

**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.13/WC/DLC/NDD/2017 / 513.

Dated: 18/06/2021.

In the matter of:

Sh. Shyam Sunder, S/o Sh. Ganda Lal,  
R/o Village Dharampur, Post Patara,  
P.S. Ghatampur, District Kanpur Nagar,  
Uttar Pradesh - 209206

.....Claimant

Versus

1. M/s The New India Assurance Company Ltd.,  
5<sup>th</sup> Floor, Jeevan Bharti Building  
Connaught Place, New Delhi - 110001

**At present at:**

10th Floor, Core-I, Scope Minar,  
Laxmi Nagar, District Centre,  
Delhi - 110092

2. Sh. Nitesh Sachan, S/o Sh. R.C. Sachan,  
R/o Village Ashok Nagar, Post Patara,  
P.S. Ghatampur, District Kanpur Nagar,  
Uttar Pradesh - 208001

.....Respondents

**ORDER**

1. Vide this order, I shall dispose of the application dated 09.06.2017 filed on 13.06.2017 for seeking injury compensation under section 22 of The Employee's Compensation Act, 1923.
2. The case of the applicant/claimant is that he was employed as a driver with Respondent No. 2 for about 4 years and he was posted for the last 1 year on the vehicle bearing no. UP-78-AT-8910-Truck. On 27.01.2007, he met with an accident arisen out of and during the course of employment and received grievous multiple injuries on his both legs. The claimant had got loaded dumper with stones aggregate ('Gitti') from Kabarai and proceeded to Lucknow where the truck was got unloaded. At about 04:00 - 05:00 A.M in the morning on 27.01.2007, when the unloaded truck was coming from Gomti Nagar, Lucknow, the vehicle met with an accident at Alam Nagar, Nahar Chowraha-Lucknow. An over-speeding vehicle came from Kanpur side and that vehicle which was on the



wrong side of the road hit the claimant's truck on the driver's side twice. Due to the hit the claimant Shyam Sundar was trapped in his damaged truck and grievously injured and he had to be dragged out with the help of police. He was taken to Hospital where seeing the the seriousness of his injury he was not found able to have his statement recorded and to lodge an FIR/Enquiry or lodge a complaint with the police. Hospitalization - Initially he was taken to Trauma Centre-Lucknow where he remained admitted for 3 days and his fractured limbs were plastered. Thereafter he was taken to Ashirwad Hospital-Kanpur where again he remained admitted for another 3 days. He incurred expenses during his stay of treatment. After that he was taken to Chandrabhal Hospital-Kanpur. He was operated and he remained there as an indoor patient for 10 days and incurred expenses during his stay in the hospital. He underwent subsequent operation at P.P.M. Hospital-Kanpur by being admitted for 15 days, he incurred expenses during his hospital stay. The treatment was followed up with further operation at Chandrabhal Hospital-Kanpur and there he admitted for 14 days. He has further stated that he had to sell out his 1.5 bighas agricultural land in order to pay for the heavy expenses incurred during the course of his on-going treatment for the grievous injuries sustained during the accident. Post hospitalization - he states that after this accident the applicant/claimant has become physically crippled and is not in a position to do any work of his occupational work and has become 100% disabled for the purpose of his employment as a driver as he has been rendered incapable of driving a vehicle due to injury. His earning capacity has been totally depleted. The vehicle (bearing No. UP-78-AT-8910-Truck) was owned by the Respondent No. 2 at the time of the accident and it was insured with the Respondent no. 1 i.e. M/s New India Assurance Company Ltd., and an extra premium was charged under E.C. Act by the respondent no. 1 from respondent no. 2. The applicant was drawing wages @ Rs. 5000/- per month as per minimum wages and food allowance Rs. 300/- per day and he was aged about 38 years at the time of his accident. The Respondent No.2 is having the notice of the accident since the day of its occurrence and it has been made known to the applicant that the Insurance Company had been informed immediately after the accident took place but despite this respondents did not pay injury compensation to the claimant. In the last claimant prayed that direction to be given to the respondents jointly or severally to pay injury compensation to the extent of 100% disability as per provision of the Act alongwith 12% interest per annum from the date of accident till its realization and penalty to the extent of 50% under the Act.

