

**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.CEC/SD/I/18/2018/459.

Dated: 25/03/2021.

In the matter of:

**Mr. Jamaluddin, S/o Mr. Anvar Ali,**  
R/o 300, Faislabad Tanda 4,  
Bulandshahr, Bulandshahr,  
Uttar Pradesh – 203001.

.....Claimant

Versus

**1. M/s Venture Supply Chain Pvt. Ltd.,**  
MHP5950 G/F Block K-2,  
KH No. 831, Mahipalpur,  
Delhi - 110037

**2. M/s IFFCO Tokio General Insurance Company Ltd.,**  
IFFCO Sadan, C - 1 District Centre,  
Saket, New Delhi – 110017

.....Respondents

**ORDER**

1. Vide this order, I shall dispose of the application dated 10-04-2018 for seeking injury compensation under section 22 of The Employee's Compensation Act, 1923.
2. In the claim application, the claimant has stated that he was employed as second driver on vehicle bearing No. NL-01-AA-4752-Truck owned by respondent no. 1 and on 08.11.2017, he was posted as co-driver on the vehicle and he met with an accident resulting thereby he sustained grievous injuries on his right eye and forehead out of and during the course of employment. The vehicle was on its business trip. The vehicle was going from Delhi to Kolkata having loaded goods therein. On 08.11.2017 at about 4:00 A.M. when the vehicle reached under Police Station Sadar Palwal, District Palwal, Haryana near KMP road toll plaza it met with an accident. The vehicle was being driven by the first driver of the vehicle and when it reached near toll plaza on KMP road another vehicle preceding this took instant brake the driver of this vehicle also tried but the urgency could not match and this vehicle rammed in the 'dalla' of the preceding vehicle. The vehicle was damaged. Both the drivers were entrapped inside the cabin of the vehicle.





Public from nearby rushed on and the cabin was break-opened to get the drivers taken out from the caught up position. Ambulance was called in and both the drivers were taken to Govt. Hospital, Palwal. After a short while the claimant was taken to Safdarjung Hospital, Delhi. But due to seriousness of the injuries and to buttress treatment he was taken to Max Hospital, Saket, Delhi and was got admitted there. He remained admitted there and he was operated upon. He has incurred heavy expenses to the tune of about Rs. 8 Lacs on his treatment. After this accident he is not in a position to do any work of driving a vehicle and has become 100% disabled for the purpose of his employment as driver. His earning capacity has been totally reduced. In respect of this accident, a case was registered under Police Station Sadar Palwal, District Palwal, Haryana, vide FIR No. 0849, dated 16.11.2017. He has further stated that the vehicle bearing No. NL-01-AA-4752 was owned by the respondent no. 1 at the time of the accident and it was insured with the respondent no. 2 i.e. M/s IFFCO Tokio General Insurance Company Ltd., vide policy No. 94023343 for the period from 25.07.2017 to 24.07.2018 and an additional premium was charged under the Employee's Compensation Act, 1923 by the respondent no. 2 from respondent no. 1. He has stated that he was drawing wages @ Rs. 30,000/- per month along with all allowances and he was aged 30 years at the time of his accident. The respondent no.1 is having the notice of the accident since the day of its occurrence and the Insurance Company has been informed immediately after the accident took place. He has further stated that he was driver by profession and he has become totally disabled as law settled in Pratap Narain Singh vs. Srinivasa Sabata, cited at 1976 ACJ 141 SC. He was employed on the vehicle and the accident caused out of and during the course of his employment. He has further stated that he 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 along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%.

3. Summons were sent to the respondents with the direction to appear and to file written statements/documents, if any in their defense.
4. The respondent no. 1 has filed written statement stating therein that the vehicle bearing no. NL-01-AA-4752 was fully insured with the respondent no. 2 and the liability of drivers is also covered under the policy. It was further stated that respondent no. 1 has paid Rs. 1,00,000/- to the claimant while the claimant was admitted in Max Hospital Saket, New Delhi. It was also stated that the claimant was employee of respondent no. 1.
5. The respondent no. 2 also filed their written statement wherein the said respondent denied all the contents of the claim application and their liability for payment towards compensation to the claimant except to the extent that the vehicle bearing no. NL-01-AA-4752 was insured them, rest of the other contents have been denied in toto.





