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.WCI/192/NW/2017/ 170. Dated: 03/08/2022

In the matter of:

Furkan @ Mohd. Furkan S/o Sh. Noor Mohd. @ Noor Ahmed
R/o Village Baderi Rajputaan
P/o Bharapur, P/s Bahadarabad
Tehsil Roorkee, District Haridwar
Uttarakhand -247667 .....Applicant

Versus

1. **Ahsan Elahi, S/o Sh. Abdul,**
   M/s Sriram Transport Company,
   Side No. 2, New Azadpur Mandi,
   Delhi - 110033

2. **M/s The New India Assurance Company Ltd.**
   12/1, Jeevan Raksha Building, Asaf Ali Road,
   Delhi-110002 .....Respondents

ORDER

1. Vide this order, I shall dispose of the application dated 05.06.2017 seeking injury compensation Under Section 22 of The Employee's Compensation Act, 1923.

2. In the claim petition, it has been stated by the applicant/claimant that he was employed as driver on vehicle bearing No. UA-07M-8987-Truck owned by Respondent No. 1. The vehicle met with an accident on the intervening night of 02/03.12.2014, resulting thereby he sustained injuries on his both legs out of and during the course of employment. The vehicle was on its trip from Delhi to Saharanpur and after getting the furniture unloaded at Saharanpur the vehicle was proceeding towards Jwalapur. All of a sudden a front tyre of the vehicle got burst and he was have it replaced with the another one, as he was affixing the jack, all of a sudden another vehicle came in a rash and negligent speed and hit this vehicle. The vehicle fell down from the jack and he was caught up underneath the vehicle. His both legs were caught up and sustained grievous injuries. He was taken to hospital and was got admitted in Luthra Nursing Home at Haridwar. He remained admitted there for about 6 days thereafter he was got again admitted 2-3 times in the hospital. He sustained grievous injury on his legs and his injuries have made him unable to drive a vehicle. After the accident there were multiple injuries on his both legs and injury on his left leg was more grievous. After this accident he is not in a

Commissioner under Employee's Compensation Act, 1923 * Delhi *

position to do any work of the occupation of driving and has become 100% disabled for the purpose of his employment as driver. His earning capacity has been brought to nil and totally reduced. The vehicle bearing No. UA-07M-8987-Truck was owned by Respondent No. 1 at the time of accident and it was insured with respondent no. 2 i.e. M/s New India Assurance Company Ltd., vide policy no. 340703311301000007789 for the period from 28.02.2014 to 27.02.2015 and an additional premium had been charged by respondent no. 2 from respondent no. 1 under the Act. The claimant further stated that he was getting wages Rs. 8,000/- per month plus Rs. 200/- as food allowance and was aged 45 years at the time of accident. Respondent No.1 is having the notice of the accident since the day of its occurrence and the Insurance Co. had been informed immediately after the accident took place. He has further stated that he was driver by occupation of driving a transport vehicle and he has become totally disabled and not able to take up physical work and he has shown this identical to the one and as per law settled it is a case of total disablement as per law settled by the Hon'ble Supreme Court of India in Pratap Narain Singh vs. Srinivasa Sabata cited at 1976 ACJ 141. He was an Employee and the accident was caused out of and during the course of employment. The applicant filed the case and it was transferred to a place not convenient to him and the same was dismissed under rule 24 of the Workmen's Compensation Rules. The applicant is entitled to compensation to the extent of 100% disability and as per section 4(1) (c) & 4(1) (d) of the Employee's Compensation Act he is entitled for temporary and permanent disablement and medical expenses along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount.

3. The summonses 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. 1 filed written statement stating therein the present petition filed by the claimant is not maintainable against the answering respondent as the vehicle bearing no. UA-07M-8987 (Truck) on which he was employed as driver, at the relevant time it was insured with the respondent no. 2/ New India Assurance Co. Ltd. and the applicant was covered under the policy which was issued by the respondent no. 2 insurance company. The incident was duly notified to the respondent no. 2 and in case of any amount is found due and payable then the same is payable by the respondent no. 2 as the answering respondent has paid extra premium for driver and conductor/cleaner to them so, there is no liability of the answering respondent. It is further submitted that the claimant Furkan alias Mohd. Furkan was employed as driver on the vehicle bearing no. UA-07M-8987 (Truck) and while he was on his duty on the vehicle he met with an accident on 02/03.12.2014 and he was being paid salary of Rs. 9,000/- per month and Rs. 150/- as allowances towards food etc.

