

BEFORE SH. K.M. SINGH, COMMISSIONER
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)
DISTRICT EAST

VISHWAKARMA NAGAR, JHILMIL COLONY, SHAHDARA, DELHI-110032.

Case No. CEC/ED/D/29/2018/8009-8011

Dated: 10/2/2021.

In the matter of:-

Smt. Farzana W/o Late Muzammil Chaudhary & Ors.
271, Khureji Khas, Krishan Nagar, Delhi.

.....Petitioners

VERSUS

1. Sh. Bal Krishan S/o Sh. Sher Singh
H. No-180, Gali No-1, Garg Colony, Sec-22,
Faridabad, Haryana.
2. M/s Sriram General Insurance Co. Ltd.
506-507, 5th Floor, Pragati Deep Building,
Laxmi Nagar, Delhi-110092.

.....Respondent/s

ORDER

1. Vide this order, I shall dispose off the death claim application of Smt. Farzana W/o Late Muzzammil Chaudhary filed by the above claimant under the provisions of Employees Compensation Act, 1923 (hereinafter referred to as an Act) seeking death compensation. It has been stated by the claimant that her deceased husband Late Muzzammil Chaudhary was working as a Driver with the Respondent No-1 on Bus bearing no- UP-75M-0001 (Ashok Layland). On 16.04.2018, when the deceased was driving the vehicle in question, he met with road accident at about 5:00 AM on Yamuna Expressway, Near Zirakpur, PS-Tapple, Aligarh, U.P. due to sudden brake by an unknown tractor without any signal. Due to the accident, the deceased received grievous injuries resulting into death. The police case was also got registered in PS- Tapple vide FIR No-325 dated 16.04.2018. The post mortem was also conducted vide PM No-436/2018. At the time of the accident, the deceased was 43 years old and was getting

Page 1 of 6



Rs.16,000/- per month. The claimant has stated that the bus bearing No. UP-75M-0001 (Ashok Layland) is owned and registered in the name of Respondent No.1 and is insured by Insurance Policy No. 101040131/18/004845 valid from 31.08.17 to 30.08.2018. The claimant has sent legal notice dated 04.06.2018 through registered post dated 05.06.2018 to the respondent No.1 for payment of death compensation but they neither paid any compensation nor replied the notice. In the end, the claimant has prayed that the necessary directions to be passed in the matter directing the respondent to pay the compensation to him alongwith interest and 50% penalty.

2. That the summons was served upon the respondents to appear and file reply in their defense. The respondent no-2 appeared and filed reply wherein they have stated that the claim is not maintainable as there was no employer-employee relationship between claimant and Respondent-1 and the death did not arise out of and in the course of employment. They further submitted that as per the Act, it is mandatory duty of the insured to furnish the particulars of the policy, date, time and place of the accident particulars of the injured/ deceased, but the respondent no-1 has not complied with the statutory demands.
3. Notices were sent to Respondent No.1 but neither any one appeared nor any reply was received on behalf of Respondent No.1. The counsel for claimant has moved an application dated 02.01.2019 for service of summon to the respondent no-1 through publication in newspaper for addresses of Respondent No.1. The request was allowed and the publication of summon in newspaper Veer Arjun (Local UP) was approved and notice through publication was done at their addresses i.e.
(1) H.No. 180, Gali No.1, Garg Colony, Sector-22, Faridabad, Haryana
(2) 16/1, Gali No.1, Geeta Colony, Delhi. But even after service of summons through publication in local newspaper, the respondent no-1 did



not appear in the proceedings; therefore, having no alternative left, Respondent No.1 was proceeded Ex-parte on 18.04.2019. It was revealed during the proceedings that the summons u/s 4 A (3) of the Act for Interest and penalty had not been issued and it was decided to issue separate show cause notices to the parties for filing reply. Thereafter, the matter was fixed for claimant's evidence.

4. That claimant Smt. Farzana has filed her evidence by way of affidavit dated 02.05.2019 which is exhibited as CW-1/A alongwith documents which are exhibited as CW-1/1 to CW-1/16 which was tendered by her on 30.07.2019. She was cross examined by the counsel for Respondent No-2 on 05.02.2020. During the cross of claimant, nothing adverse has come out against her. The claimant side filed written arguments in the matter which are taken on record. The counsel for Respondent No-2 submitted that they do not want to lead any evidence and requested to close the evidence stage of the respondents. Accordingly, on the request of Respondent No.2, the evidence stage was closed and oral arguments were heard from both the parties and after that the matter was reserved for orders.
5. That on perusal/ examination of documents placed on records, evidences by way of affidavit, arguments in this case, the respondent no-1 failed to appear despite of service of summons through Publication. It has been mentioned in the FIR No.0325/2018, P.S. Tappal Aligar that Sh. Muzammil S/o Sh. Mumtiyaz Chaudhary, bus driver of Bus No. UP-75M-0001 (Ashok Layland) got expired in the accident with a tractor and in absence of appearance of Respondent No.1, and inference is drawn that the bus driver driving the bus No. UP-75M-0001 (Ashok Layland) was in employment of Respondent No.1. Therefore, this authority is of the considered opinion that there exists some employer-employee relationship between the respondent no-1 and the deceased on the day of accident and



