

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/34/NW/18/ 201.

Dated: 31/08/2022.

IN THE MATTER OF:

Mohammad Mobeen S/o Mohammad Umar

R/o Gram Samantha, P.S. Kaithwaliya,
Thana – Dudhara, Samantha Chhapia Vasie,
Distt. Sant Kabeer Nagar, U.P

.....Applicant/Claimant

V/s

Sh. Sanjeev Kumar S/o Rajender Singh

R/o H.No. 96, Bazadd Gali VPO,
Hiranki, Delhi - 110036

.....Respondent No.1

M/s Sri Ram General Insurance Co. Ltd.

1001, Ground Floor, Arya Samaj Road,
Karol Bagh - 110005

.....Respondent No.2

ORDER

1. By this order I will dispose of claim application filed by petitioner dated 27/03/2018 under the provision the EC Act 1923 for seeking injury compensation from the respondent.
2. The case of claimant is this that he was a workman employed with respondent No. 1 as a driver. He further stated that he met with an accident on 20/01/2018 at about 11 hours. The claimant further stated that the accident took place at under the jurisdiction of police station Sadai Pur Birhum West Bengal India while driving the truck bearing No. HR-37-C-0244 during the course of employment under the respondent No. 1. The claimant further stated that due to the accident right leg was amputated during the course of employment of respondent No. 1. The claimant further stated that he has spent rupees 5,00,000/- on his treatment, conveyance and special diet etc. The claimant further submitted that the vehicle bearing number HR-37-C-0244 was insured at the time of accident wide policy cover note number 101047/31/18/007630. The complainant stated that he was aged about 22 years at the time of accident and his last drawn salary was Rs. 20,000/- per month. That the employer has notice of accident and he has requested verbally many times to pay the compensation but the respondent did not make any payment. It is further stated that the accident was registered in PS Sadai



Pur Birhum West Bengal India, vide F.I.R No. 12/2018 under section 279/338/427 I.P.C on 23/01/2018. In the last claimant prayed that he was employed on the vehicle and the accident caused out of and during the course of his employment. He is entitled to compensation of Rs. 15,00,000/- with interest and the respondents be directed to pay penalty for not depositing the compensation in time.

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 employer in person appeared before the Authority on 17/09/2018 and admitted that accident has occurred during his employment, but not filed any Written Statement on record.

Further Respondent No 2 Insurance Co. appeared and filed reply in this matter and stated that all grounds taken and averments made by the claimant are generally and specifically denied. The respondent further submitted that there was employer and employee relationship between respondent No. 1 and claimant Mohammad Mobeen nor the petitioner sustained injuries in any accident arising out of and during the course of employment with respondent no. 1 on vehicle bearing Reg. No. HR-37C-0244 and he was never employed with Imamuddin S/o Vazid Ali being the actual owner of vehicle and the injured was driving the vehicle under the supervision and control of new owner, and neither the RC nor policy was transferred by the new owner in his name, therefore the present claim petition is totally wrong, misconceived and baseless filed by claimant concealing the true and material facts amounting to misrepresentation on his part and prayed that the claim is liable to be dismissed. The answering respondent further submitted that the PA for owner/Driver was changed by them for covering the owner/driver in case if the insured vehicle met with self-inflicted accident, therefore the liability of answering respondent is confined to the own damages caused to insured vehicle any injury to third party, owner/driver in any self – inflicted road accident and not otherwise. It is further submitted by the respondent that as per section 134 (c) of the Motor Vehicle Act, 1988, it is mandatory duty of the insured / respondent no. 1, herein to furnish the particulars of policy, date, time and place of accident, particulars of injured and name of the driver and particulars of driving licence, but the insured / respondent no. 1 has not complied with statutory demand and further stated that this respondent is not liable to indemnify the insured or pay any compensation and the case is liable to indemnify the insured or pay any compensation and the case is liable to be dismissed against respondent no 2. The respondent further denied that the petitioner spent Rs. 5,00,000/- on his treatment, conveyance and special diet etc, nor petitioner has provided the bills of Rs. 5,00,000/- as spent on his treatment, conveyance and special diet etc. The answering respondent no. 2 submitted that vehicle bearing no. HR-



