



OFFICE OF THE COMMISSIONER EMPLOYEE'S COMPENSATION
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)

DISTRICT NORTH-WEST
LABOUR WELFARE CENTRE, NIMRI COLONY,
ASHOK VIHAR, PHASE-IV, DELHI-110052

No. ECD/108/NW/19/2278-80

Dated: 23/08/21

In the matter of:-

1. Smt. Davinder Kaur W/o Late Sh. Paramjeet Singh @ Paramjeet Subasing
(Aadhar No. 327452550423)
2. Sh. Gurwinder Singh S/o Late Sh. Paramjeet Singh @ Paramjeet Subasing
(Aadhar No. 244430212766)
R/o:- V.P.O Khojkipur, Tehsil Khadur
Sahib, District Taran Taran Punjab-143112

Through Sh. R.K. Nain, Advocate,
Chamber No. 723, Western Wing, Tis Hazari
Courts, Delhi-110054.
(Mob. No. 9312070470)

:Petitioner /Claimant

VERSUS

✓ M/s. Caravan Roadways Punjab Pvt. Ltd.,
Through Sh. Subhash Chander, Director,
(Tel. No. 01615067177 & Email ID:-
ludhiana@crppl.in)
A-28, Sanjay Gandhi Transport G.T. Karnal
Road, New Delhi-110001

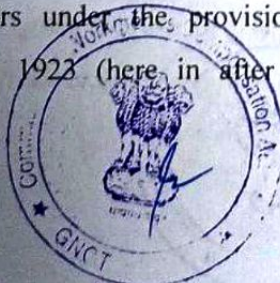
:Respondent no.1

M/s. The Oriental Insurance Company Limited,
Through Sh. Radhey Shyam, Advocate,
(Mob. No. 9811428585),
Regional Office (Hub), 10th floor,
Hansalya Building, Barakhamba Road
New Delhi-110001

:Respondent no.2

ORDER

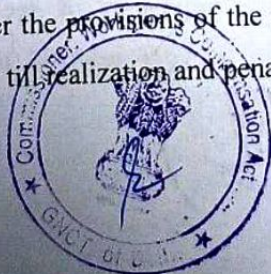
1. By this order the undersigned shall dispose off the claim application dated 30.09.2019 filed by Smt. Davinder Kaur W/o Late Sh. Paramjeet Singh @ Paramjeet Subasing and others under the provisions of section 22 of the Employees' Compensation Act, 1923 (here in after referred to as the Act) for claiming





compensation on account of death of Sh. Paramjeet Singh @ Sh. Paramjeet Subasing (herein after referred to as the deceased) stated to have occurred in the course out of his employment with respondent no.1, M/s. Caravan Roadways Punjab Pvt. Ltd, on 11.07.2019.

2. In the claim, it has been stated that the deceased was employed as driver with the Respondent No.1 on his vehicle bearing No. PB-10-FV-6577 Truck. On 11.07.2019 the deceased was on duty as driver on the said vehicle which was on its business trip from Ludhiana to Mumbai and was loaded with grocery (parchoon). At about 03:30 AM, when the vehicle reached on the Mindhola River bridge under the jurisdiction of Police Station Palsana, District Surat Rural, Gujrat, rammed into rear portion of a truck which was parked on the road without any reflector or any warning signs. Due to the collision, the deceased sustained grievous injuries, which resulted into the death of the deceased. Post-mortem was conducted on the body of the deceased at P.H.C. Kadodara. The case was registered with Police station Palsana District Surat Rural Gujrat, vide FIR No. 1/82/2019 dated 11.07.2019. It has further been stated that the vehicle bearing No. PB-10-FV-6577 Truck was owned by the Respondent No. 1 at the time of the accident/ incident and was insured with Respondent No. 2 i.e. M/s. The Oriental Insurance Company Limited vide policy no. 233900/31/2019/2961 for the period from 07.11.2018 to 06.11.2019 and additional premium was charged by the Respondent No. 2 from Respondent No.1 under Employees' Compensation Act. That the applicants are the dependents of the deceased, being his widow and minor son and the deceased was the sole earning member in his family. That the deceased was drawing wages at the rate of ₹15,000/- per month plus @ ₹300/- per day as food allowance. That the deceased was aged about 44 years at the time of accident. The Respondent No. 1 is having the notice of the accident since the day of its occurrence and the insurance company was informed immediately after the accident. Even otherwise, a notice under section 10 of the Act has been served upon the Respondent No.1. The claimants have further stated that the deceased was an employee of Respondent No. 1 and died out of and during the course of his employment, hence the claimants are entitled to receive compensation as per the provisions of the Act along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%.





