

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. ECI/98/NW/2019/25.

Dated: 29/04/2024.

IN THE MATTER OF:

Sh. Ashey Ram S/o Sh. Laxman
R/o 117, Hardashpur, Kotra, Rampur,
Khempur, Uttar Pradesh- 244924

...Applicant/Claimant

V/s

1. Sh. Ashok Kumr S/o Chander Prakash
R/o H.No. 269, Lok Vihar Pitampura,
North-West, Delhi - 110034

2. M/s Universal Sampo General Insurance Co. Ltd.
Office No. 103, First Floor, Ackruti Star, MIDC Central Road,
Andheri East, Mumbai – 400093, Maharashtra

.....Respondents

ORDER

1. Vide this order, I will dispose of the application dated 16/09/2019 and amended claim application dated 29/02/2020 by which claimant replaced respondent no. 2 Universal Sampo General Ins. Co. Ltd. in place of National Insurance Co. Ltd..
2. Claimant in the claim petition stated that he was employed as a driver by the respondent no.1 on his vehicle bearing No.HR-55K-5348 (Truck). That the said vehicle bearing No.HR-55K-5348 (Truck) was owned by respondent no.1. That he was working on Vehicle No.HR-55K-5348 (Truck) since long time and was working with full devotion and sincerity. That on the direction of respondent no.1 on 30.6.2019 at about 6.45 p.m. after loading the Frooti in the said vehicle the applicant started his commercial trip from Sitar Ganj (Uttarakhand) to Ghazipur, Delhi. It is further submitted that on 2.7.2019 at night about 3.30 A.M he reached at crossing Bhopra Border, an unknown vehicle came in very rash and negligent manner and hit the front side of the said vehicle. That as a result of said accident he received multiple injuries on his both legs, head and other parts of body and thereafter he got unconscious and he was immediately rushed to Guru Tegh Bahadur Hospital, Dilshad Garden, Delhi-110095 by the PCR vehicle. It is further submitted that he was admitted on 02.07.2019 in the above said hospital and was discharged on 23.08.2019. It is further submitted by the claimant that he



received multiple injuries all over his body in the above said accident which was occurred out of during and in the course of his employment with respondent no.1 and now he has become 100% disabled for his work as driver. It is further submitted that the said vehicle bearing No.HR-55K-5348 (Truck) was owned by respondent no.1 at the time of accident and it was insured with the respondent no.2 through vide Certificate-cum-Policy No.2315/57392733/01/000 under cover note number USGIA/2018069208 valid for the period 05.07.2018 to 04.07.2019. That he was drawing the wages at the rate of Rs.20,000/- per month. That he was aged about 36 years at the time of accident. That the respondent no.1 is having the notice of accident since the day of occurrence. It is further submitted that he has incurred approximately Rs. 2,00,000/- on his treatment. In the last claimant prayed that he was an employee and received injuries out of during and in the course of his employment with the respondent no.1. He was unfortunately received injury arising out on 2.7.2019 at night and resulting out he became 100% disabled for his work as driver and therefore prayed that he is entitled to receive the 100% injury compensation as per E.C. Act. That he is also entitled to interest at the rate of 12% per annum 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 approached this Hon'ble Authority with clean hands and has suppressed the true and correct facts from this Hon'ble Authority, hence the claim of the claimant is liable to be dismissed with deterrent punishment. That the Claimant has wrongly arrayed the National Insurance Co. Ltd. as insurer of the vehicle in question bearing Regn. No. HR-55K- 5348. It is submitted that the said vehicle was comprehensively insured with M/s Universal Sompo General Insurance Co. Ltd. vide Certificate-cum-Policy No. 2315/57392733/01/000 under cover note number USGIA/2018069208 issued from Gurgaon Branch Office of the said insurance company at Block-B, Ground Floor, Plot No. 52, Sector-44, Gurgaon, Haryana for the period from 05.07.2018 to 04.07.2019. It is further submitted that the Claimant/driver on the date of alleged accident i.e. 02.07.2019 was holding a valid driving license bearing No. UP22-20020001219. Thus, the compensation, if so awarded by the Hon'ble Authority, is liable to be paid and satisfied by the said insurance company to the Claimant. Hence the claim of the Claimant qua the Respondent no. I is liable to be dismissed at the threshold. That there is no cause of action in favour of the claimant and against the answering Respondent and the claimant has filed the present claim only with the motive to extort money from the answering Respondent under some provocation by misusing the liberty given in the law. Further answering respondent denied rest of contents of claim petition in toto and prayed that the claim as filed by the claimant against the answering respondent may kindly be dismissed being devoid of any merit and substance in favour of the answering respondent and in the interest of justice.
5. Respondent no. 2 filed its reply and submitted that without admitting the factum of accident and its liability it is stated the contents of the application filed by applicant for compensation are wrong and denied. That the claimant was not the employee of Respondent No. 1 on



