

IN THE COURT OF 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.WCI/194/NW/17/28.

Date: 31/01/2023.

In the matter:

Sh. Manjeet Singh @ Harjeet Singh S/o Sh. Kartar Singh,
R/o Village & Post – Jhava, P/S – Tanda, Tehsil – Dasua,
District – Hoshiarpur, Punjab – 144203

...Applicant/Claimant

VERSUS

1. Sh. Manoj Kumar,
Shop No. 21, Transport Centre,
New Subzi Mandi, Azadpur, Delhi – 110033

Also at:

Shop No. 154, 1st Floor, Transport Cetnre,
Subji Mandi, Azarpur, Delhi - 110033

2. M/s National Insurance Co. Ltd.,
8th Floor, Tower 3A, Ajmeri Gate,
Connaught Place, New Delhi – 110001

...Respondents

ORDER

1. Vide this order, I will dispose of the application of the applicant/claimant seeking injury compensation dated 28.06.2017.
2. In the application preferred by the applicant/claimant stated he was employed as a driver on vehicle bearing no. HR-55-S-0947 owned by respondent no. 1. On 19.03.2016, he met with an accident resulting thereby he sustained injury on his right leg out of and during the course of employment and thereafter his leg was amputated. He was posted as driver on the vehicle and trip was Nasik to Delhi and it was loaded with Oranges. On 19.03.2016 at about 02:30 A.M. when the vehicle reached near the Behror, District - Alwar (Rajasthan) and the vehicle was running on flyover. The preceding vehicle took brake and the driver who was driving this vehicle could not match the urgency and the brake could not be applied. This vehicle rammed into the preceding vehicle resulting thereby the cabin of this vehicle was damaged and the right leg of claimant was caught up and crushed. Ambulance was called in and he was taken to Kailash Hospital, Behror (Rajasthan) thereafter he took treatment in Swai Man Singh Hospital and remained admitted there for about 2 months. His right leg was amputated.



- After this accident he has been disabled and he is not in a position to do any work of his capacity and has become 100% disabled for the purpose of his employment as a driver as his right leg was amputated. His earning capacity has been totally reduced. It is further stated that the vehicle bearing No. HR-55-S-0947 was owned by respondent no.1 at the time of accident and it was insured with respondent no. 2 i.e. M/s National Insurance Company Ltd., vide policy no. 361202/31/15/6300000515 for the period from 22.04.2015 to 21.04.2016 and an additional premium was charged by the respondent no. 2 from respondent no. 1 under the Employee's Compensation Act, 1923. It is further submitted that the applicant/claimant was drawing wages @ Rs. 8000/- per month and Rs.150/- per day as food allowances and he was aged 48 years at the time of his accident. The Respondent No.1 is having the notice of the accident since the day of its occurrence and the Insurance Co. has been informed immediately after the accident took place. The claimant was driver by profession and he has become totally disabled as law settled by the Hon'ble Supreme Court of India in Re - Pratap Narain Singh Deo vs. Srinivasa Sabata cited at 1976 ACJ 141. The applicant/claimant was an Employee and the accident was caused out of and during the course of employment. It is further stated that the claimant filed the case and it was transferred to a place, without hearing him, not convenient to him and the same was dismissed under rule 24 of the Workmen's Compensation Rules. The Applicant/claimant is entitled to compensation to the extent of 100% disability and as per section 4(1) (c) & 4(1) (d) of the Employee's Compensation Act he is entitled for temporary and permanent disablement and medical expenses along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount.
3. On filing claim the then Ld. Commissioner vide its order dated 09/10/2017 the matter was dismissed due to want of jurisdiction of the claim under the provision of Workmen compensation Rule, 1924, on the ground that claimant was originally residing in Punjab, Accident took place in Alwar, Rajasthan and vehicle in question was registered in Haryana. After aggrieved by order dated 09/10/2017, petitioner filed FAO 46/2017 before Hon'ble High Court of Delhi. Hon'ble High Court vide its order dated 23/01/2018 directed both the parties to appear before the Commissioner on 12/02/2018 for filing their respective replies within 15 days.
 4. Accordingly both the parties appeared on 12/02/2018 before the then Ld. Commissioner and copy of claim was supplied to both the parties for reply along with reply on the issue of penalty u/s 4A of the Act.
 5. The Respondent No. 1 has filed his written statement and stated that the accident is not disputed but the claimant was not employed by the answering respondent as driver on his vehicle bearing no. HR-55-S- 0947 at any point of time as such he is not entitled to receive any compensation claimed by him. The claimant was employed by the answering respondent on causal basis as a helper and he was being paid @ Rs. 350/- per day. As stated above the occurrence of the accident of the vehicle of answering



