

**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.WCD/24/WD/11/ 160.

Dated: 27/07/2022.

IN THE MATTER OF:

1. Smt. Sitapati W/o Late Sh. Kishan Yadav,
2. Sh. Deepak S/o Late Sh. Kishan Yadav

C/o Sh. Ranjeet Singh Advocate,
Seat Behind Court Room No. 43,
Near SBI, Tis Hazari Court, Delhi - 110054

..... Claimant

V/s

M/s Shri Rajdev Yadav Goods Carriers,
Z-114, 1st Floor, Loha Mandi,
Naraina, New Delhi - 110028

M/s National Insurance Company Ltd.
3, Middleton Street, Kolkata - 700071

....Respondents

ORDER

1. By this order, I will dispose off application of the applicants / claimants dated 03/06/2004 seeking death compensation under Employees Compensation Act, 1923 (herein after will be referred as an Act).
2. The claimants/applicants are legal heirs of the deceased workman Lt. Kishan Yadav. The case of claimants is this that the deceased workman was employed as a cleaner/helper with the respondent at a salary of Rs. 2784/- per month. On 24.12.2003 when he was posted as cleaner/helper on vehicle bearing No. DL-I-GB-2649, he met with an accident in front of Shan-e-Punjab Dhaba, G.T. Road, Gannaur and in the said accident the deceased workman got grievous injuries and he was brought to Bhatia Nursing Home, Gannaur where he died. The deceased workman was aged 24 years. In the last claimant prayed that respondent be directed to pay compensation along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount.
3. The summonses were issued to the respondent. As per Labour Inspector report dated 14/06/2006, no such firm was found functioning from the address provided in the claim application and it also added that local enquiries reveals that the same has



shifted from this address. Then AR of respondent filed an affidavit dated 28/07/2006 stating therein that management has shifted at Naraina, New Delhi and summons may be issued at Naraina address. But in spite exercising all modes of service including publication of notice in newspaper, the respondent did not appear and they were proceeded ex-parte.

4. Further in the matter the claimant filed her evidence by way of affidavit dated 29/03/2007 and the same was corroborated the contents of her claim and was tendered on 25/05/2007. She also filed documents from Ex. CW1/1 to CW1/A to G and H and further the then Employees Compensation Commissioner issued final order dated 26/08/15 with the direction to the respondent to pay the compensation amount to the claimants as per the direction and an recovery order dated 04/04/2016 was also issued with the direction to the concerned District Magistrate/District Collector (West District) for the recovery of the compensation amount along with the simple interest as arrears of land revenue.
5. On 18.01.2017 respondent through its counsel moved an application dated 18/01/2017 under Order 9 Rule 13 CPC for setting Ex-Parte order dated 26/08/2015 passed by the then Employees Compensation Commissioner and on 11/08/2017 the then Authority after hearing both the parties has set aside order dated 26/08/2015 with cost Rs. 5000/- on respondent.
6. The claimant filed an amended claim application dated 19/09/2018 stating therein that the only changes made in the claim petition is that claimant No. 3 & 4 Sh. Ram Lal (Father of the deceased) and Mrs. Sudama Devi (mother of deceased) have died and requested that the name of claimant no. 3 & 4 be deleted from the array of the claim as a claimant and further requested to implead M/s National Insurance company Ltd. as respondent no. 2 in the case and application of claimants were allowed.
7. Accordingly, summons dated 28/03/2018 was issued along with the show cause notice u/s 4A dated 27/03/2018 to the respondent. The respondent No. 1 appeared and filed its reply stating therein that the answering respondent is not liable to make any amount of compensation as the truck bearing No. DL-1G-B-2649 on the date of accident i.e. 24/2/2003 was insured with the respondent. No. 2, M/s National Ins. Co. Vide cover note No. DR0429993 w.e.f. 10/05/2003 to 09/05/2004. Respondent no 1 further stated that the claimants has not approached with clean hands and has concealed and suppressed the true facts regarding that the claimant Smt. Sita Pati



has re-married and therefore requested that the claim deserves to be dismissed. The respondent no 1 further stated that the deceased workman Krishan Yadav was employed with the answering respondent as a helper and his last drawn wages was Rs. 2784/- per month. It is further stated that after the accident, the respondent has provided all the details regarding the coverage of the insurance of the Truck to the father of the deceased workman and also paid Rs. 90,000/- to the father of the deceased as Ex-gratia. In the last respondent prayed that the claim kindly be dismissed holding that the amount as claimed is highly exorbitant and also stated that the answering respondent is not liable to make any amount of compensation as the vehicle bearing No. DL-1G-B-2649 was insured and prayed that claim be dismissed.