6. On the pleadings of the parties, the following issues were framed on 11/01/2019 for adjudication:
- Whether there was employee-employer relationship between the applicant and Respondent?
  - Whether the applicant suffered injury in the course of his employment with the respondent?
  - If yes, what relief he is entitled to and from whom and what directions are necessary?
  - Whether the applicant is also entitled to penalty and if so from whom?
7. The case was fixed for the evidence of the parties; On behalf of the claimant. The claimant filed his evidence by way of affidavit ExAW1/A along with the documents such as copy of Medical Documents. Copy of Medical Treatment Bill. Copy of Demand Notice dated 14-08-2018 of Max Healthcare Institute Limited. Copy of Driving Licence. Copy of Aadhar Card. Copy of FIR No. 0849/17 dated 16.11.2017. Copy of Insurance Policy of the vehicle. Copy of Vehicle Particular Details of the vehicle. Copy of Authorisation Certificate of N.P. (Goods) of the vehicle. Copy of Certificate of Fitness of the vehicle. He has also tendered his affidavit on 02/09/2019. He was also cross examined by counsel for respondent no 1 & 2 on 24/02/2020.
8. The respondent no. 1 has filed his evidence by way of affidavit along with the documents - R.C. of the vehicle, permit, and insurance certificate.
9. Respondent No. 2 - IFFCO Tokyo General Insurance Company Ltd. did not give any evidence. They were given ample opportunity to do that. But it was stated that the insurance company does not want to adduce any evidence.
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:

**Issue No. 1 & 2**

The case of the applicant is that he was employed on vehicle bearing No. NL-01-AA-4752 .On 08.11.2017 at about 4:00 A.M. when the vehicle reached under the jurisdiction of Police Station Sadar Palwal, District Palwal, Haryana near KMP road toll plaza it met with an accident. The vehicle was being driven by the first driver of the vehicle and when it reached near KMP road toll plaza another vehicle preceding this vehicle took instant brake. The driver of this vehicle also tried but the urgency could not match and this vehicle rammed in the 'dalla' of the preceding vehicle. The vehicle was damaged. Both drivers were entrapped inside





the cabin of the vehicle. Public from nearby rushed in and the cabin was break-opened to get the drivers taken out from the caught up position. Ambulance was called in and both the drivers were taken to Govt. Hospital, Palwal. After a short while the claimant was taken to Safdarjung Hospital, Delhi. But due to serious accidental injuries to buttress his treatment he was taken to Max Hospital, Saket, Delhi and was got admitted there. He has given evidence. It includes the police F.I.R. and medical treatment documents. In F.I.R. which has been got registered by the other driver had stated that the driver of the preceding vehicle took instant brakes and due to dense fog the vehicle could not be seen. The driver tried to apply brakes but the urgency could not match and this vehicle rammed into the preceding vehicle.

Respondent No. 1 who is owner of the vehicle has admitted that the accident took and in that accident both the drivers sustained injuries. He has provided necessary medical assistance to them. The insurance company which had taken the premium for insuring the vehicle for covering all risks including the liability to indemnify them. They were given information with all necessary details to process the claim. He has stated in case the compensation is held payable the insurance company be asked to pay.

Respondent insurance company though had denied the facts of the accident out of and during the course of his employment with respondent No. 1. Though the insurance company has not filed any investigation respondent which they have conducted at their end.

