



GOVT. OF NCT OF DELHI
BEFORE THE COMMISSIONER EMPLOYEE'S COMPENSATION/
DY. LABOUR COMMISSIONER, LABOUR DEPARTMENT
(EAST & NORTH EAST DISTT.)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

No.CEC-D/NE/10/2019/ 6150-6152

Dated: 02/2/21

In the matter of:

Smt. Bhagwan Devi W/o Late Sh. Bhagwan Singh@ Bhagwati
R/o Dabhoura Shah Garh
Aligarh, Shahgarh, Uttar Pradesh-202129

.....Claimant

V/s

Sh. Mahesh Kumar S/o Sh. Bhagwan Singh
R/o N/121, Gali No.5, Sadatpur Extension
Karawal Nagar, Delhi-110094

.....Respondent-1

State Bank of Indian Gen. Ins. Co.
Through its Manager
7th B, Ground Floor, Opp. Rachna Cinema
Rajendra Place, New Delhi

.....Respondent-2

Order

1. This order shall dispose off the application dated Nil received in this office on 27.03.2019 under Employees Compensation Act, 1923 (Hereinafter referred as an Act) filed by the claimant wherein it has been stated that the claimant is the mother of deceased driver who expired in an accident arising out of and during the course of employment with Respondent-1. The deceased driver was unmarried and there are no other dependents. The deceased driver was under the employment with Respondent-1 on his truck bearing No.DL-1LV-5662. It has been stated in the claim application that on the instructions of Respondent No.1, the deceased was driving the truck alongwith his cleaner from Delhi to Agra via Yamuna Express Way on 29.07.2016 at 1.30 P.M. and when he was driving the said truck and reached near Bhaipur Khera, Mohammadabad Bridge, an unknown truck which was ahead of the truck and deceased applied sudden breaks due to which the vehicle no. DL-1LV-5662 stuck against the unknown vehicle and due to forceful impact, the deceased driver and the cleaner sustained the multiple dangerous injuries and were shifted to Kailash hospital, Jewer, Gautam Budh Nagar, U.P. from where the deceased driver was referred to LNJP hospital where he expired on 11.08.2016 during the treatment. The post-mortem was conducted in Maulana Azad Medical College and Lok




at New Delhi (CN No. GN No. 24 dated 20/01/2016) was registered in P.S. District Gadhim Bhatti Nagar, UP. It is also stated in the claim that the deceased driver was holding a valid and effective driving license at the time of accident. At the time of accident, the last salary is stated to be Rs. 10,000/- per month and age of deceased is stated to be 10 years (DOB 11/03/1992) as per school certificate has also been stated that the vehicle is insured with SBI Insurance Co. vide proposal No. P157253 valid from 1/3/2016 to 28/03/2017 and in the last the claimant has prayed to pay Rs. 20 lakh with interest @ 12 % per annum from the date of its realization.

2. Notices were issued to Respondent-1 & Respondent-2. Respondent-1 filed reply submitted that the deceased driver was holding a valid and effective driving license and the vehicle was plying on a valid permit at the time of accident and vehicle was insured with Respondent-2 vide proposal No. P157253 valid from 1/3/2016 to 28/03/2017 and Respondent-2 has charged extra premium for the legal liability under the Workmen Compensation Act for the paid driver. Respondent-1 has also submitted that they have performed Bereavement regarding the accident and death of driver Sh. Yuvraj @ Yuvraj Singh in the claimant's favour for the damage of the said vehicle in this accident and Respondent-2 has paid the claim for damage of vehicle to him and has prayed to dismiss the claim against him and direct Respondent-2 i.e. State Bank of India Gen. Mgr. to pay the compensation amount.

