

**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. ECI/71/NW/2018/ 232.

Dated: 23/09/2022.

IN THE MATTER OF:

Sh. Thakur Vikramditya S/o Sh. Bharat Thakur
R/o Vill – Paigambarpur,
PO Darima, PD Keoti, District Darbhanga, Bihar

.....Applicant/Claimant

V/s

Smt. Sudesh W/o Sh. Ravinder
R/o H.No 54, Pandit Sunder Lal Wali Gali
Narela, New Delhi-110040

.....Respondents No.1

M/s IFFCO-TOKIO Gen. Insurance Co. Ltd.
IFFCO Sadan, C-1, District Centre,
Saket, New Delhi-110017

.....Respondents No.2

ORDER

1. By this order I will dispose of claim application filed by petitioner dated 06/07/2018 under the provisions the EC Act 1923 for seeking injury compensation from the respondents.
2. The case of claimant is this that he was employed with respondent no 1 as driver and was getting a salary of Rs. 13,000/- per month with Rs. 100 per day. He further stated that under the instruction of respondent no 1 he was on his professional trip on vehicle (Canter) bearing no. DL-1LX-2653 as driver and the said Canter was loaded with goods from Delhi was to reach to Bhiwadi. It is further submitted that on 05/05/2018, when the vehicle (Canter) bearing No. DL-1LX-2653 reached near IMT Chowk, the vehicle was loaded with goods and was going in normal speed. The vehicle going ahead of the vehicle hit into that vehicle and therefore the vehicle No. DL-1LX-2653 was badly damaged. It is further submitted that he was the driver of the said vehicle sustained grievous injuries in his body especially in his both legs, during the course of his employment with respondent no 1. It is further stated that a case was also registered in the Police Station Manesar, vide FIR No. 0114 dated 12/05/2018. It is further submitted that thereafter he was immediately taken to nearby hospital and he was primarily treated therein and his treatment is still going on and he has spent more than Rs. 1,00,000/- over his treatment. It is further stated by the claimant that he has become 100% disable for the purpose of performing his duty due to the injuries sustained in the accident. It is further submitted that the vehicle bearing No. DL-1LX-263 – Canter was owned by the respondent no – 1 at the time of accident and it was insured with the respondent no 2 vide



policy no 28296589 for the period 27/07/2017 to 26/07/2018. It is further submitted that the respondent no 1 the owner of the vehicle is having the notice of the accident, since the day of its occurrence and he had informed the Insurance Co. i.e. respondent no 2 immediately after the accident. It is further submitted that the respondent no 1 has also applied for OD claim to the respondent no. 2 for the damages of the vehicle in question. In the last claimant prayed that since accident occurred out of and in the course of employment with respondent no 1 hence respondent is liable 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 along with all medical expenses, incurred by him over his treatment, along with claim claimant filed copy of DL, Copy of RC of vehicle bearing no. DL-1LX-2653, Copy of insurance policy, copy of PUC, copy of permit of vehicle, copy of FIR No. 0114 dated 12/05/2018, copy of summary of bills spent on the treatment, copy of summary of medical bill expenses.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the defence of the matter. Respondent No 1 appeared and filed reply in this matter and stated that the present claim is not maintainable as the same is not verified properly. It is further submitted by resp. No 1 that they have spent more than Rs. 200000/- over the treatment of the claimant. Resp. No 1 further submitted that the claim is liable to be dismissed as per the provisions of order VII Rule 11 CPC. It is further submitted that the answering resp. No 1 is not liable to compensation as it has taken comprehensive policy for the vehicle bearing no. DL-1LX-2653 from M/s IFFCO TOKIO vide policy no 28296589 covering period from 27/07/2017 to 26/07/2018. It is further submitted that the answering resp. No 1 has already informed the insurance company about the accident while applying for OD claim and all the documents have already verified by the insurance company, and prayed whatever liability, if arises has to be indemnified by the insurance co. Only. It is further submitted by resp. No 1 that it is denied that the claimant was getting a salary of Rs. 13,000/- per month with Rs. 100 per day, as the claimant was getting only Rs. 10,000/- per month with actual expenses, if any. It is further submitted by respondent no 1 that his brother has himself helped in the treatment of the claimant, the claimant was got admitted in a private hospitals and was given best case and the claimant was never asked to spend on his pocket. It is further submitted that all the expenses were incurred from the pocket of the answering respondent no 1. The respondent no 1 further denied that the claimant has spent more that Rs. 1 Lacs over his treatment as whatever medical bills were raised were paid by the answering respondent. In the last respondent denied the claim of claimant and prayed that the petition to be rejected.
4. Respondent no 2 also appeared and filed its reply stating there in that at the very outset, it is submitted that no such accident has taken place out of and during the course of employment of applicant with the respondent no 1 on the vehicle No. DL-1LX-2653. It is further submitted that the documentary proof regarding disability as averred by the petitioner is not placed on record neither applicant nor respondent no 1 has furnished any documentary proof with the



