



सत्यमेव जयते

BEFORE SH. K.M. SINGH, COMMISSIONER

(UNDER EMPLOYEES' COMPENSATION ACT, 1923)

DISTRICT NORTH-EAST

**VISHWAKARMA NAGAR, JHILMIL COLONY, SHAHDARA,
DELHI-110032**

Case No. CEC-D/NE/43/2018/ 3557-3559

Dated: 11/8/2024

In the matter of:-

1. Smt. Sharda W/o Late Mohd. Jafar
2. Md. Arsad (Minor) S/o Late Mohd. Jafar
3. Baby Jannat (Minor) D/o Late Mohd. Jafar
4. Md. Azan (Minor) S/o Late Mohd. Jafar

All resident of B-298, Kondli, B-Block,

Harijan Basti, Delhi-110096

.....Claimants

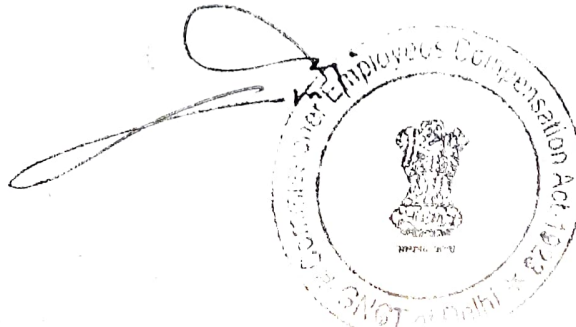
VERSUS

1. Sh. Mahender Singh S/o Sh. Veer Chand Gattam,
1/3514, Gali No-2, 3rd Floor, Ashok Marg,
Ram Nagar Extn., Shahdara, Delhi-110032.
2. M/s Cholamandalam MS General Insurance Co. Ltd.
Plot No-6, Adjacent to Metro Pillar No-81,
Pusa Road, Karol Bagh, Delhi-110005.

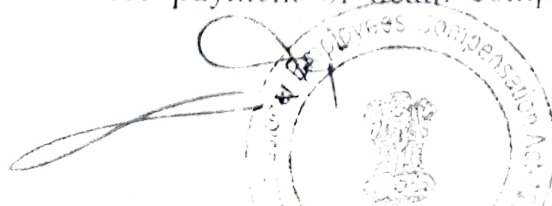
.....Respondent/s

ORDER

1. Vide this order, I shall dispose off the death claim application of Smt. Sharda W/o Late Mohd. Jafar filed by the above claimants under the provisions of Employees

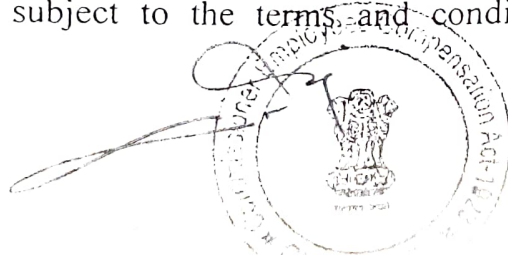


Compensation Act, 1923 (hereinafter referred to as an Act) seeking death compensation. It has been stated by the claimants that her deceased husband Late Mohd. Jafar was working as a Driver with the Respondent No-1 on vehicle bearing no- DL-1-LT-5446 (TATA 407). At about 7.00 P.M. on 27.09.2018, when the deceased was driving the vehicle in question and was returning from his official trip from Jaipur to Delhi with the goods loaded in the vehicle alongwith helper Mr. Dharam Veer S/o Sh. Kallu. The deceased was not well and was suffering from ailment. He requested the Respondent No-1 for taking the rest. But the Respondent No-1 became adamant to deliver the goods to Delhi urgently. They further threatened the deceased that if the goods were not delivered in time, then he will be terminated from his job. On the instructions of the Respondent No-1, the deceased started the journey being unwell. When the vehicle reached near Family Dhaba, Shahjahanpur, Rajasthan, all of the sudden, the health of the driver deteriorated due to over working and thereafter he died during the duty. The police case also got registered in PS- Shahjahanpur, Distt- Alwar, Rajasthan. The post mortem was also conducted by the police. At the time of the accident, the deceased was 40 years old and was getting Rs. 15,000/- per month. The claimant has further submitted that the vehicle was insured with Respondent No-2 M/s Cholamandalam MS General Insurance Co. Ltd. vide policy no- 3379/01905483/000/00 valid from 29.12.2017 to 28.12.2018. The claimant has approached the respondents for payment of death compensation but



they did not pay any compensation till date. In the end, the claimant has prayed that the necessary directions to be passed in the matter directing the respondent to pay the compensation to him alongwith interest and 50% penalty.