3. The summons were sent to the respondents with the direction to appear in proceedings and to file written statements/ documents, if any in their defence.
4. Respondent No.1 appeared and filed his written statement stating therein that the deceased died in the alleged accident due to his own negligence as while plying his vehicle No. PB-10-FV-6577 Truck, the deceased due to his own negligence rammed into the rear portion of another vehicle Truck No. GJ-21Y-0790, which was parked at the road side. Had the deceased plied the vehicle with due care & attention, the said accident could have been avoided easily. The deceased had caused the accident due to his own negligence, causing financial loss to him due to total damage of the vehicle. The Respondent No. 1 further stated the vehicle in question was duly insured with the Respondent No. 2 vide policy no. 233900/31/2019/2961 for the period of 07.11.2018 to 06.11.2019 and the deceased driver was covered under the said policy as the Respondent No. 2 was paid extra premium for the insurance of the driver of the vehicle. Therefore, the Respondent No. 2 being insurer, is liable to pay compensation to the claimants. Respondent further admitted that the deceased was being paid ₹15,000/- per month along with ₹300/- per day as food allowance as stated by claimants in the statement of claim.
5. Respondent No. 2 appeared and filed written statement refuting all the contents of claim application, however admitted that the vehicle in question was insured with him vide policy No. 233900/31/2019/2961 for the period from 07.11.2018 to 06.11.2019. Respondent No. 2 further stated that this Authority has no jurisdiction to entertain the present claim as the accident has occurred within the jurisdiction of P.S. Palsana, District Surat Rural, Gujrat, the policy issuing office is situated in Ludhiana, the owner of the truck is resident of Ludhiana, and the claimants are also the residents of VPO Khojkipur, District Taran Taran, Punjab.
6. The claimants did not prefer to file rejoinder and hence on the basis of pleadings, the following issues were framed by my predecessor:-
 - i. Whether deceased/ employee Sh. Paramjeet Singh @ Paramjeet Subasing met with an accident on 11.07.2019 resulting thereby he died out of and in his employment?





ii. If so what relief and what direction in this regard?

7. The claimant Sh. Davinder Kaur W/o Late Sh. Paramjeet Singh @ Paramjeet Subasing, filed her evidence by way of affidavit dated 14.08.2020 Ex AW1/A, which was tendered on 02.09.2020. She relied upon the documents exhibited as Ex.AW1/1 to Ex. AW1/10 which are copy of FIR bearing No. 1/82/2019 dated 11.07.2019 and documents prepared by Palsana Police Station (District Surat Rural) alongwith English Translation exhibited as AW-1/1 (colly number of pages 1 to 26), Certified copy of Postmortem report of the deceased alongwith English Translation exhibited as AW-1/2 (colly number of pages 1 to 17), Certified copy of receipt for handing over the dead body of the deceased alongwith English Translation exhibited as AW-1/3 (colly number of pages 1 to 2), Copy of Death Certificate exhibited as AW-1/4, Copy of Driving Licence of the deceased exhibited as AW-1/5, Copy of Aadhar Card of the deceased is exhibited as AW-1/6, Copy of Aadhar Card of Davinder Kaur, exhibited as AW-1/7, copy of Aadhar Card of Gurwinder Singh, exhibited as AW-1/8, copy of Insurance Policy of the vehicle exhibited as AW-1/9 (colly number of pages 1 to 3), copy of Certificate of Registration of the vehicle exhibited as AW-1/10. She was cross examined by AR of Respondent No.2. In the cross she stated as under: -

