



GOVT. OF NCT OF DELHI
BEFORE THE COMMISSIONER EMPLOYEE'S COMPENSATION/
JOINT LABOUR COMMISSIONER
LABOUR DEPARTMENT (EAST & NORTH EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

NO.CEC-D/ED/01/2022/ 10249-52

Dated: 07.12.22

In the matter of:

Smt. Durgesh W/o Late Sh. Deepak
R/o Village Alamnagar, Alampur, Tehsil
Garh Mukteshwar, Distt. Haipur, U.P ... L.R of Deceased

Sh. G.S Bisht & Sh. Amit Kumar
Chamber No. K-98, Tis Hazari Court,
DelhiCounsel for Claimant

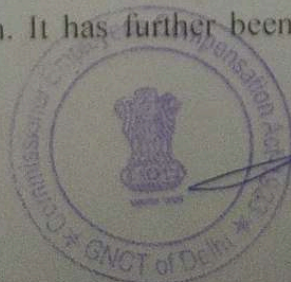
V/s

M/s Shree Shyam Solutions,
Through its Partner/Proprietor
242, Saudanagar Complex, Mukund Nagar,
Haipur Mod, Ghaziabad, UP-201001 Respondent No.1

The Oriental Insurance Company Ltd.
80,First Floor, F.I.E. Patparganj Industrial Area,
Delhi-110092 Respondent No.2

ORDER

1. That the claimants have filed an application dated 06.12.2021 under Employee's Compensation Act, 1923 (hereinafter referred to as an 'Act') stating therein that the Deceased Sh. Deepak was a qualified and experienced driver and employed with Respondent No.1 at Eicher Cantor No.UP-14-HT-7990 and his last drawn wages was Rs.25,000/- per month. It has further been stated that the deceased Sh. Deepak



S. J.

expired on 25.03.2021 during the course of his employment with respondent no.1 as an unknown truck hit him about 11:40 P.M. while deceased Sh. Deepak was foot down from his vehicle for call of nature at Village Gona, P.S. Chandi Nagar, Distt. Baghpat, U.P. after which he was shifted to hospital where he expired. FIR No.64/2021 U/s 279/304-A was registered at P.S. Chandi Nagar, Distt. Baghpat, U.P. Age of the deceased is stated to be 27 years. The claimants have further stated that the vehicle in question is insured with respondent no.2 and having policy issued from Patparganj, Delhi Branch Office and prayed to direct the respondents for compensation under the Act alongwith with penalty @ 50% and interest @ 12% per annum.

2. That notices were issued to both the parties and the respondent no.2 vide their reply has admitted that the alleged truck was insured with them through the policy in question as PCCV public carriers vide policy bearing no.271700/31/2021/120 for an IDV of Rs.8,79,000/- for the period of one year only w.e.f. 29.04.2020 to 28.04.2021 at the behest and in the name of the respondent no.1 but has denied rest of the claim of the claimants and also stated that unless and until it is proved that respondent no.1 is the owner of the vehicle in question and also the employer of the deceased at the time of alleged accident, no liability can be imposed on them directly or indirectly and requested to dismiss the claim.

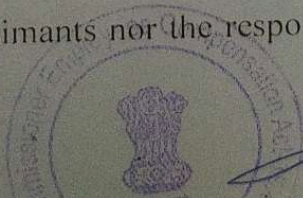
3. That respondent no.1 vide their reply has admitted that the deceased Sh. Deepak was their employee who was driving their vehicle on 25.03.2021 and was hit by an unknown vehicle while parking on the roadside when he was going from Ghaziabad to Sonipat for delivery of goods assigned to him by the vehicle in



question. Respondent No.1 has also submitted that the vehicle in question was insured with respondent no.2 vide policy no. 271700/31/2021/120 covering the risk w.e.f. 29.04.2020 to 28.04.2021 and as per terms of the insurance policy, respondent no.2 has undertaken to indemnify them against all sums or claims whatsoever made by any employee/LRs of the employee.

4. That since respondent no.1 has admitted employee-employer relationship and occurrence of accident in which the deceased Sh. Deepak expired during the course of employment and also stated that the vehicle in question is insured with respondent no.2 and respondent no.2 has also admitted that the vehicle in question was insured with them vide policy no. 271700/31/2021/120 for the period from 29.04.2020 to 28.04.2021 and the accident has occurred on 25.03.2021 which clearly shows that the accident has occurred during the period when the vehicle was insured and therefore it is held that the claimants are entitled for compensation on account of death of Sh. Deepak from Respondent No.2.

