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GOVT. OF NCT OF DELHI
BEFORE THE COMMISSIONER, EMPLOYEE'S COMPENSATION
OFFICE OF THE DY. LABOUR COMMISSIONER
LABOUR DEPARTMENT (EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

No.F. CEC-D/ED/17/2017/ S21-S24

Dated: 16/03/21

In the matter of :

Smt. Rupa Rana W/o Sh. Ram Bahadur Rana
Sh. Ram Bahadur S/o Sh. Man Bahadur
R/o H.no.H.no.28, Gali no.2 Shaker Pur,
Karkardooma, Delhi-110092

original order
Copy Received
on behalf of my client
Smt. Rupa Rana

... Petitioner

16/3/21
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V/s

M/s Meru Cab Company Ltd.
R/o Bimla Plaza, 1st Floor, Plot No.9
Dwarka, Sestro-6, South West
Delhi-110075

Also at
431, Lower Ground Phase-III,
Gurgram Haryana-122001

... Respondent no.1

M/s Bajaj Allianz General Insurance Co. Ltd.
Unit No. 808, 8th Floor, Pearls Best Heights-I,
Plot no.A-5, Netaji, Subhash Place, Pitampura,
Delhi-110034

... Respondent no.2

ORDER

1. This order shall dispose of the claim petition filed on 12.07.2017 by Smt. Rupa Rana and Ram Bahadur Rana (hereinafter referred to as 'Petitioners') against M/s Meru Cab Company Limited (hereinafter referred as respondent no.1) and M/s Bajaj Allianz General Insurance Co. Ltd. (hereinafter referred as respondent no.2) filed before Commissioner Employee Compensation (CEC), under the Act of 1923 (hereinafter referred to as an Act) claiming death compensation in respect of their son- Nanu @ Rajan Bahadur who is alleged to have died during and in course of employment.

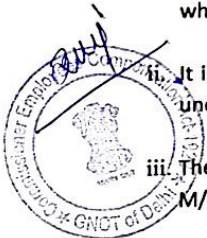


2. The brief fact as mentioned in the petition is that Late Sh. Nanu Alias Rajan worked as driver on vehicle no. DL 1RY 4886, met with a silent death on 23.07.2015 while sleeping in the car due to cardiac arrest happened during his duty timings. The deceased was approx. 36 years of age drawing approx. Rs.10,000/- salary per month. The case was reported to PS-Anand Vihar vide DD no. 37A on same day and the post mortem was conducted in Aruna Asif Ali Hospital vide no. 981/2017. The claimant alleged that R-1 and R-2 are liable to pay compensation as the accident occurred during and in-course of employment with R-1 and the said vehicle was insured with R-2. The claimants prayed to CEC to grant them relief of Rs.15 Lakh towards compensation amount alongwith interest and penalty.
3. Upon receipt of the claim, summon dated 14.07.2017 was issued for appearance of both Respondents on 10.08.2017. In response to the summon, the respondent no.2 appeared and received copy of the claim for filing the WS, which was later filed on 21.09.2017. On 17.10.2017 and 15.11.2017 fresh addresses of R-1 that of Gurgram and Dwarka Sector11 was filed by the claimant and accordingly fresh summons were issued, which again returned unserved. Later, amended memo of party was filed by the claimant. The R-1 appeared on 27.02.2018 received copy of claim and thereafter filed reply on 22.03.2018.
4. In the reply, R-2 stated that the claim is not maintainable against the insurance as the policy is not exclusively taken under EC Act, no notice under section 10 was/is served to them, the deceased was not the employee of R-1, the deceased does not sustain accidental injury in any road accident, it is a case of natural death not during the course of employment but due to the suffocation which led to heart attack.
5. In the reply, R-1 stated that the claim is not maintainable as there is no employer-employee relationship between R-1 and deceased driver, as an agreement was entered into on 20.02.2017 on Principal to Principal basis. Alongwith the WS, R-1 filed documents such as copy of agreement, copy of order of DLC South west GNCTD, copy of order of Labour Court Mumbai, Hyderabad and Bangalore which is passed in favor of R-1. The R-1 admitted that the said vehicle was insured by the R-2 vide policy no. OG-17-1701-1831-0000-1169 for the period 18.07.2016 to 17.07.2017.
6. Show-Cause Notice dated 06.04.2018 under section 4A(3)(b) of the Act was also issued to respondent no.1 and reply was filed by them on 15.10.2010.
7. On 16.05.2018, on the basis of the pleadings of the parties, following issues has been framed as under:

i) Whether the deceased Nanu @ Rajan Bahadur died due to injury sustained by and out of employment under the respondent no. 1, and if so, what amount claimants are entitled under the EC Act 1923?

ii) Any other relief including penalty @ 50% of compensation amount?