"My name is Davinder Kaur. I have brought my Aadhar Card (OSR). My husband name is Paramjeet Singh, he was son of Sh. Subha Singh. My ration card has not been prepared so far. I have two children. My daughter's name is Kiranpreet Kaur and my son's name is Gurvinder Singh. My daughter's age is 21 years whereas my son's age is 19 years. My daughter has not yet been married. Case has been filed by me alone. I want to give my money share to my children as well. My father-in-law and mother-in-law are no more. I don't have any residential address in Delhi. My husband was employed on the vehicle owned by M/s. Caravan Company. I was not present at the time of accident. The accident took place on 11.07.2019. I didn't lodge FIR. The vehicle was on its business trip from Ludhiana towards Bombay. I don't have any documentary proof to show that my husband was drawn ₹15,000/- per month and ₹300/- per day as food allowances. My husband was aged 44 years 7 months and 1 day at the time of occurrence accident. I have not filed any other case either MACT or EC in any other court/Tribunal anywhere in India. The same is the





position about my children. About the negligence of a vehicle nothing was explained to me. I don't know whether any prosecution was initiated or is pending against any driver of any vehicle pertaining to this case. The contents of Para no.7, in my affidavit have been written on the advice of my counsel and no copy of such notice has been annexed herewith. The vehicle registration number of the vehicle on which my husband was working is not known to me. It is wrong to suggest that my husband was not working on the stated vehicle. It is wrong to suggest that my husband was not drawn wages ₹ 15000 pm and ₹ 300 per day as food allowances. It is wrong to suggest that I am not entitled to death compensation. It is wrong to suggest that because of non-enclosure of bulity of the loaded goods, challan, I am not entitled to detach compensation to my husband. It is wrong to suggest that I have not arrayed my daughter in the memo of parties willingly and to make her disentitled from compensation. It is wrong to suggest that my case is not true."

8. The claimant witness Sh. Surjit Singh @ Sarjeet Singh S/o Sh. Ajaib Singh examined himself as AW2 who filed his evidence by way of affidavit dated 06.08.2020 Ex AW2/A and the same was tendered on 02.09.2020. He was cross examined by AR of Respondent No.2. In the cross he stated as under: -

"My name is Sarjeet Singh. I have brought my Driving License (OSR). I was employed as driver on Delhi Vehicle bearing no. RJ-14-GK-6810. The vehicle is owned by Sh. Kulveer Singh. The vehicle is owned by Sh. Sohan Singh F/O Sh. Kulveer Singh and managed by Sh. Kulveer Singh. The accident took place on 11.07.2019. The exact time of occurrence of accident is not known to me. I reached the place of accident at 10:00 A.M. The occurrence of accident was not witnessed by me as I reached after while. The information of occurrence of accident was given to me by a few drivers who were discussing the fact that Caravan's vehicle has met with an accident and driver of the vehicle were telling to have died. They did not tell me about the manner and way the accident took place. On reaching there I saw the vehicle standing in accident position and asked the people nearby as to where the driver of the vehicle was. The police was there nearby the vehicle and police personal took me to the spot of place where the body was placed. The police did not take my signatures on any document. The deceased was known person/driver to me. He was not related to me. The vehicle was in accidental





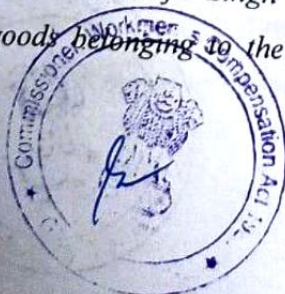
position and the cabin was finished entirely due to the accident and the other vehicle behind which this vehicle was standing had damaged it its rear position. I cannot tell at whose negligence the accident took place. I did not give information about the occurrence of the accident to the police. It is wrong to suggest that I am deposing falsely."

