

**IN THE COURT OF 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.WC/222/NW/15/ 24.

Date: 29/04/2024.

**In the matter of :-**

**Sh. Gurmit Singh S/o Sh. Rulda Singh,**  
R/o H. No. 130, Village – Balewal,  
Tehsil – Batala, District – Gurdaspur,  
Punjab – 143505

..... Applicant

Versus

**1. Sh. Shinghara Singh,**  
**M/s – DBT Transport Company,**  
C/o Libra Filling Station, GTK Road,  
Opposite – Jahangirpuri, Delhi – 110033

**2. M/s Chola MS General Insurance Co. Ltd.,**  
Plot No. 6, Pusa Road near Metro Pillar No. 81,  
New Delhi-110005

..... Respondents

**ORDER**

1. Vide this order, I will dispose of the application of the applicant/claimant dated 02/12/2015 seeking injury compensation Under Section 22 of The Employee's Compensation Act, 1923.
2. In the application filed by the applicant/claimant, it has been stated that he was employed as a first driver on vehicle bearing No. HR-55T-7506-Truck owned respondent no. 1. On 01-01-2015 he met with an accident arising out of and during the course of employment. On 01-01-2015, the applicant left from Delhi to Bangalore after getting the said vehicle loaded with Apples. The applicant was along with second driver Sh. Nand Lal on the vehicle. When the vehicle reached at Jaipur bypass, in Chandwaji the tyre of the vehicle got burst and the second driver Sh. Nand Lal was driving the vehicle and his control on the vehicle ended and the vehicle fell down from the flyover on the under passing road. The applicant as well as the second driver sustained grievous injuries. Police arrived at the scene and took the drivers out from the vehicle. They were taken to Hospital and took treatment. The applicant sustained grievous injuries on his right leg. The applicant is still taking treatment. After this accident the applicant is not in a position to do any work of his capacity and has become 100% disabled for the purpose of his employment as a driver. His earning capacity has been totally reduced. It has been stated that vehicle bearing No. HR-55-T-7506-Truck was owned by respondent no.1 at the time of accident and it was validly insured with respondent no. 2 i.e.





M/s Chola MS General Insurance Co. Ltd., vide policy no. 3379/01029616/000/00 for a period 07.04.2014 to 06.04.2015 and an additional premium was charged by the respondent no. 2 from respondent no. 1 under E.C. Act. He was drawing wages @ Rs. 9000/- per month plus Rs. 200/- per day as food allowances and was aged 36 years at the time of his accident. Respondent No.1 is having the notice of the accident since the day of its occurrence and the Insurance Co. has been informed immediately after the accident took place. Even otherwise, a notice under section 10. of the E.C. Act has been served upon the respondent no. 1. The Applicant is entitled to compensation to the extent of 100% disability and as per section 4(1) (c) & 4(1) (d) of the Employee's Compensation Act he is entitled for temporary and permanent disablement along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%.

3. The summonses were sent to the respondents with the direction to appear and to file written statements/documents, if any in their defense.
4. Respondent No. 1 owner of the vehicle - filed its reply and stated that there is no employee employer relationship between the applicant and answering respondent. Driver posted on the vehicle was one Shri Sajjan. When the vehicle met with an accident at that time Sh. Sajjan was driving and the applicant was not at all employed on the truck in question. The driver who was posted on the vehicle namely Sh. Sajjan he informed the answering respondent about the accident and in turn respondent No. 1 informed the insurance company about that. The applicant has come with unclean hand. He was neither employed, nor posted on the vehicle as such, hence there is no question of sustainment of injury on the vehicle. He has prayed that the claim application be dismissed.
5. Respondent No. 2 M/s Chola MS General Insurance Co. Ltd., also filed its written statement. In the written statement it is stated that applicant was not employee with the owner of the vehicle, at the time of furnishing information for seeking O.D. claim did inform that Driver was Sajjan and he was driving the vehicle at the time of accident. It was further stated that one more claim was filed by one Nand Lal. That claim was dismissed in default. In the said claim, the claimant Shri Nand Lal had stated that he was alone on the vehicle. He nowhere mentioned that Gurmeet Singh was also posted as driver on the vehicle. Therefore, the story put forth by the claimant seems to be concocted only to get compensation against an accident in which he was not at all an employee. It has further been stated that as per the Motor Vehicles Act the authorities have to furnish the entire information but in the instant case nothing has been done. However, it was admitted that the vehicle was owned by the respondent No. 1 and it was insured with respondent No. 2 vide policy No 3379/01029616/000/00 for the period 07.04.2014 to 06.04.2015. It was prayed since the accident of the applicant was not caused out of and during the course of his employment, it needs to be dismissed with costs.
6. Claimant filed rejoinder by which he denied contents of reply filed by respondent and reiterated the contents of his claim application.





