

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

Misc./ECI/38/NW/19/ 17.

Dated: 19/04/2024.

In the matter of :-

Sh. Prempal

S/o Sh. Prahlad Singh

Village – Bajauta, PO – Khair

PS -Tappal, District – Aligarh, Uttar Pradesh – 202137

.....Applicant/Claimant

Versus.

1. M/s Universal Somp General Insurance Co. Ltd.,
Unit No 903 & 904, 9th Floor, Gditi Tower,
Netaji Subhash Place, Pitampura, New Delhi - 110034

2. In India Cargo Movers,
SCO No. 296, Sector – 58,
Transport Nagar, Faridabad, Haryana – 121004

....Respondents

ORDER

1. Vide this order, I will dispose of the application of the applicant/claimant dated 11.12.2019 seeking injury compensation Under Section 22 of The Employee's Compensation Act, 1923.
2. The case of the applicants/claimants is this that he was employed as driver on vehicle bearing no. HR-38S-3210 and on 05.07.2018 the vehicle was on its business trip from Noida to Indore loaded with goods comprised of washing machines of L.G. Company. On that day i.e. on 05.07.2018 at about 6.45 PM when the vehicle reached near village Pipli, Tappal block, Aligarh, a vehicle came from opposite direction which in its efforts to overtake another vehicle collided with the applicant's vehicle from front. The cabin of this vehicle smashed completely. The applicant sustained grievous injury on his both legs, hands and ribs and sustained injury in his head as well. He was taken to Kailash Hospital, Jewar, Gautam Budh Nagar, UP and got admitted there. After that he took further treatment from his native place. The owner's representative visited the hospital and handed over some money to the applicant through his brother. MLC was prepared by Kailash Hospital vide MLC No. KH/361/2018. After this accident, the



applicant/claimant is not in a position to do any work of his capacity and has become 100% disabled for the purpose of his employment as Driver. That the vehicle bearing no. HR-38S-3210 was owned by the Respondent No. 2 at the time of the accident and it was insured with the Respondent No. 1 i.e. M/s Universal Sompo General Insurance Co. Ltd vide policy No. 2315/57768678/01/000 valid from 31.10.2018 to 30.10.2019 and an additional premium was charged under E.C. Act by the Respondent No. 1 from Respondent No. 2. The applicant/claimant was drawing wages @ Rs. 14,000/- per month plus Rs. 250/- per day as food allowances. The applicant/claimant was aged 40 years at the time of his accident. He has relied on law by the Hon'ble Supreme Court about the territorial jurisdiction. He has prayed for injury compensation along with interest and penalty as per the provisions of the Employee's Compensation Act.

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 – Universal Sompo General Insurance Co. filed its written statement. In the written statement it was stated that applicant was not employee, the owner of the vehicle did not furnish the information as mandated, there is lack of necessary documents such as Medical documents, F.I.R. charge sheet, site plan etc. It was stated who knows he has claimed compensation under other provisions of law as well. However, it was admitted that the vehicle bearing No. HR-38-S-3210 was insured with them vide policy No. 2315/57768678/01/000 issued in the name of IN INDIA CARGO MOVERS for the period from 31.10.2018 to 30.10.2019.
5. Respondent No. 2 – who is owner of the vehicle - filed its response. In its reply it has been stated that there is no employee employer relationship between the applicant and answering respondent. Driver posted on the vehicle was one Shri Pratap Singh and not the applicant and it was stated that the said fact is proved by the D.D.R. No. 060 dated 06.07.2018. The said respondent has further stated that there is no locus. It is stated that the applicant did not sustain any injury in the alleged accident nor has he become disabled to the extent of 100% as claimed. It was stated that on 05.07.2018 they have deputed their permanent driver whose name was Pratap Singh S/o Shri Dalbir Singh. The prayer was made to dismiss the claim application.
6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. On 27/01/2021 the following issues were framed for adjudication:
 - i. Whether employee-employer relationship existed between the claimant and R-II? And, if so
 - ii. Whether the accident leading to injuries causing disability occurred during and in the course out of his employment with respondent? And if so



- iii. To what amount of compensation the claimant is entitled to? Any other relief
- iv. Whether the respondents are liable for penalty under section 4(A) of the Act 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.AW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. AW1/1 to Ex. AW1/4 and Mark A to Mark C i.e. Copy of Medical treatment documents, Copy of medical bills of Rs. 21,696/-, copy of Voter ID card and Aadhar card of the deponent, copy of disability certificate, copy of Police complaint, copy of Insurance policy of vehicle, copy of RC, Fitness certificate, Authorization certificate and Tax receipt. His statement was recorded and was also cross examined by counsel of respondent no. 1 on 08/08/2023 and completed on 05/09/2023.