9. The claimant witness Sh. Balwinder Singh @ Bhola S/o Sh. Suba Singh examined himself as AW3 who filed his evidence by way of affidavit dated 05.08.2020 Ex AW3/A and the same was tendered on 02.09.2020. He was cross examined by AR of Respondent No.2. In the cross he stated as under: -

"My name is Balwinder Singh and my nick name is Bhola, I am the real brother of the deceased. We have received information through a telephonic call we received from the Police thereafter I received the message from my home. I am also a driver employed in the same company - Caravan, I cannot tell from which number we had a call communicating occurrence of accident. I cannot tell the number today also. The phone call was received from the mobile of deceased itself. I reached hospital where the PM was conducted. I was accompanied by my cousin named Sh. Buta Singh. My mother and father both are expired. The affidavit was prepared on my instruction, I took my signature once in the chamber of applicant's lawyer and thereafter on the sheet of the notary who attested it. I do not reside in Delhi. It is wrong to suggest that I am deposing falsely."

10. The claimant witness Sh. Kulbir Singh S/o Sh. Sohan Singh examined himself as AW4 who filed his evidence by way of affidavit dated 05.08.2020 Ex AW4/A and the same was tendered on 02.09.2020. He was cross examined by AR of Respondent No.2. In the cross he stated as under: -

"I am the owner of the vehicle whereon the driver was Sh. Surjit Singh. I have brought my Aadhar Card and Driving License (OSR). I own 05 vehicles. The five vehicles which I mentioned are infact owned by my family members. Surjit Singh was employed as driver on the vehicle owned by my father. The vehicle was being managed and taken care by me. I am not definite as to whose consignment was loaded in the truck delivered by Sh. Surjit Singh on the day of accident; but normally we used to carry goods belonging to the companies Inland Transport





Company and Liberty Golden. The vehicle driven by Surjit Singh was loaded at Alipur or Kheda Kalan. The vehicle normally departs from Delhi after opening of no-entry around 10:00 p.m. afterwards. The accident took place near Surat in Gujarat. I do not recall the exact date of the departure of my vehicle but it could be either 8th of July or 9th. The completion of trip from Delhi to Bombay takes around 04 to 05 days. I can produce the bulky of that particular consignment on that particular trip if asked by the Hon'ble Court. The driver Sh. Surjit Singh posted on my vehicle on the day sent me photos pertaining to the accident and the same are still available in my mobile phone. I did not go at the place of occurrence of accident. It is wrong to suggest that because I have not filed any document showing the employment of Sh. Surjit Singh on my vehicle hence my statement is not true. It is wrong to suggest that I am deposing falsely."

11. An application for re-summoning of witness was filed by AR of Respondent No. 1 on 24.09.2020 inter-alia stating therein that counsel of Respondent No. 1 was suffering from fever so he could not appear on 02.09.2020 for cross examination of witnesses of claimant. The application was allowed by my Ld. Predecessor subject to cost of ₹6,000/- and the case was adjourned to 29.10.2020. Claimant and her witnesses appeared on the said date i.e. 29.10.2020 but none from Respondent No. 1 appeared to cross examine the witness. On subsequent date i.e. on 16.12.2020, Sh. Kulbir Singh, witness of claimant was cross examined by AR of Respondent No. 1. Cost of ₹6,000/- was paid to AR of claimant, AR of claimant expressed his inability to call the other witnesses stating that they have already been cross examined by AR of Respondent No. 2. In cross examination by AR of Respondent No. 1, Sh. Kulbir Singh witness stated as under: -

"The Truck bearing No. RJ-14-GK-6810 was being managed by me. There was no written authority as it was owned by my father. Mr. Surjeet Singh has been working on our truck since then. I received a telephonic call from Surjeet Singh during the course of the day which mentioned about the occurrence of accident. I had known Paramjeet Singh since long as he was my brother in law (bahanoi). It is correct that I did not see the accident and also did not see the deceased on steering wheel on that day. I am deposing about the occurrence of accident on the information received from Surjeet Singh as well as from the family of the deceased. I am not a





summoned witness. I was asked to be present as a witness at the instance of clamant. It is wrong to suggest that I am making untrue statement at the instance of the claimant to fetch the compensation. Davinder Kaur, the widow of the deceased has two children comprising of one son and one daughter. Both of them are unmarried and are studying. The name of the son is Gurvinder Singh aged about 17 years and daughter is Kiranpreet Kaur (Kiran) aged about 18 years. Davinder Singh, widow of the deceased is housewife and she extend help in farming work. The family owns agriculture land admeasuring one to one and half acres. I am engaged in cultivation as also operation of trucks owned by us. It is wrong to suggest that I am deposing falsely and my deposition is untrue at the instance of the claimant to facilitate them death compensation."

