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BEFORE SH. AMARDEEP, COMMISSIONER
(EMPLOYEE'S COMPENSATION ACT, 1923)
GOVT. OF NCT OF DELHI, LABOUR DEPARTMENT
(SHAHDARA & NORTH EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

No. F. CEC-I/NE/67/2019/218-20

Dated: 13.02.23

In the matter of: -

Sh. Shahrukh S/o Sh. Sajid
R/o Village Palra, Tehsil Barraut,
P/s Doghat, Distt. Bagpat, U.P.-250622

.....Claimant

V/s

Sh. Upendra S/o Sh. Bed Singh
R/o C-3/15, Gali No. 14,
Soniya Vihar, Karawal Nagar,
Delhi-110090

... Respondent No.1

M/s National Insurance Company Ltd.
IInd Floor, 2E/9, Jhandewalan Extension,
New Delhi-110055

... Respondent No.2

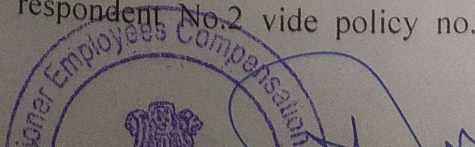
Order

1. Vide this order, I shall dispose of the claim application dated nil received in this Office on 04.12.2019 filed by the claimant under Employee's Compensation Act, 1923 (hereinafter referred to as an 'Act') claiming injury compensation from the respondents.
2. That the claimant, Sh. Shahrukh S/o Sh. Sajid was employed as Cleaner with the respondent no.1 on vehicle bearing no. HR-69C-1247 (Truck). On 16.09.2019 the claimant after getting the said vehicle loaded with dust from Charkhi Dadri, Haryana, left for Loni Border, Delhi. The Driver namely Shoukeen was driving the vehicle and was on Kundli-Manesar-Palwal Highway, when the vehicle reached near Badli, Haryana another vehicle preceding the vehicle of the claimant applied sudden brakes. The driver of this vehicle also immediately applied brakes but could not avoid the collision with the vehicle due to the impact the cabin of the vehicle of the claimant's vehicle got crushed and the claimant got trapped in the vehicle and sustained grievous injuries on his body especially Right leg. An ambulance was called and the claimant was taken to Bahadurgarh Government Hospital where he got admitted for about 4 hours and then referred to G.T.B. Hospital in Delhi. He was admitted in G.T.B. Hospital from 17.09.2019 to 25.09.2019. After getting discharged he further continued taking treatment. The claimant incurred heavy expenditure on his treatment and



become disabled after the accident which was caused out of and during the course of employment with Respondent No.1 and after this accident, he is not in a position to do the work of his capacity and has become 100% disabled for the purpose of his employment as a Cleaner as his movement has been restricted due to injuries in leg. His earning capacity has been totally reduced. The vehicle bearing no. HR-69C-1247 (Truck) was owned by the Respondent no.1 at the time of accident and it was insured with the respondent no.2 M/s National Insurance Co. Ltd. vide policy no.3604013119110000287 and an additional premium was also charged under EC Act by the respondent no.2 from respondent no.1. The claimant was drawing wages @ Rs.8,000/- per month and food allowance Rs.300/- per day and his age was 24 years at the time of accident. Respondent no.1 is having the notice of the accident since the day of its occurrence and the Insurance Company has been informed immediately after the accident took place and a notice under Section 10 of the EC Act has been served upon the respondent no.1. The claimant was cleaner by profession on transport vehicle and he has become unable to take up that work. He further stated that the accident caused out of and during the course of his employment and he is entitled to compensation to the extent of 100% disability and as per Section 4(1)(c) & 4(1)(d) of the EC Act, he is entitled for temporary and permanent disablement along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%.