3. The summons were sent to the respondents with the direction to appear and to file written statements/documents, if any in their defence.
4. The respondent No. 2 - who is stated to be employer and also the owner of the vehicle has filed his written statement. In his written statement he has stated that on 27.01.2007, the vehicle met with an accident. At the time of the accident the applicant was driving the vehicle. In the accident, the applicant sustained injuries and the vehicle was damaged. The vehicle damage claim was applied in the office of respondent/Insurance Company. The insurance company got the investigation conducted and after





investigation, the claim was paid by the insurance company to him. The said respondent has further stated that the insurance company was supplied with all the information which they required for processing the claim of the applicant. The delay has been caused at their end. The vehicle was fully insured and there was nothing with the insurance company to delay the claim of the applicant. He has further stated that the claim application of the applicant be dismissed qua respondent No. 2.

5. The respondent No. 1 – also filed their written statement. In the written statement filed by them they have raised the objection of limitation and jurisdiction. On facts, the averments made in the claim application were denied by the said respondent. However, it was admitted that the vehicle was insured with them vide policy No 4222003108010000147 valid from 01.06.2008 till 31.05.2009 in the name of Sh. Nitesh Saksham residence of Kanpur Uttar Pradesh. On the basis of denial of claim it is submitted by respondent no 1 that applicant is not entitled for any relief and the claim is deserved for dismissal.

The issue of limitation was framed as a preliminary issue.

Limitation issue

The request of the counsel for framing limitation issue as a preliminary issue was accepted and by invoking Rule 29 of the Workmen's Compensation Rules, a preliminary issue of limitation was framed. The arguments were heard and a detailed order stating reasons has been passed by which my predecessor had condoned the delay by his order dated 02.09.2019. I do not find that I need go and see the merit of the order passed by the learned commissioner/predecessor. Hence that issue is closed and I do not find it necessary to assume authority to pass an order by exercising power to exercise a review of that order.

Thereafter on the basis of pleadings of the parties and documents available on record the then Ld. Authority had framed following issues on 08.03.2018 for adjudication:

1. Whether this court has territorial jurisdiction to entrain and decide the case?
2. Whether the claimant was employed with the respondent No 2 at the time of accident?
3. Whether the accident arose during the course of employment?
4. Whether the insurance coverage was coverable in respect of vehicle under the under met an accident on 27.01.2007?
5. Whether the claimant is entitled to injury compensation and if so from whom?
6. Whether the applicant is also entitled to penalty and if so from whom?
7. Whether the accident was caused resulting into injury to the claimant out of and during the course of his employment with respondent No. 1?



For the purpose of territorial jurisdiction the applicant has stated that there is a law by judicial pronouncement by the Hon'ble Supreme Court whereby it has been ruled that the insurance companies have their business offices and where they have the one there is no prejudice to them. He has placed reliance on the Judgment passed by the Hon'ble Supreme Court of India and also the Hon'ble High Court of Allahabad and Hon'ble High Court of Rajasthan.

Malati Sardar vs. National Insurance Co. Ltd., cited at 2016 (1) T.A.C. (SC).

National Insurance Company Ltd. vs. Smt. Seema Devi & Ors. – First Appeal From Order Defective No. 459/2020 (Allahabad High Court).

United India Insurance Company Ltd. vs. Narendra Kaur ( Rajasthan High Court)

Oriental Insurance Co. Ltd. Versus Kusha Dalabehera, cited as Orissa (182) (ACJ 2003).

Naresh vs. Jawahar Singh – L.P.A No. 80/2009 – Delhi H.C. - D.B. I

The Hon'ble Apex court in its Judgment in Malati (supra) has held if there is no prejudice, the objection of territorial jurisdiction is not available. In the said judgment, the Hon'ble Apex Court has held that in vehicular accident the vehicle being insured, the insurance company steps into the shoes of the owner of the vehicle. The insurance company has its business offices. They would suffer no prejudice in case the matter is enquired in Delhi.

The Hon'ble High Court of Allahabad in National Insurance Co. Ltd. vs. Smt. Seema Devi and ors. In F.A.O. 459/2020 did not see any different position under the Employee's Compensation Act and while following the said judgment in re. Malati Sardar (Supra) the objection of territorial jurisdiction was held to be taken by the insurance company sans prejudice.