8. On 05.06.2018, Petitioner Sh. Ram Bahadur's evidence was filed who was examined-in-chief and further cross examined on 09.07.2018 by the counsel of R-1 and R-2. Affidavit of evidence of claimant is supported by documents exhibit WW1/1 as Aadhar card of Sh. Ram Bahadur Rana, exhibit WW1/2 Aadhar card of Rupa Rana exhibit WW1/3 Aadhar card of Sh. Rajan Bahadur (Deceased) exhibit WW1/4 driving license of Rajan Bahadur, exhibit WW1/5 Driver Badge of Sh. Rajan Bahadur and General Dairy entry of PS Anand Vihar as Mark-A.
9. Evidence was also filed by R-1 through its witness Sh. Rashid Khan who was examined-in-chief and cross examined by claimant's counsel and R-2's Counsel on 20.11.2018
10. The R-2 did not file any evidence and the evidence stage was thus closed and arguments were then filed by R-1 & R-2 on 04.02.2019 and by the claimant's side on 16.04.2019. Oral arguments were also heard from the parties on 03.06.2019 and 07.08.2019.
11. In the written arguments filed by the petitioner on 16.04.2019, reliance is made upon various judgments of Hon'ble High Court of Delhi, Hon'ble High Court of Madras and Hon'ble Supreme Court on the issue of death due to Heart Attack cases covered under the Act in favour of their contention. Judgment regarding interest and penalty has also been quoted. The reliance on criminal case related documents has also been substantiated by two Judgments of Hon'ble Delhi High Court.
12. In the arguments filed by the Respondent no.1 the re-emphasis is/was made upon the same pleadings already taken by them.
13. In the arguments filed by the Respondent no.2 the emphases are made upon the natural death which is not covered under EC Act.
14. In view of the pleadings and cross examination of the claimant the following basic factual truth emerge before the CEC: -
- It is an admitted fact that death of Late Sh. Rajan Bahadur occurred when he was seated on the driver seat (may be in wait of getting duty from Meru Cab through web-based application), met with natural death due to heart attack while he was on duty of driving the car which is owned by respondent no. 1.
 - It is also admitted fact that no accident report was filed by respondent no.1 under the presumption that The Act of 1923 is not applicable in this case.
 - The vehicle upon which the deceased lost his life is registered in the name of M/s Meru Cab Company Private Limited.



- iv. The said vehicle was/is insured by Bajaj Allianz General Insurance Company Limited for the period 18.07.2016 to 17.07.2017 for third party liability only.
- v. The R-1 operates on a business model in which the driver is shown as 'entrepreneur' and agreement is executed between the driver and the company having the clause wherein employer and employee relationship is not established between the parties. There are also clauses in agreement regarding indemnification of M/s Meru Cab Company by driver entrepreneur against any lost damage liability etc.
- vi. The copy of orders annexed by the respondent no.1 alongwith his reply is not necessarily binding upon the Commissioner Employees Compensation under the EC Act, as this Act of 1923 is a benevolent and social legislation and need to be interpreted liberally in such a way that deceased family get some relief in terms of money for the irreparable loss incurred by the family.
- vii. In the cross examination, the claimant's father stated that the deceased was working as driver on salary basis in the Meru Cab company, although no record was produced to establish employee-employer relationship. He further stated that the distance between the places where the death happened was only 30 mtrs. from his residence and the driver was on duty at that time.
- viii. The respondent management was able to establish that the payment that deceased received from time to time was not a salary slip but a money transaction receipt between the R-1 and the deceased.
- ix. In the cross examination of Sh. Rashid Khan, witness of R-1, it is revealed that the company has more than 500 drivers which are working on agreement basis. Although the said agreement is in English language the same was made understood to the driver at the time of signing by the driver. It is admitted by the R-1 witness that the deceased was working with Meru Cab Company for last 7 to 8 months but strictly as per agreement terms.
- x. In the reply of the Show cause notice, the R-1 relied upon the terms and condition of the agreement dated 21.10.2016 and stated that in the absence of employer and employee relationship the section 4A (3) (b) of the Act is not applicable.

15. On careful examination of E-stamping page of agreement dated 21.10.2016, it is found that Meru Cab is mentioned as 1st party whereas the 2nd party name was not mentioned or missing. The terms and conditions of the agreement is one sided and totally designed in favour Meru Cab company, balance of power being shifted to Meru Cab, driver rendered with a comparatively weaker bargaining power; has deliberately been shown as 'entrepreneur'. While, the true picture is that such driver is not playing any role of entrepreneur as no investment or risk is being taken by him per se entrepreneur as is clear from the terms of agreement.