- respondent on 19.03.2016 is not disputed. It was further stated that the applicant was not driving the vehicle but he was sleeping in the cabin of the vehicle. It was further stated that as the accident took place in Rajasthan the authority in Delhi does not have jurisdiction. It was further stated that he had filed case earlier and that was withdrawn. Hence the instant case cannot sustain. It was further stated that the amount of compensation as claimed by the applicant is excessive and does not match with the Schedule IV of the Act. He has sought the dismissal of the claim applicant as barred by the principle of res-judicata. The claim application be dismissed.
6. The Respondent no. 2 also filed their written statement wherein it was stated that the claim of the applicant is not maintainable as there was no employee employer relationship. It has been stated that the insurance was not served with the notice. Further claimant has not filed any cogent documents to prove his employee employer relationship with respondent. This case has been filed in collision with respondent No. 1 to extract money. However, it is respectfully submitted that the vehicle bearing registration No. HR-55-S- 0947 (Truck) was insured with the respondent no. 2 vide policy no. 361202/31/15/6300000515 in the name of Mr. Manoj Kumar was valid for the period 22.04.2015 to midnight 21.04.2016. Rest of other contents of the claim petition have been denied and prayed that claim deserves to be dismissed.
 7. That thereafter the claimant filed fresh claim application by invoking Rule 24(2) of Workmen's Compensation Rules 1924 the said applicant was rejected by order dated 27.06.2018 by the then Ld. Commissioner.
 8. Thereafter again the claimant filed appeal before the Hon'ble High Court vide FAO 323 of 2018 and the same was withdrawn with liberty to avail remedy as available in law.
 9. That thereafter the claimant filed application for restoration of the earlier claim petition and the said application was decided in favour of the claimant to have the matter decided on merit vide order dated 15/11/2019 by the then Ld. Commissioner.
 10. On 23/09/2020 following issues were framed for adjudication:
 1. Whether claimant met with an accident resulting thereby he received grievous injuries out of and in the course of his employment?
 2. If so what relief and what directions are necessary in this regard?
 11. The case was fixed for the evidence of the parties. In his evidence the claimant relied upon the documents i.e. Copy of Written Statement filed by Respondent No. 1 – Owner of the vehicle bearing no. HR-55S-0947, Certified copy of Insured Verification Report dated 23.03.2018 in respect of vehicle bearing no. HR-55S-0947, Certified copy of RC Verification from Gurgaon RTO Report dated 22-04-2018 in respect of vehicle bearing no. HR-55S-0947, Copy of Insurance Policy of the vehicle bearing no. HR-55S-0947,



- Copy of Police Verification Sheet dated 19-03-2016, Certified copies of Medical Treatments Documents of the applicant/claimant, Photograph of the applicant/claimant after the accident, Copy of Aadhar Card of the applicant/claimant.
12. On 15.06.2022, one summoned witness namely Sh. Umesh Kumar has appeared before this Hon'ble Authority and he stated as under:

"Statement of Sh. Umesh Kumar (Mob. 9950415584), S/o Sh. Ravi Dutt Sharma, aged about 35 years. Working as Medical Record Clerk, Kailash Hospital, Behror, Rajasthan – 301713.

On S.A.

I am a summoned witness. I have brought the treatment record of Sh. Manjeet Singh @ Harjit Singh. Sh. Manjit Singh as per the medical record was got admitted in Kailash Hospital post his RTA near Keshwarna Flyover on NH-8 and brought by 1033 ambulance in ED (illegible) at 6:20 AM on 19.03.2016. He was admitted on account crush injury of Right foot near ankle of D/L/W on the right calf near knee. I have brought the medical treatment document of the said Manjeet Singh S/o Sh. Kartar Singh, R/o village Tanda, Teshil- Dasua, District- Hoshiyarpur, Punjab. Which are annexed as Ex. AW1/1 (Colly. 9 pages). The same has been taken from the original record of the hospital. (OSR)

XXXX Cross by Sh Prem Kumar Singh, Adv. For R2.