12. The Respondent No.1, Sh. Bhagwan Das S/o Late Sh. Birdu Ram, Authorized Representative of M/s. Caravan Roadways Punjab Pvt. Ltd. examined himself as RW1 and filed his evidence by way of affidavit dated 13.01.2021 Ex RW1/A, which was tendered on 25.02.2021. He relied upon the documents exhibited as Ex.RW1/1 to Ex. RW1/4 which are true copy of Resolution, copy of RC of vehicle No. PB10FV6577, copy of national permit of goods dated 18.11.2016, copy of insurance policy of vehicle dated 05.11.2018 (colly 3 pages) & documents marked as "A to E" which are copy of mParivahan, copy of Goods Carriage Permit For Hire or Reward, copy of Permit in Respect of National Permit Multi Axle Goods VCH, copy of Certificate of Fitness & copy of Authorization for Goods Vehicle Permit respectively. He was cross examined by Counsel of Claimant. In the cross he stated as under: -

"I am doing marketing work at Caravan Roadways Punjab Pt. Ltd., for last 4 to 5 years. I was not present at the place of incident. It is correct that the deceased was employee of respondent no.1. It is correct that the deceased met with an accident arisen out of and during the course of employment. The vehicle was insured with Respondent no.2 at the time of incident. We informed the insurance company about the incident on the 2nd day. We have applied for OD claim for the damages to the vehicle with the insurance company. I didn't see the deceased driving the vehicle rashly and negligently. We didn't give any compensation to the dependent of the





deceased as they didn't approach the company. It is wrong to suggest that I am deposing falsely."

In cross examination by Counsel for Respondent no.2, he stated as under: -

"The accident occurred because of the negligence of the deceased driver Sh. Paramjeet Singh. I don't have any documentary proof of intimation of accident to the insurance company on 2nd as mentioned. Vol. The record must be available in our office. I didn't bring the proof of salary given to the deceased. We didn't give any appointment letter to the deceased at the time of his appointment as our driver. I don't know against which vehicle the chargesheet was filed. I don't know whether we received claim for the damage to the vehicle from the insurance. Vol. We must have received the said claim. It is wrong to suggest that we didn't inform the insurance company about the accident. It is wrong to suggest that the deceased was not employed with our company since we didn't give him any appointment letter. I didn't bring any documentary proof of employee- employer relationship today. It is wrong to suggest that I am deposing falsely."

13. AR of Respondent No. 1 filed a copy of email dated 11.07.2019 alongwith affidavit vide which he has informed that information regarding occurrence of accident of his vehicle bearing No. PB-10FV-6577 was sent to Sh. Ramneek Singh, Insurance Agent of Respondent No. 2 at his email rssethi1989@gmail.com. Respondent No. 1 further informed that he has received the OD Claim regarding damage of vehicle from Respondent No. 2.
14. Respondent No. 2 despite affording opportunities, did not lead any evidence in his defence, hence his opportunity for leading evidence was closed on 08.04.2021.
15. Claimant filed written arguments and adduced verbal as well which are in tandem of her claim application. Claimant relied upon following judgment in respect of her claim:-
 - (i) Judgment of Hon'ble Supreme Court of India in case titled as "Maghar Singh Vs. Jaswant Singh" cited at 1997 ACJ 517.