3. Respondent-2 submitted that the Commission is not having territorial jurisdiction to entertain the present claim application as cause of action arose within the jurisdiction of Respondent-2. Respondent-1 submitted that there is no employer-employee relationship between Respondent-1 and the deceased and the accident of the deceased is not related to the employment with Respondent-1. The Respondent-2 has submitted that the claimant has not proved that in this regard, a case No. 100 of 2018 filed before the MACT, Kanpur against this vehicle which was dismissed by the MACT, Kanpur on 09/08/2018. An appeal was filed in Hon'ble High Court of Allahabad which was dismissed by the Hon'ble High Court of Allahabad on 09/08/2018. Now the present application had been filed regarding material facts. Respondent-2 has also submitted that the deceased driver is not verified from the concerned insurance company and the proposal form which was submitted at the time of respondent. Respondent-2 has also submitted that the deceased was driving the vehicle in a negligent manner without following the traffic rules and the accident of his vehicle which was with an accident and if the accident is caused due to negligence of driver then no claim can be entertained and the claimant's petition should be dismissed.

4. The reply of the copy of Respondent-2 was filed by the AR of claimant denying the liability of respondent-2 and praying that respondent-2 should be held liable for the claim. The copy of the reply of Respondent-2 is not to be taken into account for the purpose of the present proceedings.

member/relatives as an employees as is held by the Hon'ble High Court of Andhra Pradesh in case titled as "United India Insurance Ltd. Vs N. Bujji @ Manemma & Ors. T.A.C. 2012 (2) 526 is reproduced as under:

"Whether the father should not employ his son? Employer-employee relationship-Second respondent, father of deceased employed his deceased son-Held. That there is no bar under the Act to say that the father should not employ his son-Appeal dismissed."

The claimant filed an application under section 5 of Limitation Act for condonation of delay of 8 months submitting that she is an illiterate and widow lady and is residing in remote area of Uttar Pradesh and was depending on the deceased son namely Yuvraj @ Yugraj and has submitted that the delay has been condoned by the Hon'ble High court of Rajasthan in case titled as State Road Trans. Corpn. Vs Anand Kanwar & Ors. cited as 1988 ACJ 1051 and is reproduced as under:-

"Workmen's Compensation Act, 1923, section-10-Claim condonation of delay-Employer failed to report the fatal accident to the Commissioner-Widow filed claim for the death of her son after delay of long time-Widow has nobody to look after her and she has been moving from pillar to post to get the compensation-Commissioner condoned the delay-Whether sufficient cause of condone the delay-Held;yes."

The claimant has also cited the Judgment of Hon'ble Supreme Court of India, in case titled as "Sandhya Rani Devvarma & Ors. Vs. National Ins. Co. Ltd. And others 2016 ACJ" (page No.2717), wherein it is held that **"Limitation Act, 1963, section 14-Appeal-Special leave petitioner-Condonation of delay-Sufficient cause Delay of 2824 days-Whether in view of the fact that (i) delay was cause on account of appellants pursuing the remedy of filing writ appeal before the Division Bench of the High Court; and (ii) claim lies under beneficial legislation of Motor Vehicles Act, it may be deemed fit and proper to condone the delay-Held yes; delay condoned."**

5. The claimant filed evidence by way of affidavit dated 23.09.2019 duly attested by the seal of Oath Commissioner wherein she has reiterated the same contents as mentioned in the original application. The claimant has submitted the documents which are Exb. as CW-1/1 to CW-1/6 and are placed in file i.e. Copy of Aadhar Card of Smt. Bhagwan Devi (OSR) Exb. CW-1/1, Copy of Intimation by the Owner to the Police regarding accident Exb. CW1/2 (OSR), Copy of GD No.24 dated 30.07.2016 Exb. CW-1/3 (OSR), copy of R.C. of vehicle No. DL-1LV-5662, Driving License of deceased, copy of Insurance of offending vehicle, Permit and fitness of offending vehicle the same are marked as M1 to M6., Copy of MLC of deceased issued by Kailash Hospital Exb. CW1/4, Copy of postmortem report No. 816/16 dated 12.08.2016 conducted on the body of deceased Yuvraj @ Yugraj Exb. CW 1/5 (Colly/OSR), Copy of High School certificate of deceased mentioning the date of

birth as 07.09.1992 Exb. CW1/6. The claimant tendered her evidence on 31.10.2019 and was crossed by AR of Respondent No.2 and nothing adverse has come during the cross. Opportunity was given to Respondent No.-2 but Respondent No.1 did not cross the claimant.

