

**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-I/WD/129/2016/1356.

Dated: 25/02/2022.

IN THE MATTER OF:

Sh. Sadre Alam S/o Sh. Ful Hasan

R/o Gram – Jirat,

Biraul, Darbhanga, Bihar – 847203

Through Counsel Sh. R.K Nain

Ch. 722-723, Western Wing,

Tis Hazari Courts, Delhi - 110054

.....Applicant

Versus

Sh. Satender Singh,

CW-665, 1st Floor,

Sanjay Gandhi Transport Nagar, Delhi

M/s SBI General Insurance Co. Ltd.

7B, GF, Pusa Road,

Opposite Metro Station Pillar No. 153,

Rajender Nagar, New Delhi - 110060

.....Respondent's

ORDER

1. By this order I will dispose off claim application filed by petitioner dated 13/10/2016 under the provision of section 22 of the EC Act 1923 for seeking injury compensation from the respondents. Henceforth EC, Act 1923 will be addressed as the Act.
2. The case of claimant is this that he was employed as a driver on vehicle HR-55H-0913 Truck owned by R1 Sh. Satyender Singh. On 14/05/2016 he met with an accident arising out of and in the course of his employment when on the instruction of R1 he was on his business trip accident was occurred due to instant break failed when he reached at Itawa By-pass around 10:00 PM. The applicant was alone driving the vehicle when he met with an accident, thereby he sustained injuries on various parts of his body. After



the accident he was taken to hospital for buttress treatment in hospital Itawa, UP. In this accident applicant sustained injury on his right foot, right arm and right chest and on the left side of his forehead also. Further it is contented that after this accident claimant has become 100% disable for work of as a driver which he was performing prior to the accident and accordingly his total earning capacity has been reduced as a driver. On the day of accident the vehicle was insured with R2 vide Policy No 0000000000985243-02 for the period from 22/05/2015 to 21/05/2016. The respondent no. 2 SBI General Ins. had also charged an additional premium from resp. No. 1 under EC, Act 1923. Claimant has further submitted that his last drawn salary was Rs 8,500/- plus Rs. 200/- per day as food allowance and he was 35 years old at the time of accident. Further it is contended that despite having notice of accident from the date of its occurrence resp. has not paid compensation to the claimant. In the last it is prayed that direction to be issued to respondents jointly or severally to pay compensation considering 100% disability of the claimant along with 12% simple interest PA from the date of accident till its realization along with penalty to the extent of 50% of the principal amount.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply/defence in the matter. Respondents appeared through their counsels in the proceedings. R1 filed reply in the matter and stated that since the vehicle in question was insured with R2 on the day of accident for the period from 22/05/2015 to 21/05/2016 as such payment of compensation, liability cannot be fastened upon them. Further R1 has admitted factum of Employee-Employer relationship and accident caused out of and in the course of his employment. On the day of accident claimant was employed as a driver. Further resp. admitted that claimant was drawing wages Rs. 10,000/- PM along with all the allowances. After the accident R1 has informed to R2 about the accident immediately for further necessary action to pay compensation to the claimant, but no compensation was paid by R2 to the claimant. In the last R1 prayed that if any liability comes in this case that should be fastened upon R2 ins. Co.
4. R2 also filed reply in the matter wherein in principle R2 admitted that compensation Ins. Policy No 985243-02 was issued in favour of R1 which



was valid from 22/05/2015 to 21/05/2016 and if any liability comes on R1 will be as per terms of the policy, rest of other contents have been denied on the ground that present application has been filed with the collision with R1 with an ulterior motive. Further R2 denied that in respect of alleged injuries sustained on 14/05/2016 by the claimant under the employment of R1 as claimant has failed to show any evidence that he had received injury out of and in the course of employment with R1. Further R2 also submitted that claimant failed to show valid DL by which he was authorized to drive a vehicle and also denied that accident was occurred out of and in the course of his employment. R2 has admitted the factum of coverage of vehicle under Policy No.985243-02, rest of other contents of claim petition has been denied in toto. In the last R2 prayed that application in question is liable to be dismissed with a heavy cost as R2 is not liable to pay any compensation to the claimant.

5. Counsel for petitioner rebutted all the contents of R2 as stated in their reply and reiterated contents of his claim petition.
6. On 06/03/2020 on the basis of pleading of the parties and documents available on record following issues were framed for adjudication:
 1. Whether claimant had met accident resulting thereby he received injury in due course of his employment with R1?
 2. And if so what relief and what directions are necessary required in this regard?
7. Matter was fixed for the evidence of the parties. Petitioner Sh. Sadre Alam filed his evidence by way of affidavit Ex. AW1/A. The contents of affidavit are corroborated to those claim petition. Claimant has also filed documents Ex AW1/1 to AW1/10 (Colly) i.e Certified copy of MLC of applicant from Dr. Bheem Rao Ambedkar Hosp., Itawa UP dt. 15/05/2016, Certified copy of Police intimation dt. 15/05/2016, certified copy of discharge summary, copy of Disability of claimant, Copy of DL, Copy of Aadhar Card, Copy of RC of vehicle in question, National Permit of vehicle in question, Cert. of fitness of vehicle and copy of Insurance cert. of vehicle. His statement was also recorded on 25/03/2021 and was also cross ex. by counsel of R2.