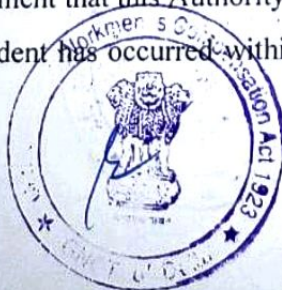


- (ii) Judgment of Hon'ble Supreme Court of India in case titled as "State of Mysore Vs. S.S. Makapur" cited at 1993, 2SCR 943.
- (iii) Judgment of Hon'ble Apex Court in case titled as "Mackinnon Mackenzie & Co. Pvt. Ltd. Vs. Ibrahim Mahmood Issak" cited at 1969 ACJ 422.
- (iv) Judgment of Hon'ble Apex Court in case titled as "Mackinnon Mackenzie & Co. Pvt. Ltd. Vs. Ritta Farnands" cited at 1969 ACJ 419.
- (v) Judgment of Hon'ble High Court of Karnataka at Bangalore in case titled as "Assistant Executive Engineer Vs. Sunanda & Anr." cited at 1995 ACJ 218.
- (vi) Judgment of Hon'ble Madras High Court in case titled as "Sri Sabari Miles Ltd. Vs. M. Kulandai" cited at 1984 II ACC 246.
- (vii) Judgment of Hon'ble High Court of Rajasthan in case titled as "Managing Director & Ors. Vs. LR's of Devi Lal & Ors." cited at III 2006 ACC 855 (Division Bench).
- (viii) Judgment of Hon'ble Supreme Court of India in case titled as "Pratap Narain Singh Deo Vs. Srinivasa Sabata" cited at 1976 ACJ 141.
- (ix) Judgment of Hon'ble Supreme Court of India in case titled as "Ved Prakash Garg Vs. Premi Devi" cited at 1998 ACJ 1.

16. Respondent No. 1 did not file any written arguments, however argued verbally. Respondent No. 2 filed his written arguments and adduced verbal as well. Respondent No. 2 mainly relied upon two judgments of Hon'ble Supreme Court in the matter of "Ved Prakash Garg V/s Premi Devi & Ors." and in the matter of "L.R. Ferrer Alloys Limited V/s Mahavir Mahto & Anr.", which are relating to imposition of penalty. During arguments, AR of claimant informed that no other case relating to compensation in respect of death of deceased has been filed by the claimants before any Authority. Thereafter the case was reserved for orders.

17. I have gone through the pleadings, evidence led by parties & the arguments & records available on file and my findings in the case are as under: -

Before going into the issues of the case, I would like to discuss the objection raised by Respondent No. 2 on the jurisdiction of this Authority. Respondent No. 2 has stated in his written statement that this Authority has no jurisdiction to entertain this claim as neither the accident has occurred within the jurisdiction of this Authority





nor the claimants or the owner of vehicles are residing within the jurisdiction of this Authority. Here it would be appropriate to refer section 21 of the Act, which is as under: -

"21. Venue of proceedings and transfer – (1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which –

- (a) the accident took place which resulted in the injury; or*
- (b) the employee or in case of his death, the dependent claiming the compensation ordinarily resides; or*
- (c) the employer has his registered office."*

On going through the details of Respondent No. 1, as submitted by claimant alongwith her claim, it has been found that the Regd. Office of Respondent No. 1 is located at A-28, Sanjay Gandhi Transport Nagar, G.T. Karnal Road, New Delhi-110042. Since the Regd. Address of Respondent No. 1 falls under the jurisdiction of this Authority, hence in view of section 21, this Authority has jurisdiction to hear and decide the claim filed by claimant. Now issue wise my findings in this case are as under: -

Issue No. 1: - The claimant has claimed that her husband Sh. Paramjeet Singh @ Sh. Paramjeet Subasing was employed with Respondent No. 1 as Driver, who met with an accident on 11.07.2019 out of and in the course of his employment while driving the vehicle bearing No. PB-10FV-6577 owned by Respondent No. 1.