In addition to the above, the Hon'ble High Court in : Naresh vs. Jawahar Singh – L.P.A No. 80/2009 - Hon'ble High Court of Delhi – Division Bench I –(D.B. I) held that the issue of territorial jurisdiction does not go to the root of the matter and while following law by the Hon'ble Supreme Court in Hira Lal Patni - it has been held as has been stated above that the issue of territorial jurisdiction does not go to the root of the matter. The Hon'ble D.B. held that the objection of territorial jurisdiction does not go to the root and it was rejected and the order of the single bench rejecting the claim application on the objection of territorial jurisdiction was reversed.

The Hon'ble Supreme Court also in Morgina Begum has held that the migrant labourers have to move from one place to another for the purpose to earn their livelihood and they have to frequently change their habitation from one place to another as per the need of their work prospects – by amending the Act in 1995 a provision was brought wherein the application could be filed where the claimant resides. If it is at a place where the claimant resides it is certainly keeping in view the convenience of the accident victim or the bereaved family. The employer with whom he had worked to earn his livelihood would certainly be in a better position to defend the claim. It can be either at the permanent place of the claimant or a temporary one where he has opted as a place of his





convenience. There is employer has to show that he is gravely prejudiced while defending the claim application and more severely than the one at the residence of the claimant. A notice under section 21(1) has already been sent to the commissioner. In view of the above discussions, I do not find any justification in not following the Judgment of the Hon'ble Supreme Court and the Hon'ble High Court as above. Hence the objection of the insurance company raising about the territorial jurisdiction carries no weight. Hence the said objection is rejected. The said issue is decided in favour of the applicant and against the respondent/s.

Given the above discussions as no prejudice can be caused to the insurance company which has its business offices in Delhi, the objection of the territorial jurisdiction of the insurance company is rejected. The said issue is decided in favour of the applicant and against the respondents.

## ISSUE NO. 2

The evidences were adduced on behalf of the applicant and the applicant filed his own affidavit exbt. AW1/A and filed the following documents: - Copy of Police Complaint about the accident exhibited as AW-1/1., Copy of Disability Certificate exhibited as AW-1/2. Copy of Medical Treatment Documents exhibited as AW-1/3 (colly). Copy of Insurance Cover Note of the vehicle exhibited as AW-1/4. Copy of Certificate of Registration of the vehicle is exhibited as AW-1/5. Copy of Goods Carriage Permit of the vehicle exhibited as AW-1/6. copy of Driving Licence of Sh. Shyam Sunder exhibited as AW-1/7. Copy of Aadhar Card of Sh. Shyam Sunder exhibited as AW-1/8. Copy of Election Identity Card of Sh. Shyam Sunder exhibited as AW-1/9. Copy of Ration Card is exhibited as AW-1/10.

The applicant/claimant also adduced one witness namely Sh. Vijay Shankar, who has filed his affidavit before this authority and the said witness was also cross examined by counsel for respondents.

That all the documents placed by the claimant and testimony of him as also that of the witness is sufficient to prove the factum of employment and accident.

The stand taken by respondent No. 2, stating that he had been paid O.D. Claims for the accident also confirms the occurrence of accident out of and during the course of employment. The respondent/insurance company has not filed investigation report for the reason best known to them. This be so the factum of employment injury is proved and the burden of applicant/claimant is discharged by that stand. Thereafter the dispute remains between respondent no. 2 and respondent no. 1. Respondent No. 1 - the insurance has admitted the vehicle was insured by them. The vehicle being insured they are liable to pay. Had there been anything contrary they ought to have brought it by way of counter evidence. It has been argued by the learned counsel for the applicant that as per the Insurance Regulatory and Development Authority (Protection of Policy holders'



Interests) Regulation, 2002 the Insurance Company is duty bound to have every claim investigated by the Surveyor approved by IRDA.

The learned counsel for the insurance has argued that there is no F.I.R. and M.L.C. The learned counsel for the applicant vehemently argued that for work injury compensation police report, F.I.R. and D.D., M.L.C are not necessary and the entitlement is not contingent on the registration of police case. In this regard he relies on the judgment of Delhi High Court in a case titled as Shriram General Insurance Company Ltd. Vs. Babu & Anr., FAO 361/2013. The relevant portion of the judgment is reproduced as under:-

