

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. ECD/95/NW/2018/ 27

Dated: 29/04/2024

IN THE MATTER OF:

1. **Rukseena W/o Lt. Jamshed**
2. **Irshad S/o Lt. Jamshed**
3. **Dilsana D/o Lt. Jamshed**
4. **Waseem S/o Lt. Jamshed**
5. **Sameem S/o Lt. Jamshed**
6. **Chotalli S/o Lt. Jamshed**

All R/o Near Masjid, Dhadhuka,
Mewat, Tain, Haryana-122107

.....Applicant/Claimant

V/s

1. **Manju Dhingra w/o Sh. Rajinder Kumar,**
R/o. H.No. 502/28, Jyoti Park,
Street No. 8, Gurgaon, Haryana - 122006

.....Respondent No.1

2. **M/s The Oriental Insurance co. Ltd.**
88, Janpath, New Delhi - 110001

.....Respondent No.2

ORDER

1. Vide this order, I will dispose of the application dated 10/09/2018 filed by the applicant/claimant for seeking death compensation.
2. Claimant in the claim application submitted that Jamshed (Now deceased) aged about 43 years S/o Sh. Chotalli residence of Near Masjid, Dhadhuka, Mewat, Tain, Haryana - 122107 was working as a driver on vehicle bearing no.HR-55X-9058. That on 24.7.2018 at about 7.30 PM the deceased was on his duty and covering the vehicle with Tarpaulin (Tripaál) and suddenly fell down from the vehicle no. HR-55X-9058 and fell unconscious. That he was moved to the SRCH hospital where he was declared brought dead by the doctors. That deceased died during the course of employment and under the employment of respondent no.1. That the accident took place under the jurisdiction of Police station



Alipur, Delhi and deceased died during the course of employment of respondent no. 1. That the deceased was aged about 43 years at the time of accident. That his last drawn salary was Rs.10,000/- per month and used to contribute his entire income to the petitioners for the maintenance and house hold expenses. That the employer has notice of accident and he was requested verbally many times to pay the compensation, but he did not make any payment. That the mother of the deceased has since died. That the accident was registered in Police station Alipur, Delhi vide DD NO.82 dt.24.7.2018. In the last claimant prayed that they are entitled to receive compensation of Rs. 15,00,000/- (Rupees Fifteen Lacs) on account of premature death of the deceased, loss of dependency and mental torture and shock suffered by them. That the respondent no.1 and 2 are liable to pay compensation, as the deceased died in the accident during the course of employment with respondent no.1 and 2. It is, therefore, prayed that the petitioner may kindly be awarded compensation as admissible under the Act with interest and the respondents be directed to pay interest and penalty for not depositing the compensation within time.

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 answering respondent is a law abiding citizen of India. That the answering respondent No.1 purchased a vehicle bearing No.HR-55X-9058 for the purpose of carrying the business of loading the goods from one place to another place as per the demands of the consumers. That the said vehicle bearing No.HR-55X-9058 was insured with the Respondent No.2 bearing Policy No.272500/31/2017/8536 insured's Code No.72445228 insured the said vehicle in the name of answering Respondent No.1 Manju Dhingra. That for the purpose of driving the vehicle the answering respondent No.1 required a driver thereafter the efficient drivers required time to time for the purpose of on its demand of the vehicle carrying the goods from one place to another place. That the answering respondent No.1 hired a driver named as Shabbir resident of village Khedla Tehsil Nuh, District Mewat, Haryana. That the said driver Shabbir was driving the said vehicle since 3-4 months. That on 19.07.2018 the said vehicle was carrying the goods from Ankleshwar, Gujarat and coming towards Delhi to drop out the goods. That the vehicle has dropped and unloaded the goods on 22.07.2018. Thereafter, after unloading of the said vehicle, the same has to load some goods from Delhi and the said vehicle coming towards the Hamidpur, Delhi was parked due to strike was going on 23.07.2018 and 24.07.2018 and 25.07.2018 for in favour of the price rise of diesel /petrol. In this connection the said vehicle was parked at Hamidpur under the jurisdiction of the Alipur Police Station where the incident took place and the husband of the petitioner No.1 died. That Shabbir a driver of the said vehicle was on duty called to Jamshed the husband of the petitioner to guard the vehicle entirely at his risk and responsibilities by saying of giving him the agreed amount between the said driver Shabbir and husband of the petitioner No.1. That the husband of the petitioner was neither appointed/authorised by the answering respondent No.1 to guard the said vehicle. That the



husband of the petitioner was only came to guard the vehicle on the direction of the driver Shabbir who was a friend and residing nearby his village. In the last the answering respondent further denied rest of the contents in toto and prayed that this Hon'ble Court may kindly be pleased to reject the application with exemplary cost, in the interest of justice.