Further claimant examined another witness in the case i.e. Sh. Pratap Singh. His statement was recorded and was further cross examined by counsel of respondent no. 1 on 05/09/2023.

Further, Record clerk of the Kailash Hospital where claimant took treatment was summoned who appeared and filed the treatment documents on record and the statement was also recorded and was further cross examined by counsel for claimant and respondent no. 1 on 16/01/2024.

9. For respondent No. 1 Sh. Abhishek, Advocate appeared and gave statement that respondent no. 1 does not wish to lead any evidence in the matter, as such taking his statement under consideration the evidence stage of respondent no. 1 was closed on 27/02/2024.

Further despite sufficient opportunities provided to respondent no. 2, respondent no. 2 failed to appear in the matter hence on 27/02/2024 respondent no. 2 was proceeded ex-parte.

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 this, that he was posted as driver on the vehicle bearing No. HR-38S-3210 and the vehicle was on its business trip from Noida to Indore and during



the business trip it met with an accident near village Peepli, Tappal Block, Aligarh and in this accident claimant sustained grievous injuries on his both legs , hands and ribs were fractured and due to that they have had clotting and sustained injury in his head as well. After the accident claimant was immediately taken to Kailash hospital, Jewar, Gautam Budh Nagar, UP where he took treatment. After that he took further treatment from his native place. After the treatment his injury culminated into permanent impairment. As per disability certificate bearing No. 1808 dated 10/01/2023 issued by Aruna Asaf Ali Govt. Hospital , 5 Raj pur Road, Delhi – 110054 claimant assessed by board 26% permanent (physical impairment/visual impairment/speech and hearing impairment) in relation to his right upper limb and lower limb. The accident was reported to the Police Station. He has filed medical treatment documents. He has brought the documents of his treatment by summoning concerned official from the hospital. He was medically examined by the Medical Board as to his impairment. The employer had objected that the applicant was not posted but some other person whose name is Pratap Singh was posted as driver on the vehicle. The said Pratap Singh came in the witness box and he categorically stated that the applicant was posted as driver on the vehicle HR-38S-3210 and not the witness (Pratap Singh). No evidence was given by the respondents. On close examination of the pleadings, evidence, and documents on record, I am of the considered view that the accident had been caused out of and during the course of employment. It is held that the applicant was employed and posted as driver on vehicle bearing No. HR-38S-3210 and he met with an accident while being posted as driver on the vehicle. The said issues are decided in favour of the applicant and against the respondents.

ISSUE NO. 3 & 4

13. In the claim application by the applicant/claimant, it has been stated that he was drawing Rs. 14,000/- per month plus Rs. 250/- 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. 21,500/- 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 01.01.1975 and by that the applicant on day of accident had completed 43 years of his age. Hence, it is held that the applicant had completed 43 years of his age. The applicant was directed to appear before the Medical Board of Govt. Hospital. He was directed to have him medically assessed as to his disablement. He was examined by the Medical board and Medical Board of Aruna Asaf Ali Hospital, Delhi has assessed him 26% permanent disabled. In his medical Disability Certificate, his injury has been shown in his 'right upper limb and Lower Limb. The documents and the Medical Certificate show that the claimant may



not be able to drive a transport vehicle. Apart from that a doctor from the Medical Board was examined and he categorically stated that post this accident and consequential injury his functional capacity has been affected including driving of the 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.

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%.

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

i)	Relevant factor of 43 years	:	175.54
ii)	60% of wages @ Rs. 8000/- pm	:	Rs. 4800/-
iii)	Amount of compensation	:	

$$\frac{175.54 \times 8000 \times 60}{100} : \text{Rs. 8,42,592/-}$$

15. The applicant/claimant is also entitled to interest as per Section 4A (3) (a) of the 'Act' @ 12% per annum from 30 days after the accident. The applicant has further stated that he has spent an amount on his treatment. He has placed on record bills amounting to Rs. 21,696/- 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.

16. Therefore, the claimant is entitled to receive injury compensation from Respondent No. 2 but as the said Respondent No. 2 has taken an insurance coverage, hence in spirit of indemnifying the insured, the Respondent No. 1 is directed to deposit before this Authority an amount of **Rs.8,42,592/- Rupees eight lacs forty two thousand five hundred ninety two only** on account of compensation payable to the applicant/claimant and along with medical expenses Rs. 21,696/- and interest @ 12% p.a. w.e.f. 04.08.2018 till its realization. The amounts as ordered be deposited by **respondent No. 1** 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 18th day of April, 2024.

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