It is correct that the bill of treatment was paid by the ICICI, Lombard (NHAI)."

13. Despite given sufficient opportunities respondent no 1 & 2 did not lead any evidence in the matter. On the submission of respondent no 2 on 18/08/2022 evidence stage was closed.
14. The case was fixed for arguments and written arguments was filed by the claimant only, respondents neither filed written submission nor adduced any type of oral, hence oral argument of claimant was heard.
15. 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

The case of the applicant/claimant is that he was employed as a driver on vehicle bearing no. HR-55-S-0947 owned by respondent no. 1. On 19.03.2016, he met with an accident resulting thereby he sustained injury on his right leg out of and during



the course of employment and thereafter his leg was amputated. He was posted as driver on the vehicle and trip was Nasik to Delhi and it was loaded with Oranges. On 19.03.2016 at about 02:30 A.M. when the vehicle reached near the Behror, District - Alwar (Rajasthan) and the vehicle was running on flyover. The preceding vehicle took brake and the driver who was driving this vehicle could not match the urgency and the brake could not be applied. This vehicle rammed into the preceding vehicle resulting thereby the cabin of this vehicle was damaged and the right leg of claimant was caught up and crushed. Ambulance was called in and he was taken to Kailash Hospital, Behror (Rajasthan) thereafter he took treatment in Swai Man Singh Hospital and remained admitted there for about 2 months. His right leg was amputated. After this accident he has been disabled and he is not in a position to do any work of his capacity and has become 100% disabled. He has claimed injury compensation along with interest and penalty.

16. Respondent No. 1 has not denied the occurrence of accident. He has not disputed the injury sustained by the applicant. The employer has only taken a defence that the applicant was not employed as driver but he was posted as a casual helper. He was on Rs. 350/- per day as wage. It has been stated that he being a casual employee he is not entitled to compensation.

Respondent No. 2 in their written statement has stated that there is no employee employer relationship and accident did not occur out of and during the course of his employment. However the coverage of the vehicle by the insurance policy issued by them is not disputed.

Given the above discussions, the objection taken by respondent No. 1 that the claimant being a casual employee is not entitled to compensation. While going through the definition of the 'employee' and employed under the Act the entitlement of the applicant is not defeated. The accident has taken place when the applicant was present in the capacity of an employee irrespective of regular or casual. Even if it is believed that the applicant was posted as a casual employee and he was present in the vehicle and he met with an accident, as has been stated by the owner of the vehicle, still the accident is deemed to have occurred out of and during the course of employment. The investigator reports filed therein whereby the insurance company has got the matter investigated makes it explicitly clear that the accident did take place. The counsel for the applicant has placed his reliance on the judgments by the Hon'ble Supreme Court in the case -Hon'ble Supreme Court of India in a case titled as **Maghar Singh vs. Jaswant Singh, cited at 1997 ACJ 517**, The relevant extracted portion of the judgments is reproduced as under:

"Workmen's Compensation Act, 1923, sections 3(1) and 2(1)(n) – Accident arising out of and in the course of employment – Workman – Claimant sustained injury which resulted in loss of both his hands just above the wrist resulting in permanent disability with 100 per cent functional loss while he was operating toka machine – Respondent contended that the claimant was not his



employee – Claimant did not possess any letter of appointment or any documentary evidence for payments received by him for the work done – Evidence that the machine which the claimant was operating was that of respondent – Respondent had taken the claimant to the hospital after the injury and had signed the bed-head ticket – Whether the claimant was a workman under the respondent and the accident arose out of and in the course of employment – Held: yes.”

He has further relied on another judgment titled as Mackinnon **Mackenzie & Co. Pvt. Ltd. vs. Ibrahim Mahmood Issak** cited at 1969 ACJ 422, wherein it has been held that :

“Para no. 6.....