8. For R1 Sh. Satender Singh, owner of vehicle has filed his evidence Ex RW1/A. the contents of affidavit is corroborative to its reply. He was also cross ex. by counsels for the parties.
9. For R2 Sh. Sandeep Kapoor, Sr. Legal Advisor filed his evidence by way of affidavit. During the proceedings on 27/12/2021 counsel of R2 submitted that he does not want to examine the evidence and will not rely upon the affidavit of Sh. Sandeep Kapoor, Sr. Legal Advisor accordingly matter was fixed for final argument on 12/01/2022. Counsel for the claimant and R2 has filed written submission on record. Today matter has been fixed for oral submission from the parties.
10. For the petitioner Ld. Counsel Sh. R.K Nain submitted oral submission that since claimant was employed with R1 as a driver and on the day of accident i.e. 14/05/2015 and had received 20% disability as per certificate issued from Medical Board, Aruna Asaf Ali Govt. Hospital, Delhi. It is further argued that in this accident the claimant has received grievous injuries and become 100% unfit to perform duty of driver. Factum of Employer-Employee relationship and the accident occurred out of and in the course of employment, the R1 has admitted the same in his reply and also in evidence. On the other side Ld. Counsel for R2 Sh. Uday Malhotara has argued on the line that since claimant is running a shop in his village and is earning Rs. 6,000/- to 7,000/- per month as such he is not entitled for any compensation. Ld. Counsel for R1 Sh. Ravi Bhushan argued that since vehicle in question was insured with R2 and the R2 has taken additional premium form R1, the liability should be fastened upon R2.
11. On the basis of the pleading of the parties and documents available on the record I am giving my findings on the issues framed in the matter as under:

Issue No. 1

The case of claimant is that he was employed with R1 as a driver on the day of accident on 14/05/2016 when he was on his business trip he met with an accident resulting thereby he received grievous injuries all over his body and as per medical assessment by the medical board he became 20% disabled. Since accident has been occurred out of and in the course of his employment



and vehicle was insured with R2 and as per admission of factum of employee employer relationship and accident occurred out of and in the course of his employment of R1 and I have not found any counter evidence on record from respondents as such respondents are liable for payment of injury compensation jointly or severally. On the issue of injury as medical board has assessed 20% permanent disability to claimant, counsel of claimant argued that in this accident claimant has become totally unfit for the work of driver which he was performing before accident as he has received grievous injuries all over the body, hence 100% loss of earning capacity of claimant to be considered for the propose of driving of vehicle. In this regard Ld. Counsel relied upon the judgments of Hon'ble Delhi HC in the matter National Insurance Co. Ltd. v/s Ranjeet Singh @ Rana in FAO 246/2007 cited as 2009 SCC online Del 3826 wherein Hon'ble court discussed the issue of loss of earning capacity, where 15% disability was considered as a 100% loss of earning capacity. In one other case also Hon'ble court considered 23% disability as a 100% loss of earning capacity in the case titled as Ravi Kumar vs M/s Ashok Kumar & Bros & Anr. in FAO 498 of 2016 cited at 2017 ACJ 1365. According to submission adduced by the counsel for petitioner and judgment of Hon'ble High Court as discussed above which is applicable in this case claimant has become 100% disable in this accident. Further the arguments adduced by Ld. Counsel for R2 does not appears satisfactory to me as claimant is earning Rs. 6000 to 7000/- from his shop as such he should not held entitled for compensation under the Act is not considerable, since this is the case of compensation under EC, Act 1923, hence claimant cannot be debarred for holding entitlement of compensation under the Act. Further, submission adduced by R1 since vehicle was insured with R2 appears justified to me. In view of these discussion, I hold that claimant has met with an accident out of and in the course of his employment with R1. Since vehicle in question was insured with R2 on the day of accident and additional premium was charged by R2 from R1 under EC Act 1923, hence R2 Insurance Co. is liable to indemnify to claimant injury compensation to the extent of 100% as the above 02 judgments as cited in the matter is completely applicable. As such R2 is liable to pay compensation to the claimant, hence issue no 1 is decided against the respondents and in favor of the claimant.



Issue No 2

As made discussion in para no 1 for relief I am taking age of claimant as 35 years from the date of birth 01/01/1981 (as per Aadhar Card) and relevant factor 197.06 and 60% of last drawn wages restricted to 8,000/- as such calculation is made as under:

$$197.06 * 4800 = \text{Rs. } 9,45,888/-$$

12. Therefore, the applicant/claimant is entitled to receive injury compensation from respondents jointly or severally, since vehicle was insured on the day of accident as such R2 Insurance Co. is liable to indemnify to the claimant. Accordingly I direct Respondent no. 2 ins. Co. to deposit Rs. **9,45,888/- (Rupees Nine Lakhs forty Five thousand Eight hundred Eighty Eight Only)** on account of compensation payable to the applicant/claimant along with simple interest @ 12% P.A. w.e.f. 14/05/2016 till its realization through pay order/cheque in favour of **"Commissioner Employee's Compensation"** within a period of 30 days from pronouncement of this order i.e. 24/02/2022, failing which same shall be recovered as per provision of the Act.

13. The order is announced today i.e. 24/02/2022 in open court.

14. Given under my hand and seal of this Authority on this 24th day of February, 2022.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