5. Respondent no. 2 filed its reply wherein he has denied all the contents of claim application in toto and stated that claimant has not filed any documents to prove employee-employer relationship as well as accident occurred out of and in the course of his employment with respondent. It was the onus upon the claimant to support his claim by way of documents. On this ground resp. no. 2 denied claim of claimant and prayed that claim is liable to be dismissed with heavy cost in favour of the answer respondent and against the petitioners in the interests of justice.
6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. On 05/10/2021 following issues were framed for adjudication:
 1. Whether employee-employer relationship exist between the parties?
 2. Whether accident resulting into death of deceased caused out of and during the course of employment and if so to what amount of death compensation, the dependants are entitled to?
 3. Relief, if any?
 4. Whether penalty is imposable u/s-4A(3) and if so the quantum thereof?
8. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex.WW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. WW1/1 to Ex. WW1/7 and Mark A to Mark D i.e. Copy of Aadhar card of all the petitioners/claimants, copy of original school certificate of Jamshed, copy of MLC, Copy of post mortem report, copy of the DD No. 82B. Her statement was also recorded and was also cross examined by counsel of respondent No. 2 on 26/11/2020. Further due to non appearance of respondent no. 1 since 26/10/2020, the opportunity for cross examining the claimant was closed on 26/11/2020.
9. For respondent No. 1 Smt. Manju Dhingra – filed her evidence by way of affidavit Ex. DIW1. The contents of affidavits were corroborative to those reply. DIWI also filed documents Ex. DW1/1 to Ex. DW1/6. Her statement was also recorded and was also cross examined by counsel of claimant and Resp. No. 2 on 13/09/2022.

Further respondent No. 1 examined another witness i.e. Sh. Sabir S/o Jaan Mohd. (Driver) by way of affidavit Ex. RW1 and further tendered his evidence and was also



cross examined by counsel of respondent no. 2 on 16/11/2023 and by counsel of claimant on 06/12/2023.

10. For respondent No. 2 Sh. Abhishek Tripathy – filed his evidence by way of affidavit and an additional affidavit Ex. R2W1/X and R2W1/Y. The contents of affidavits were corroborative to those reply. R2W1 also filed documents Ex. R2W1/A to R2W1/F. His statement was also recorded and was also cross examined by counsel of claimant (opportunity given, cross nil) and Resp. No. 1 on 13/09/2022.
11. The matter was fixed for arguments. Written arguments were filed by the claimant and respondents and oral arguments were also heard in detail.
12. On the basis of pleadings of the parties and documents available on record I am giving my findings on the issues framed in the matter as under:

Issue No.1 & 2

13. That the case of the petitioner is this that Jamshed (Now deceased) aged about 43 years S/o Sh. Chotalli residence of Near Masjid, Dhadhuka, Mewat, Tain, Haryana - 122107 was working as a driver on vehicle bearing no.HR-55X-9058. That on 24.7.2018 at about 7.30 PM the deceased was on his duty and covering the vehicle with Tarpaulin (Tripaal) and suddenly fell down from the vehicle no. HR-55X-9058 and fell unconscious. That he was moved to the SRCH hospital where he was declared brought dead by the doctors. That deceased died during the course of employment and under the employment of respondent no.1. That the accident took place under the jurisdiction of Police station Alipur, Delhi and deceased died during the course of employment of respondent no. 1. That the deceased was aged about 43 years at the time of accident. That his last drawn salary was Rs.10,000/- per month and used to contribute his entire income to the petitioners for the maintenance and house hold expenses. That the employer has notice of accident and he was requested verbally many times to pay the compensation, but he did not make any payment. That the mother of the deceased has since died. That the accident was registered in Police station Alipur, Delhi vide DD No.82 dt.24.7.2018. In the last claimant prayed that they are entitled to receive compensation of Rs. 15,00,000/- (Rupees Fifteen Lacs) on account of premature death of the deceased, loss of dependency and mental torture and shock suffered by them. That the respondent no.1 and 2 are liable to pay compensation, as the deceased died in the accident during the course of employment with respondent no.1. on the other side resp. no. 1 denied employee - employer relationship with deceased on the ground that on the day of accident one Sh. Shabbir was the driver on vehicle in question and not Jamshed. The Jamshed was never employed by the resp. no. 1 however Jamshed was hired by Shabbir for covering the vehicle with Tarpaulin (Tripaal) and suddenly fell down from the vehicle no. HR-55X-9058 and fell unconscious and after that he was taken to the hospital for treatment and declared brought