7. On 23/01/2017 following issues were framed for adjudication:
- Whether employer and employee relationship exists between claimant and resp. No. 1?
  - Whether accident resulting into injury to claimant is caused out of and during the course of employment and if so to what amount of injury compensation claimant is entitled to?
  - Relief, if any?
8. Matter was fixed for the evidence of the claimant. Claimant filed his statement by way of affidavit Ex. AW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed documents Ex. AW1/1 to AW1/5 and Marked AW1/6 to AW1/9 i.e. Copy of police complaint – PS Chandwasi, District – Jaipur, RJ, Copy of disability certificate, Copy of discharge summary, Copy of medical treatment bills, Copy of insurance policy of the vehicle, copy of Aadhar card of the deponent, Copy of election Identity card, copy of photograph after the accident. His statement was also recorded and was also cross examined by counsel of respondents on 20/03/2017.

Further along with the report the P.S. further filed a sheet General Diary maintained by the said P.S. At entry No. 1502 it is mentioned that near Manpuri Pulia a truck bearing No. HR-55-T-7506 was met with an accident. In that accident two employees namely Nand Lal and Gurmeet Singh sustained injuries and they had been taken to hospital. The insurance company further sought the file whereby another driver Nand Lal had once filed a claim case. In that it was stated that he said he was the only driver and was not accompanied by the applicant.

The report does not endorse the stand taken by respondent No. 1. No driver namely Shri Sajjan is reported in the report.

9. For respondent No. 2 Sh. Ayush Dabas –filed his evidence by way of affidavit Ex. R2W1/2. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 26/09/2023.

Despite summons issued to Respondent No. 1 through speed post as well as through concerned SHO, resp. no. 1 did not bother to participate in proceedings; as such resp. no. 1 was proceeded ex-parte on 22/08/2023.

10. The case was fixed for arguments and written arguments were filed and oral arguments were also heard.

11. 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**

12. The case of the applicant is that he was posted as driver and on the vehicle bearing No. HR-55-T-7506 and on 01-01-2015, the applicant left from Delhi to Bangalore after getting the said vehicle loaded with Apples. The applicant was alongwith second driver Sh. Nand Lal on the vehicle. When the vehicle reached at Jaipur bypass, in Chandwaji the tyre of the vehicle





got burst and the vehicle fell down from the flyover on the under passing road. The applicant as well as the second driver sustained grievous injuries. Police arrived at the scene and took the drivers out from the vehicle. They were taken to Hospital and took treatment. Respondent No. 1 who is the owner of the vehicle filed his written statement and stated that the applicant was not posted nor there exists any employee employer relationship between him and the applicant. He stated that Shri Sajjan was posted on the vehicle on the day of accident. Insurance company also stated that there is no employee employer relationship between the applicant and respondent No. 1. Evidence has been filed by the respective parties according to their stand. O.D. Claim documents were filed. At the instance of the applicant documents from the concerned POLICE STATION were summoned. These were filed. Police record was sought and documents from the concerned P.S. has placed on record i.e. a report which shows about occurrence of accident. In the said report it has been stated that the vehicle met with an accident. In that accident, the vehicle was damaged and it went further to say that in this accident two drivers posted on the vehicle namely Nand Lal and Gurmeet Singh were injured and it has been mentioned in that report that they had been taken to Hospital (NIMSHospital).

The report filed bearing No. 6252 dated 30/10/2023 speaks about the accident and it tells there were two employees namely – Nand Lal and Gurmeet Singh who have been taken to NIMS Hospital for treatment. Further record from the hospital was sought by the insurance about the admission of Shri Gurmeet Singh but the hospital did not furnish the information about the applicant and it was stated that the Nand Lal was admitted in the hospital and his report was filed. The report submitted by the concerned P.S. confirms that the vehicle was met with an accident and immediately after the accident the concerned police came into action. The injured employees – Shri Nand Lal and Gurmeet Singh were taken to hospital. Police Report and General Diary reports say so. The story by respondent No. 1 does not inspire me and seems to be false. Their stand that one Sajjan was posted as driver cannot be believed to be true. The documents for the sought repair of the vehicle do not suggest that driver posted on the vehicle might have remained unhurt. This is because of the reasons that entire cabin was damaged. It could be true that the applicant might not have been admitted at Jaipur but he files medical documents which suggests RSA injury. He might have sustained some injury before that does not mean that he would not be entitled for the injury in question. Hence, I hold that the applicant was posted on the vehicle bearing No. HR-55-T-7506 and the vehicle was met with an accident and in that accident the applicant sustained injury. Hence, I hold that the injury to the applicant has been caused out of and during the course of his employment. The said issue/s are decided in favour of the applicant and against the respondents