3. The Claimant moved an application under order 6 Rule 17 of CPC for amendment in the claim petition stating that due to typographical error the claimant in para No. 1 line 3 has mentioned date of accident as 16.09.2019 instead of 17.09.2019. The actual date of accident is 17.09.2019 and not 16.09.2019. It is further stated that the amendment will not cause any prejudice to the other parties. The application of claimant for amendment in claim was allowed and after correction the claimant filed the amended claim.
4. Summon was issued to the parties for appearance. The respondent No.2 appeared and filed written statement stating that the present petition is barred by jurisdiction of the Hon'ble tribunal under section 21 of employees compensation act. That the claimants resides at district Baghpat U.P, The address of respondent No.1 Owner of the vehicle is given as Sonipat Haryana, and the accident has taken place at Kundli Manesar, Haryana. The Hon'ble court has no jurisdiction to entertain the present petition and it should be dismissed on this ground. There are no documents like F.I.R/DD entry of the alleged accident employment certificate, wage/salary certificate, attendance register of the claimant and no documents like RC, Permit, Fitness have been placed on record. Therefore, the application should be dismissed. That the claimant was not employed as a cleaner with respondent No.1 as alleged in the claim application at the time of accident. That no accident took place during and in the course of employment of the claimant as alleged in the claim. Therefore, the respondent is not liable to pay any compensation. The Respondent No.1 had not complied with the provision of Section 134(C) and 158 of MV Act. That no notice has been given regarding the said accident and the claim of the claimant to the respondent No. 2, therefore the answering respondent could not enquire the subject matter in time and collect the material facts for evidence in his defense. That vehicle bearing No. HR-69C-1247 (Truck) was insured by respondent No.2 vide policy no. 3604013119110000287 for the



period from 14.04.2019 to 13.06.2020 in the name of Mr. Upender. In the circumstances stated hereinabove it is prayed that the claim be dismissed with heavy cost.

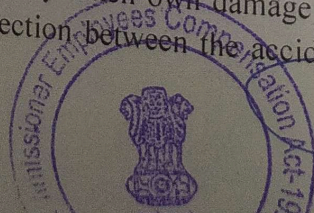
5. The Respondent No.2 filed amended written statement wherein it is stated that claimant Sh. Shahrukh was not employed with Respondent No. 1 as alleged in the claim application at the time of accident. That as per own damage claim application of Respondent No.1 which was filed before Respondent No.2, the Respondent No.1 also filed affidavit wherein it is stated that he did not know claimant Shahrukh and he was not his employee at any point of time. The Respondent No.1 stated that at the time of accident Sh. Ash Mohammad @ Shokeen was driver of the said vehicle with cleaner Sh. Murasleen. The Respondent No.1 take an undertaking that if his statement is found false he is liable to return own damage claim money to the insurance company. Hence, it shows that the claim story of the petitioner is concocted and only to extract money. That as per the statement of the Respondent No.1 and driver Ash Mohammad which were taken by the surveyor of the insurance company at the time of his investigation, both have stated that they do not know the Claimant Shahrukh in any manner. That no documents have been filed to show employer-employee relationship between the Respondent No.1 and claimant. That the claim is barred by jurisdiction under Section 21. That no accident was took place during and in the course of employment of the claimant. The answering Respondent is not responsible to pay any compensation to the claimant.
6. The respondent No. 1 also filed his written statement stating that the claimant Sh. Shahrukh is/was not employee with the Respondent no.1 at any point of time. The present petition is liable to be dismissed being filed upon false, baseless and concocted story. The claimant was not present in the vehicle No. HR-69C-1247 at the time of accident dated 17.09.2019. That the answering Respondent himself filed a claim in the office of the insurance company that is respondent No.2 qua the damaged vehicle bearing No. HR-69C-1247 along with the affidavit wherein it is clearly stated the Respondent has no relation with Sh. Shahrukh as he has never been employed by him. That the present petition is barred under section 21 of the Act as this tribunal has no territorial jurisdiction. That the Vehicle No. HR-69C-1247 was insured with Respondent No. 2 vide policy No. 360401311910000287 for the period 14.06.2016 to 13.06.2020. It is denied that the claimant is entitled to any compensation.
7. The claimant filed rejoinder wherein he has stated that the applicant was working in an unorganized sector and the employers generally never issue any appointment letter and salary slip to their employees. Hence, to ask the applicant/claimant to provide copy of appointment letter or salary slip cannot be justified in the eyes of natural justice. The law has been declared by Hon'ble Supreme Court in the case titled as Maghar Singh Vs Jaswant Singh 1997 ACJ 517 (SC) wherein it is recorded "*there is also no reason to believe that the appellant would wrongly point a finger at the respondent as his employer*". The Hon'ble Supreme Court in the case of Tebha Bai Vs Rajkumar Keswani (2018) 7 SCC 705 has held- "*indeed in our view there is no reason as to why the appellants would file a case on false grounds*". He has further stated that this Authority have jurisdiction in this matter as per the law laid down in the matter of Malati Sardar Vs National Insurance Company Ltd. by the Hon'ble Supreme Court of India. It has been held that if insurance company is having its office in the area of the Authority then the Authority should have the jurisdiction. Further, the claimant has denied the contention of the respondents.