Respondent No. 1 has admitted that the deceased was employed with him as Driver and met with an accident leading to death in the course out of his employment, however contended that the said accident had occurred due to his own negligence, hence no compensation is payable. But this ground is not tenable in view of section 3 of the Act as in this case the employee received personal injuries in the course out of his employment resulting into his death. Section 3 of the Act is as under: -

3. Employer's liability for compensation - (1) If personal injury is caused to [an employee] by accident arising out of and in the course of his employment, his





employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable –

- (a) In respect of any injury which does not result in the total or partial disablement of the employer for a period exceeding three days;
- (b) In respect of any injury, not resulting in death or attributable to –
 - (i) The employer having been at the time thereof under the influence of drink or drugs, or
 - (ii) The wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees or
 - (iii) The wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

Respondent No. 2 has taken all the defences to refute the claim but failed to produce any contra evidence to disprove the claim filed by claimant.

Since the factum of employment and accident are not deputed by Respondent No. 1 and the documents i.e. FIR, PMR, death certificate, DL, RC of vehicle etc. also indicates the same, hence it is held that the deceased died due to accident in the course of his employment with Respondent No. 1 and hence the issue is decided in favour of claimant.

Issue No. 2: - Issue No. 1 has been decided in favour of claimants, hence the claimants are entitled to compensation on account of death of deceased. Claimants have claimed the last drawn wage of deceased as ₹15,000/- p.m. + food allowance @₹300/- per day and the same has been admitted by Respondent No. 1. No document to prove the wage as claimed has been produced on records either by claimant or Respondent No. 1. Hence in this situation, I am inclined to accept the minimum wage notified by GNCT of Delhi as wage of the deceased. Minimum wage for skilled category at the time of accident i.e. on 11.07.2019 was ₹17,508/- p.m. but the wage of deceased is being restricted to ₹8,000/- in view of notification of Central Govt. S.O. 1258(E) dated 31.05.2010 for the purpose of calculation of





compensation. Further the claimants have claimed the age of deceased as 44 years at the time of accident and the same is found correct. As per driving licence & Aadhaar Card of claimant, his date of birth is 10.12.1974, so on the date of accident, he had completed his 44 years of age and the same is being taken to calculate the compensation. The compensation is calculated as under: -

(i) Relevant factor laid down under schedule IV of the Act for 44 years of age	:	172.52
(ii) 50% of monthly wage restricted to Rs. 8,000/- p.m.	:	4,000/-
(iii) Amount of compensation payable to the Dependents of deceased	:	172.52 x 4000 = 6,90,080/-
(iv) Funeral expenses allowed u/s 4(A) of the Act	:	Rs. 5,000/-
Total amount	:	₹ 6,95,080/-

Therefore, I held that the claimants are entitled to receive an amount of Rs. 6,95,080/- as compensation including funeral benefit from Respondents on account of death of Paramjeet Singh @ Sh. Paramjeet Subasing.

Further, the compensation was payable to the dependents within one month from the date on which the accident had occurred and in this case accident had occurred on 11.07.2019 and the compensation would have been paid to them by 10.08.2019 but the same has not yet been paid, so in view of the provisions laid down under clause (a) of sub section (3) of section 4A of the Act, the dependents are entitled for simple interest on compensation amount i.e. Rs. 6,90,080/- @ 12% p.a. w.e.f. the date after one month of accident i.e. from 11.08.2019 till the date of realization of the compensation amount by the respondent.

Further the vehicle of Respondent No. 1 was duly insured with Respondent No. 2 vide policy No. 233900/31/2019/2961 at the time of accident, so Respondent No. 2 is liable to make the payment of compensation alongwith interest to the claimants.

On the issue of penalty, Respondent No. 2 has stated that as per the provisions of the Act, the Respondent No. 1 was liable to pay the compensation amount to claimants within a month from the date of accident and in default thereof, penalty if any is liable to be imposed that should be imposed upon Respondent No. 1 only as

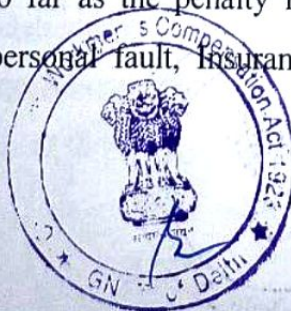




Respondent No. 2 cannot be held liable for penalty, in view of the judgment of Hon'ble Supreme Court in the matter of "Ved Prakash Garg V/s Premi Devi & Ors." and in the matter of "L.R. Ferror Alloys Limited V/s Mahavir Mahto & Anr."