2. That the summons was served upon the respondents to appear and file reply in their defense. The respondent no-1 appeared and filed reply wherein they have admitted employer-employee relationship between the deceased and the respondent no-1. He further admitted that the deceased was on duty during the day of his death and had informed the respondent about his medical ailment. The respondent no-1 further submitted that the deceased was being paid Rs. 15,000/- per month plus Rs.150/- per night. The respondent no.1 also submitted that the vehicle was insured with Respondent No-2 M/s Chola mandalam MS General Insurance Co. Ltd. vide policy no-3379/01905483/000/00 valid from 29.12.2017 to 28.12.2018 The respondent no-2 also appeared and filed reply stating therein that the claim filed by the claimant is liable to be dismissed as it has no locus standi. They further submitted that they are not liable to pay compensation as the Respondent No-1 has not provided them the information about the death of the deceased nor provided the details of employment. However, they have admitted that the Respondent No-1 had insured his vehicle with Respondent No-2 vide policy no-3379/01905483/000/00 valid from 29.12.2017 to 28.12.2018 subject to the terms and conditions of the



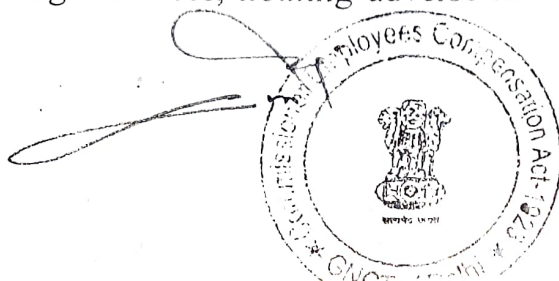
policy. It was revealed during the proceedings that the summons u/s 4 A (3) of the Act for Interest and penalty had not been issued and it was decided to issue separate show cause notices to the parties for filing reply. Thereafter, the matter was fixed for framing of issues.

3. That during the proceedings on 07.08.2019, the following issues were framed after discussion with the parties for adjudication:-

- I Whether the death of deceased Mohd. Jafar happened during and in the course of employment?
- II Whether the claimant (deceased's wife) is entitled for death compensation from Respondent No-1 and No-2?
- III. Whether the claimant is also entitled for interest and penalty as per section 4A?
- IV. Any other relief?

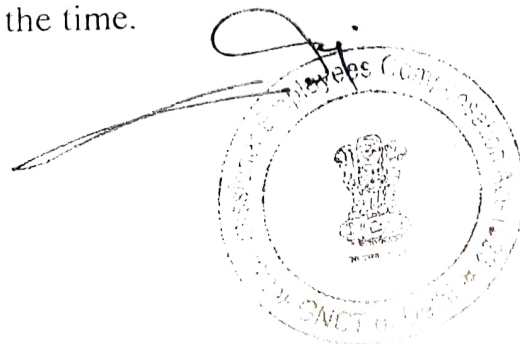
Thereafter, the matter was reserved for claimant's evidence.

4. That claimant Smt. Sharda has filed her evidence by way of affidavit dated 05.09.2019 which is exhibited as WW-1/A alongwith documents which are exhibited as WW-1/1 to WW-1/4 which was tendered by her on 23.10.2019. She was cross examined by the counsel for Respondent No-1 on 23.10.2019. During the cross nothing adverse has come out against the claimant side. The counsel for respondent no-2 has also cross examined the claimant on 21.11.2019 and during the cross, nothing adverse has come out. The



claimant's counsel has moved an application for evidence of witness Sh. Dharamveer in the matter. The request was allowed and accordingly, the witness Sh. Dharamveer Goswami S/o Sh. Susheel Goswami filed his evidence by way of affidavit dated 12.12.2019 which was tendered by him on 29.01.2020. He was cross examined by the counsel for Respondent No2.

5. That both the respondents i.e. R-1 and R-2 neither filed any evidence nor led any evidence.
6. That, thereafter, it was observed that show cause notice for imposition of penalty under Section 4A(3) of the Act has not been issued therefore show cause notice was issued to both the respondents so as to why penalty @50% of compensation amount be not imposed on them.
7. That the respondent no-1 has filed the reply to the show cause notice issued to them for deposition of interest and penalty. In their reply, the respondent no-1 has taken a plea that they helped the claimants in every possible manner after the death of deceased and also suggested them to file the compensation claim, therefore, they will not be liable to pay interest and penalty as the delay in paying the compensation is not intentional but procedural. The respondent no-2 has also filed the reply stating therein that they are not liable to pay the interest and penalty as the respondent no-1 has not provided them the information well within the time.



