

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.CEC/I/66/ND/22 / 30.

Date: 30/04/2024.

IN THE MATTER OF:

Sh. Kundan Kumar S/o Sh. Sudhir Singh,
R/O H.No.552, Shahbad Daulatpur,
Pansali, Pehlad Pur, Narela,
North-West, Delhi-110042.

..Applicant/Claimant

V/s

Sh. Ravish Kumar S/o Sh. Jagdish Parsad
R/o RZ- C- 1/40, Pratap Garden,
Uttam Nagar, New Delhi - 110059

M/s HDFC ERGO General Insurance Co. Ltd.
Ambadeep Building,
14, Ground Floor, Kasturba Gandhi Marg,
Connaught Place, New Delhi - 110001

.....Respondents

ORDER

1. Vide this order, I will dispose of the application dated 08/01/2020 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that he was employed as Cleaner/Helper by the Respondent no.1 on his vehicle bearing No.DL-1M-6272 (Truck). That he was working as Cleaner/helper on the said vehicle with full devotion and sincerity. That on 08.07.2012 the said vehicle was on its commercial trip and was loaded with paper at D-Block, Sector-3, Bawana, Delhi and was going from Delhi to Muzaffar Nagar, U.P. That on 08.07.2012 when the said vehicle reached under the jurisdiction of P.S. Mansoorpur, Distt. Muzaffar Nagar, U.P., suddenly the driver of the said vehicle applied the brakes to avoid the accident with other vehicle going ahead of it. That the driver of the said vehicle could not control the said vehicle and as a result of it it hit a tree. That in the said accident he has received multiple injuries and his both legs were badly crushed and he was immediately admitted to Govt. Hospital as the injuries were serious, he was taken to Jagdamba Super Speciality Hospital, L-619, Shastri Nagar, Hapur Road, Meerut but could not get the proper treatment and thereafter he was referred to Safdarjung Hospital, New Delhi on 10.7.2012 and discharged on 19.7.2012.



That the above said accident occurred out of during and in the course of his employment with the respondent no.1. That he also got treatment long time in Sant Parmanand Hospital, Civil Lines, Delhi-110054. That on 08.07.2012 the above said matter was reported to police by the owner of vehicle i.e. respondent no.1 with P.S. Mansoorpur, Distt. Muzaffar Nagar, U.P. That the said vehicle bearing No.DL-1L-6272 (Truck) was owned by respondent no.1 at the time of accident and it was insured with respondent no. 2 vide Cover Note No.002300930351, valid for the period 05.10.2011 to 04.10.2012. That he was drawing the wages at the rate of Rs.8000/- per month. That he was aged about 24 years at the time of accident. That he incurred the medical expenses on his treatment approximately Rs.4,00,000/-. That the respondent/management is having the notice of accident since the day of occurrence. It is further submitted that he was an employee at the time of incident with the respondent and incident occurred out of during and in the course of his employment. He was unfortunately received injury arising on 08.07.2012 and resulting out he became 100% disabled for his work. In the end claimant prayed that he is entitled to receive the 100% injury compensation as per Employee Compensation Act. That he is also entitled to interest at the rate of 12% p.a. from the date of accident till realisation and penalty to the extent of 50% of the principal amount.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent No. 1 filed its reply and submitted that the claimant has not come with clean hands before this Hon'ble Court and suppressed the material facts from this Hon'ble Court, so, the present petition is not maintainable and is likely to be dismissed on this grounds. That the answering respondent No.1 is not liable to pay any compensation to the claimant as there was no negligence on their behalf and if any compensation is payable to the claimant it is by the respondent no.2 only hence the petition is liable to be dismissed. That the answering respondent no.1 has insured the vehicle No DL-IM-6272 (TRUCK) with the respondent no.2 namely HDFC ERGO General Insurance Company Limited for the period of 05/10/2011 to 04/10/2012 vide Policy No.2315200143980300000, so the respondent no.1 is not liable to pay any compensation to the claimant in any manner. That at the time of accident driver of above said vehicle have valid driving license so the answering respondent no.1 is not liable to pay any compensation to the claimant in any manner, if payable compensation to the claimant it is pay by the respondent no.2. In the last answering respondent prayed that the petition/DAR/complaint of the petitioners may please be dismissed with heavy cost in favour of the answering respondent, in the interest of justice.
5. Respondent no. 2 filed its reply and submitted that the claim petition is liable to be dismissed as it is barred under the Limitation Act. That the present claim application has been filed without any basis as such the claim petition is liable to be dismissed on this ground alone. That the injured Kundan Kumar was not employed as cleaner/healper with respondent no. 1 as alleged in the claim application at the time of alleged incident. That no documents have been filed to show the relationship of employer and employee by the applicants. That no such