5. Respondent No. 2 filed their response. In their reply/submission it has been stated that the claim of the applicant is not maintainable as has been shown under Rule 24(2) of the Employee's Compensation Rules, 1924. The claim application is barred by the principles or res-judicata, There was no employee employer relationship and the accident was not caused out of and during the course of employment. It has been stated that the answering respondent is not liable to indemnify the insured as there was violation of terms and condition in the policy. It was further stated that the claim application is barred by limitation.

6. In response to that the counsel for the claimant has argued and has vehemently opposed the objection taken by the counsel for the insurance. The counsel for the claimant argued as the objection of delay and resjudicata are not considerable that though the principle of res-judicata is a general rule and it applies in the proceedings in a civil suit. Under the Workmen's Compensation Rules – rule 41 provides for applicability of the provisions of Code of Civil Procedure. These are order V, IX, XIII, XVI, XVII and Order XXIII. Section 11 of the Code which is pertaining to res-judicata has not been made applicable in the proceeding under the Act. It is for the law makers to make a provision applicable or not to make it applicable. Rule 24 of the Workmen's Compensation Rules says that one application rejected and not decided on merit does not preclude the filing of another application. In an identical case titled as Upender Tiwari vs. M/s National Insurance Co. Ltd. And anr. – F.A.O. No. 345/2018 – judgment passed on 09.10.2019 has ruled –

> **"The application seeking withdrawal of the claim and liberty for filing a fresh one is dismissed as withdrawn. The impugned order is set aside. Consequently, the claim case stands revived on the file of the Commissioner Employee's Compensation, who shall take it up for further proceedings in accordance with law on 14.11.2019....." The parties are directed to appear accordingly."**

The matter has not been decided on merit. The claimant has not been given compensation for the injuries caused to him admittedly which were caused out of and during the course of his employment. Given that I do not find any force in the objection of the insurance company and the objection of res-judicata by the insurance company is rejected. As far as the delay is concerned, Section 4A provides that the entitlement to receive compensation becomes due the day accident takes place. It has also been held by the Hon'ble Supreme Court – by four judge bench, in Pratap Narain's case. In case the entitlement is on the day of accident then where is question of delay. In addition to that the counsel for claimant has relied on the judgment by the Hon'ble Supreme Court in the case under the Act where considering that this is a beneficial legislation and technical view should not debar the claimant of his legitimate injury compensation. In Balbir Singh's case delay of 30 years was not found a reasonable ground and condoned the delay. Hence the

objection of delay is rejected and the delay in filing claim application allowed and the matter needed to be considered on merit.

7. The following issues were framed to be decided:
   1) Whether there exist relationship of employee and employer between the applicant and respondent No. 1?
   2) Whether the accident resulting injury to the applicant had been caused out of and during the course of employment?
   3) If yes, what directions are necessary and what relief the applicant is entitled to and from whom?

8. On 15.03.2022, the claimant tendered his evidence by way of affidavit along with following documents:

   Copy of Medical Bills Exbt. as AW1/1, Original medical treatment documents Exbt. as AW1/2, Copy of driving licence is Exbt. as AW1/3, Copy of Aadhar Card & Voter I Card Exbt. AW1/4 (colly) (OSR), Copy of Disability Certificate Exb. as AW1/5 (OSR), Copy of Insurance Policy of vehicle marked as "A", Copy of RC, permit authorization certificate are marked as "B" (colly). Accordingly, the claimant was cross examined by the counsel for the respondent for the respondent no. 2. The claimant has produced two witnesses namely Yameen and Noor Ahmad, both the witnesses filed their own affidavits before the Authority and both were cross examined by the counsel for the insurance company.

   Earlier, the Medical Board of the Govt. of Hospital Aruna Asaf Ali, Govt. of NCT of Delhi was asked to assess the applicant as to his permanent disability. He was got medically examined and assessed about his physical disability. The said Medical Board of Aruna Asaf Ali Hospital, Delhi, had certified his permanent disability as 38%. The injury to his left lower limp was shown.