8. That the all the parties argued the case orally and after that the matter was reserved for orders.
9. That on perusal/ examination of documents placed on records, evidences by way of affidavit, arguments in this case, etc. which proves that the deceased was working with Respondent No-1 as admitted by the respondent no-1 in his reply. Therefore, there is nothing to disbelieve that there exists employer-employee relationship between the respondent no-1 and the deceased on the day of accident and accordingly, the deceased had died during and in the course of his employment while performing his duties for the respondents. The other important point of discussion is the coverage of insurance on the date of accident. The vehicle was insured on the day of accident with M/s Cholamanadalam MS General Insurance Co. Ltd. Vide policy no- 3379/01905483/000/00 valid from 29.12.2017 to 28.12.2018 and an additional premium was charged by the Insurance Company under the Act for coverage of paid drivers. Accordingly, since, the vehicle in question was covered under the insurance policy on the day of accident and accordingly, the Respondent No-2 is liable to indemnify the Respondent No-1. As far as plea of Respondent No-2 is concerned that the Respondent No-1 has not informed them about the accident well in time, in this regard, this authority is of the view that since the Employees Compensation Act, is a social legislation which provides financial support to the families of the injured/ deceased, therefore, in the interest of justice, the

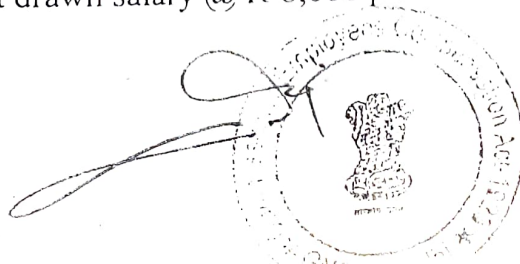
Respondent No-2 shall release the payment of compensation to the dependents of the deceased and if any recovery arises as per the terms and conditions of the policy, they will have the liberty to recover the same from the Respondent No-1.

10. That as per the claim, the age of deceased was 40 years at the time of the accident, which is evident from the available documents on the record i.e. date of birth mentioned as 18.04.1977 on the driving license, therefore, the same has been taken on record for the purpose of calculation of compensation and age of the deceased is considered as 41 years as on date of accident i.e. 27.09.2018. As far as the last drawn wages of the deceased is concerned, it is mentioned that the deceased was drawing wages @ Rs. 15,000 per month at the time of accident according to which the monthly wages of the deceased are comes to more than Rs.8,000. As such, for the purpose of calculation of amount of compensation, the last drawn wages of deceased is taken as Rs.8,000/- which is the maximum limit of wages fixed for the purpose of calculation of compensation under the provision of law.

11. That in view of the above facts and circumstances and on the basis of 41 years of age the relevant applicable factor i.e. 181.37 and Rs.8,000 per month wages, the amount of compensation to which petitioners are entitled is calculated as under:-

(i) Relevant factor of 40 years of age = 181.37

(ii) 50% of last drawn salary @ R 8,000 pm = 4,000



(iii) Amount of Compensation

$$181.37 \times 4,000 = \text{R } 7,25,480/-$$

12. That in view of above facts and circumstances and the documents placed on record, it is held that the petitioners are entitled to receive an amount of R 7,25,480/- as death compensation plus R 5,000 as funeral expenses in respect of death of deceased from the respondents.

13. That as per the provisions of the Act, the respondents should have make the payment of compensation within one month from the date it fell due i.e. 27.10.2018, but the respondents fail to do so. Therefore, as per the provisions of Clause (a) of Sub Section (3) of Section 4A of the Act, the claimant is also entitled for simple interest @ 12% p.a. on the amount of compensation i.e. R 7,25,480 w.e.f. 27.10.2018 till the date of realization of the compensation amount by the respondents.

14. That as far as imposing penalty upon respondents is concerned, after going through the reply filed by both the respondents, this authority is of the considered view that since, it is a social legislation, therefore, the payment should have been made to the claimant well within the time. Since, the respondent no-2 has informed that they were not informed by the Respondent No-1 about the death of the employee, this authority hold that an amount to the extent of 10% of the awarded compensation is liable to be paid by the Respondent No-1 to the dependents of the deceased on account of penalty u/s 4A of the Act.

15. That as decided above, the Respondent No-2 M/s Cholamandalam MS General Insurance Co. Ltd. is hereby directed to deposit the above amount of R 7,25,480 alongwith simple interest @ 12% per annum w.e.f. 27.10.2018 till the date of payment of the same plus R5,000 as funeral charges and Respondent No-1 Sh, Mahender Singh is directed to deposit Rs. 72,548/- on account of penalty by way of Demand Draft / Pay Order in favour of "Commissioner Employees Compensation" within 30 days from today, failing which proceedings to recover the amount of compensation as well as the interest, as an arrear of land revenue, shall be initiated as per the provisions of Section 31 of the Act.

Given under my hand and seal of this court on 11th day of August, 2021.



(K.M.SINGH)

Commissioner, Employees Compensation