*"8. So far as the first argument that there has to be a DD entry with the police and a MLC report, the argument is totally misconceived because this is not a medico legal case nor is the case where a police enquiry is required. The simple case is that while affixing the jack to wheel out the punctured tyre, all of a sudden the jack got de-affixed and as a result of which the vehicle fell down and respondent no. 1 suffered injuries on his legs and also suffered a crack in his backbone. In such circumstances, it is absurd for an Insurance Company to argue that there has to be a medico legal case and a report must be registered with the police. After all, in such a case the complaint with the police will be filed against whom inasmuch as it is not the case that a person has deliberately shifted the jack. This argument is therefore rejected. "*

From the perusal of the above, the stand of respondent No. 2 – owner of the vehicle in his written statement and evidence has categorical taken a stand that the accident had been caused and in that accident the vehicle was damaged and the applicant who was posted as driver sustained injury. The insurance company was informed immediately after the accident. The insurance company conducted the investigation. After investigation, vehicle damage (O.D. Claim) was paid to him. It has been stated that the information regarding the injuries to the applicant were given to the insurance company and furnished all requisite details. In view of that it is proved that the applicant/claimant was an employee of the respondent No. 2 and he received injuries during and out of the course of employment in an accident. The said issue is decided in favour of the claimant and against the respondent/s.

### **ISSUE NO. 3 AND 4**

In the claim application, the claimant has stated that he was drawing wages @ Rs.5,000/- P.M. plus Rs. 300/- per day as food allowances. Respondent No. 2, the owner of the truck has said in his written statement that the applicant was being paid Rs. 3,000/- per plus Rs. 100/- per day as food allowance – (totalling to Rs. 6,000/- per month). The minimum rates of wages at the time of accident were Rs. 3736/- for skilled





worker. Hence his wage is taken Rs. 3736/- per month. In the claim application, he has been further stated that he was 38 years old at the time of accident. He has filed his I.D. Card. As per that his date of birth is shown 01.01.1969 thereby on the day of accident he was 38 years. Hence age is taken 38 years. He was got himself physically examined and Medical Board had assessed him and his disability has been shown 70% by medical board. In his medical Disability Certificate, his injury has been shown non-union of (Rt.) thigh. The documents and the Medical Certificate show that the claimant may not be able to do any physical work of the nature. In this regard, the question as to reduction in earning capacity was argued by the both parties. Ld. Counsel for the claimant argued that the as the workman was working as driver which he was doing to prior this accident, hence this is a case of 100% loss of earning capacity. Similarly the Hon'ble High Court of Delhi in – National Insurance Co. Ltd. v. Shri Ranjit Singh @ Rana – 2009 SCC Online Del. 3826 has held:-

*" 15. In the impugned order Commissioner observed:*

*" As after the operation of his right leg he is not in a position to drive any vehicle what so ever.. Although the disability has been assessed as 15% only but keeping in view the nature of profession of claimant it is clear that after this disability the claimant shall not be in a position to perform/drive a heavy duty vehicle like truck/bus etc. Hence, in this case the loss of earning capacity becomes total for which disablement for the purpose of compensation is taken as 100%."*

*16. Disability certificate in the present case clearly states that condition of disability is non progressive. After operation of respondent No. 1's right leg, he is not in a position to drive any vehicle ever again. Since he was a driver by profession, his earning capacity has been lost. He is incapable of earning bread for his family with regard to the nature of his job. The disability has been correctly assessed as 100% since it will lead to 100% loss in the earning capacity of respondent No. 1 as a driver."*

The learned counsel for the applicant has further relied on the judgment of the Hon'ble Delhi High Court in F.A.O. No. 498/2016 passed on 19.04.2017. The operative part of the Judgment is reproduced as under:-

*" 5. Learned counsel for the appellant argues that admittedly the appellant was a driver and though the disability as per the medical certificate is 23%, the disability is such that on account of fracture of the two bones in the left lower limb, there is such a permanent disability as regards the profession of the appellant as a driver and that in fact appellant will not get the driving license on account of this disability and hence he can no longer carry out his profession of a driver."*

He has further relied on the judgment passed by the Hon'ble Andhra High Court in Rayapati Venkateswara Rao vs. Mantai Sambasiva Rao – II (2001) ACC 300 - Hon'ble Justice N.V. RAMANA, J has held that 20-25% physical disablement rendered the applicant 100% loss in earning capacity. The operative para of the judgment is reproduced as under:-



"10. ....

