

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. EC(D)-15/SWD/18 / 11.

Dated: 16/04/2024.

IN THE MATTER OF:

Smt. Aarti Devi & Ors.

R/o Village Ujjaina, Thana Baheri,
Anchal Baheri, Bhachhi Asli, Darbhanga Bhachhi,
Bihar – 847101

...Applicant/Claimant

V/s

M/s Manish Logistics (I)

K-450, Gali No. 12, Old Rang Puri Road,
New Delhi – 110037

.....Respondent No. 1

M/s Iffco Tokio General Ins. Co. Ltd

Regd. Office: Iffco Sadan, C-1 District Centre,
Saket, New Delhi – 110017

.....Respondent No. 2

ORDER

1. Vide this order, I will dispose of the application dated 30/08/2018 filed by the applicant/claimant for seeking death compensation.
2. Claimant in the claim application submitted that the employee/deceased Vipin Kumar @ Bipin S/o Tej Narayan Yadav was employed as a Driver by the respondent No. 1-on his vehicle bearing No.DL-1LW-3678 (Tempo). He was working with full devotion and sincerity. That the vehicle bearing No.DL-1LW-3678 (Tempo) was owned by the respondent no.1. That on 3/4.07.2018 at midnight while deceased was discharging his duty as driver by driving the vehicle No.DL-1LW-3678 (Tempo) for commercial trip on the direction of respondent no.1, when on 3/4.07.2018 at midnight he reached at Mahipalpur Flyover towards Gurugram near Radisson Hotel, NH-8, Mahipalpur, New Delhi under the jurisdiction of police station Vasant Kunj South, unfortunately the above said vehicle met with an accident. That in that accident the driver/employee of the above



said vehicle namely Vipin Kumar @ Bipin received grievous head injury. It is further submitted that he was immediately rushed to JPN Trauma Centre (AIIMS) Delhi by the CAT Ambulance where he was declared brought dead on 4.7.2018 at 00:41 a.m. (TC No.500107472). That the Post Mortem Report No. TC-422-18 of deceased was conducted by the doctors of Jai Prakash Narain Trauma Centre Hospital, (AIIMS) Delhi. That the deceased/ driver namely Vipin Kumar @ Bipin died due to unfortunate above said accident which arose out of during and in the course of his employment with the respondent no. 1. It is further submitted that a case was also registered in regard of above said accident with police station Vasant Kunj South, South West Distt., New Delhi vide FIR No.326/2018 dated 4.7.2018 U/S.279/304A of IPC. That the vehicle bearing No.DL-11W-3678 (Tempo) was owned by the respondent no.1 at the time of accident and it was insured with the respondent no.2 vide Policy No.P400 Policy #273 7365 which was valid from 13.10.2017 to 12.10.2018. That the deceased was aged about 28 years at the time of accident/death. That the deceased Vipin Kumar was drawing the wages at the rate of Rs.12,000/- per month plus Rs.100/- per day as daily allowance. That the applicants are the real dependents/legal heirs of deceased at the time of accident/death. That the respondent no.1 is having the notice of accident since the day of occurrence. That the deceased unfortunately received grievous injuries on 3/4.07.2018 at midnight and he died due to the unfortunate accident. He was an employee of respondent no.1 at the time of accident and died due to unfortunate accident which was arising out of and in the course of his employment with the respondent no. 1. That the applicants are entitled for death compensation due to the death of deceased Vipin Kumar from the respondents along with interest and penalty. In the last petitioner prayed that since the deceased was working and died due to above said accident which arose out of during and in the course of his employment under respondent no. 1. The petitioners are entitled to death compensation as per E.C. Act. They are also entitled to interest at the rate of 12% p.a. from the respondents till realization and also penalty to the extent of 50% of the principal amount.

3. Summon was 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 claim petition under reply is not maintainable in the eyes of law as the same is gross misuse of process of law and liable to be dismissed with costs. That the claimants has not come with clean hands before this Hon'ble Court and has suppressed the material facts from this Hon'ble Court, hence the claim petition is not maintainable and the same is liable to be dismissed. That no cause of action has ever arisen either in favour of claimants or against the respondent no. 1, and in the absence of any cause of action the claim petition under reply is not maintainable and the same is liable to be dismissed. That the claim petition under reply is not maintainable in the eyes of law and the same is liable to be dismissed, because at the time of alleged incident deceased was not on duty. However driver of the said vehicle was insured by the



insurance company. That the claim petition under reply is not maintainable in the eyes of law and the same is liable to be dismissed, because the deceased was working as a driver with the respondent no 1 since last 4 months on daily basis at the rate of Rs.600/- per day, and on that day i.e. 03-07-2018 at about 11 A.M. he started from Okhla branch office of Bhagwati Air Express Pvt. Ltd. and reached Airport to delivery of goods to Shor Shot India and after receiving goods Shor Shot India released the vehicle at about 04.40 P.M. and after delivery of goods driver of the vehicle no.DL-1LW-3678 i.e. deceased came to the office of answering respondent at about 05.30 P.M. and he was directed to park the vehicle in parking area of Rangpuri Godawn of answering respondent and accordingly he parked the vehicle and discharged from his duty. Further it is submitted that deceased has kept keys of the vehicle with him as he was living in the same area. Further it is submitted that deceased took the vehicle without knowledge and consent of answering respondent, he was not on duty at that time. In the last the answering respondent further denied rest of the contents in toto and in the last prayed to dismiss the complaint of the complainant under reply with costs in the interest of justice.

