

**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.EC(D)-56/SWD/16/1381.

Dated: 16/03/2022.

IN THE MATTER OF :

**Smt. Gurdev Kaur & Ors**

R/o Quarter 15/8, Khaber Land,

Dhaura Kuan, Delhi Cantt.

New Delhi – 110010

.....Applicants

Versus

**Harjit Singh S/o Gurudev Singh**

R/o H.No – 385, Gill Kothe,

Saina, Barnala Punjab - 148103

**M/s United India Insurance Co. Ltd.**

Delhi Regional Office-I,

8<sup>th</sup> Floor, Kanchanjunga Building,

Barakhamba Road,

New Delhi - 110001

..... Respondents

**ORDER**

1. By this order, I will dispose of the application dated 21/09/2016 filed on 28/09/2016, u/s 22 of the compensation Act, 1923 for seeking death compensation.
2. In the application, filed by the applicant/claimant submitted that the deceased Kulwinder Singh S/o Nachhatar Singh was employed as a Driver by the respondent no 1 on his vehicle bearing No. PB-19H-5378. That the deceased was working with full devotion and sincerity for last some months. That on the direction of owner of vehicle i.e. Respondent no 1 after loading the agriculture instruments in the above said vehicle and left from Punjab for Bihar for a commercial trip. On 27.07.2016 after unloading said goods and coming back with loaded useless agriculture instruments at about 06:30 PM when the said vehicle reached at Village Rampur, Atauli near Canara Bank, under jurisdiction of P.S. Isuapur, Distt. Saran Bihar, suddenly the said vehicle was electrocuted



with wire of electric 11000 volts live, as a result of said incident/accident driver (deceased) received multiple grievous injuries all over his body and he was immediately rushed to Govt. Hospital. The Post Mortem of deceased was conducted at Govt. Hospital on 28/07/2016 vide P.M.R No – 28860. The claimant submitted that the deceased died due to said accident which was arising out of during and in the course of his employment with the respondent no 1. The claimant further submitted that the case was registered in regard of the said accident vide DD No – 2/16 dated 27/07/2016 with Police Station Isuhapur Dist – saran, Bihar. That the vehicle bearing no. PB-19H-5378 Truck was owned by the respondent no 1 at the time of accident and it was insured with respondent no 2 vide policy No – 20040531168105280142 for the period of 21/07/2016 to 20/07/2017. That the deceased/employee was drawing wages of Rs. 10,000/- per month plus Rs. 150/- per day as food allowances at the time of accident/death. That the deceased/employee was aged about 32 years (As per DL bearing No. PB. 1820100034339) at the time of accident. The claimant also submitted that the respondent no 1 was having the notice of accident since the day of its occurrence. In the last claimant submitted that since the death of deceased was occurred out of and in the course of his employment as such respondents are liable to pay Death compensation to claimants under the provision of Employees' Compensation Act, 1923. Accordingly claimant prayed that the applicants are entitled to interest at the rate of 12% per annum from the date of accident till realization and penalty to the extent of 50% of the principal amount.

3. Summons were issued to the respondents with direction to file defence/reply in the matter. Respondent no 1 filed reply wherein respondent no 1 admitted to the extent of vehicle bearing no PB-19H-5378 in question was owned by them and the deceased namely Kulwinder Singh was employed was a driver. The respondent no 1 further submitted that they have intimated to insurance about the incident as vehicle was insured with the insurance company at the time of accident. The respondent no 1 further submitted that the vehicle in question was insured with the respondent no 2 vide policy no. 20040531168105280142 for the period of 21/07/2016 to 20/07/2017. Further the respondent denied and submitted that deceased was drawing wages Rs. 8000/- per month along with Rs. 100/- per day as food allowance at the time of accident and rest of the contents of the claim application are matter of record. In the last the respondent prayed that the prayer clause of the claim application is totally wrong and



denied and submitted that respondent no 1 is not liable to pay any compensation and if award is to be passed it is for the respondent no 2 Insurance company as the vehicle was insured with the respondent no 2 at the time of the accident.