9. No evidence was led by the Respondents.

10. The case was fixed for arguments and written arguments were filed and oral arguments were also heard.

11. On the pleadings of the parties, documents filed therein and the evidence adduced on their behalf, I have to give my findings in the case as under:

Issues No. 1 & 2

The vehicle met with an accident on the intervening night of 02/03.12.2014, resulting thereby he sustained injuries on his both legs out of and during the course of employment. The vehicle was on its trip from Delhi to Saharanpur and after getting the furniture unloaded at Saharanpur the vehicle was proceeding towards Jawalapur. Suddenly a front tyre of the vehicle got burst and the applicant was affixing the jack, all of a sudden another vehicle came in a rash and negligent speed and hit this vehicle. The vehicle fell down from the jack and he was caught up underneath the vehicle. His

both legs were caught up and sustained grievous injuries. He was extricated and taken to hospital and was got admitted in Luthra Nursing Home at Haridwar. He remained admitted there for about 6 days, and subsequently he was again got admitted 2-3 times in the hospital. He has sustained grievous injury on his legs and his injuries have made him unable to drive a vehicle. After the accident he sustained multiple injuries on his both legs and injury on his left leg was more grievous. After this accident he is not in a position to do any work of his capacity and has become 100% disabled for the purpose of his employment as driver. His earning capacity has been totally reduced. The vehicle bearing No. UA-07M-8987-Truck was owned by Respondent No. 1 at the time of accident and it was insured with respondent no. 2 i.e. M/s The New India Assurance Company Ltd., vide policy no. 34070331130100007789 for the period from 28.02.2014 to 27.02.2015 an additional premium was charged by the respondent no. 2 from respondent no. 1 under the Act. The Respondent No.1 is having the notice of the accident since the day of its occurrence and the Insurance Co. had been informed immediately after the accident took place. He has further stated that he was driver by profession and he has become totally disabled and not able to take up physical work and as per law settled by the Hon'ble Supreme Court of India in Pratap Narain Singh vs. Srinivasa Sabata cited at 1976 ACJ 141 it is a case of total disablement and he was an Employee and the accident was caused out of and during the course of employment. He gave his evidence by filing affidavit and he was cross examined by the counsel for the insurance company. In his case, two witnesses came and deposed. Cross examination was done by the counsel for the respondent. Respondent No. 1 did not deny the occurrence of accident when he was posted on the vehicle.

The respondent/s were directed to file their evidence. But nothing was brought and carried forward to defeat the claim.

The matter was fixed for the arguments by the parties. On behalf of the Claimant, arguments were filed and oral were heard. On behalf of respondent/insurance company also filed their written arguments. The arguments were corroborative of the stand taken by them earlier in the pleading. The matter was reserved for orders.

Thereafter, an application was filed on behalf of the claimant stating therein that the applicant could not trace the goods receipt/builty of the loaded goodson the trip. In the application it had been stated that now he had got a copy thereof traced and the said builty evidenced that the business trip lastly taken for the truck had the applicant posted. In that builty he had tried to show that the builty had the signature and name of the applicant as driver. To arrive at a just and reasonable decision, he has sought the reopening of the case for adducing additional evidence. But considering that the matter had crossed the stage of evidence and arguments and now it was reserved for order there was not justifiable reason to allow the said application. Hence the same was rejected.

The matter was argued and the counsel for the applicant argued that on the issue of standard of proof and sufficiency of evidence, he has argued that principles of

Evidence Act and Code of Civil Procedure Code are not strictly applicable in the proceedings before the Commissioner and it is not incumbent on the part of the applicant to get his case proved beyond doubt. In this regard, he has drawn attention of this authority towards a judgment of the Hon'ble Supreme Court of India in a case titled as ***Maghar Singh vs. Jaswant Singh, cited at 1997 ACJ 517***, wherein it has been held :

"Workmen's Compensation Act, 1923, sections 3(1) and 2(1)(n) – Accident arising out of and in the course of employment – Workman – Claimant sustained injury which resulted in loss of both his hands just above the wrist resulting in permanent disability with 100 per cent functional loss while he was operating toka machine – Respondent contended that the claimant was not his employee – Claimant did not possess any letter of appointment or any documentary evidence for payments received by him for the work done – Evidence that the machine which the claimant was operating was that of respondent – Respondent had taken the claimant to the hospital after the injury and had signed the bed-head ticket – Whether the claimant was a workman under the respondent and the accident arose out of and in the course of employment – Held: yes."