8. The respondent No. 2 also filed its reply dated 29/05/2018 and subsequent amended reply on 24/09/2019, stating therein that the answering respondent is not liable to pay any compensation to claimant, as claimant in petition stated that deceased was employee of Rajdev Yadav Goods Carrier, whereas insurance comp. has no privity of contract with the Rajdev Yadav Goods Carrier. It is further stated that the policy was taken by the M/s Nanak Roadways Corpn. and not by Rajdev Yadav Goods Carrier, the respondent company is not liable to indemnify Rajdev Yadav Goods Carrier and prayed that claim petition needs to be dismissed. The respondent further submitted that the petition is not maintainable as the same is barred by limitation and further respondent denied rest of contents of claim petition in toto and prayed that the claim petition deserve to be dismissed.
9. On the basis of pleading of the parties and docs available on record following issues were framed on 29/05/2018 for adjudication:
 1. Whether the deceased Kishan Yadav was the employee of respondent no 1 on 24.12.2003?
 2. Whether the deceased Kishan Yadav suffered death out of and in the course of employment with respondent no 1 on 24.12.2003?
 3. Whether the claimant is entitled to compensation for the death suffered by deceased Kishan Yadav and if so amount of compensation?
 4. Whether respondents are liable to pay penalty u/s 4(A)(3)(b) of the Act for not paying the amount of compensation within 30 days from the date of accident?
 5. Whether respondent no 2 is indemnifier of respondent no 1?
 6. Any other relief if any?



10. Matter was fixed for the evidence of the parties. Claimant examined herself by way of filing her affidavit Ex. CW1/A. The contents of affidavit are corroborated to those claim petition. Claimant also filed documents Ex. CW1/1 to CW1/10 i.e. Copy of Policy, Copy of DD, Copy of Post Mortem, Copy of ID Card, Copy of demand Notice, Copy of Postal receipt, Copy of acknowledgement receipt, Copy of Aadhar Card, Copy of Aadhar Card of Deepak, Copy of Pariwar Register. Claimant has tendered her evidence and was also cross examined by the counsels of respondent no 1 and 2 on 09/09/2019.

11. During the course of proceeding on 20/04/2022, it came to the notice of this Authority that vide order dated 24/09/2019 application filed by the respondent no 2 on 24/09/2019 under order 6 rule 17 CPC has been disposed off vide detailed order as such further question does not remain to be discussed on the said application. Since the application has been already allowed on 24/09/2019, but however on the request of respondent no 1 time was granted to file reply, if any, if new facts can be put on record, but despite ample opportunities respondent no 1 neither appeared nor filed any reply on application as such the granted time to respondent no 1 for filing reply was not availed as such right was closed. Further submission adduced by Ld. Counsel for petitioner as well as respondent no 2 heard in detail, after the discussion and as per order dated 24/09/2019 this issue has been cleared that vehicle in question was insured with respondent no 2 and policy was issued in the name of Nanak Roadways Corporation, further Nanak Roadways Corporation has sold the vehicle to Sh. Rajdev Yadav Goods Carrier (Resp. No. 1) and accident was occurred on 24/12/2003 but on this date vehicle was not transferred in the name of respondent no 1 as such liability of compensation cannot be fastened upon respondent no 2 due to no privity of agreement / policy with respondent no 1.

In view of above I hold that respondent no 1, M/s Rajdev Goods Goods Carrier is liable to discharge his liability under EC Act, 1923 in favour of the claimant

12. Accordingly all the issues framed in the matter as above are decided in favour of claimant and against respondent no 1.

13. In view of above discussion, the application of the applicants is answered accordingly. In the claim application it has been stated that on the day of accident i.e. 24/12/2003 deceased was aged 24 years and was drawing wages Rs. 2784/- PM. In respect of age they have filed copy of Identity card wherein deceased has been



shown 22 years as it was issued on 28/08/2002. In the post mortem report with age is shown as 23-24. In the given situation, the age of deceased is taken as 24 years. The wage are to be taken as per minimum wages applicable at the time of occurrence of accident. The rate of minimum wages of un-skilled category on the day of accident was Rs. 2783/- PM. In the given age and wage and relevant factor 218.47 applicants are entitled for death compensation as under:

$$\frac{218.47 * 2783 * 50}{100} = \text{Rs. } 3,04,001/-$$

14. Therefore, the claimant is entitled to receive compensation from respondent No. 1. The respondent No. 1 is directed to deposit before this Authority an amount of **Rs. 3,04,001/- (Rupees Three Lakhs Four Thousand One Only)** on account of compensation payable to the claimant along with interest @ 12% p.a. w.e.f. 24/01/2004 till its realization. Regarding issue on penalty respondent no 1 did not comply mandate of section 4A of the Act despite having knowledge of accident from the date of its occurrence as such respondent No. 1 is also liable to pay 50% penalty to the claimants on awarded amount i.e. Rs. 1,52,000/-. Accordingly along with above direction respondent no 1 is further directed to deposit 50% penalty of awarded amount i.e. **Rs. 1,52,000/- (Rupees One Lakh Fifty Two Thousand Only)** through pay order in favour of "Commissioner Employee's Compensation" within a period of 30 days from pronouncement of the order before this Authority.

15. Given under my hand and seal of this Authority on this 23rd day of July, 2022.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