vehicle No. HR-55K-5348 (TATA LPT TRUCK) and was not a workman within the provisions of Sec.2(1)(n) of the Workmen's/Employees Compensation, Act, therefore no cause of action arised against answering Respondent No. 2 and they have wrongly been implicated as respondents in the claim application by the applicant, therefore, no cause of action is arised against the answering respondent under the provisions of W. C. Act, 1923 (Amended upto date) and the application of the applicant is liable to be dismissed with heavy cost being bad for mis-joinder and non-joinder of necessary and proper parties. Further it is submitted that the applicant is required to supply documents to the Respondent No. 2 i. e. (i) Proof of Age, Education, and salary and Employment proof with Respondent No. 1. (2) Copy of proof Resident of Delhi of applicant and Legal heirs, (ii) Copy of valid and effective Registration Certificate, Route permit, Route Permit authorization, Fitness Certificate, Insurance Policy the Owner of vehicle No. HR-55K5348 (TATA LPT TRUCK) the respondent No. I was holding at the time of alleged accident, (3) Copy of Charge Sheet, FA R. ML.C. Discharge Slip, Medical Bills, Permanent Disability Certificate and valid and effective D. L. of applicant and (4) Any other relevant document & information. It is stated that vehicle bearing Registration No. HR-55K-5348 (TATA LPT TRUCK) was insured with answering respondent in the name of Shri Ashok Kumar Sardana vide policy No. 2315/57392733//01/000 valid from 00:01 hrs. on 05.07.2018 to Mid Night 04/07/2019. It is further submitted that coverage under the said Insurance policy, if any, is strictly as per the terms and conditions of the Insurance Policy and the provisions of Motor Vehicles Act and Workmens' Employees Compensation Act (Amended upto date). It is specifically denied that the applicant was the employee of Respondent No. 1 on vehicle No. HR-55K-5348 (TATA LPT TRUCK) at the time of accident on 02/07/2019 and also denied that Applicant was a workman within the provisions of Sec. 2(1)(n) of the Workmen's Compensation Act, 1923, therefore, Respondent No. 2 is not liable to pay any compensation to the applicant. Further answering respondent denied rest of contents of claim petition in toto and prayed that the claim petition deserves to 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 08/11/2021 following issues were framed for adjudication:
 - i) Whether employee-employer relationship exists between claimant and respondent?
 - ii) Whether accident resulting injury to claimant occurred during and in the course of employment if so?
 - iii) To what amount of injury compensation claimant is entitled? Any other relief?
 - iv) Whether the respondent are liable for penalty u/s 4A of the Act and if so, to what extent and what amount?
8. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. PW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. PW1/1 to PW1/4 i.e. copy of Aadhar card, Copy of Driving License, Copy of patient discharge summary, Original medical bills. His statement was also recorded and was further cross examined by respondent no. 1 on 06/06/2022.



Further, despite service of summon none from respondent no. 2 appeared hence his opportunity to cross examination of claimant was closed on 12/12/2022.