In another case settled by the Apex Court in a case titled as Mackinnon ***Mackenzie & Co. Pvt. Ltd. vs. Ibrahim MahmoodIssak cited at 1969 ACJ 422***, wherein it has been held that :

"Para no. 6……..

In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessary prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inference. On the one hand the Commissioner, must not surmise, conjecture or guess, on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead, L.C. in Lancaster v. Blackwell Colliery Co. Ltd., observed:

"if the facts which are proved give ise to conflicting inference or equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."

In another case settled by the Apex Court in a case titled as ***Mackinnon Mackenzie & Co. Pvt. Ltd. vs. RittaFernandezcited at 1969 ACJ 419***, wherein it has been held that :

"……Whether the death arose out of and in the course of employment – The test is whether there was any casual connections between the death and his employment – Employer must produce evidence within his special knowledge, otherwise adverse inference should be drawn."

He has further argued that though the goods receipt has not been considered to be taken on record as per law. But still it shows that the applicant was posted on the vehicle. The Hon'ble authority could have considered this in view of the law in S.S. Makapur vs. State of Mysore.

After perusal of the pleadings, evidence adduced, and the law placed, I am of the considered opinion that accident had taken place and the applicant sustained injury while being posted on the vehicle. In view of the above, it is proved that the applicant/claimant was an employee of the respondents and he received injuries during and out of the course of employment in an accident. Thus, this issue is decided in favour of the applicant/claimant and against the respondents

Relief:

In the claim application the claimant has stated that he was getting wages Rs. 8,000/- per month plus Rs. 200/- per day as food allowance. But as per maximum limit prescribed at that particular point of time, his wages can be taken Rs. 8,000/- per month and accordingly he wage is taken as Rs. 8,000/- per month. In the claim application, he has further stated that he was 45 years old at the time of accident. He was got himself physically examined and Medical Board of Aruna Asaf Ali Hospital, Delhi. The Medical Board has assessed him38% permanent disabled. In his medical Disability Certificate, his injury has been shown 'Left Lower Limb'. 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 adriver by his occupation which he was doing prior to this accident, after the accident he is no more in a position to continue with hs occupation this be so this is a case of 100% loss of earning capacity. Finding the nature work, it should be accepted that it is case of 100% disablement and in this regard the Ld. Counsel for the claimant has relied on the ruling of the Hon'ble Supreme Court of India – *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 do take up and do that work which he was doing hence the disablement was assessed 100%. Similarly he has relied on the judgment by the Hon'ble *Supreme Court in Mohan Soni vs. Ram Avtar&Ors., 2102 ACJ 583, which holds that the occupation must be considered while considering the disability. The main operative portion of the judgment is read as under:-*

"This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect."

The Hon'ble High Court of Delhi in a judgment in New India Assurance Co. Ltd. Vs. Mohd. Ajmer – FAO 259 of 2013 it has been ruled that a driver with injury in his leg having disablement to the extent of 30% is certainly a case of 100% loss of earning capacity. This is because of the reason that he is no more capable to drive a transport vehicle.

12. Keeping that in view I hold that the loss of earning capacity of the claimant is total and accordingly he is entitled to compensation. In the given wage, age and loss of earning capacity the applicant/claimant is entitled to compensation as under:

i)	Relevant factor of 45 years	:	169.44
ii)	60% of wages @ Rs. 8000/- pm	:	Rs. 4800/-
iii)	Amount of compensation		
	$\frac{\textbf{169.44 X 8000 X 60}}{\textbf{100}}$	:	**Rs. 8,13,312/-**

13. The claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident.

14. Therefore, the 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 sprit of indemnifying the insured, the Respondent No. 2 is directed to deposit before this Authority an amount of **Rs. 8,13,312/-** on account of compensation payable to the applicant/claimant along with interest @ 12% p.a. w.e.f. 02.01.2015 till its realization through pay order in favour of **"Commissioner Employee's Compensation"** within a period of 30 days from pronouncement of the order before this Authority.

15. Given under my hand and seal of this Authority on this 08th day of August, 2022.

08/8/22

(S.C. Yadav)
Commissioner
Employee's Compensation Act, 1923

Commissioner Employee's Compensation Act, 1923 ★ Delhi ★