8. On completion of pleadings following issues were framed by the then Authority:
- (i) Whether there was Employer-Employee relationship between the claimant and the Respondent No.1 and if so, whether the claimant got injuries during the course of employment with the Respondent No.1 and if so, to what amount of compensation is he entitled and what other relief ?
9. The claimant filed his evidence by way of affidavit and he was cross examined by the respondents. The respondent no.1 and 2 also filed their evidence and they were crossed examined by the claimant. Parties filed their written submissions, arguments heard.
10. I have gone through the claims, replies and documents filed by the parties and my findings are as under:-

Issue No.1

The claimant in his claim has stated that he was employed as Cleaner with the respondent no.1 on vehicle bearing no. HR-69C-1247 (Truck). On 17.09.2019 the claimant after getting the said vehicle loaded with dust from Charkhi Dadri, Haryana, left for Loni Border, Delhi. The Driver namely Shoukeen was driving the vehicle and was on Kundli-Manesar-Palwal Highway, when the vehicle reached near Badli, Haryana, the vehicle met with an accident with another vehicle and he sustained grievous injuries on his body especially Right leg. He was taken to Bahadurgarh Government Hospital where he got admitted for about 4 hours and then referred to G.T.B. Hospital in Delhi. He was admitted in G.T.B. Hospital from 17.09.2019 to 25.09.2019. The respondent no.1 in his written statement has denied Employer-Employee relationship, stating that they have never employed the claimant, in fact they have employed Sh. Aas Mohammad @ Shoukeen as Driver of vehicle bearing no. HR-69C-1247 and Sh. Mursaleen was employed as Cleaner in the said vehicle. The respondent no.2 in his written statement has also stated that accident did not occur out of and during the course of employment. There did not exist Employer-Employee relationship between the claimant and respondent no.1, as no document has been placed on record to prove Employer-Employee relationship. The claimant in his evidence has filed medical documents Ex. AW1/1, medical records of G.T.B. Hospital Ex. AW1/2, disability certificate Ex. AW1/3 and photocopy of photograph of injured employee as Mark-A. The counsel for claimant during the argument has stated that the claimant was the employee of the respondent no.1 and at the time of accident he was in vehicle bearing no. HR-69C-1247 and he relies on document Ex.AW1/1 and AW1/2.

11. The Ex.AW1/2 is MLC No.E18444/25/19, which is in the name of Sh. Shahrukh, it is mentioned A/H/O Road Traffic Accident near KMP Highway Badli on 17.09.2019 around 04:00 A.M. In the admission note also it is mentioned A/H/O RTA at Highway Badli. The primary onus to show that the claimant was employed with the respondent no.1 at the time of accident is on the claimant. The vehicle no. HR-69C-1247 has admittedly met with an accident on 17.09.2019 at around 04:00 A.M near Badli on KMP Highway and the respondent no.1 has already taken own damage claim from respondent no.2. The claimant has shown causal connection between the accident and his presence on the vehicle at the



time of accident by way of Ex. AW1/1 and Ex. AW1/2 and thereby shifted the onus on the respondent no.1 to show that claimant was not employed with the respondent. The respondent no.1 in his written statement has stated that they have employed Sh. Aas Mohammad @ Shoukeen as Driver and Sh. Mursaleen as Cleaner on vehicle no. HR-69C-1247. The respondent is duty bound to maintain the records of his employees under the provisions of Labour Laws and to prove his case he could have produced the records like attendance register, wage register of his employees. Even otherwise he could have called Sh. Aas Mohammad @ Shoukeen as witness to prove that claimant was not employed on vehicle no. HR-69C-1247 on the date of accident, who is his employee. However, the respondent no.1 has neither filed the employee records like attendance register, wage register, which are in his possession nor he produced Sh. Aas Mohammad @ Shoukeen or Sh. Mursaleen as his witnesses. To prove his case he relies on the affidavit which he has given to the insurance company at the time of taking own damage claim from respondent no.2 wherein he has stated that Sh. Aas Mohammad @ Shoukeen was driving the vehicle and he also relies on the statement of the Sh. Aas Mohammad @ Shoukeen which was given to the insurance company wherein he has stated that Sh. Shahrukh S/o Sajjid does not work as conductor or driver nor I know him. This is an only a statement by a person and it cannot be relied until and unless he is brought to witness box and examined on Oath. Further, during the cross examination the respondent no.1 was put a question- As per Para No.3 of your WS, it is stated that you have filed a claim application for the damage sustained to the vehicle you had stated that you filed an affidavit in the Office of respondent no.2 stating that you have no relation with Sh. Shahrukh. Why did you states so in the said affidavit? The respondent no.1 replied- I do not know. Again said that insurance company informed me that the claim of OD is not being processed because of the third party claim by Shahrukh and therefore I had to give the said affidavit. From the reply given by the respondent no.1 during the cross examination it is implicit that he has written in his affidavit that Shahrukh was not his employee, on the insistence of insurance company and for the purpose of securing his claim. Therefore, the affidavit given by respondent no.1 to the respondent no.2 can't be relied. Hence, the respondent no.1 has failed to show that the claimant was not employed by him at vehicle no. HR-69C-1247 at the time of accident on 17.09.2019.

