

IN THE COURT OF 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. ECI/74/NW/18/168-170.

Dated: 01/02/2021.

IN THE MATTER OF:

Sh. Sanjay Kumar Dass @ Sanjay Kumar Singh,

S/o Sh. Sudama Das @ Sudama Singh,

R/o Village-Patwa, P/o- Sripathar,

Anchal & P/S- Dhoraiya,

District – Banka, Bihar - 813109

..... Claimant/Petitioner

V/s

Sh. Raj Singh, S/o Sh. Malkiat Singh

AW-488, Sanjay Gandhi Transport Nagar,

Delhi-110042

....Respondent No.1

M/s National Insurance Company Ltd.

Regional Office – I, 4th Floor,

Jeewan Bharti Building, Cannaught Place,

New Delhi- 110001

....Respondent No.2

ORDER

1. Vide this order I will disposed of claim application dated 13/07/2018 filed on 16/07/2018 by claimant under section 22 of the Employees Compensation Act, 1923. (Herein after referred as an Act).
2. Petitioner Sh. Sanjay Kumar Dass alias Sanjay Kumar Singh S/o Sh. Sudama Das alias Sudama Singh has submitted that he was employed as a first driver on vehicle bearing Number PB-07-AS-5659 truck owned by Respondent No.1 on 14/11/2016, Further he submitted that during this accident which was arisen out of and during the course of his employment resulting thereby he sustained grievous injuries on his foot and due to this his left foot was amputated during the treatment. On the day of accident he was on its business trip on vehicle in question as a first driver accompanied by second driver from New Sabji Mandi Azadpur Delhi to Siliguri via Puraniya having loaded apples therein. It is further contented that on 14/11/2016 at about 8:30 AM when the vehicle reached near Islampur Bus Stand, West Bengal there was traffic jam. The petitioner dis-boarded from the vehicle to see as to how much probable time



could take to clear jam. When petitioner was coming back towards the vehicle after checking the traffic jam, the vehicle was running onwards and at that time the vehicle was being driven by second driver of the vehicle in slow speed and when claimant was trying to mount on the vehicle suddenly his hand slipped and he fell down and his left foot was caught underneath the tyre of the vehicle. His left foot was crushed badly and he was taken to Govt. Hospital- SD Hospital, Uttar Dinajpur, West Bengal for treatment. Where claimant was remained for a short time while thereafter he was shifted to Siliguri Nursing Home Pvt. Ltd. Thereafter for better treatment claimant was referred to Ananda Lok Hospital and Neuro Science centre, Siliguri where he was admitted for about 04 days. Thereafter claimant was taken to Annu institute of Orthopaedics and rehabilitation Patna. Thereafter he took treatment from other hospital. During the treatment his left foot was amputated. Claimant has spent huge amount on his treatment. After treatment claimant has become disable and he is not in a position to do any work of his capacity and become 100% disabled for the purpose of his employment as driver. His earning capacity has been totally reduced. At the time of accident vehicle bearing no PB-07-AS-5659 truck was owned by respondent No 1 and was insured with the respondent No2 i.e. M/s National Insurance Co. Ltd. Vide policy no. 360701311510000802 for the period from 06/01/2016 to 05/01/2017 and additional premium was also charged under Employees Compensation Act by Respondent No. 2 from respondent No. 1. It is further submitted that on the day of accident claimant was aged 38 years and was drawing wages at the rate Rs. 100 per month and food allowance Re. 2000 per day.

In the last claimant/petitioner submitted that Respondent No.1 having the notice of the accident, since the day of this occurrence and Respondent No 2 informed immediately after the accident took place, even otherwise a notice u/s 10 of the Employees Compensation Act, 1923 has been served upon the respondent No. 1, injury compensation has been not paid. Since the claimant was driver by profession and has become totally disabled as settled law by the Hon'ble Supreme Court of India, in case titles as Pratap Narayan Singh v/s Srinivas Sabatta cited at 1976 ACJ 141. Further claimant/petitioner submitted that since he met with an accident out of and in the course of his employment with Respondent No.1, as such he is entitled to receive compensation to the extent of 100 % disability as per provision of the Act along with 12% interest per annum from the date of accident till realization and penalty to the extent of 50%. Claim is supported by documents such as application for exemption of the court fee dated 13/07/2018, affidavit of claimant documents regarding treatment, insurance policy certificate bearing No 360701311510000802 valid from 06/01/2016 to midnight 05/01/2017, authorization certificate of NP (Goods) issued by Transport Department, Punjab, National Permit for goods



carriage, Registration Certificate of vehicle in the name of Raj Singh s/o Malkiyat Singh bearing vehicle No PB07AS5659, driving licence of Sh. Sanjay Kumar Singh s/o Sudama Singh, Aadhar card of Sh. Sanjay Kumar Dass s/o Sudama Das, Election ID Card, Photograph and vakalatnama of Sh. R.K Nain Advocate.

