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**COMMISSIONER UNDER EMPLOYEE'S COMPENSATION ACT, 1923
(DISTT. SOUTH-EAST)
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI
LABOUR WELFARE CENTER, BAL MUKUND KHAND
GIRI NAGAR, KALKAJI NEW DELHI-110019**

Old No. CEC/SD/I/79/2017

Old No. CEC/SD/I/12/2021

New No. CEC/SED/I/128/2022/1247-1150

Dated 03/03/2025

In the matter of:

Sh. Fulchandra S/o Late Sh. Puttilal
R/o House No. B-38
Harsh Vihar, Hari Nagar Part-III
Badarpur, New Delhi-110044

Sh. Fulchandra S/o Late Sh. Puttilal
Permanent R/o Village Saray Gadheva
Post - Saraiyan, P/S - Roora
Tehsil - Akbarpur, Distt.-Kanpur Dehat
Uttar Pradesh-209303

.....Claimant

V/s

Sh. Dalbeer Shukla
R/o House No. 1338, Village Sambhu Nagar
Behind the Palivari Inter College
District - Sikohabad
Chhoti Masjid ke pas (100 meter ke fasle par)
Sambhu Nagar, Sikohabad

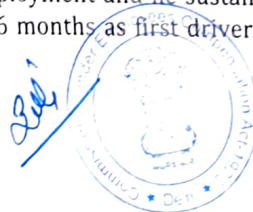
.....Respondent No. 1

M/s Oriental Insurance Company Ltd.
10th Floor, Hansalaya Building
15, Barakhamba Road, New Delhi-110001.

.....Respondent No. 2

ORDER

1. This order shall dispose of the claim petition filed by Sh. Fulchandra (hereinafter referred to as claimant) filed on 21.06.2017 before the Commissioner under Employee's Compensation under Employee's Compensation Act, 1923 (hereinafter referred to as the Act) District South East O/o Labour Department.
2. Sh. Fulchandra (Claimant) who is stated to be engaged as a driver on the vehicle bearing No. UP-78-CN-4129 owned by Respondent no. 1 and on 04/05.04.2016, he met with an accident out of and during the course of employment and he sustained grievous injuries on his right leg. He had been employed for 6 months as first driver. On 04/05.04.2016,





after getting the said vehicle loaded with new glass empty bottles, he proceeded for Meerut. When his vehicle reached near Shikohabad he met with an accident which took place when the applicant was proceeding in his direction, there was a road crossing, another vehicle emerged instantly on the cross road just before the vehicle of the applicant. The applicant tried to stave off a direct hit in the front portion of the said vehicle and he swerved his vehicle. Inspite of his best efforts the vehicle of the applicant drove in that vehicle in its rear portion. The vehicle was completely smashed. The co-driver who was on the side was saved with less injury. After half an hour people came and extracted them from the entrapped position. The applicant was taken first to Government Hospital, Shikohabad where he received first aid for half an hour. He fell unconscious and ambulance took him subsequently to Agra Hospital at night 3-4 A.M where he was not attended to. He was taken by his family during the day at 2.00 P.M to Kanpur. He was taken first to Helet Hospital where they were informed of the necessity to amputate his leg. So his relatives got him admitted to Kalyapur Pvt. Nursing home where he was admitted for 11 days. He kept on lying at home for 1.5 months because of paucity of funds. He has incurred an expense of Rs. 1,15,000/- during the treatment. After this accident the applicant 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. His earning capacity has been totally reduced. It is further stated that the vehicle bearing No. UP-78-CN-4129 was owned by respondent no. 1 at the time of accident and was insured, and an additional premium was charged by the insurance company from Respondent No. 1 under the Employee's Compensation Act, 1923. It was further stated that he was drawing wages @ Rs.8,000/- per month plus 300/- per day as food allowance and he was aged 38 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 vs. Srinivasa Sabata cited at 1976 ACJ 141. The applicant/claimant was employed on the vehicle and the accident caused out of and during the course of his employment. The Applicant 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 along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%. The claimant prayed the CEC to release him temporary/permanent disablement benefits along with interest and penalty as prescribed under the Act of 1923. Along with the claim, he has filed; application for court fee, medical documents and bills, aadhar card of the claimant, photograph of the injured part and vakalatnama. The claimant prayed to grant him relief under EC Act, 1923 including disablement amount, medical expenses and interest etc.