dead. Resp. no. 1 examined himself as a witness. During the cross examination Ld. Counsel for the claimant has put the question that whether resp. no. 1 have issued appointment letter and other service records to all the drivers engaged by her as stated in cross examination that 5-6 drivers are working with them but she is not able to tell whether all have been issued appointment letter or other service records. Salary of the workers are being paid in cash. Resp. no. 1 has also admitted that confidentially she cannot tell that on the day of accident of the deceased resulting in death, whether Shabbir or Jamshed was driver on vehicle in question. From the cross statement of the resp. no. 1, one thing is clear that resp. no. 1 has not discharged his statutory liabilities at the time of appointing the workers / drivers in their organization. It was the onus of the resp. no. 1 to provide statutory documents such as appointment letter, wage slip etc to all workers so that they must have proof regarding their employment. But the resp. no. 1 deprived all of them from these statutory documents. In this case police DD was made and post mortem was also done. One thing more it has come out that when deceased was not in the employment of the resp. no. 1 then how he was present at the place of peril and met with an fatal accident. From this it is proved that deceased was in the employment of the resp. no. 1 and met with an accident out of and in the course of his employment , resulting he died as the resp. no. 1 failed to prove contents of his reply. Claimant relied upon the judgement of Hon'ble High Court of Delhi in the case titled M/s Schindler India Pvt. Ltd. V/s PWD & Ors FAO 85/2013 decided on 01/05/2014 wherein, Hon'ble Court held that strict provisions of CPC and evidence Act do not apply to the proceedings before the Commissioner as per judgment of Hon'ble Supreme Court in the case of Om Prakash Batish V/s Ranjit Kaur @ Ranbir Kaur & Ors (2008)12 SCC 212. Further petitioner relied upon the judgment of Hon'ble High Court of Delhi case United India Insurance Company Ltd V/s Anita Devi in FAO No 103/2016 decided on 10/11/2017 and United India Insurance Company Ltd V/s Hari Lal in FAO 96/2021 decided on 04/05/2023 on the issue of relationship of employee and employer. Resp. No. 1 filed written submission and relied upon the judgement of Gauhati High Court Case No MACApp./264/2014 where in Hon'ble Court held that since the vehicle in question was insured with ins. Co hence liability of payment of compensation is on Ins. Co. Resp. No. 2 Ins co. also filed written submission on the line of there written statement, after considering all the facts and documents, pleadings and arguments and discussion made above in the light of judgement as cited above issue no. 1 & 2 are decided in favour of claimant and against the respondents.

ISSUE No. 3 & 4

14. In view of above discussion made. I hold that claimant is entitled to receive death compensation under the EC Act 1923 from respondent. For considering the case of claimant for compensation I am taking age of deceased as 47 years as per age in Aadhar No. 722518336582 of the deceased and relevant factor as per age 163.07 and 50% of Rs. 8000/- as restricted under the Act.



Accordingly compensation is calculated as under:

50% of Rs. 8000/-	:	4000/-
Relevant factor	:	163.07
4000 * 163.07	:	Rs. 6,52,280/-

In view of this calculation claimant is entitled to receive Rs. 6,52,280/- as compensation from the respondent. 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. Regarding the issue on penalty show cause notice was issued to the respondent to show cause as to why penalty be not imposed upon them. Despite sufficient opportunities respondents did not file reply. Even resp. no. 1 also did not disclose anything in reply that after the accident he had informed to the insurance company to pay the compensation to the dependants of the deceased as the vehicle owned by him had met with an accident, wherein driver died. As such resp. no. 1 failed to discharge his liability on time so the claimant deprived from there legitimate right and compelled to file this claim before this Authority as such for laxcity of conduct I impose a penalty of 50% of the awarded principal amount on the respondent No. 1.

16. In view of above discussion, I direct respondent No. 2 to deposit Rs. 6,52,280/- as compensation along with 12% interest w.e.f. 23/08/2018 till its realization and the respondent No. 1 is also directed to deposit 50% penalty of awarded amount i.e. Rs. 3,26,140/- within 30 days from the date of order by way of Demand draft in favour of "Commissioner Employees Compensation", failing, which same shall be recovered as per provision of the Act.

17. Given under my hand and seal of this Authority on this 29th day of April, 2024.

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