3. Summons dated 27/09/2018 was issued to respondent with direction to appear before the Authority to file reply on 22/10/2018 at 10:00 AM, but no one for Respondent No.1 appeared as such another notice dated 16/11/2018, 30/11/2018 for 17/12/2018, 24/12/2018 for 29/12/2018 were sent to the respondent but again no one appeared for respondent nor filed any reply as such notice dated 29/07/2019 for 01/08/2019 was sent to advocate for petitioner who had given report on affidavit dated 31/07/2019 that notice was served to Sh. Harbaj who disclosed himself as a employee of Sh. Raj Singh, Respondent No1 and another notice dated 10/01/2020 for 20/02/2020 was sent by speed post upon respondent no.1 which was served as per tracking consignment No ED596294333IN on 22/01/2020, despite this neither respondent appeared nor filed any reply as such the then Ld Commissioner proceeded ex-parte on 20/02/2020 to respondent No. 1.
4. Respondent No 2 M/s. National Insurance Co. Ltd. appeared in the proceeding and filed reply, wherein respondent denied all the contents of claim application of claimant. Further it is submitted by respondent that the claim application, claimant has filed incollusal with the respondent no.1 owner of the vehicle. No notice u/s 10 of the Employees Compensation Act, 1923 was given by the insured regarding accident to the Respondent No.2. It is further submitted that complainant has filed forged and fabricated DL of Sanjay Kumar Singh to support his case and prove the fact that he was working as driver whereas the alleged person shown as a victim of accident is Sanjay Kumar Dass as such fake story has been created by collecting fake documents from here and there. Further applicant has failed to produce any cogent proof of employer-employee relationship, to disclose the name of first driver due to negligence of whom the accident has occurred. On this ground claim is not maintainable and liable for dismissal. It is further submitted by respondent No 2 that if employee-employer relationship, accident occurred out of and in the course of employment of employee then as per section 3(1) of the Act employer is liable to pay compensation to the claimant, but in this case no documents establishing relationship as employee-employer, no details of injury sustained and proper treatment record filed, no documents regarding spending huge amount on treatment are filed on record, as such claim application is deserved to dismissal against respondent No 2.



5. In the last respondent no 2 submitted that since claimant failed to prove his case on merit as such claimant is not entitled for any compensation. In principle respondent no 2 insurance company admitted that vehicle bearing registration number PB-07-AS-5659 truck was insured with respondent no 2 vide policy number 360701311510000802 in the name of Sh. Raj Singh and was valid for the period from 06/01/2016 to midnight 05/01/2017. However, liabilities of the insurer are subject to the terms and conditions as stipulated in the policy. It is further submitted that in case of violation of any terms of the policy the insurance company will not be liable to indemnify the owner of the truck in the present case. In the last respondent prayed that the claim is not maintainable and is liable to be dismissed with cost.
6. Claimant has not filed rejoinder. On 20/02/2020 following issues were framed for adjudication by the then Ld Commissioner:
- Whether Employee-Employer relationship exists between parties?
 - Whether accident resulting into injury to claimant is caused out of and during the course of employment and if so what amount of injury compensation the claimant is entitled to?
 - Relief, if any?
 - Whether penalty is imposable u/s 4 A(3) of the Act and if so the quantum thereof?
7. Matter was fixed for 06/03/2020 for evidence of claimant. Claimant filed his statement by way of affidavit Ex. AW1/A. The contents of affidavit are corroborative those claim petition. Along with affidavit (Ex. AW1/A) claimant filed documents Ex AW1/1 to AW1/9 i.e. copy of disability certificate by which claimant Sh. Sanjay Kumar Dass assessed 40% permanent disabled, copy of medical treatment documents (colly no of pages 1 to 8) driving licence, copy of aadhar card, copy of election identity card, copy of insurance policy of vehicle, copy of the certificate of the registration of the vehicle, copy of National permit of the vehicle and photographs after the accident and copy of medical treatment of bills (colly no of pages 1 to 33). Claimant Sh. Sanjay Kumar Dass alias Sanjay Kumar Singh s/o Sh. Sudama Dass alias Sudama Singh tendered his affidavit on 16/09/2020 and was also cross examined by Sh. Prem Kumar counsel for Respondent No-2.
8. Claimant also examined Sh. Rajeev Kumar Dass S/o Sh Sudama Dass as a witness who depose that Sh. Sanjay Kumar Dass was employed as a driver on the vehicle owned by Sh. Raj Singh Respondent no.1. On 14/11/2016 he met with an accident. He had received telephonic call from Montu who was employed on vehicle owned by same owner Sh. Raj Singh that Sanjay kumar has met with as accident and is admitted in Anand Lok, Siliguri hospital. On