3. The application for assessment of medical disability through Aruna Asaf Ali Hospital was also filed by the claimant which was considered and the claimant was referred to the said Hospital.
4. Upon summoning of the respondent Sh. Dalbir Shukla through SHO and speed post. None appeared from respondent on 02.06.2017, 10.07.2017, 20.07.2017, 08.08.2017, 29.08.2017, 19.09.2017, 10.10.2017, 03.11.2017, 17.11.2017, 08.12.2017, 26.12.2017. On 19.01.2018, Sh. Dalbeer Shukla appeared, received copy of the claim and thereafter stopped appearing on 02.02.2018, 28.02.2018, 15.03.2018, 03.04.2018, 04.05.2018, 11.05.2018, 24.05.2018, 08.06.2018, 10.07.2018, 03.08.2018, 31.08.2018, 19.09.2018,





12.10.2018, 16.11.2018 and ultimately respondent was proceeded ex-parte on 16.11.2018.

5. Following issues were framed in this case on 04.12.2018:

- (i) Whether there was employee-employer relationship between the applicant and the respondent?
- (ii) Whether the applicant suffered injury in course of employment with respondent?
- (iii) What relief?

6. Case was adjourned for filing ex-parte evidence on 21.12.2018, 18.01.2019, 30.01.2019, 18.02.2019, 08.03.2019, 10.04.2019, 07.05.2019, 16.05.2019, 04.06.2019, 11.07.2019, 09.08.2019, 28.08.2019.

7. On 02.09.2019, claimant filed amended claim along with the evidence by way of affidavit. On 04.03.2020, the respondent appeared through a counsel however case was reserved for order on the same day. Thereafter an order dated 13.03.2020 was passed directing the respondent Sh. Dalbeer Shukla to deposit a sum of Rs.8,70,576/- along with the interest and penalty. A recovery certificate was also issued on 08.11.2021 because the respondent failed to deposit the ordered amount.

8. Thereafter, application for restoration of the case was filed on 15.02.2021 by the respondent through his Counsel Adv. Vivek Mishra along with the application for stay of operation of award. The reply was filed by claimant side on dated 06.04.2021 wherein they opposed the application of the management. On 05.07.2021, application was filed by the claimant side for production of documents related to OD Claim. The respondent on 28.07.2021 filed his reply/objection on this application. On 16.08.2021, the then CEC allowed the application of the respondent and case was restored. The claimant also moved application for amendment in the claim and accordingly impleaded M/s Oriental Insurance Co. Ltd. as party no. 2 to this case. In the said application, the claimant informed that the said vehicle was insured by M/s Oriental Insurance Co. Ltd. vide policy no. 221301/31/2016/1258 for the period 19.03.2016 to 18.03.2017.

9. Fresh summons was issued to the parties for appearance on 02.09.2021, 27.09.2021, 25.10.2021. The R-1 Sh. Dalbeer Shukla through his counsel filed WS stating therein that the injured was working as a driver at the time of accident on 4/5 April, 2016. There was some confusion with respect to the registration number of the vehicle. The vehicle which is registered with the insurance company is UP 78 CN 4129. With this the R-1 submitted that the correction/amendment in petition is required as to the name of the R-1 whether it is Sh. Dalbeer Singh or Sh. Dalbeer Shukla. The insurance company has filed their WS on dated 08.03.2022 wherein they stated that as per the medical lego examination report, the name of the injured person is mentioned as Phool Chandra S/o Sh. Nankha, however the name of the claimant is mentioned as Fulchandra S/o Late Sh. Puttilal. Therefore, the claim is liable to be dismissed. The claimant is not the resident of Delhi nor the R-1 and the insurance company and therefore there is no jurisdiction in this case. The judgment relied by the claimant side is not applicable in this case, hence the claim is liable to be dismissed. The claimant has not filed any documentary evidence of accident held on 04/05 April, 2024 like DD Entry, FIR, NLC, Discharge summary, vehicle permit fitness, photograph,

Signature



appointment letter etc. to prove that the accident took place and he was under employment of R-1. The present claim has been filed by claimant in collusion with the R-1 because there is a mismatch in the vehicle number of original claim and the amended claim. The insurance policy was issued covering the vehicle and its employees vide the said policy is subject to certain terms & conditions which if violated no compensation is payable. The contents of the Para No. 3, 4, 5, 6, 7, 8 is denied by the R-2 and prayed to dismiss the claim. The said WS is filed by Manju Gonkar, Dy. Manager of M/s Oriental Insurance Co. Ltd.

