

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. CEC/SD/D/28/2013/29.

Date: 31/01/2023.

IN THE MATTER OF:

Smt. Asha Devi W/o Sh. Samant Singh
Sh. Samant Singh S/o Sh. Ram Singh

Permanent address: -

R/o H.No. 318, Village Banagan,
Tehsil Chhivaramau,
District Farukhabad, UP

Present Address:-

R/o Village Gadheka Purva,
Post Sukhsenpur, District Kannojo, UP

...Applicant/Claimant

V/s

Sh. Sushil Bhadauria,

R/o K-3/30, Gali No. - 11A,
Ghonda, New Delhi - 110001

.....Respondent No. 1

M/s The New India Assurance Co. Ltd.

J-129, Kirti Nagar, New Delhi - 110015

.....Respondent No. 2

ORDER

1. In compliance of order dated 29/08/2019 of Hon'ble High Court in FAO 148/2016 I am deciding issue only to the extent to render a fresh decision concerns the claim of recovery rights.
2. In the matter respondent no. 2 Insurance Company had taken plea before Hon'ble High Court of Delhi in FAO No 148/2016 that the Driving Licence bearing no. 14863/FKD/07 on which registered owner of the vehicle - Respondent no 1 in this case had placed on record copy of another verification report obtained from licensing Authority MV Depot, Fategarh, Farukhabad indicating the licence relied upon was actually a genuine documents. Further it was argued before Hon'ble High Court by respondent no. 1 that the insurance company had not carried out verification from appropriate office and hence the evidence of RW1 was not credible. On this ground Hon'ble High Court remanded back the matter to Commissioner for removal of doubts in regard to DL for further enquiry and adjudication and further it was directed to Commissioner to the extent, will render a fresh decision concerns the claim of recovery rights.



3. On this issue on the application dt. 02/03/2021 of respondent no 2 licensing Authority ARTO, Farukhabad, UP was summoned along with the records pertaining to DL No 14863/FKD/07. In compliance of direction of this Authority Sh. Rajender Kumar S/o Sh. Bhagwan Singh, Head Assistant, ARTO Office Farukhabad, UP filed detailed reply vide letter dated 14/03/2022 and also appeared in person and gave statement on 23/03/2022 before this Authority. Wherein Sh. Rajender Kumar filed ID Card Ex PW2/1 (OSR) and certified report from ARTO, Farukhabad, UP and on oath in cross examination stated that the Licence No. 14863/FKD/07 was not issued in the name of deceased employee Sh. Vimlesh Kumar s/o Sh. Sawant Singh R/o Farukhabad, UP as the requisite fee was not paid by him, hence the DL is forged, fake and invalid and DL in question has never been issued to Sh. Vimlesh kumar S/o Sh. Sawant Singh Deceased employee in deficiency of requisite fees. Further he stated that the Kanpur Investigation agency is already conducting enquiry regarding the issuance of DL No 14863/FKD/07. Further he stated that DL in question was not valid on 15/02/2013, no one was present on behalf of respondent no. 1 to put any cross question to this witness.
4. From the above verification report and statement of Sh. Rajender Kumar S/o Sh. Bhagwan Singh, Head Assistant, ARTO Office Farukhabad, UP it is clear that DL bearing No 14863/FKD/07 on which respondent no 1 is relying is not genuine document but it is fake document. It was the onus of the respondent no 1 that he should have to ensure before engaging any person as a driver he must have effective and valid DL only then respondent may hire any person as a driver. If respondent does not ensure this aspect and hand over the vehicle to run any untrained person that may attract accident. The respondent has completely failed to ensure that deceased was having valid DL on the day of his engagement. In these circumstances insurance company cannot be fastened liability though the vehicle in question was insured due to breach of contract. In this case insurance company has already deposited the awarded compensation amount Rs. 8,79,800/- along with 12% PA interest w.e.f. 15/03/2013 till its realization and same has been disbursed in term of order of Employee's Compensation Commissioner dated 29/01/2016. Since in the absence of valid and effective DL of deceased employee on accident resulting in death respondent no 1 owner of the registered vehicle is liable to pay the compensation to the dependants of the deceased employee.
5. In view of above observation respondent no 2 insurance company M/s The New India Insurance Co. is entitled to recover the ordered amount u/s 13 of the Employee's Compensation Act, 1923, along with simple interest @ 12 % p.a in terms of order dated 29/01/2016 of Employee's Compensation Commissioner from respondent no 1 Sh. Sushil Bhadauria. Accordingly matter is disposed off.
6. 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