According to the medical evidence, the applicant cannot perform his duties as a cleaner as he was performing prior to the accident and he has to use a stick to walk. So it is clear from the evidence and findings of the learned Commissioner that the appellant cannot perform his duties as cleaner as he was performing on the day of accident and as per the settled legal position as extracted above, it has to be held that when once the workman was incapacitated and unable to perform his duties what he was performing on the day of accident, even though the physical disability sustained is 20 to 25 he loses his earning capacity by 100%.

1. So following the decisions cited supra and in view of the fact that the applicant cannot perform the same duties as he was performing on the date of accident, I am inclined to hold that the applicant lost his 100% earning capacity and he is entitled for 100% compensation."

The claimant gave his evidence and he remained physically present and his condition does not render him capable to drive a vehicle. He unable to walk, sit on his heels, thus he cannot mount on the transport vehicle. The situation of the claimant and the facts are covered by that one and more recently the Hon'ble High Court of Delhi in a judgment in New India Assurance Co. Ltd. Vs. Mohd. Ajmer – FAO 259 of 2013 whereby it has been ruled that a driver with injury in his leg having disablement to the extent of lesser is certainly a case of 100% loss of earning capacity. He is not able to move freely and he finds difficulty in squatting, he cannot use his leg for pressing brakes and accelerator etc. He cannot even stepped up to enter driver's seat. This is because of the reason that he is no more capable to drive a transport vehicle. Hence I hold that the loss of earning capacity is total and the claimant is entitled to compensation accordingly.

#### ISSUE NO. 5, 6 AND 7

As the claimant has stated that he was drawing last drawn wages Rs. 5000/- per month plus Rs. 300/- per day food allowance but no documentary evidence has been placed on record as such Minimum Wages Rs. 3736/- for skilled category prevailing at that time of accident of claimant has been taken for calculation of compensation.

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

i)	Relevant factor of 38 years	:	189.56
ii)	60% of wages @ Rs. 3736/- pm	:	Rs. 2242/-
iii)	Amount of compensation		
	<b>189.56 X 2242</b>	:	<b>Rs. 4,24,994/-</b>

6. The claimant is also entitled to interest as per Section 4A ( 3 ) ( a ) of the 'Act' @ 12% per annum from 30 days after the accident as the respondents failed to deposit injury compensation as per section 4A of the Act.

7. The claimant is entitled to receive injury compensation from respondent no. 2 but as the said respondent no. 2 has taken an insurance coverage hence in sprit of indemnifying the





insured, the respondent no. 2 i.e. M/s The New India Assurance Com. Ltd. is directed to deposit before this Authority an amount of **Rs. 4,24,994/- (Rupees Four Lakh Twenty Four Thousand Nine Hundred Ninety Four Only)** on account of compensation payable to the claimant along with interest @ 12% p.a. w.e.f. 26.01.2007 till its realization.

8. A show cause notice was issued to the respondents calling them to show reason and explain as to why penalty to the extent of 50% be not imposed on them. Respondent No. 2 has responded stating that their vehicle was insured and they had informed the insurance company with all requirement. Apart from that the insurance had paid them O.P. Claim but detailed the claimant's injury compensation, as the insurance company has delayed it, the penalty should be imposed against respondent insurance company. The insurance company explained that it was the duty of the respondent No. 2. Keeping in view the version of both the respondents, I see that the accident took place on 27.01.2007 and today we are in 2021. Nothing has been paid to him so far. He has stated that after the accident he is without any source of income. He has become unqualified and unauthorised to drive a vehicle. The owner has taken his vehicle damage claim but he showed lesser diligence in persuading the insurance company by furnishing all details and enhanced the miseries of the crippled workman. He graduates his tread with the help of crutches. Keeping that in view, I feel this is a fit case for imposition of penalty. I am of the view that a penalty to the extent of 50% is imposed against respondent No. 2 as nothing has shown by them whereby it could be seen justified as efforts were not sufficiently made by the owner of the truck in facilitating the compensation to the claimant.
9. The Respondent No. 1 is directed to deposit the amount of compensation of **Rs. 4,24,994/- (Rupees Four Lakh Twenty Four Thousand Nine Hundred Ninety Four Only)** along with interest @ 12% p.a. w.e.f. 26.01.2007 till its realization and respondent No.2 is directed to deposit the penalty amount to the tune of **Rs. 2,12,497/- (Rupees Two Lakh Twelve Thousand Four Hundred Ninety Seven Only)** by way of pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of the order before this Authority.

10. Given under my hand and seal of this Authority on this 18<sup>th</sup> day of June, 2021.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