5. Respondent no. 2 filed its reply and submitted that the answering respondent is not liable to pay any compensation to the petitioner unless and until it is proved that the deceased was under employment of the owner/insured as alleged & died due to the alleged accident arising out of and in the course of employment under respondent No.1, on the Tempo No. DL-1LW-3678. That the liability of the answering respondent in the present case is vicarious arising out of contract of insurance based on certain terms and conditions. Unless and until it is proved that the deceased allegedly being driver of the Tempo No. DL-1LW-3678, allegedly involved in the accident, was holding a valid and effective driving license and/or was not otherwise disqualified from holding such license by the competent Authority and there was valid and effective permit and fitness in respect of the vehicle at the time of alleged accident, the answering respondent will not be liable to indemnify the respondent No. 1 or to pay any compensation to the applicant under the policy in question. That the answering respondent No. 2 as per the contract of Insurance is only liable to indemnify the respondent No.1 in respect of any liability arising under the workman compensation act in respect to the named employee during the course of his employment under the respondent no.1. It is the primary duty of the respondent No. 1 to pay the amount of compensation to the petitioner if it is found payable by him as an employer whatever amount is payable within 30 days of occurring of such a liability and in case the respondent No. 1 fails to pay the same he is alone liable to pay the interest and penalty if any imposed by this Hon'ble Court and the respondent No. 2 is not liable in any manner whatever to indemnify the respondent No.1 in respect of any such liability of interest or penalty arising out of the aforesaid default. That the answering respondent cannot be held liable to pay any compensation to the petitioner if it is found at any stage that the applicant had filed any other case for grant of compensation in respect of the same accident under the Motor Vehicle act as under the provision of the law the applicant



cannot claim compensation with regard to one accident from two courts. That the answering respondent is not liable to pay any compensation to the applicant as the owner/insured has failed to supply the relevant documents regarding the age, wages and employment of the deceased with the respondent No.1, and failed to supply the proper information regarding the alleged death of the deceased and accident and has thus committed breach of terms and conditions of the Ins. Policy. In the last the answering respondent further denied rest of the contents in toto and in the last prayed that the petition of the petitioner may kindly be dismissed with cost.

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 deceased met with an accident resulting in death? And if so
 2. What amount and what directions are necessary in this regard?
 3. Whether penalty under section 4(A) of the Act to be imposed upon respondent? If yes on whom?
8. Matter was fixed for the evidence of the claimant. Claimant filed her 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 Ex. PW1/2 and Mark PW1/A to Mark PW1/J i.e. Copy of Aadhar card of deceased, copy of Aadhar card of the deponent and other claimants, copy of FIR no. 0326, copy of final report u/s 173 Cr.P.C in regard to FIR no. 0326, copy of U/s 65B Indian Evidence Act, copy of site plan of accident place, copy of post mortem report of deceased, copy of salary proof of deceased, copy of registration proof of vehicle, copy of fitness certificate of vehicle no. DL-1LW-3678, Copy of insurance policy. Her statement was also recorded and was also cross examined by counsel of respondent No. 1 & 2 on 27/04/2022.
9. For respondent No. 1 Sh. Mahabir Prasad Sharma – 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 04/07/2023.
10. For respondent No. 2 Ms. Sunidhi Mittal – filed her evidence by way of affidavit Ex. R2W1. The contents of affidavits were corroborative to those reply. Her statement was also recorded and was also cross examined by counsel of claimant on 27/09/2022 and Resp. No. 1 on 09/05/2023.