In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inference. On the one hand the Commissioner, must not surmise, conjecture or guess, on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead, L.C. in Lancaster v. Blackwell Colliery Co. Ltd., observed:

“if the facts which are proved give rise to conflicting inference or equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the applicant contends, then the Arbitrator is justified in drawing an inference in his favour.”

Given, the pleadings of the parties, evidence placed on record and the reliance placed, I take an inference that the accident has been caused out and during the course of his employment. The said issue is decided in favour of the applicant and against the respondent/s.



Issue No. 2:

In the claim application the applicant/claimant has been stated that he was drawing wages @ Rs. 8000/- per month and Rs.150/- per day as food allowances and he was aged 48 years at the time of his accident. But as per maximum limit prescribed at that particular point of time, his wages is taken as Rs. 8,000/- per month. Though I see that the age of the applicant is missing in his claim application but in the medical documents the age of the claimant has been shown as 40 years. The claimant was posted as an employee on the transport vehicle as driver cum cleaner, though the employer has admitted that he was employed but not as driver but he was working as cleaner. Be this so even if he was an employee as cleaner he has been rendered incapable to mount and dismount the truck and much less to take up the work of helper and now in this situation, he is not in a position to take work being one legged person and he has lost 100% of his earning capacity. Hence, in the given amputation his loss of earning capacity be taken as 100%. In this context my attention is drawn towards a case decided by the Hon'ble Supreme Court of India in a case titled as Pratap Narain Singh Deo vs. Srinivasa Sabata and another cited in 1976 ACJ 141. The relevant portion of the judgment is reproduced as under:-

"It has not been disputed before us that the injury was of such nature as to cause permanent disablement to the respondent, and the question for consideration is that whether the disablement incapacitated the respondent for all work which he was capable performing at the time of the accident. The Commissioner has examined the question and recorded his findings as follows: The injured workman in this case is carpenter by profession...By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand."

Given the above declared law and the disability of the applicant as also keeping in view his work, I hold that this is a case of 100% loss of earning capacity.

17. In the given wage, age (as per DOB 01/01/1967 as mentioned in the Aadhar Card) and loss of earning capacity the applicant/claimant is held to be entitled to compensation as under:

- | | | | |
|------|------------------------------|---|------------|
| i) | Relevant factor of 49 years | : | 156.47 |
| ii) | 60% of wages @ Rs. 8000/- pm | : | Rs. 4800/- |
| iii) | Amount of compensation | | |

$$\frac{156.47 \times 8000 \times 60}{100} : \text{Rs. 7,51,056/-}$$



18. The claimant is also entitled to interest as per Section 4A(3)(a) of the 'Act' @ 12% per annum from 30 days after the accident. As far as penalty under section 4A (3) (b) of the Act is concerned respondent No. 1 has taken a stand that the applicant was not a permanent employee and he was employed by the respondent no. 1 on causal basis as a helper. They didn't take any steps in having him facilitation of compensation. Even no steps were taken even to deposit provisional payment. For that I see there is lapse on the part of owner of the vehicle to have the payment of compensation delayed. The applicant has not received even a single penny till this date even after elapse of about 6 years since the accident took place. Hence I see a logic in not exonerating respondent owner of the vehicle absolutely free from any flaw. In the given situation, I see a justification in holding the applicant entitled to penalty from the respondent to the extent of 50% of the compensation amount. The penalty is thus imposed on respondent No. 1.
19. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent no. 1 but as the said respondent no. 1 has taken an insurance coverage hence in spirit of indemnifying the insured, the respondent no. 2 is directed to deposit before this Authority an amount of **Rs. 7,51,056/- (Rupees Seven Lakhs Fifty one Thousand Fifty Six Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% p.a. w.e.f. 18.04.2016 till its realization. The amount of penalty of **Rs. 3,75,528/- (Rupees Three Lakhs Seventy Five Thousand Five Hundred Twenty Eight Only)** be paid by the Respondent No. 1 as held above. The amount of injury compensation along with interest and penalty be deposited by the respective parties as ordered above through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of the order before this Authority.
20. Given under my hand and seal of this Authority on this 31st day of January, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