9. For respondent No. 1 Sh. Ashok 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 cross examined by counsel of claimant on 22/11/2023 and counsel for respondent no. 2 on 10/01/2024.
10. For respondent No. 2 Sh. Abhishek, 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 & 2:

12. The case of claimant is this that he was employed as a driver by the respondent no.1 on his vehicle bearing No.HR-55K-5348 (Truck). That the said vehicle bearing No.HR-55K-5348 (Truck) was owned by respondent no.1. That he was working on Vehicle No.HR-55K-5348 (Truck) since long time and was working with full devotion and sincerity. That on the direction of respondent no.1 on 30.6.2019 at about 6.45 p.m. after loading the Frooti in the said vehicle the applicant started his commercial trip from Sitar Ganj (Uttarakhand) to Ghazipur, Delhi. It is further submitted that on 2.7.2019 at night about 3.30 A.M he reached at crossing Bhopra Border, an unknown vehicle came in very rash and negligent manner and hit the front side of the said vehicle. That as a result of said accident he received multiple injuries on his both legs, head and other parts of body and thereafter he got unconscious and he was immediately rushed to Guru Tegh Bahadur Hospital, Dilshad Garden, Delhi-110095 by the PCR vehicle. It is further submitted that he was admitted on 02.07.2019 in the above said hospital and was discharged on 23.08.2019. It is further submitted by the claimant that he received multiple injuries all over his body in the above said accident which was occurred out of during and in the course of his employment with respondent no.1 and now he has become 100% disabled for his work as driver. It is further submitted that the said vehicle bearing No.HR-55K-5348 (Truck) was owned by respondent no.1 at the time of accident and it was insured with the respondent no.2 through vide Certificate-cum-Policy No.2315/57392733/01/000 under cover note number USGIA/2018069208 valid for the period 05.07.2018 to 04.07.2019. That he was drawing the wages at the rate of Rs.20,000/- per month. That he was aged about 36 years at the time of accident. That the respondent no.1 is having the notice of accident since the day of occurrence. It is further submitted that he has incurred approximately Rs.2,00,000/- on his treatment and same may be directed to respondent to pay the same. After considering the contents of the claim application, replies of the respondents, evidence and documents available on record and accordingly employee-employer relationship, accident caused out of and in the course of employment of the claimant and vehicle in question is insured by the respondent no. 2 on the day of accident as discussed above are not disputed, hence I held that claimant is entitled to receive injury



compensation from the respondents jointly or severally. Since, vehicle in question was insured with respondent no. 2 on the day of accident and the policy bearing No. 2315/57392733/01/000 under cover note number USGIA/2018069208 valid for the period 05.07.2018 to 04.07.2019 was issued in favour of resp. no. 1 as such respondent no. 2 insurance co. 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 and against the respondents.

ISSUE No. 3

13. As made discussion above for relief I am taking age of claimant as 36 years (as per date of birth 10/04/1983 mentioned in Aadhar Card No.529870681081) and relevant factor 194.64 and 60% of last drawn wages restricted to 8,000/- and 89% disability, as such calculation is made as under:

$$\frac{194.64 \times 4800 \times 89}{100} = \text{Rs. } 8,31,502/-$$

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

14. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent No. 2 to deposit **Rs. 8,31,502/- (Rupees Eight Lakh Thirty One Thousand Five Hundred and Two Only)** on account of compensation payable to the applicant/claimant and medical expenses Rs. 22,098/- as per section 4(2A) of the Act along with interest @ 12% P.A. w.e.f. 01/08/2019 till its realization within a period of 30 days from pronouncement of the order before this Authority.

ISSUE No. 4

15. Regarding the issue of penalty, issue was framed for adjudication on 08/11/2021 as issue no. 4 along with other issue, respondents were granted opportunity to file reply on the point of penalty, but respondents did not file. In these circumstances since vehicle in question is insured with resp. no. 2 and the additional premium was also charged from resp. no. 1 and the resp. no. 2 is having information about the accident from the date of accident but respondent no. 2 did not discharge his liability as such respondent No. 2 is liable to pay penalty to the extent of 50% of the principal amount. Therefore, the respondent No. 2 is directed to deposit 50% penalty of awarded amount i.e. **Rs. 4,15,751/- 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.

16. 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