4. Respondent no 2 insurance company filed its reply wherein it is contended that the contract of insurance is a contract of utmost good faith and as such the answering resp. No 2 cannot be asked to indemnify the insured/respondent no 1 until and unless certain terms and conditions of insurance policy are complied with by the insured. The insured must prove that he was registered owner of the vehicle involved in alleged accident on the date of accident and the deceased driver of the said vehicle was holding the valid and effective DL as on the date of accident and/or was not disqualified from holding the same. The insured must also prove that this insured vehicle was having a valid permit, fitness certificate for driving and same being used in conformity with conditions as to its use as is in proposal form/policy. Further respondent no 2 denied the liability to pay any compensation to the petitioner in the absence of establishment of negligence on the part of the alleged offending driver, as it is clear reflected from the petition that there is a collusion in between the driver, owner who had colluded with each other to give details of the vehicle so that liability could be fastened upon the respondent no 2. It is further contended that claim is not maintainable against the resp. no 2 as vehicle bearing No PB-19-H-5378 which is insured with resp. no 2 is not involved in an accident as per the DD No 2/16 dated 27/07/2016 with PS. Isuapur, Distt. Saran, Bihar. Further respondent no 2 has taken ground that the case is not maintainable against them as the deceased was himself responsible for the accident as the deceased was driving the truck under the influence of liquor, therefore he could not control the truck and same electrocuted with wire 11000 Volts live, as there is no involvement of other vehicle in the accident as such the legal ARs of the deceased cannot take the advantage of the deceased own fault. Further it is contended that resp. no 2 ins. Co. is liable to indemnify 3<sup>rd</sup> party only but deceased was himself driving vehicle involved in the accident without holding legal, valid and effective DL to drive truck at the time of alleged accident as well as valid permit to drive commercial vehicle on alleged date of accident therefore resp. no 2 is not liable to pay any compensation to the petitioners. Further resp. no 2 submitted that petitioners has not filed any documentary evidence to proof employee-employer relationship between claimant and resp. no 1. Resp. no 2 is also not liable to pay compensation, penalty and interest as claimed by the petitioner due to that resp.



no 1 owner of the vehicle and driver had not sent any intimation about occurrence of accident hence it is specifically denied for want of knowledge also that accident took place on 27/07/2016 at about 06:30 PM on this above stated ground resp. no stated that claim to be dismissed against resp. no 2. Resp. no 2 has also taken ground of jurisdiction. In principle resp. no 2 admitted that at the time of alleged accident vehicle in question bearing No PB-19-H-5378 truck was insured with resp. no 2 vide policy no 2004053116P105280142 for the period from 21/07/2016 to 22/07/2017 and the same was issued in the name of resp. no 1. Rest of other contents of petition are denied by reps. No 2 and prayed that the claim is deserved for dismissal against resp. no 2.

5. Claimant filed rejoinder by which she denied all the contents of reply filed by respondents and reiterated the contents of claim application. Regarding jurisdiction issue as taken by resp. no 2 ins. Co. claimant submitted that there is no resp. no 3 in the present claim application and this Authority has got the jurisdiction to entertain the present claim petition on the ground of residence of the petitioner. Petitioner has filed her Aadhar card regarding present address in Delhi along with claim petition.
6. Since the factum of employee employer relationship accident caused out of and in the course of employment of resp. no 1 as deceased Kulwinder Singh died. As per submission of resp. no 1 deceased Kulwinder Singh was employed as a driver on 27/07/2016 and on the direction of resp. no 1 he was performing his duty as a driver on vehicle in question bearing No PB-19H-5378 and met with an accident at village Rampur, Atauli, near Canara Bank, due to vehicle was electrocuted with the wire. Due to this deceased Kulwinder Singh had received injuries and died on the spot. Immediately resp. no 1 informed ins. Co. resp. no 2 about the incident as vehicle in question was insured at the time of accident. Vide policy no 20040531168105280142 for the period from 21/07/2016 to 21/07/2017. Further resp. no 1 submitted that at the time of accident deceased was drawing Rs. 8000/- per month wages plus 100 Rs. Per day as food allowance. Resp. no 2 in principle admitted that the vehicle in question was insured vide policy as discussed above and policy certificate was issued in favour of resp. no 1. As such no trial was further required in the matter. The objection raised by the resp. no 2 that deceased was not holding valid and effective DL at the time of accident and accident was not occurred in the territorial jurisdiction of this Authority because resp. no 1 and claimant was