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 & 3

13. That the case of the petitioner is this that the employee/deceased Vipin Kumar @ Bipin S/o Tej Narayan Yadav was employed as a Driver by the respondent No. 1-on his vehicle bearing No.DL-1LW-3678 (Tempo). He was working with full devotion and sincerity. That the vehicle bearing No.DL-1LW-3678 (Tempo) was owned by the respondent no.1. That on 3/4.07.2018 at midnight while deceased was discharging his duty as driver by driving the vehicle No.DL-1LW-3678 (Tempo) for commercial trip on the direction of respondent no.1, when on 3/4.07.2018 at midnight he reached at Mahipalpur Flyover towards Gurugram near Radisson Hotel, NH-8, Mahipalpur, New Delhi under the jurisdiction of police station Vasant Kunj South, unfortunately the above said vehicle met with an accident. That in that accident the driver/employee of the above said vehicle namely Vipin Kumar @ Bipin received grievous head injury. It is further submitted that he was immediately rushed to JPN Trauma Centre (AIIMS) Delhi by the CAT Ambulance where he was declared brought dead on 4.7.2018 at 00:41 a.m. (TC No.500107472). That the Post Mortem Report No. TC-422-18 of deceased was conducted by the doctors of Jai Prakash Narain Trauma Centre Hospital, (AIIMS) Delhi. That the deceased/ driver namely Vipin Kumar @ Bipin died due to unfortunate above said accident which arose out of during and in the course of his employment with the respondent no. 1. It is further submitted that a case was also registered in regard of above said accident with police station Vasant Kunj South, South West Distt., New Delhi vide FIR No.326/2018 dated 4.7.2018 U/S.279/304A of IPC. That the vehicle bearing No.DL-1LW-3678 (Tempo) was owned by the respondent no.1 at the time of accident and it was insured with the respondent no.2 vide Policy No.P400 Policy #273 7365 which was valid from 13.10.2017 to 12.10.2018. That the deceased was aged about 28 years at the time of accident/death. That the deceased Vipin Kumar was drawing the wages at the rate of Rs.12,000/- per month plus Rs.100/- per day as daily allowance. That the applicants are the real dependents/legal heirs of deceased at the time of accident/death. That the respondent no.1 is having the notice of accident since the day of occurrence but did not pay any compensation to the claimants. I have considered all the materials such as evidence, cross examination and arguments and other documents available on record. After considering all the materials it has come out that deceased was the employee of the resp. no. 1 and as per the statement of the co-employee Ramesh s/o Omprakash R/o K-450, Gali No. 12, Old Rangpuri Road, Mahipalpur Ext. New Delhi has given his statement in FIR to the police



that the deceased Vipin Kumar @ Bipin S/o Tej Narayan Yadav was working as a driver with the respondent no. 1 on the vehicle bearing no. DL-1LW-3678 by this witness it is proved that deceased was the employee of the respondent no. 1 and on the day of accident as per FIR report when police reached on information about the incident at Mahipalpur, Flyover towards Gurugram near Radisson hotel NH-8, Mahipal Pur , New Delhi, vehicle in question was found standing in accidental condition. Further as per FIR No. 0326/2018 dated 04/07/2018 registered with PS Vasant Kunj South Delhi on enquiry police came to know that injured was taken to the hospital by CAT ambulance and thereafter the police reached to AIIMS Trauma Centre, New Delhi where they received MLC No. 500107472/04 July 2018 of unknown age 28 yrs. From all these facts it is proved that deceased Vipin Kumar @ Bipin S/o Tej Narayan Yadav met with an accident out of and in the course of his employment with resp. no. 1 as such claimant are entitled to receive death compensation from the respondents. On the day of accident vehicle in question bearing No. Tempo DL-1LW-3678 was insured with respondent no. 2 insurance company vide policy No. 27399365 for the period from 13/10/2017 to 12/10/2018 and the policy was issued in the name of resp. no. 1 i.e. M/s Manish Logistics India.

14. In view of above discussion made. I hold that claimant is entitled to receive death compensation under the EC Act 1923 from respondents jointly or severally, since vehicle in question was insured with resp. no. 2 insurance co. on the day of accident as such resp. no. 2 is liable to indemnify to the claimant on behalf of respondent. For considering the case of claimant for compensation I am taking age of deceased as 22 years as per age in Aadhar No. 275576855322 of the deceased and relevant factor as per age 221.37 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/-	:	4000/-
Relevant factor	:	221.37

4000 * 221.37	:	Rs. 8,85,480/-
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In view of this calculation claimant is entitled to receive Rs. Rs. 8,85,480/- 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. Further keeping in view the facts and circumstances that the respondent has not filed any reply in response to the issue framed with respect to the imposition of penalty as to why penalty be not imposed upon them. Further, respondent no. 1 has not brought any document on record that he had informed about the accident well in time to the resp. no. 2 Ins Co. for taking necessary steps for payment of compensation to the dependants of the deceased



employee. Therefore I find this fit case for imposition of penalty as such I impose a penalty of 25% of the principal amount on the respondent No. 1.

15. In view of above discussion, I direct respondent No. 2 to **deposit Rs. 8,85,480/- as compensation along with 12% interest w.e.f. 03/08/2018 till its realization** and the respondent No. 1 is also directed to **deposit 25% penalty of awarded amount i.e. Rs. 2,21,370/- 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.

16. Given under my hand and seal of this Authority on this 16th day of April, 2024.


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