On the other hand, Respondent No. 1 has stated that the vehicle in question on which the deceased was employed as Driver was duly insured with Respondent No. 2 and any compensation or interest or penalty which is found to be payable, shall be paid by Respondent No. 2. As immediately after the accident, the same was reported to Respondent No. 2 & it was the duty of Respondent No. 2 to settle the claim of compensation in respect of deceased as additional premium for coverage of Driver under WC policy was paid by Respondent No. 1 to Respondent No. 2. Respondent No. 1 has argued that in the matter of "United India Insurance Company Ltd V/s Roop Kanwar" Hon'ble High Court of Rajasthan has held Respondent No. 2 i.e. Insurance Company liable to pay the penalty in addition to compensation and interest to the dependents of the deceased.

The facts of the case put forth before me in this case are same as discussed in the case of Ved Prakash Garg V/s Premi Devi & Ors as relied by the Respondent No. 2. As herein also, the owner of the vehicle has obtained comprehensive policy in respect of the vehicle including coverage of driver and the accident was immediately reported to Respondent No. 2 by Respondent No. 1. In Ved Prakash Garg V/s Premi Devi & Ors., Hon'ble Supreme Court after examining the entire scheme of the Act has held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and partial of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim of compensation alongwith interest will have to be made good jointly by the Insurance Company with the insured employer. But so far as the penalty imposed on the insured employer is on account of his personal fault, Insurance Company cannot be made liable to





reimburse penalty imposed on the employer. Hence the compensation with interest is payable by insurance company but not penalty.

In view of the judgment of Hon'ble Supreme Court, insurance company cannot be held liable for penalty. Penalty is imposed due to personal fault of the employer for not making the payment in due time. Mere reporting of accident to the Respondent No. 2 by the Respondent No. 1 will not suffice. Respondent No. 1 has failed to inform that what efforts, he made in getting the compensation by the dependents. Further, he neither submitted the service records in respect of deceased to the Respondent No. 2 nor has submitted the same before this Authority, it is pertinent to mention that it is the statutory liability of employer to maintain the service records of his employees. He further failed to discharge his legal liability for reporting the accident in Form EE to this Authority within time as prescribed under the Act. These could be some of the reasons due to which the dependents of deceased could not get the compensation in due time as prescribed under the Act. Delay of more than two years has occurred in this case in making the payment of compensation, therefore I find it a fit case for imposing penalty. Considering all the facts mentioned above, I am of the opinion that the end of justice would meet if penalty @ 20% of the compensation amount which comes to Rs.1,38,016/- is awarded in this case, which should be paid by Respondent No. 1. Accordingly, Respondent No. 1 is directed to pay Rs.1,38,016/- to the claimant on account of penalty.

18. As decided above, Respondent No. 2 i.e. The Oriental Insurance Company Ltd. is hereby directed to deposit the compensation amount ₹6,90,080/- alongwith simple interest @ 12% p.a. w.e.f. the date after one month of the accident i.e. from 11.08.2019 till the date of payment alongwith funeral expenses of Rs. 5,000/- by way of demand draft /pay order in favour of "Commissioner Employees Compensation-VII" within 30 days from the date of this order failing which proceedings to recover the same shall be initiated as per the provisions of Section 31 of the Act.





19. Further, Respondent No. 1 i.e. M/s. Caravan Roadways Punjab Pvt. Ltd., A-28, Sanjay Gandhi Transport G.T. Karnal Road, New Delhi-110001 is directed to deposit the penalty amount Rs.1,38,016/- by way of demand draft /pay order in favour of "Commissioner Employees Compensation-VII" within 30 days from the date of this order failing which proceedings to recover the same shall be initiated as per the provisions of Section 31 of the Act.

Given under my hand and seal of this court on^{19th} day of August, 2021.

JK




(S.K. Gupta)

Commissioner Employee's Compensation
(District-North-West)