10. The claimant filed the rejoinder on 04.04.2022, wherein they stated that the preliminary objection of the R-2 from the Para No. 1 to 6 is false and incorrect and also from Para No. 1 to 8 of R-2's reply is incorrect. On 28.04.2022, claimant filed the application for production of records related to OD Claim.
11. Summons were again issued to the parties for appearance on 28.04.2022, on the show cause as to why penalty should not be imposed upon them for violation of section 4(A)3(b) of the Act.
12. On 31.05.2022, revised issues were framed in this case:
 - (i) Whether there exist employer-employee relations between the respondent and the claimant?
 - (ii) Whether the claimant sustained injuries out of and during the course of employment?
 - (iii) And if yes, what amount claimant is entitled and what directions are necessary in this regard?
13. The reply was filed by the R-2 upon show cause notice in which they stated that the R-1 has failed to deposit the compensation within one month. They relied upon the judgment of Hon'ble Supreme Court of India in which the liability of penalty cannot be imposed upon insurance company. The R-2 prayed to withdraw the show cause notice.
14. The reply was filed by the R-1 upon show cause notice in which they stated that they have already intimated the insurance company just after the company and all the documents were supplied to the R-2. The said vehicle is already insured by R-2 and they have charged additional premium under the Head Compensation Act, 1923. There is no delay on the part of R-1 and therefore penalty may not be imposed against them. The R-1 relied upon certain judgments of various Courts to prove that the interest and penalty is liability of the insurance company.
15. Claimant sought adjournment on 25.07.2022 for filing their evidence by way of affidavit which was later on filed on 18.08.2022. The Aruna Asaf Ali hospital vide their letter dated 01.05.2018 has provided the 30% of disability to Sh. Fulchandra in respect of right lower limb, the copy of the same provided to the concerned party.
16. Evidence from the claimant Sh. Fulchandra, himself which was tendered on 05.09.2022 duly attested by Oath Commissioner on 08.08.2022 and cross examined by Adv. Rahul





from the R-2 and Adv. Vivek Mishra from the R-1 on the same day. Along with the evidence the claimant has filed documents exhibited AW-1/1 (Medical Lego Examination Report), AW-1/2 (Copy of medical treatment paper), AW-1/3 (copy of disability certificate), AW-1/4 (medical bills), AW-1/5 (copy of aadhar card) and AW-1/6 (Copy of Driving License).

In the cross examination, the claimant stated that he is the resident of Kanpur, UP and the name of his father is Puttilal @ Nankhe Prasad. He is illiterate and doesn't know what is written in the affidavit. He was employed as a Driver for Rs.8000/- and daily allowance in the vehicle no. UP 78 CN4129. The accident occurred between 4th and 5th of the month, he exactly doesn't remember the same. He can not do his routine work regularly and not able to stand comfortably. He is only 8th standard passed. He doesn't have any documentary prove to establish that he was employee of Sh. Dalbeer Shukla @ Dalbeer Singh. He was having a valid driving license at the time of accident. In the end, he denied all the negative suggestions given by the Ld. Counsel of the R-2. In the cross examination by R-1, the claimant stated that after the accident R-1 did not visit him and left him unattended. He is the employee of Sh. Dalbeer Shukla and not Sh. Dalbeer Singh because he was getting the salary in cash. He filed FIR after six months of the accident because he was not able to walk. In the end, the claimant denied all the negative suggestions given by the Counsel of R-1.

17. Evidence of witness Sh. Nirmal Kumar was filed on dated 03.10.2022 duly attested by Oath Commissioner on 03.10.2022 which was tendered on 27.02.2023 and was cross examined by Adv. Vivek Mishra by R-1 and Adv. Radhey Shyam from R-2.

In the cross examination, the witness of the claimant stated that he has worked with R-1 for 20 days and he was not issued any appointment letter/salary slip. He was present at the time of accident and was watching the incident, he also sustained minor injuries. He was appointed at the instance of Driver Sh. Fulchandra and was being paid expenses by Sh. Fulchandra. He doesn't remember the date on which he was appointed as a Cleaner. He has not informed the incident to the Police and also doesn't know the name of the Hospital where the injured was admitted. He denied that he was not present at the time of accident and also denied that he was not working as a Cleaner on the said vehicle.