this information he reached the hospital and saw Sanjay Kumar Dass is in injured condition and hospitalised. At that time Sh. Montu another employee of the owner was also present there. He stayed there for 1 day and 1 night. When he saw that better treatment is not being provided to Sh. Sanjay Kumar Dass he shifted in some other Hospital at Patna and got admitted in RMS Hospital. Where he got admitted for treatment for about 01 month. During treatment his leg was amputated by surgery. The witness was also cross examined by Sh. Prem Kumar Singh Counsel for Respondent No 2.

9. Counsel for claimant/applicant and respondent no.2 filed written submission on record. Oral submission adduced by both the Ld. Counsel has been also heard on 18/01/2021.
10. On the basis of pleadings 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 Sh. Sanjay Kumar Dass alias Sanjay Kumar Singh is this that he was employed as a first driver on vehicle bearing no PB-07-AS-5659 owned by respondent no.01 and on 14/11/2016 he met with an accident arisen out of and in the course of his employment resulting thereby he sustained grievous injuries on his foot and his left foot was amputate during the treatment. The said accident was occurred when he was employed as a first driver on vehicle in question and was on its trip from New Sabji Mandi, Azadpur Delhi to Siliguri via Puraniya having loaded apples therein. On the day of accident he was accompanied by second driver. Accident was occurred on 14/11/2016 about 08:30 AM near Islampur Bus Stand, West Bengal. The accident was occurred when claimant was disboard to see reason of jam and the same time second driver drove the vehicle in slow speed, claimant was trying to mount on the vehicle suddenly his hand slipped and he felt down and his left foot was caught underneath the tyre of the vehicle. During treatment in various hospitals as mentioned in the claim his left foot was amputated. In treatment he spent huge amount. Due to this accident claimant become disabled and lost 100% earning capacity as a driver. As per disability certificate claimant become 40% permanent disabled. On the day of accident vehicle in question was insured with respondent no 2 under policy no 360701311510000802 for the period from 06/01/2016 to midnight 05/06/2017 and additional premium was charged under EC, Act by the respondent No. 2 by respondent no.1. Claimant also filed detail of medical bill amounting Rs. 1,61,778.98/- vide Ex. AW1/1.

Respondent No 1, despite given sufficient opportunities neither appeared nor filed reply/evidence on record, as such he proceeded ex-parte on 20/02/2020. Respondent no. 2 insurance company denied his liability for payment of compensation to the claimant on the ground that claimant has not filed any



documentary evidence to prove employee-employer relationship with respondent no.1 and any documentary evidence in regard accident occurred on 14/11/2016. In principle respondent no 2 admitted that vehicle in question was insured with respondent no.2.

To prove his case claimant examined himself as a witness Ex. AW1/A and Sh. Rajeev Kumar Dass as a witness. Counsel for respondent also argued that since accident occurred out of and in the course of employment with respondent no 1 as such respondent no 1 is liable to pay compensation to the claimant to the extent of 100%. Since vehicle in question was insured with respondent no 2 as such respondent no 2 is also liable to indemnify in the matter. Ld. counsel for petitioner argued that in cross examination of claimant Ld. Counsel for respondent no 2 Sh. Prem Kumar put question to claimant in regard his 02 names on which claimant denied the suggestion and replied that, "I am named by both the names Sanjay Kumar Dass & Sanjay Kumar Singh." On suggestion of Ld Counsel of R-2 claimant was replied that his accident has occurred due to negligence of claimant. Claimant has stated in cross examination that he was employed on vehicle in question on the day of accident, accident occurred out of and during the course of his employment. He was 1st driver but he does not know name of 2nd driver. Further he disclosed Sh. Raj Singh as his employer and was working since 1996 with them. The 2nd witness Sh. Rajeev Kumar Dass has also supported claim of claimant in his witness as well as cross examination.

