the resp. and the deceased Sh. Balwan Singh?
  - 2) And if so whether accident resulting into death occurred in the course out of employment with the resp. no 1?
  - 3) And if so to what amount of compensation the claimant is entitled, any other relief?
  - 4) Whether respondents are liable for penalty under section 4A and if so to what extent and to what amount?
7. During the proceeding on 13/12/2019 before the then Ld. Commissioner resp. no 2 had confirmed that vehicle in question was insured with them on the day of accident and the averment made in the WS/reply that vehicle in question was not insured on the day of accident has been wrongly mentioned inadvertently. On the basis of this claimant has not filed rejoinder.
8. Matter was fixed for the evidence of the claimant. On 13/12/2019 claimant filed her statement/evidence by way of affidavit Ex. CW1/A, copy was provided to the resp's. Claimant Smt. Kanta has tendered her affidavit on 14/02/2020 before the



Commissioner Employees Compensation. She was also cross examined by counsel for resp. No 1 & 2.

9. For resp. no 1 Sh. Gurvinder Kapoor s/o Lt. Sardar Kulwant Singh, filed his evidence/statement by way of affidavit Ex. RW1/1. He has also tendered an affidavit on 22/03/2021 and was cross examined by counsel for claimant.
10. Claimant filed written submission on record. Respondent no 2 also filed written submission on record alongwith citation of Hon'ble Supreme Court titled as General Manager BES vs Mrs. Agnes dated 10/05/1963, 1964AIR193, 1964SCR(3)930.
11. On 15/09/2021 oral submission adduced by both the parties have heard in detail.
12. I have considered all the pleadings of the parties, documents available on record and evidence adduced by the parties and accordingly I am giving my findings on the issues framed in the matter as under:

**Issue No. 1**

The case of claimant is this that his deceased husband Balwan Singh was employed as a driver with respondent's transport for last 10 years on last drawn wages of Rs. 15,000/- as per claim on 25/06/2018 deceased was driving the vehicle bearing No HR-55N-8384 which was loaded for B91/K, Mansaram Park Uttam Nagar and on journey. On the way of said journey an accident had occurred near PW Rest House, Gharonda and the deceased has stopped his vehicle to help the victim of the said accident and while returning to his vehicle an unknown vehicle, coming in very high speed in rash and negligent manner had done accident whereas the deceased has got grievous fatal injuries and when one driver namely Raj Kumar had taken the deceased to Aparna Hospital by three wheeler the doctor had declared brought dead. Further claimant stated that considering the employee-employer relationship respondent has paid Rs. 30,000/- through cheque No. 000765 as a compensation to claimant as the legal heir of the deceased. In reply respondent had denied relationship of employee-employer and stated that deceased employee Sh. Balwan Singh was operating trucks on trip basis. Depending upon his availability to drive the truck. On 25/06/2018, he was assigned the vehicle wilfully and negligently parked the vehicle of the respondent on the road and jay walking to other side of the road by increasing the peril and was hit by some vehicle resulting into his death and on humanitarian ground respondent had paid Rs. 30,000/- to the widow of deceased Balwan Singh to meet out last ritual expenses. Further it is stated that deceased Balwan Singh was never under regular employment with respondent and was only casual worker who was called to drive the vehicle depending upon his availability on trip basis. Vehicle in question was insured with respondent no 2 as such liability for payment of compensation is on resp. No 2. As per submission of respondent that deceased Balwan Singh was not a regular employee but was a casual worker on the day of





accident casual worker who was called to drive the vehicle depending upon his availability.

As per section 2(dd) of the EC, Act, 1923 employee has been defined as under:-

*"\*[(dd) "employee" means a person, who is—*

*(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or*

*(ii) (a) a master, seaman or other members of the crew of a ship,  
(b) a captain or other member of the crew of an aircraft,  
(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,  
(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or*

*(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;]"*

As per section 2(dd) schedule II (XXV) and (XXVI) driver has been defined as a employee. Further deceased employee was in the course of his employment with respondent on the day of accident and respondent had paid Rs. 30,000/- to the widow of the deceased Balwan Singh as such deceased Balwan Singh was the employee and accordingly issue No 1 is decided in favor of claimant and against the respondent.

### **Issue No 2**

As per statement of claimant on the day of accident i.e. 25/06/2018 deceased was on his duty as a driver on vehicle bearing No HR-55N-8384. On 25/06/2018 on the way of his journey an accident had occurred near PW Rest house, Gharonda of unknown person, deceased Balwan Singh stopped his vehicle on the road and had gone to other side of the road to help the victim and on returning to his vehicle unknown vehicle coming in very high speed in rash and negligent manner had hit him and he got grievous and fatal injuries and on reaching hospital doctor declared brought dead. The respondent has also taken same stand in his reply. As per section 3 of the EC Act, 1923 employer's "liability for compensation comes only if personal injury is caused to an employee by accident arising out of and in the



course of his employment. Only then his employer is liable to pay compensation in accordance with the provision of the Act", In this case deceased has left his vehicle for moving other side of the road to help victims of unknown person who met as accident was not in the part of duty of the deceased Balwan Singh. He added peril only then he met an accident at own will, as such accident of deceased Balwan Singh cannot be terms as accident caused arising out of and in the course of his employment as such employer u/s 3 of the Act is not liable to pay compensation to the claimant being the widow of the deceased Balwan Singh, though the vehicle in question was insured with respondent no 2. In these circumstances the respondents cannot be fastened <sup>with</sup> any liability for payment of compensation to claimant. As such issue no 2 is decided against the claimant.

### Issue No 3 & 4

In view of detailed discussion made in issue no. 2, accordingly issue No. 3 & 4 are not required for any answer. In view of this claimant is not entitled for any relief.

13. Given under my hand and seal of this Authority on this 27 day of October, 2021.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