incident took place during the course of employment of the injured as alleged by the applicants in the claim application. That the answering respondent shall take all the defences /pleas under W.C. Act/ Rules including sec 3. 10 etc of the W.C. Act, the MV Act including section 149 of the said Act as well as the defences /plea under the Insurance Act /Rules including u/sec 64-VB of the said Act as are available to the answering respondent. That it is submitted that if the owner fails to contest the claim petition or he is in collusion with the claimant petitioner then the answering respondent be allowed us 170 of the M.V. Act by the Hon'ble Court to take all the defences as are available to be owner. That the present petition is without any cause of action against the answering respondent this Hon'ble Court has no jurisdiction to entertain the present claim petition. It lacks material and requisite particulars to be disclosed under the WC Act and the MV Act and rules framed there under. That the answering respondent reserves its right to take appropriate defences/pleas proceedings at a later stage if some new facts come to its knowledge subsequent to the filing of the written statement. That the present case is not maintainable based on the current facts, circumstances and that the applicant's application is not in accordance with the provision of the Workmen's Compensation Act and the Rules framed there under therefore it is liable to be dismissed with costs. In the end the answering respondent denied rest of the contents in toto and made submissions that the present petition may kindly be dismissed.

6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. On 29/01/2020 following issues were framed for adjudication:
 1. Whether the claim is time barred?
 2. Whether the employee-employer relationship exist between the claimant and respondent?
 3. Whether accident resulting injury to the claimant occurred during and in the course of employment, if so to what amount of injury compensation, claimant is entitled?
 4. Any other Relief?
 5. Whether the respondent are liable for penalty u/s 4A and if so to what extent and what amount?
8. Matter was fixed for the evidence of the claimant. Claimant filed his statement by way of affidavit Ex.PW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. PW1/1 to PW1/5 and Mark PW1/B to PW1/E i.e. Copy of Aadhar card of Kundan Kumar, copy of medical treatment record of Jagdamba Super Speciality Hospital, copy of medical bills of Sant Parmanand Hospital, Copy of disability certificate, original previous claim petition dated 04/04/2016, copy of information letter to Police station, Mansurpur, UP, copy of registration certificate of vehicle bearing no. DL-1M-6272 – TRUCK, Copy of insurance Cover note dated 05/10/2011, copy of medical bills issued by Ambey Medical store. His statement was also recorded on 07/07/2022 and was further cross examined by counsel of resp. No. 2 on 21/09/2022.



9. For respondent No. 1 Sh. Ravish Kumar – filed his evidence by way of affidavit Ex. RW1/A. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant and resp. No. 2 on 22/11/2023.
10. For respondent No. 2 Sh. A. K Singh, Advocate appeared and gave statement that respondent no. 2 does not wish to lead any evidence in the matter, as such taking his statement under consideration the evidence stage of respondent no. 2 was closed on 10/01/2024.
11. On the pleading of the parties, evidence adduced on their behalf and the arguments addressed thereon, I have to give my findings as under:-

ISSUE No. 1

12. Claimant has filed application alongwith the claim under section 10(1) proviso V for condonation of delay wherein it is mentioned that claimant was employed by the respondent on his vehicle bearing no DL-1L-6272 as a cleaner and on 08/07/2012 after loading paper in the said vehicle at Delhi and was going to Mujjafarnagar, UP and under the jurisdiction of PS Mansoorpur UP he met with an accident resulting thereby he received grievous injuries on his both legs which were badly crushed. After the discharge from the hospital he was advised to get follow up in OPD as he was not fully fit and treatment got continued since long time, he was dispersed and lost all hopes for his survival. Due to the suffering and agony he lost all hopes of life and was bed ridden due to the injuries. Further it is stated that respondent was having the knowledge of the accident despite that never paid attention to him and his family and did not extent any financial help. Further he stated that being a semi-illiterate and not having any knowledge of time limitation for filing of the claim application he could not filed within stipulated time period, hence delay occurred. In this case date of accident is 08/07/2012 and application for compensation has been filed on 10/01/2020 after a approximate period of 51/2 years while under the Act limitation is given 02 years. In these circumstances considering the submission of the claimant regarding delay it is clear that resp. no. 1 has fully knowledge about the accident and had received OD claim from the resp. no. 2 , but neither resp. no. 1 nor resp. no. 2 took any steps regarding payment of compensation to the claimant. Under the Act under section 4(A) it is clear mandate that compensation is payable within 30 days from the date of accident. Further, Employees Compensation Act is the legislature in the nature of social welfare for the workers as such only on delay ground no legitimate worker can be deprived for their rights to claim compensation under the Act. Claimant counsel relied upon the judgement of Hon'ble Supreme Court of India in the CA No. 3910 of 2019 decided on 12/04/2019 titled as Balbir Singh v/s New India Assurance Co. Ltd. The observation made by Hon'ble apex court is completely applicable in this case. As such I condon delay of approximately 51/2 years and allow the claim of claimant.