Ld. Counsel for petitioner relied upon the following judgement:

- i) Pratap Narayan Singh v/s Siri Niwas Sabata at 1976ACJ141 – regarding compensation to the action of 100% as claimant's left leg amputated and become unfit to work as a driver which he was doing before accident. Further he claimed 12% interest PA from the date of accident till its realisation and 50% penalty.
- ii) Magahar Singh v/s Jaswant Singh cited at 1997ACJ517 – In this case Hon'ble apex court held that as per section 3(1) and 2(1)(n) – accident arising out of and in the course of employment – workmen/claimant sustained injury which resulted loss in both his hands just above the wrist resulting in permanent disability with 100% functional loss while he was operating toka machine – respondent contended that claimant was not his employee – claimant did not possess any letter of appointment or any documentary evidence for payment received by him for the work done – evidence that machine which the claimant was operating was that of respondent – respondent had taken the claimant to the hospital after the injury and has signed the bed – head ticket – whether the claimant was a workman under the respondent and the accident arose out of and in the course of employment – Hon'ble apex court held yes.



- iii) Mackinnon Mackenzie and Co. Pvt. Ltd. v/s Ibrahim Md. Isak, cited at 1969ACJ422 – As per section 3 of the act – whether an accident arose out of and in the course of employment – burden of proof rest upon the workmen – Commissioner can draw inference from proved facts but he should not base his findings nearly on surmise or conjectures. In this case Hon'ble court held that (relevant observation) in the case of death caused by accident the burden of proof rest upon the workmen to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessary prove it by direct evidence. Although onus of proving that injury occurred by accident both of and in the course of employment rests upon the applicant, these essentials may be inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand he may draw an inference from the proved facts so long as it is a legitimate inference.
- iv) Mackinnon Mackenzie and Co. Pvt. Ltd v/s Rita Fernandes, cited at 1969ACJ419 – in this case Hon'ble apex court held that whether the death arose out of and in the course of employment – The test is whether there was any casual connections between the death and his employment – Employer must produce evidence within his special knowledge, otherwise adverse inference should be drawn.
- v) Chiman Sukhiya Vasala v/s Ahmed Musa Ustad & Ors. Cited at 1987ACJ161 (Hon'ble court of Gujarat at Ahmdabad) in this case Hon'ble court has commented on duty of commissioner – Commissioner rejected the claim of workmen on technical ground finding discrepancy in the pleadings and evidence – Appeal was allowed. Hon'ble court observed that the objects and ideas set forth in the constitution is to secure to all its citizens socio economic justice --- it becomes the imperative duty of the judicial official officers and much more that of the Commissioner appointed under the Workmen's Compensation Act, which is a welfare and beneficial legislation that the cause of any person suffering from economic or other disability is not sacrificed on account of technical or such other procedural defects.
- vi) Tebha Bai & Ors v/s Raj Kumar Keshwani and Ors cited at (2018)7SCC705 – in this case Hon'ble court relied upon the oral evidence of the claimants and held that the claimants are entitled for death compensation.
- vii) Sh. Ram General Co. Ltd V/s Babu & Ors vide FAO 361/2013 – Hon'ble Delhi High Court – In view of this judgement, unimpeached testimony of the applicant and his detailed cross examination, testimony of the witness, his treatment clicks a casual connection of the applicant with the owner of the truck. Employer had been called upon to file its response,



but inspite of notice be served upon them, they opted not to respond. Nor any rebuttal has been filed. There is no contra evidence. The insurance company has failed to bring any evidence, in this circumstances as per principle laid down by Hon'ble Supreme court in Mackinnon Mackenzie and Co. Pvt. Ltd v/s Ibrahim Authority may take an inference in favour of an applicant.

- viii) In regard awarding 100% compensation Ld. Counsel relied upon Pratap Narayan Singh Dev V/s Sri Niwas Sabata and Anr. Cited in 1976ACJ141- "The injured workmen in this case is carpenter by profession – by loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpenter cannot be done by one hand." Hon'ble Court hold that disability should be assessed as 100%.
- ix) Other judgement which are relied by the Ld Counsel for petitioner in regard loss of earning capacity are as under :
- National Insurance Co. V/s Ranjit & Anr FAO246/2007, The Hon'ble Delhi Court – 15% disability held 100% earning capacity – the person held unfit to drive a vehicle.
- National Insurance Co. Ltd. & Anr. V/s Sh. Hari Om FAO264/2010 Hon'ble Delhi High Court.
11. Regarding issue of penalty Ld. Counsel relied upon the judgement of Hon'ble Supreme Court of India in a case titled as Pratap narayan Singh Dev V/s Siri Niwas Sabata cited at 1976ACJ141.
12. In the last Ld Counsel for petitioner argued that as per above pleadings and judgement of Hon'ble Supreme Court and High Court he has proved his case for compensation under the act.
13. On the other side Ld. Counsel for respondent no. 2 submitted oral submission that claimant failed to prove his case by way of not filing any documentary evidence which prove employee employer relationship, accident caused out of and in the course of employment with respondent no 1 and accordingly relied upon his pleadings. Further Ld. Counsel for Respondent No 2 in cross examination of claimant had asked that the accident was occurred due to negligence of claimant but same could not proved, hence it prima facie proved that respondent No 2 insurance company has accepted that accident was occurred of the claimant. Further after the accident when claim petition has been filed before this Authority by the claimant then it was onus upon the respondent No 2 to get survey of the accident to report factual position of the case to this Authority but same could not be done. Further the objection of the respondent No 2 that name of the claimant is defer as alleged in claim i.e