7. On 23.01.2020, all the parties were present and it was stated by the parties that they have compromised and the matter was fixed for payment on 28.02.2020 but no payment was made to the claimant.
8. Thereafter, no evidence was lead by Respondent-1 & Respondent-2 and Respondent-2 gave offer of settlement on the principal amount. Arguments were heard from claimant's side and Respondent-2.
9. After examination of pleadings/documents, evidence and hearing of arguments in this case, there are not grounds of Respondent-2 for not having jurisdiction of this matter with this Commissioner. It is also established from the records that the deceased expired in the accident caused by vehicle No. DL-1LV-5662 during the course of employment with Respondent-1 and therefore, the claimant is entitled for death compensation from Respondent-2 as the vehicle was insured with Respondent-2. Moreover nothing remains to adjudicate as the Respondent-2 has already offered for payment of compensation to the claimant on the principal amount during the proceedings. No documentary proof relating to wages being drawn @ Rs.10,000/- per month have been filed either by the claimant's side or Respondent-1, therefore, the maximum limit of wages i.e. Rs.8,000/- is considered as the last drawn wages. As far as the age of the deceased is concerned, the date of birth of deceased Sh.Yuvraj has been mentioned as 7.9.92 in the certificate of High School Examination 2009 in Board of High School and Intermediate Examination U.P. and as such on the date of death of deceased i.e. 11.08.2016, his age comes to 24 years.
10. That in view of the above facts and circumstances and on the basis of 24 years of age for which the relevant applicable factor is 218.47 and considered wages of Rs. 8000/- per month, the payable amount of compensation is calculated as under:-

i)	Relevant factor for 24 years of age	= 218.47
ii)	50 % of last drawn wages @ Rs. 8000/- per month	= Rs. 4000/-
iii)	Amount of compensation	= 218.47 x Rs.4000/-
		= Rs. 8,73,880/-

It is, therefore, held that the claimant is entitled to receive a sum of Rs. 8,73,880/- from the Respondent on account of death compensation and an additional amount of Rs.5,000/- towards funeral charges.

11. As per provisions of the Act, the Respondent should have made the payment of compensation within one month from the date it fell due i.e. 11.09.2016, but the Respondent failed to do so. Therefore, as per provisions of clause-A of sub-section-3 of

Section-4 A of the Act, the claimant is also entitled for simple interest @ 12% on amount of compensation i.e. Rs. 8,73,880/- with effect from 11.09.2016 till the date of realization of Compensation Amount by the Respondent.

12. Respondent 2 is directed to deposit an amount of Rs.8,73,880/- (Rupees Eight Lacs Seventy Three Thousand Eight Hundred and Eighty Only) alongwith 12 % interest from 11.09.2016 till the date of realization and another amount of Rs. 5000/- towards funeral charges by way of demand draft/pay order in the favour of "Commissioner, Employee's Compensation, District North East" within thirty days of passing of this order, failing which recovery proceeding shall be initiated against respondent No.2 under section-31 of the Act.
13. Both the Respondent-1 & Respondent-2 are further directed to show cause as to why penalty not exceeding fifty percent of the compensation amount be not imposed upon him under Section 4 (A) (3) (b) of the Act for the default in not paying the compensation due under the Act within one month from the date it fell due. Both the parties are directed to appear before the CEC on 18.02.2021 at 10.A.M.

Given under my hand and seal on 2nd February, 2021.



(K.M. SINGH)
COMMISSIONER, EMPLOYEE'S COMPENSATION
DY. LABOUR COMMISSIONER