

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/D/125/2017/1297.

Dated: 16/12/2021.

IN THE MATTER OF :

1. Smt. Seema Rani W/o Lt. Sh. Vinod Kumar
2. Harshika D/o Lt. Vinod Kumar
3. Manju Devi W/o Sh. Suresh Kumar
4. Surender Kumar S/o Sh. Munshi Ram

All resident of:-
R/o F-175, F-Block,
Near Punjab National Bank,
Village Khanpur, South Delhi - 110062

.....Applicants

Versus

1. Mr. Mukesh S/o Sh. Dharam Singh
R/o 135, Block - 10, Dakshin Puri,
Dr. Ambedkar Nagar, New Delhi - 110062
2. M/s ICICI Lombard General Insurance Co. Ltd.
Plot No 18, Block K,
Lajpat Nagar II, New Delhi - 110024

..... Respondents

ORDER

1. By this order, I will dispose of the application dated 31/10/2017 filed on 20/11/2017, of the applicants/claimants seeking death compensation under Workmen's Compensation Act now Employee's Compensation Act 1923.
2. Claimant Smt. Seema Rani has submitted that her husband deceased Vinod Kumar s/o Sh. Surender Kumar was a driver on the vehicle Maruti Wagonar Bearing No. DL-1R-TA-5825 (The applicant by moving application dated 11/03/2019 corrected vehicle number to DL-1R-TA-5825 instead of DL-1R-TA-5225 in the claim petition, which was allowed by the Authority) under employment with respondent no 1. He was going in the car along with respondent no 1. He was murdered on 06/03/2017 at about 11.30 PM while



driving in Maruti Wagonar bearing no DL-1R-TA-5825 at Gali No 5 & 7, DDA Flats Madangir, New Delhi under the jurisdiction of PS Ambedkar Nagar, Delhi during his course of employment with respondent no 1. The deceased died due to injuries in the accident while driving in Maruti Wagonar bearing no. DL-1R-TA-5825. The Maruti Wagonar was insured vide Policy No. 3004/MI-3615427/00/000 from the period 03.43 PM 31/03/2016 to midnight 30/03/2017. She further submitted that the deceased was aged about 30 years at the time of accident. His last drawn salary was Rs. 10,000/- per month. That the employer has notice of accident and he was requested verbally many times to pay compensation to the petitioner but he did not make any payment. She submitted that the accident was registered in P.S. Ambedkar Nagar, Delhi vide FIR No. 0138/2017 dated 07/03/2017. The post-mortem of deceased was also conducted in AIIMS, Delhi-110029. In the end claimant prayed that the applicant is entitled to receive compensation on account of premature death, loss of dependency and mental torture and shock suffered by the family of deceased. That the respondent no 1 and 2 are liable to pay compensation to the petitioner, as the deceased died in the accident during the course of employment with respondent no 1 and 2. The claim is supported by affidavit of Smt. Seema Rani w/o Deceased Vinod Kumar, copy of FIR, copy of Policy certificate No. 3004/MI-3615427/00/000, copy of indemnity bond dated 15/03/2017 filed in the court of Sh. Gopal Singh Chauhan, Ld. MM, Saket Court Delhi, in the case of FIR No. 0138/2017, copy of RC of Vehicle No. DL-1R-TA-5825, permit issued by transport department, Delhi, certificate of fitness of vehicle.

3. Summons were sent to the respondent with direction to appear before this Authority to file reply in the matter. Respondent no 1 & 2 appeared and filed reply on record. Respondent no 1 in its reply submitted that the application of the complainant is baseless and has been filed with malafied intention only to extort money from the respondent and harass on frivolous grounds. That the claimant has not come with the clean hands and has suppressed material facts. The respondent submitted that the deceased was the friend of the respondent and he was not an employee of the respondent. Further submitted that the complainant has himself committed wrong and he cannot take advantage of his own wrongs. That all the paras in the application are wrong and denied. In the last respondent no 1 prayed the claim of the claimant may be dismissed in the interest of justice.



4. Respondent no 2 also filed its written statement, wherein it has submitted that the claim is filed with malafied and malicious intentions concealed, suppressed and manipulated true facts. That it is submitted that the present claim petition/application is false vexatious and frivolous as such the deceased namely Vinod Kumar did not die in an accidental mishap and it was a murder. The respondent submitted that the murder cannot be said to be an accident for compensation under EC Act, it is further submitted that the murder did not arise out of and during the course of employment of the deceased. Further the respondent no 2 denied employee employer relationship between respondent no 1 & the deceased. Further respondent has taken stand that the ins. Co. is not liable to pay any amount of compensation as at the time of the alleged accident the deceased was not holding a valid and effective DL. Respondent no 2 submitted that the vehicle bearing No DL-1RTA-5825 vide policy No 3004/115066726/00/000 valid w.e.f 31/03/2016 to 30/03/2017 was in the name of Sh. Mukesh, however, liability, if any of the ins. Co. is subject to the terms and conditions of the policy in question. Respondent no 2 further submitted that the vehicle bearing No DL-1RTA-5825 was being used in violation of the terms and conditions of the policy in question. The respondent no 2 prayed that the present claim of the claimant is not maintainable and the same is liable to be dismissed as the applicant/petitioners have not served the legal notice to the respondent prior to the filing of the claim.
5. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of her claim application.
6. On 11/02/2019 following issues were framed for adjudication:
1. Whether there was employee employer relationship between the deceased and resp. no 1?
 2. Whether the deceased was died during the course of his employment with resp. no 1?
 3. If, yes what relief and direction necessary in this regard?
7. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. PW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. PW1/1 to