Sanjay Kumar Dass alias Sanjay Kumar Singh but this objection was also not proved by the respondent no 2, hence objection raised by respondent no 2 in this case are not considerable. Therefore considering the pleadings of the parties and judgment placed on record by the counsel for claimant in absence of any evidence lead by respondent as not prefer to appear in the proceedings to prove his case and to cross examine claimant and his witness produced in the case, the judgements relied in this case by the claimant are completely applicable as such the case of the claimant is proved. Hence, issue no 1 is decided in the favour of claimant and against the respondents.

Issue No 2 & 3 – Since detailed discussion has been given regarding accident of claimant and issue no 1, respondent did not appear various notices hence he was proceeded ex-parte then contents of claimant is not denied. Therefore it is proved that accident of claimant was occurred out of and in the course of his employment with respondent No 1 resulting thereby his left leg was amputated and as per disability certificate bearing certificate No. 12 dated 25/02/2017 he was assessed 40% permanent disabled in regard of traumatic amputation of left foot, but in my view which supported by Hon'ble Delhi High Court titled as National Insurance Co. Ltd & Anr v/s Sh. Hari Om, claimant after amputation of his left foot he become 100% disable for his job as a driver which he was performing before the accident. As such I hold that claimant become 100% disabled and lost 100% earning capacity as a driver. In view of this claimant is entitled for compensation as per provision of the Act. Accordingly for calculation of compensation age of claimant 38 yrs on the basis of DOB 10/05/1978 and relevant factor 189.56 and 60% of Rs. 8000/- (which comes Rs 4800/-) as restricted under the Act by GOI. Accordingly injury compensation is calculated as under:

$$\text{Rs. } 4800 * 189.56 = \text{Rs. } 9,10,080 \text{ /-}$$

14. In view of above calculation claimant is entitled to receive Rs. 9,10,080/- compensation along with 12% interest after 30 days from the accident till its realisation from Respondent No.1, since despite having knowledge of accident respondent did not pay compensation to the claimant as per Section 4(A) of the Act. Further as per section 4(2A) of the Act the employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment. According to this provision claimant is also entitled to receive actual medical expenditure incurred on his treatment, regarding this claimant has submitted details of medical bill Ex. AW1/1 amounting Rs. 1,61,778.98/- (colly page 3 to 26). In view of this Respondent No. 1 is liable to pay injury compensation amounting Rs. 9,10,080/- along with 12% interest after 30 days from accident till its realisation and actual



expenditure Rs. 1,61,778.98/- incurred on his treatment to claimant, since vehicle in question was insured with Respondent no 2 on the day of accident hence respondent no 2 is liable to indemnify to claimant on behalf of respondent no 1.

Issue No.4 – As per section 4A (3)(b) – (issue of penalty).

Despite having knowledge of accident respondent no. 1 Sh. Raj Singh s/o Sh. Malkiat Singh AW/488, Sanjay Gandhi Transport Nagar, Delhi-110042, did not pay injury compensation to the claimant as per the Act even after filing case before Commissioner Compensation respondent No. 1 neither appeared nor filed any defence/reply in the matter despite receipt of many notices from the Commissioner Employees Compensation. It shows that respondent no 1 deliberately neither paid compensation to the claimant nor attended proceedings before Commissioner as such he is liable to pay 50% penalty of awarded amount under section 4A(3)(b) of the Act.

15. In view of above discussion respondent no. 2, M/s National Insurance Co. Ltd. is directed to deposit Rs. 9,10,080/- along with 12% interest after 30 days from accident till its realisation and actual expenditure of Rs. 1,61,778.98/- incurred on treatment of claimant, within 30 days from the date of order by way of Demand Draft/Cheque in favour of Commissioner Employees Compensation, failing which same shall be recovered as per provision of the Act. Accordingly Respondent No 1 is also directed to deposit Rs. 4,55,040/-, within 30 days from the date of order by way of Demand Draft/Cheque in favour of Commissioner Employees Compensation, failing which same shall be recovered as per provision of the Act.

16. Given under my hand and seal of this Authority on this 29th day of Jan, 2021.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