residing in Punjab and accident was occurred at village Rampur, Atauli, near Canara Bank, under jurisdiction of P.S Isuapur, Distt. Saran, Bihar. In claim petition claimant has mentioned that present residing address at Quarter No 15/8, Khaiber Land, Dhaula Kuan, Delhi Cantt. New Delhi – 110010, where she was residing and in support of this as submitted in rejoinder she filed her Aadhar card on record, so objection taken by respondent no 2 regarding territorial jurisdiction of this Authority is not considerable. As per Aadhar Card of claimant local address has been mentioned Delhi. In this regard Section 21 of the Act provides that claimant or his dependant can file claim before the Authority as prescribed U/s 21 of the Act.

Section 21 (1) of the Act stipulates as under: -

*“where any matter under this Act is to be done by or before a commissioner, the same shall, subject to the provisions of this Act and to any Rules made hereunder, be done by or before the Commissioner for the area in which –*

- (a) the accident took place which resulted in the Injury or,*
- (b) the (employee) or in case of his death, the dependant claiming the compensation ordinarily resides: or*
- (c) the employer has his registered office.*

Provided that no matter shall be processed before or by a commissioner, other than a commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Govt. to the Commissioner having jurisdiction over the area and the State Govt. concerned:

Provided further that, where the (employee) being the master of ship or a seaman or the captain or a member of the crew of an aircraft or (an employee) in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries any business or the registered office of the company is situate, as the case may be.

7. In view of section 21(b) of the Act the claimant was residing in Delhi as per there Aadhar Card as such case of claimant is maintainable before this Authority for deciding.



8. In view of above discussion since factum of employee employer relationship accident caused out of and in the course of employment of respondent and vehicle in question was insured with R2 on the day of accident, hence no trial is required in the case and accordingly I hold that death of deceased Kulwinder Singh was occurred on 27.07.2016 during his course of employment with R1. Hence R1 being the employer u/s 3 of the Act is responsible to pay compensation to dependants of the deceased employee as per provision of the EC, Act, 1923. Since Vehicle in question was insured with R2 on the day of accident as such R2 is liable to indemnify to claimant on behalf of R1.
9. In view of above discussion for calculation of compensation age of deceased 32 yrs, relevant factor 203.85 and 50% of Rs. 8000 (since under the Act cap of Rs. 8000 has been fixed).

Accordingly compensation is calculated as under:

- |      |                              |   |            |
|------|------------------------------|---|------------|
| i)   | Relevant factor of 32 years  | : | 203.85     |
| ii)  | 60% of wages @ Rs. 8000/- pm | : | Rs. 4800/- |
| iii) | Amount of compensation       | : |            |

$$203.85 \times 4800 : \text{Rs. } 9,78,480 /-$$

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

10. Regarding penalty u/s 4A of the Act as claimed by the claimant show cause notice dated 22/12/2020 through speed post was served upon respondent No. 1 as per POD consignment No ED731675850 and also upon respondent no 2 insurance Co. as per POD consignment No ED7316758631, but neither respondents appeared nor filed any reply in response to Show cause notice on given date. From this it appears that respondent did not want to submit anything. Keeping in view the facts and circumstances, I impose 25% penalty of the principal amount on the respondent No. 1 which comes **Rs. 2,44,620/-**.

11. Therefore, the applicant/claimant is entitled to receive injury compensation from respondents jointly or severally, since vehicle in question was insured on the day of accident with respondent no 2, hence the respondent no. 2 Insurance



Co. is liable to indemnify to the claimant. Accordingly Respondent no 2 Insurance Co. is directed to deposit before this Authority an amount of **Rs. 9,78,480/- (Rupees Nine Lakhs Seventy Eight thousand Four hundred Eighty Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 27.07.2016 till its realization. Further respondent no 1 is also directed to deposit **Rs. 2,44,620/-** as penalty through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from the receipt of this order.

12. Given under my hand and seal of this Authority on this 16<sup>th</sup> day of March, 2022.

(S.C. Yadav)  
Commissioner

Employee's Compensation Act, 1923