answering respondent regarding wages and employment of the injured on the said vehicle at the time of alleged accident. It is further submitted that in absence of DL of the deceased, the deceased cannot be presumed to be working as a driver on the vehicle. It is further submitted that the answering respondent is not liable to pay any compensation to the petitioner unless and until it is proved that the injured sustained injury and any permanent disability due to the alleged accident arising out of and in the course of employment under respondent no 1, on the vehicle no. DL-1LX-2653. It is further submitted that the liability of the answering respondent no 2 is vicarious arising out of contract of insurance based on certain terms and conditions. Unless and until it is proved that the driver of the vehicle No. DL-1LX-2653, allegedly involved in the accident was holding a valid and effective DL and/or was not otherwise disqualified from holding such licence by the competent Authority in respect of the vehicle at the time of alleged accident and /or there was a valid and effective permit and fitness in respect of the vehicle as on the date of alleged accident, the answering respondent will not be liable to indemnify the respondent no 1 or to pay compensation to the claimant under the policy in question. It is submitted by the respondent no 2 that as per there records available with the respondent no 2 the policy no. 28296589 was issued by the answering respondent no 2 in the name of Mrs. Sudesh, respondent no 1 for a period from 27/07/2017 to 26/07/2018 in respect to vehicle no DL-1LX-2653, rest of contents of claim petition has been denied in toto and in the last 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. During the course of proceeding on 30/01/2020 AR for claimant submitted that he does not want to file rejoinder.
6. After going through the pleadings of the parties and documents on record it was found that it is an admitted fact that the petitioner was employed with respondent no 1 and had met with an accident during the course of his employment with respondent no 1 and the vehicle in question was insured with respondent no 2 on the day of accident vide policy No. 28296589 from the period to 27/07/2017 to 26/07/2018, further respondent no 2 had taken time to settle this matter but despite efforts no settlement could arrive between the parties. Therefore only issue is to be decided in the matter that what amount of compensation is the claimant entitled for and by whom. The matter was fixed for assessment of disability of the claimant by the medical board. The claimant on 14/12/2021 filed disability certificate assessed by the medical board and as per the disability certificate received in this court the claimant got 50% disabled (as per disability certificate of medical board).
7. Matter was fixed for the evidence of the parties. Claimant examined himself by way of filing his affidavit Ex. CW1/X. The contents of affidavit are corroborated to those claim petition. Claimant also filed documents Ex. CW1/1 to CW1/9 i.e. copy of DL, Copy of Disability certificate, Copy of RC of vehicle bearing no. DL-1LX-2653, Copy of insurance policy, copy of PUC, copy of permit of vehicle, copy of FIR No. 0114 dated 12/05/2018, copy of summary of bills spent on the treatment, copy of summary of medical bill expenses. Claimant has



tendered his evidence and was also cross examined by the counsel of respondent no 2 on 15/03/2022.

8. On 25/05/2022, despite giving sufficient opportunity respondent no 1 failed to lead evidence, hence the right of respondent to lead evidence was closed. Further during the proceeding counsel for respondent no 2 submitted that they do not want to lead any evidence, hence on the request of counsel for respondent no 2, evidence was closed and the matter was fixed for arguments. Claimant and respondent no 2 filed written submission on record .
9. On the basis of the pleading of the parties and docs available on the record and after hearing oral submission of the parties accordingly i am giving my findings as under: -

Relief:

10. From the pleading of the parties it has been come out on record that claimant was employed with respondent no 1 as a driver on the day of accident and he met with an accident as discussed in this case above resulting thereby he received grievous injuries out of and in the course of his employment and as per disability certificate claimant received 50% permanent (physical impairment in relation to his both lower limbs). Respondent no 1 did not disputed employee employer relationship and the accident occurred out of and in the course of his employment. The only dispute of respondent no 1 in this case is this that on the day of accident vehicle in question was insured with resp. no 2 ins. co. and if any liability for payment of compensation comes that should be indemnified by resp. no 2. The second objection of the respondent no 1 is this that claimant was received monthly wages 10000/- plus other expense and not Rs. 13000/- and in treatment resp. no 1 spent Rs. 2,00,000/- of the claimant. On the other hand resp. no 2 ins. co. disputed all the contents of reply but in principle resp. no 2 admitted that vehicle in question was insured on the day of accident vide policy no. 28296589. Respondent no 1 and 2 did not lead any evidence to prove any contents of the reply. Despite given opportunities to them in this circumstances it is proved that claimant Sh. Thakur Vikramditya was employed with respondent no 1 and met with an accident resulting thereby he received 50% permanent disable in his both lower limbs out of and in the course his employment. As such claimant is entitled to receive injury compensation from respondent no 1. Since vehicle in question was insured with resp. no 2 as such resp. no 2 is liable to indemnify in this matter to claimant on behalf of resp. no 1.

As made discussion above for relief I am taking age of claimant as 22 years and relevant factor 221.37 and 60% of last drawn wages restricted to 8,000/- and 50% disability, as such calculation is made as under:

$$\frac{221.37 * 4800 * 50}{100} = \text{Rs. 5,31,288/-}$$



11. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent No. 2 along with reimbursement of actual medical expenditure Rs.1,11,450/- incurred by the employee on his treatment. Accordingly I direct Respondent no.2 to deposit Rs. **5,31,288/- (Rupees Five lakh thirty one thousand and two hundred eighty eight Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 05/06/2018 till its realization and Rs. 1,11,450/- medical expenditure through pay order in favour of **"Commissioner Employee's Compensation"** within a period of 30 days from pronouncement of the order before this Authority.

12. Given under my hand and seal of this Authority on this 9th day of September, 2022.

(S.C. Yadav)
Commissioner
Employee's Compensation Act, 1923