ISSUE No. 2 & 3

13. The case of claimant is this that he was employed as Cleaner/Helper by the Respondent no.1 on his vehicle bearing No.DL-1M-6272 (Truck). That he was working as Cleaner/helper on the said vehicle with full devotion and sincerity. That on 08.07.2012 the said vehicle was on its commercial trip and was loaded with paper at D-Block, Sector-3, Bawana, Delhi and was going from Delhi to Muzaffar Nagar, U.P. That on 08.07.2012 when the said vehicle reached under the jurisdiction of P.S. Mansoorpur, Distt. Muzaffar Nagar, U.P., suddenly the driver of the said vehicle applied the brakes to avoid the accident with other vehicle going ahead of it. That the driver of the said vehicle could not control the said vehicle and as a result of it it hit a tree. That in the said accident he has received multiple injuries and his both legs were badly crushed and he was immediately admitted to Govt. Hospital as the injuries were serious, he was taken to Jagdamba Super Speciality Hospital, L-619, Shastri Nagar, Hapur Road, Meerut but could not get the proper treatment and thereafter he was referred to Safdarjung Hospital, New Delhi on 10.7.2012 and discharged on 19.7.2012. That the above said accident occurred out of during and in the course of his employment with the respondent no.1. That he also got treatment long time in Sant Parmanand Hospital, Civil Lines, Delhi-110054. That on 08.07.2012 the above said matter was reported to police by the owner of vehicle i.e. respondent no.1 with P.S. Mansoorpur, Distt. Muzaffar Nagar, U.P. That the said vehicle bearing No.DL-1L-6272 (Truck) was owned by respondent no.1 at the time of accident and it was insured with respondent no. 2 vide Cover Note No.002300930351, valid for the period 05.10.2011 to 04.10.2012. That he was drawing the wages at the rate of Rs.8000/- per month. That he was aged about 24 years at the time of accident. That he incurred the medical expenses on his treatment approximately Rs. 4,00,000/-. That the respondent/management is having the notice of accident since the day of occurrence. It is further submitted that he was an employee at the time of incident with the respondent and incident occurred out of during and in the course of his employment.

Resp. no. 1 filed reply wherein he has admitted employee employer relationship and accident caused out of and in the course of his employment with claimant. Further respondent admitted that claimant was having valid DL at the time of accident in statement on oath in evidence he has also mentioned same facts. On the other side resp. no. 2 insurance com. has taken very simple objection that claimant was not in the employment of respondent at the time of incident nor filed any documents pertaining to his employment. Even claimant has not filed any valid DL on record. The objection of the resp. no. 2 is not considerable since the owner of the vehicle in question resp. no. 1 has on oath admitted factum of employee employer relationship accident caused out of and in the course of employment wherein claimant received 58% permanent disability in relation to both lower limb out of and in the course of his employment as such claimant is entitled to receive injury compensation from the respondent jointly or severally. Since the vehicle in question was insured with resp. no. 2 Ins Co. on the day of incident and additional premium was charged from resp. no. 1 as such ins Co. resp. no. 2 is liable to indemnify to the claimant on behalf of resp. no., 1 as such issue no. 1 & 2 are decided in favour of claimant in against the respondents.



ISSUE No. 4 & 5

14. As made discussion above for relief I am taking age of claimant as 23 years (as per date of birth 01/01/1989 mentioned in Aadhar Card No.650320340709) and relevant factor 219.95 and 60% of last drawn wages restricted to 8,000/- and 58% disability, as such calculation is made as under:

$$\frac{219.95 \times 4800 \times 58}{100} = \text{Rs. } 6,12,340/-$$

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

15. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent No. 1.
16. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent No. 2 to deposit **Rs. 6,12,340/- (Rupees Six Lakh Twelve Thousand Three hundred and Forty Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 07/08/2012 till its realization and the respondent No. 1 is further directed to **deposit 25% penalty of awarded amount i.e. Rs. 1,53,085/- within 30 days** through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of the order before this Authority.
17. Given under my hand and seal of this Authority on this 30th day of April, 2024.

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