The learned counsel for the insurance company - Respondent No. 2 - has that the insurance had charged premium only for one driver. Given that they can be found liable for payment of only one driver. To counter that argument the learned counsel for applicant/claimant has argued that for payment of compensation and interest the insurance company becomes liable only by charging premium for third party insurance. He has drawn my attention to Section 147 of the "Motor Vehicles Act" which provides that the insurance company would not be required the coverage of an employee other than the one who is other than the one present for operating motor vehicle. In his arguments he has further placed his reliance on the judgment of the Hon'ble High Court in - New India Assurance Company Ltd. vs. Mathai - 2003(3) T.A.C. 153 (Ker). He has further placed reliance on the judgment - National Insurance Com. Ltd. vs. Thimmardeddt and another - cited 1999 ACJ 399 : The operative portion of the judgment is read as under:-

*" 6.....In the case of Oriental Insurance Co. Ltd. vs. Kashim, 1996 ACJ 928 Karnataka, wherein this court has examined the law and has very clearly laid down that even in the case of a spare driver who is not actually driving the vehicle at the time of accident that under the statutory cover in Section 147(1) proviso (I) (c) as an employee of the owner of the vehicle travelling in the course of employment, the claimant would be entitled*



....

It is further seen that the insurance company has not filed any evidence nor brought anything which could enable this authority to disbelieve the claimant. Hence I hold that the accident has been caused out of and during the course of employment. The said issue/s relating to employee-employer relationship and the occurrence of accident out of and during the course of employment is decided in favour of the applicant/claimant and against the respondent/s.

#### Relief:

In the claim application the claimant has stated that he was drawing wages @ Rs. 30,000/- per month along with all allowances. But as per gazette notification govt. Notification regarding fixing of wage under the Act his wages is taken as Rs. 8,000/- per month. In the claim application, as to his age he has stated that he was 30 years old at the time of accident. He was got himself physically examined and Medical Board of Aruna Asaf Ali Hospital, Delhi has assessed his 30% permanent disabled. 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. 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 the Apex Court in a judgment case titled as *K Janardhan Vs. United India Insurance Co. Ltd.* (Supreme Court of India) 2008 ACJ 2039, case of partial physical disablement was held the one total loss of earning capacity.

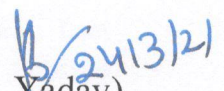
The claimant gave his evidence and he remained physically present and his condition does not render him capable to drive a vehicle. He cannot keep his eye open. There is a serious impairment in it. The Hon'ble High Court of Delhi in a judgment in *New India Assurance Co. Ltd. vs. Mohd. Ajmer* – FAO 259 of 2013 it has been ruled that a driver with injury in his leg having disablement to the extent of lesser is certainly a case of 100% loss of earning capacity. Equally in the instant case when a transport vehicle driver cannot keep his eye in working order, he cannot be held to be a qualified person to drive a vehicle. He would a risk not only to the vehicle but also other road users. 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 the claimant is entitled to compensation. In the given wage, age and loss of earning capacity the claimant is entitled to compensation as under:





i)	Relevant factor of 30 years	:	207.98
ii)	60% of wages @ Rs. 8000/- pm	:	Rs. 4800/-
iii)	Amount of compensation		
	$\frac{207.98 \times 8000 \times 60}{100}$	:	Rs. 9,98,304/-

12. 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.
13. 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 spirit of indemnifying the insured, the respondent no. 2 i.e. M/s IFFCO Tokio General Insurance Company Ltd., is directed to deposit before this Authority an amount of **Rs. 9,98,304/-** (Nine lacks ninety eight thousands three hundred and four only ) on account of compensation payable to the claimant along with interest @ 12% p.a. w.e.f. 08.12.2017 till its realization.
14. A show cause notice was issued to the respondents calling them to explain as to why penalty to the extent of 50% be not imposed on them. Respondent No. 1 has responded stating that their vehicle was insured and they had informed the insurance company with all requirements but the insurance company delayed the payment hence the same should be imposed against respondent insurance company. The insurance company explained that it was the duty of the respondent No. 1. Keeping in view the version of both the respondents, I see that the accident took place on 08.07.2017 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. Keeping in view the entirety of the situation, I am of the view that a penalty to the extent of 35% is imposed against respondent No. 1 as nothing has shown by them whereby it could be seen that they have made efforts in facilitating the compensation to the claimant.
15. Respondent No. 2 is directed to deposit the amount of compensation along with interest and respondent No. 1 is directed to deposit the penalty amount 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.
16. Given under my hand and seal of this Authority on this 24<sup>th</sup> day of March, 2021.

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