- 37C-044 was insured with answering respondent no 2 vide policy no. 101047/31/18/007630 subject to terms and conditions of policy and provisions of Motor Vehicle Act, 1988. It is further denied by the respondent that the petitioner was employed as driver on the vehicle bearing no. HR-37C-0244 by respondent No. 1, it is further denied that the injured was getting Rs. 20000/- per month and stated that nothing is produced on record to show that the deceased was working with respondent no 1 as a driver on the insured vehicle. In the end the respondent prayed that the claim be dismissed as against respondent no 2, in the interest of justice and equity.
4. Claimant filed rejoinder by which he denied contents of reply filed by respondent No. 2 and reiterated the contents of his claim application.
5. On the pleadings of the parties, the following issues were framed for adjudication on 06/09/2019:
1. Whether employee – employer relationship existed between the claimant and the respondent on the date of accident i.e. 20/01/2018? And if so
 2. Whether accident leading to injuries occurred during and in the course of employment? And if so, to what amount of compensation the claimant is entitled to?
 3. Any other relief?
 4. Whether the respondents are also liable for penalty u/s 4A? And if so to what extent and to what amount?
6. Matter was fixed for the evidence of the parties. Claimant examined himself by way of filing his affidavit Ex. PW1/A. The contents of affidavit are corroborated to those claim petition. Claimant also filed documents Ex. PW1/1 to PW1/8 and Mark A to Mark D i.e. Copy of Adhar Card, Copy of PAN Card, Copy of Disability Certificate, Copy of Income Certificate, Copy of Birth Certificate, Medical Bills (Colly 14 Pages), Medical treatment papers (Colly 17 pages), Copy of Driving licence, Copy of Caste certificate, Copy of Scholar's Register, Copy of FIR No. 12/18 dated 23.01.2018, Copy of Driving Licence. Claimant has tendered his evidence and was also cross examined by the counsel of respondent No. 2 on 31/01/2020.
7. On 31/01/2020 despite sufficient opportunities provided to respondent no 1, none appeared to cross examine the claimant, hence the right of respondent no 1 to cross examine the claimant was closed and matter was further fixed for RE.
8. On 25/09/2020 despite service of notice upon Respondent No. 1, none appeared from respondent no 1, hence opportunity of respondent no 1 to lead evidence was closed and the matter was further fixed for hearing on 09/10/2020.



On 09/10/2020 AR for respondent No. 1 appeared and informed to the Authority that he was unable to attend the court on 25/09/2020 as he was out of station and requested for an opportunity for leading evidence in the matter. Further ARC had no objection if respondent no 1 is allowed for leading RE, accordingly in the interest of justice on 09/10/2020 an opportunity for leading evidence was provided to respondent no. 1.

9. The Respondent No. 1 Sh. Sanjeev Kumar, filed statement/evidence by way of affidavit Ex. MW1/X1 also tendered the evidence and was also cross examined by the counsel of claimant 01/03/2021. The contents of affidavit are corroborated of those reply.
10. On 25/03/2021 submission adduced by the parties heard and it came under consideration that it is an admitted fact by the respondent No. 1 that the petitioner met with an accident out of in the course of his employment with respondent no 1 and vehicle was insured with respondent no 2 and the claimant was drawing Rs. 25,000/- salary per month and age 24 years and since the facts were admitted, hence Authority was of view that no further trial was required in the matter and the only issue was remain to decide the percentage of disability in nature sustained by the claimant. Accordingly disability was received from Dr. Baba Saheb Ambedkar hospital, GNCT of Delhi wherein claimant has been assessed 80% permanent disablement in relation to right lower limb.
11. The case was fixed for arguments. All the parties filed written submission on record, and also oral submissions adduced by the parties heard in detail.
12. On the pleadings of the parties, documents filed therein and the evidence adduced on their behalf, I have to give my findings in the case as under:

Issue No. 1 & 2

The claim of claimant is this that he was a workman employed with respondent No. 1 as a driver. He further stated that he met with an accident on 20/01/2018 at about 11 hours. The claimant further stated that the accident took place at under the jurisdiction of police station Sadai Pur Birhum West Bengal India while driving the truck bearing No. HR-37-C-0244 during the course of employment under the respondent No. 1. The claimant further stated that due to the accident right leg was amputated during the course of employment of respondent No. 1. The claimant further stated that he has spent rupees 5,00,000/- on his treatment, conveyance and special diet etc. The claimant further submitted that the vehicle bearing number HR-37-C-0244 was insured at the time of accident wide policy cover note number 101047/31/18/007630. The complainant stated that he was aged about 22 years at the time of accident and his last



drawn salary was Rs. 20,000/- per month. That the employer has notice of accident and he has requested verbally many times to pay the compensation but the respondent did not make any payment. It is further stated that the accident was registered in PS Sadai Pur Birhum West Bengal India, vide F.I.R No. 12/2018 under section 279/338/427 I.P.C on 23/01/2018. In view of this on the own admission of respondent no 1 during the proceedings it is proved that claimant was employee of respondent no 1 on the day of accident resulting thereby he become 80% permanent disable in relation to right lower limb and accident was occurred out of and in the course of his employment, as such I decide issue no 1 and 2 in favour of claimant and against the respondent.

Issue No. 3

Relief:

As made discussion above for relief I am taking age of claimant as 22 years (as per DOB mentioned in Aadhar Card) and relevant factor 221.37 and 60% of last drawn wages restricted to 8,000/- and 80% disability, as such calculation is made as under:

- | | | | |
|------|--------------------------------------|---|----------|
| i) | Relevant factor of 22 years | : | 221.37/- |
| ii) | 60% of wages @ Rs. 8000/- pm | : | 4800/- |
| iii) | Disability assessed by medical Board | : | 80% |
| iv) | Amount of compensation | | |

$$\frac{221.37 \times 4800 \times 80}{100} : 8,50,061/-$$

13. The claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident.

Issue No. 4

Regarding issue on penalty Show cause notice was issued to the respondents to file reply. Accordingly respondents filed reply in response to SC notice wherein respondent no 1 has not given any justified ground as to why they are not liable to pay the penalty. Further respondent no 1 did not bring any documents on record which show that after the accident immediately he had informed to the insurance company about the accident of the claimant wherein he received injuries. If claimant could have been informed on time to insurance company then delay for payment of compensation could be avoided. Further respondent no 2 insurance co. has denied that respondent no 1 had informed about the incident on time and no relevant documents including age of proof, medical documents, disability certificate etc were provided by the claimant. Further respondent no 2 has taken stand that the preliminary responsibility to deposit the compensation was



upon the employer/insured. No intimation was given by the insured about the accident to the ins. co. as such penalty cannot be imposed upon the respondent no 2. Respondent no 2 insurance co. relied upon the judgement of Ved Prakash Garg vs Premi Devi 1998ACJ-1 of Hon'ble Supreme Court of India on the issue of penalty, wherein Hon'ble court held that penalty has to be recovered from the employer another judgement on which Ins. Co R2 relied of Hon'ble Supreme Court of India is New India Ins Co vs Harshat Bhai Modia and anr. 2006(5) SCC 192.

In view of above discussion since resp. no 1 failed to discharge his duty on time to inform insurance co. R-2 on time and also failed to provide relevant docs regarding accident of the claimant, thus claimant could not be able to get injury compensation though the vehicle was insured from respondent no 2 in these circumstances respondent no 1 is liable to pay penalty 50% of awarded amount to the claimant as per section 4A of the Act.

14. Therefore, the claimant is entitled to receive injury compensation from respondents. The respondent No. 2 Insurance Co. is directed to deposit before this Authority an amount of **Rs. 8,50,061/- (Rupees Eight Lakhs Fifty Thousand Sixty One Only)** on account of compensation payable to the claimant along with interest @ 12% p.a. w.e.f. 20/02/2018 till its realization along with **Rs. 1,49,415/- medical expenditure** and further respondent no 1 is directed to deposit penalty **Rs. 4,25,030/- (Rupees Four Lakhs Ninety Four Thousand two Hundred Eighty Only)** and 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 31st day of August, 2022.

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