5. That the age of the deceased is stated to be 27 years in the statement of claim application filed by the claimant. On perusal of driving license issued to deceased Sh. Deepak, the date of birth is shown as 01.01.1993 at DL No.UP3720190005071 and therefore the age of the deceased is taken as 28 years as on 25.03.2021 i.e. the date of accident for the purpose of calculation of compensation. As far as wages of the deceased is concerned, the claimants have stated that the deceased was getting Rs.25,000/- per month and respondent no.1 has admitted that the claimant was drawing salary of Rs.20,000/- per month but neither the claimants nor the respondent no.1 has filed any proof of last



drawn wages and therefore the wages for the calculation is being considered as Rs.15,000/- which is the maximum limit of wages to be considered as per notified rate of wages and accordingly the compensation is calculated as under-

(i) Relevant factor of 28 years of age = 211.79

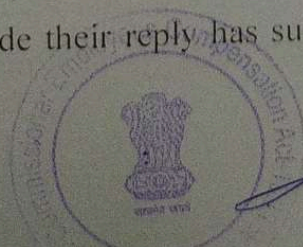
(ii) 50% of last drawn salary @ Rs 15,000 p.m. = 7,500/-

(iii) Amount of Compensation = $211.79 \times 7,500 = \text{Rs.}15,88,425/-$

6. That in view of above facts and circumstances and the documents placed on record, it is held that the claimants are entitled to receive an amount of Rs. Rs.15,88,425/- as death compensation plus Rs.5,000/- as funeral expenses in respect of death of deceased from the respondents.

7. That as per the provisions of the Act, the respondent should have make the payment of compensation within one month from the date it fell due i.e. 25.03.2021, but the respondent failed to do so. Therefore, as per the provisions of Clause (a) of Sub Section (3) of Section-4A of the Act, the claimant is also entitled for simple interest @ 12% p.a. on the amount of death compensation i.e. Rs.15,88,425/- w.e.f. 25.03.2021 till the date of realization of the compensation amount by the Respondent.

8. That in compliance of order dated 24.05.2017 in the matter of New India Assurance Co. Ltd. Vs Puran Lal & Ors. of Hon'ble High Court of Delhi, a show cause notice under section 4(A)(3) for imposition of penalty upto 50% of awarded compensation was issued to both the respondents. Respondent No.1 vide their reply has submitted that they have taken all the



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care of their employee and got the FIR registered and they informed the relatives of Sh. Deepak and arranged an ambulance for Sh. Deepak. R-1 has also submitted that the Company employers were available during post-mortem and borne all the cremation expenses of Sh. Deepak. R-1 has also submitted that they have taken the Insurance and informed to the Insurance Company for the disbursement of the claim through a letter dated 26.03.2021 and had requested to not impose penalty.

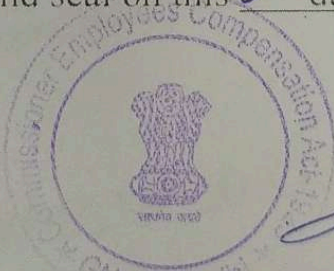
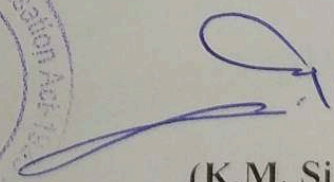
9. That R-2 also filed reply to the show cause notice mentioning therein that the Hon'ble Supreme Court has held that the Insurance Company cannot be held liable for penalty amount in the matters titled as Ved Prakash Garg Vs Premi Devi 1998 ACJ 1 and New India Assurance Co. Ltd. Vs Harshadbhai Amrutbhai Modhiya & Anr. 2006(5) SCC192.

10. That on perusal of the reply filed by both the respondents, it is noted that the respondent no.1 has not intimated regarding the occurrence of accident to the Compensation Commissioner. Moreover, notice dated 17.02.2022 for 07.03.2022, 18.03.2022 for 25.03.2022, 29.03.2022 for 20.04.2022, 26.04.2022 for 24.05.2022, 27.05.2022 for 09.06.2022 were sent to respondent no.1 and thereafter another notice dated 08.07.2022 for 20.07.2022 was served to the respondent no.1 through CDV and only after that the respondent no.1 appeared and filed reply though the respondent no.2 filed their reply on 09.06.2022. Respondent No.1 appeared on 20.07.2022 for the first time and filed reply on 28.07.2022 i.e. approximately one and a half months after filing the reply filed by respondent no.2. Though, respondent no.1 has admitted Employer-Employee relationship but even then the delay has occurred due to non-appearance of

respondent no.1 in the proceedings and therefore a penalty amounting to 30% of compensation amount i.e 30% of Rs.15,88,425/- = Rs.4,76,527.5/- i.e. Rs.4,76,528/- is also awarded to claimant to be paid by Respondent No.1.

11. That as decided above, the Respondent No-2 i.e. M/s Oriental Insurance Company Ltd. is hereby directed to deposit the above amount of Rs.15,88,425/- alongwith simple interest @ 12% per annum w.e.f. the date of accident i.e. 25.03.2021 till the date of payment plus Rs. 5,000/- as funeral charges and Respondent No.1 is directed to deposit an amount of Rs. Rs.4,76,528/-towards penalty imposed on them by way of Demand Draft / Pay Order in favour of "Commissioner Employees Compensation, District East" within 30 days from today, failing which proceedings to recover the amount of compensation as well as the interest, as an arrear of land revenue, shall be initiated as per the provisions of Section 31 of the Act.

Given under my hand and seal on this 5th day of December, 2022.



(K.M. Singh)
Commissioner Employee's Compensation