accordingly, the deceased has died during and in the course of his employment while performing his duties for the respondent No.1. The other important point of discussion is the coverage of insurance on the date of accident. Though the Insurance Company has not said anything about coverage of insurance of vehicle in question but from records (Exh. CW1/5 i.e. certificate-cum policy schedule issued by M/s Ram General Insurance Ltd.) shows that the vehicle was insured on the day of accident with M/s Sriram General Insurance Co. Ltd. Vide policy no- 101040/31/18/004845 for the period from 31.08.2017 to 30.08.2018 and an additional premium was charged by the Insurance Company under the Act for coverage of paid drivers. Accordingly, since, the vehicle in question was covered under the insurance policy on the day of accident and accordingly, the Respondent No-2 is liable to indemnify the Respondent No-1. As far as plea of Respondent No-2 is concerned that the Respondent No-1 has not informed them about the accident well in time, in this regard, this authority is of the view that since the Employees Compensation Act, 1923 is a social legislature which provides financial support to the families of the injured/deceased, therefore, in the interest of justice, the Respondent No-2 shall release the payment of compensation to the to the dependents of the deceased and if any recovery arise, they will have the liberty to recover the same from the Respondent No-1.

6. That the date of birth of deceased Sh. Muzzamil has been mentioned as 18.06.1974 (Exb. CW1/6) in the driving license No. UP70 19920006573 issued by Transport Authority of Allahabad (UP) and 3.12.1984 in Aadhar Card No. 792330256012 (Exb. CW1/7) and in the claim application, the age of deceased has been mentioned as 43 years at the time of the accident. Considering the date of birth as 18.06.1974 as mentioned in the driving license, the age of deceased is considered as 43 years on the date of accident i.e. 16.04.2018 and therefore, the same has been taken on record



for the purpose of calculation of compensation. As far as the last drawn wages of the deceased is concerned, it is mentioned that the deceased was drawing wages @ Rs.16,000 per month that the time of accident according to which the monthly wages of the deceased comes to more than Rs.8,000/-. As such, for the purpose of calculation of amount of compensation, the last drawn wages of deceased is taken as Rs.8,000 which is the maximum limit of wages fixed for the purpose of calculation of compensation under the provision of law.

7. That in view of the above facts and circumstances and on the basis of 43 years of age the relevant applicable factor i.e. 175.54 and Rs.8,000 per month wages, the amount of compensation to which claimants are entitled is calculated as under:-

(i) Relevant factor of 43 years of age	= 175.54
(ii) 50% of last drawn salary @ Rs. 8,000 pm	=Rs. 4,000/-
(iii) Amount of Compensation $175.54 \times 4,000$	= Rs.7,02,160/-

8. That in view of above facts and circumstances and the documents placed on record, it is held that the claimants are entitled to receive an amount of Rs.7,02,160/- as death compensation plus Rs.5,000/- as funeral expenses in respect of death of deceased from the respondents.

9. That as per the provisions of the Act, the respondents should have make the payment of compensation within one month from the date it fell due i.e. 16.05.2018, but the respondents fail to do so. Therefore, as per the provisions of Clause (a) of Sub Section (3) of Section 4A of the Act, the claimant is also entitled for simple interest @ 12% p.a. on the amount of compensation i.e. Rs.7,02,160/- w.e.f.16.05.2018 till the date of realization of the compensation amount by the respondents.

10. That as far as imposing penalty upon respondents is concerned, since Respondent No-1 has not appeared in the proceedings, and the insurance

Page 5 of 6



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as well as WhatsApp & Telephonically.

company has co-operated during the proceedings, therefore, I do not find it a fit case for imposing penalty upon respondent no-2. Since the Respondent No.1 neither appeared nor co-operated in proceedings. Therefore, it is fit case for imposing penalty amounting to 50% of compensation amount on Respondent No.1.

11. That as decided above, the Respondent No-2 M/s Sriram General Insurance Co. Ltd. is hereby directed to deposit the above amount of R7,02,160/- alongwith simple interest @ 12% per annum w.e.f. 16.04.2018 till the date of payment plus Rs. 5,000/- as funeral charges and Respondent No.1 is directed to deposit an amount of Rs. 3,51,080/- towards penalty imposed on them by way of Demand Draft / Pay Order in favour of "Commissioner Employees Compensation" within 30 days from today, failing which proceedings to recover the amount of compensation as well as the interest, as an arrear of land revenue, shall be initiated as per the provisions of Section 31 of the Act.

Given under my hand and seal on 10th day of February, 2021.



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(K.M.SINGH)

Commissioner, Employees Compensation

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