### **ISSUE No. 3**

13. In the claim application by the applicant/claimant, it has been stated that he was drawing Rs. 9,000/- per month plus Rs. 200/- per days as food allowances. The respondent has denied even the relationship then there was no question of any wage been paid by him. If the food allowance is taken as part of wage his monthly salary comes to Rs. 15,000/-. But as per maximum limit prescribed by the Central govt. Notification in this respect for that particular





point of time, the wage could be Rs. 8,000/- per month and thus his wages is taken as Rs. 8,000/- per month. In the claim application, he has further stated that he was aged 40 years at the time of accident. But as per his Adhaar card his date of birth is shown 01.01.1978 and by that the applicant on day of accident had completed 36 years of his age. Hence, it is held that the applicant had completed 36 years of his age. The applicant was directed to appear before the Medical Board of Govt. Hospital. He has got himself examined by the Medical Board, Govt. Hospital, Batala. The medical Board has assessed him physically disabled to the extent of 50% for his right lower limb. The documents and the Medical Certificate show that the claimant may not be able to drive a transport vehicle. In this regard, the question as to reduction in earning capacity was argued by the both parties. Ld. Counsel for the claimant argued that the as the workman was working as a heavy vehicle driver which he was doing prior to this accident, hence this is a case of 100% loss of earning capacity. Finding the nature work, it should be accepted that it is case of 100% disablement and in this regard the Ld. Counsel for the claimant has relied on the ruling of the Hon'ble Supreme Court of India – *Pratap Narain Singh vs. Srinivasa Sabata* cited at 1976 ACJ 141 whereby the Apex Court has held that the workman was no more in a position to take up and do that work which he was doing hence the disablement was assessed 100%. Similarly Supreme Court in *Mohan Soni vs. Ram Avtar & Ors.*, 2102 ACJ 583, which held that:-

*"This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect."*

The Hon'ble Delhi High Court in:- *National Insurance. Co. V. Ranjit & Anr.* - Delhi High Court – FAO No. 246/2007 – held

15% disablement held 100% loss of earning capacity – as the person was unfit to drive a vehicle.

14. In addition to the discussions as above, the applicant gave his evidence and he remained physically present and his condition does not render him capable to drive a vehicle. He cannot squat; thus, he cannot mount on the transport vehicle. The situation of the claimant and the facts are covered by the case the Hon'ble High Court of Delhi in *New India Assurance Co. Ltd. Vs. Mohd. Ajmer* – FAO 259 of 2013 whereby it has been ruled that a driver with injury in his leg having disablement to the extent of lesser is certainly a case of 100% loss of earning capacity. He finds difficulty in squatting; he cannot use his leg for pressing brakes and accelerator etc. He cannot even step up to enter driver's seat. This is because of the reason that he is no more capable to drive a transport vehicle. Hence considering the assessment of the medical board and the law given by the Hon'ble Apex court in respect of loss of earning





capacity, I am of the considered view that the loss of earning capacity is taken as 100%. It is held that he is not fit to drive a transport vehicle on the public road hence his loss of earning capacity is 100%.

15. In the given wage, age, and loss of earning capacity, the applicant/claimant is entitled to compensation as under:

i)	Relevant factor of 36 years	:	194.64
ii)	60% of wages @ Rs. 8000/- pm	:	Rs. 4800/-
iii)	Amount of compensation		

$$\frac{194.64 \times 8000 \times 60}{100} : \text{Rs. 9,34,272/-}$$

16. The claimant is also entitled to interest as per Section 4A (3) (a) of the 'Act' @ 12% per annum from 30 days after the accident i.e. from 01.02.2015. The applicant has further stated that he has spent an amount on his treatment. He has placed on record bills amounting to Rs. 24,801/- He is also entitled to medical expenses as per Section 4 (2-A) of the Act. As far as imposition of penalty under Section 4A (3) (b) is concerned, a further show cause notice is issued to the respondents as to why penalty as provided under the Act be not imposed on them.

17. Therefore, the claimant is entitled to receive injury compensation from Respondent No. 1 but as the said Respondent No. 1 has taken an insurance coverage, hence in spirit of indemnifying the insured, the Respondent No. 2 is directed to deposit before this Authority an amount of **Rs. 9,34,272/- (Rs. Nine lacs thirty four thousand two hundred seventy two Only)** on account of compensation payable to the applicant/claimant, along with medical expenses Rs. 24,801/- and interest @ 12% p.a. w.e.f. 01.02.2015 till its realization. The amounts as ordered be deposited by **respondent No. 2** through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of the order before this Authority.

18. Given under my hand and seal of this Authority on this 29<sup>th</sup> day of April, 2024.

(S.C. Yadav)  
Commissioner

Employee's Compensation Act, 1923