PW1/8 (colly 35 pages) i.e. Copy of Adhar Card of the claimants, Death certificate of the deceased, Driving licence of the deceased, Copy of the Aadhar Card of the deceased, Final report of the police station Ambedkar Nagar on FIR No 138/17. Her statement was also recorded on 09/09/2019 and was also cross examined by counsel of respondent no 2 on 09/09/2019. Respondent No 2 filed affidavit of Sh. Mukul thakur, Manager Legal as evidence on record, but despite given various opportunities R2 witness but R2 witness did not appear in witness box for testimony of his statement as such finally on 22/03/2021 right of respondent for leading evidence was closed and the matter was fixed for arguments. The claimant as well as respondent no 2 filed written submission on record and further oral submissions adduced were heard in detail.

8. On the basis of pleadings of the parties and documents available on record I am giving my findings on the issues framed in the matter as under:

Issue No. 1 & 2

The case of claimant is this that her deceased husband Vinod Kumar was employed with respondent no 1 as a driver and on 06/03/2017 at about 11:30 PM, he was driving car bearing No DL1RTA5825 owned by respondent no 1 and was going along with respondent no 1 and was murdered at Gali No 5 & 7 DDA Flats Madangiri at 11:35 PM on 06/03/2017 under the jurisdiction of PS Ambedkar Nagar. The deceased was murdered during his course of employment of respondent no 1. An Fir bearing No 0138/2017 dated 07/03/2017 was registered with P.S Ambedkar Nagar and Postmortem was conducted on AIIMS hospital in New Delhi – 110017. Petitioner no 1 is the wife of deceased, petitioner No 2 is the daughter of deceased and 3 & 4 are the mother and father of deceased. The respondent no 1 did not pay compensation despite having the knowledge of accident. Therefore they filed this claim. In reply respondent no 1 denied employee employer relationship and death of deceased due to murder out of and in the course of his employment on the ground that the deceased was the friend of the respondent. The claim has been filed only to extort the money. The claimant has filed fake claim which is not maintainable in the eye of Law and deserve for the dismissal. Insurance Company respondent no 2 also filed the reply wherein all the contents of claim application are denied on the ground that



there was no employer employee relationship with respondent no 1. Further submitted that the deceased was not having valid licence at the time of driving the vehicle and on the day of accident deceased was not in his employment as such charge sheet filed by the police. Further stated that respondent no 2 is not liable to pay any compensation to the claimant.

To prove case claimant examined herself as Ex.PW1/A and was also cross examined by counsel for respondent no 2. Respondent did not examine any witness. Written submission were filed by petitioner and resp. no 2.

I have considered the pleadings of the parties and the documents available on record such as FIR, charge sheet and evidence of claimant. Since in this matter respondent no 1 denied employee employer relationship on the ground that deceased was not in his employment as a employee but he was his friend and on the day of his death he was driving his commercial car bearing No DL 1RTA 5825 and was coming from the party and was going to his home near Pudhpa Bhawan Red Light on road some boys namely Avinash Arora @ Prince @ Pinshu, Kunal Arora @ Lovely, Gurpreet Singh @ Badal and Gurjeet Singh @ Bobby all residence of block No 13 Dakshinपुरi New Delhi have assaulted them wherein deceased and other received grievous injuries. Therefore this does not constitute accident out of and in the course of his employment of deceased. Therefore respondent no 1 & 2 denied there liabilities towards payment of any compensation to the claimants. The claimant has not produced any documentary evidence regarding employment of deceased with resp. No 1 which proves employee employer relationship with respondent no 1, nor any evidence/witness to prove that death of deceased was occurred out of and in the course of his employment. As per charge sheet report of Police in FIR No 0138/17 dated 04/03/2017, the death of deceased was happened due to assault and as per statement of resp. No 1 deceased was driving his vehicle in question from returning from party and was going to his home. To prove case claimant has not produced any witness against the statement of respondents as such I hold that the death of deceased was occurred due to assault when he was coming from a party with other friends and was going to his home in vehicle in question. The onus lies upon the claimant to prove her case beyond the doubt but claimant did not produce any witness. As per section 3 of the Act responsibility of payment of compensation lies upon the employer only when there exists employee employer relationship and personal injury is caused to an employee by an accident arising out of and in the course of his



employment and there must be casual connection between the injury, accident and the work done in the course of employment as per judgement of Hon'ble Supreme Court of India in case titled as Malikka Arjun G v/s the branch Manager The Oriental Insurance Co. Ltd. & Ors. (2009/13SCC). In this case these facts has been not proved by the claimant. Only because a death has taken place will not amount to an accident and the employers cannot be fastened any liability accordingly. In view of this I hold that no employee employer relationship was existed between deceased and the respondent under resp. No 1 and also death of deceased is not constitute in his employment. As such issues no 1 & 2 are decided against the claimant.

Issue No 3

In view of discussion made in issue No 1 & 2 petitioners are not entitled for any relief.

9. Given under my hand and seal of this Authority on this 15th day of December, 2021.

(S.C. Yadav)
Commissioner

Employee's Compensation Act, 1923