The said driver is only part playing a miniscule role maintenance and repair of vehicle and collecting fare from the passenger on behalf of the Meru Company. Although the so-called entrepreneur is given the right to hire driver and staff, by saying so the liability of Meru Cab cannot be undermined. It is a deliberate attempt on the part of Meru to eye wash the law enforcer by executed such agreement and giving it a terminology of principal-to-principal agreement and to more shocking is the fact the vehicle in question is insured as third party, deliberately avoiding the WC policy and not bringing the driver under the ambit of any insurance scheme thereby making driver devoid of social security benefits. According to my view, such agreement is executed by the Meru Cab only to avoid itself from all kind of legal liability and to obtain complete immunity.

16. Since the vehicle was insured by the respondent no.2 and therefore the insurance company is liable for making death compensation to the deceased family and thus the insurance company here will step into the shoes of the respondent no. 1. Since the payment was not released within the time period specified under the Act, the R-2 is further liable to pay interest on the principal amount. As per the directions issued by Hon'ble Delhi High Court in the FAO no. 385/13 in the matter of New India Assurance Company Versus Puran Lal and Ors. the penalty amount is also to be decided simultaneously vide the same order by CEC.

17. On perusal of the documents on record, pleading of parties judgments and orders put forwarded by the contesting parties, the CEC is of the considered view that the claimant (deceased family) is entitled for death compensation from the respondents.

Calculation of Principal Amount: -

In this case, there is no salary record of claimant-machine operator is available in case file the same is restricted to Rs.8,000/- as per the maximum limit notified under the Act. The age of the claimant is taken as 37 years on the basis of DOB mentioned on Driving License and the age factor of 37 years comes to 192.14.

As per Section 4(1)(a) of the Act in this case death of an employee, Claim amount is calculated as under:-

$$\begin{aligned} & 50\% \text{ of monthly wages } \times \text{ age factor} \\ & = 50/100 \times 8000 \times 192.14 = \text{Rs. } 7,68,560/- \end{aligned}$$

Calculation of Interest:-

Under section 4A(3)(a) of the Act, apart from above, since the respondent No-1 or 2 has failed to release the entitled death compensation amount within specified period in the Act i.e. within one month date of accident i.e. 21.02.2018. Therefore, the respondent no-2 is further liable to pay interest @ 12% upon the principal amount of Rs.7,68,560/- w.e.f. 23.06.2017 till the date of last date of



hearing i.e. 07.08.2019. The total interest amount comes to Rs.1,96,238/- which has to be borne by respondent no.2 i.e Bajaj Allianz General Insurance Company Limited.

Calculation of penalty:-

Since, reply has been filed upon show cause notice dated 06.04.2018 by the respondent no.1 management/employer on 15.10.2018 but it was not satisfactory and also no accident report was filed before the Labour Authority within the prescribed time. Therefore, total penalty @ 35 % is imposed upon respondents which would be shared between R-1 & R-2 amongst them in proportion of 25 and 10 percent respectively. The penalty when calculated on principal amount comes to Rs.192,140/- upon M/s Meru and Rs.76,856/- upon M/s Bajaj. The said penalty is imposed under section 4(A)(3)(b) of the Act for the default in paying the compensation due under the Act within one month from the date it fell due. The liability for car owner on penalty is on higher side for the reason that the act of commission and omission as made by M/s Meru by not taking WC policy or even 1st party policy and not accepting employment relationship, which led further confusion in the mind of insurance company on their liability part and compensation amount has not yet been released by any of the respondents. Respondents instead of accepting their liability under the Act, is still waiting for adjudication in the matter.

18. In view of above, the respondent no.1 is directed to deposit the amount of Rs.1,92,140/- (Rupees One Lakh Ninety-Two Thousand One Hundred Forty Only) towards Penalty. The Respondent no.2 is directed to deposit an amount of Rs.7,68,560/- towards principal, Rs.1,96,238/- towards interest, funeral benefit of Rs.5000/- and Rs.76,856/- towards penalty, total amounting Rs.10,46,654/- (Rupees Ten Lakhs Forty Six Thousand Six Hundred Fifty Four only) by way of demand draft/pay order in the favour of "Commissioner, Employee's Compensation, District North East" within thirty days of passing of this order. In case the amount is not deposited within 30 days, additional interest shall be calculated @ 12% till the date of realization and recovery proceeding shall be initiated against each of them under section 31 of the Act.

19. The present order is passed by Commissioner Employees Compensation (West District) after hearing and concluding the case as Commissioner Employees Compensation (East and North East District) and being transferred thereafter during pendency of this decision.

Given under my hand and seal of this 9th day of March, 2021.



U.K. Sinha
09/03/2021
(U.K. SINHA)
Commissioner Employees Compensation /
Dy. Labour Commissioner