12. In view of above, I hold that the claimant was employed with the respondent no.1 on 17.09.2019 and he sustained injuries out of and during the course of employment. Therefore, he is entitled to injury compensation which is calculated as under:

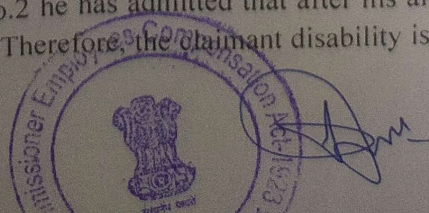
The wages of the purpose of calculation of compensation as per section 4 (1) (B) is taken as -

60% of Rs. 8,000/- i.e. Rs. 4,800/-.

Age of the claimant is 24 years

Age factor is 218.47

The claimant in his claim has stated that due to injury he is unable to perform the work which he used to do earlier hence disabled 100%. The claimant is unskilled worker and no particular skill is required to perform a job by him. Further, during his cross examination by respondent no.2 he has admitted that after his alleged accident he did labour work somewhere else. Therefore, the claimant disability is taken as 23%, which



is as per Disability certificate no.132/20/04/2021 dated 22.04.2021 issued by G.T.B. Hospital, Delhi.

Compensation Amount:

$$\frac{4800 \times 218.47 \times 23}{100} = \text{Rs. } 2,41,191/-$$

13. Therefore, the claimant is entitled to receive Rs. 2,41,191/- towards injury compensation from Respondent.
14. Since the Respondent has failed to deposit compensation amount within 30 days from the date of accident with this Authority hence Respondent is also liable to pay 12% interest per annum on awarded amount with effect from 17.09.2019 till its realisation.
15. Further, a show cause notice was issued to the respondent Under Section 4 (A) 3 (b) as to why penalty should not be imposed upon him for not depositing the amount in time. Since, there is no justifiable grounds for not depositing the injury compensation amount, therefore, penalty of Rs. 48,238/- i.e. 20% of the awarded amount is also imposed upon the respondent for not making the payment of compensation as provided under the Act.
16. The respondent no.1 has taken insurance policy no. 360401311910000287 for the period from 14.06.2019 to 13.06.2020 from respondent no.2. The claimant is entitled to receive compensation from respondent no.1 being Employer of the claimant, however, the respondent no.1 has taken insurance policy from respondent no.2, which was valid on the date of accident, therefore, the respondent no.2 is held liable to make payment of injury compensation amount of Rs.2,41,191/- along with interest @ 12% w.e.f. 17.09.2019 till the date of realization of the awarded amount.
17. Now, therefore, **the Respondent No-2 i.e. M/s National Insurance Company Ltd.** IInd Floor, 2E/9, Jhandewalan Extension, New Delhi-110055 is hereby directed to deposit Rs.2,41,191/- (Rupees Two Lac Forty One Thousand One Hundred Ninety One Only) alongwith simple interest @ 12% per annum w.e.f. the date of accident i.e. 17.09.2019 till the date of payment. Further, the **Respondent No.1 i.e Sh. Upendra S/o Sh. Bed Singh R/o C-3/15, Gali No. 14, Soniya Vihar, Karawal Nagar, Delhi-110090** is directed to deposit an amount of Rs. 48,238/- (Rupees Forty Eight Thousand Two Hundred Thirty Eight Only) towards penalty imposed on him by way of Demand Draft / Pay Order in favour of **"Commissioner Employees Compensation, District North 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 13th day of February, 2023.

COMMISSIONER, EMPLOYEES COMPENSATION



(AMARDEEP)