18. On the request of the claimant side, petitioner evidence was closed and matter was fixed for respondent evidence.

19. The respondent evidence of Sh. Dalbeer Shukla was filed on dated 04.10.2023 which was attested by Oath Commissioner on 12.09.2023. The said evidence was tendered on 30.01.2024 along with the evidence, Sh. Dalbeer Shukla has filed documents such as copy of Driving License Mark A, Copy of RC Mark B, Copy of Insurance Policy exhibit RW-1/1, Copy of fitness certificate exhibit RW-1/2, Copy of National Permit exhibit RW-1/3, Copy of bank passbook exhibit RW-1/4, Copy of aadhar card exhibit RW-1/5. The claimant Counsel Adv. Shalu did not cross examine the R-1 evidence but was cross examined by Adv. Radhe Shyam from the R-2.

In the cross examination, Sh. Dalbeer Shukla stated that he is only having one Truck in the number UP 78 CN 4129. He was not present at the time of accident and he does not remember the name of the father of the Driver. He has paid Rs.50,000/- for the





treatment of the Driver. He has not issued any appointment letter, salary slip etc. to the Driver and does not remember the name of the Conductor.

20. On 02.05.2024, the opportunity for R-2 to file RE was closed and matter was fixed for arguments, the arguments were heard on 10.07.2024, 30.07.2024, 21.08.2024 and 27.08.2024.
21. The written arguments were filed by R-1 on 21.07.2024 in which they stated that claimant was employed as a Driver with Vehicle No. UP 78 CN 4129, Truck owned by them. The applicant met with an accident near Shikohabad, UP where he sustained grievous injury. He was been paid Rs.8000/- per month, the said vehicle was insured by R-2 i.e. M/s Oriental Insurance Co. Ltd. by the said insurance policy from the period 19.03.2016 to 18.03.2017. The OD Claim of Rs.85,180/- was paid by the Insurance Company to the R-1. AT the time of accident, the R-1 has paid Rs.50,000/- to the brother of the injured Driver Sh. Fulchandra so there is no delay on the part of R-1 in ensuring the health of the injured Driver. Sh. Dalbeer Shukla could not appear in the Court due to his improper summoning and there was some confusion as Sh. Dalbeer Singh was mentioned in the summon in place of Sh. Dalbeer Shukla. The R-1 relied upon the judgments of Hon'ble High Court, Hon'ble Supreme Court wherein the liability of compensation lies with the Insurance Co. and also the interest and penalty.
22. The written arguments were filed by R-2 on 10.07.2024, in which they stated that R-1 has mentioned the name of his driver as Sh. Fulchandra. The name of the father of the injured is mentioned as Nankhe Prasad in the Driving License whereas it is mentioned as Puttilal in Aadhar Card and the claim petition. The R-1 is playing a foul and have concealed the many facts and therefore the claim is liable to be dismissed and order to be passed in favour of R-2.
23. The written arguments were filed by claimant on 10.07.2024, in which they stated that the claimant has received 30% permanent disablement and is unable to do the work of Driver of a heavy vehicle. The claimant has repeated the contents of claim petition. Further, stated that in the evidence filed by the claimant and the eye witness both when cross examined by the respondent nothing contrary was found. Despite giving many repeated directions, OD Claim document was not filed by the R-1/R-2. As per the bank statement of the R-1, it is cleared that they have received OD Claim amount from the R-2. The insurance company did not lead any evidence nor they produced any witness to defend the claim. The claimant counsel relied upon many judgments of various High Courts and Hon'ble Supreme Court to establish the 30% disability amounts to 100% loss of earning capacity. The insurance company has failed to do his obligations as per IRDAI Rules. The claimant relied upon various judgments to establish that it is not mandatory in the compensation case to prove the case beyond doubt. Reliance was made upon various judgments to establish that the claimant is entitled for interest and penalty from the respondents.
24. After hearing all the parties, proceedings were concluded for order but the same could not be announced on 18.09.2024 and up to February, 2025 due to the administrative reasons beyond control.





25. In view of above, facts and circumstances of the case, evidence on record, statement of the witness and their cross-examination, following are the vital facts which is highlighted beneath having appropriate relevance with the case:

- a) The claim was filed by Sh. Fulchandra in June, 2017 claiming injury compensation from the R-1 i.e. Employer.
- b) The Employer failed to file WS or contest the case and therefore ex-parte order was passed against the R-1 vide order dated 13.03.2020 and recovery was also initiated through the Revenue Officials.
- c) The respondent prayed for setting aside ex-parte order and accordingly their request was allowed and the insurance company was made party to this case.
- d) The WS was filed by the R-1 and R-2 respectively upon the claim petition which was addressed by the claimant through their rejoinder.
- e) The claimant was examined in chief and cross examined by both the counsels and during the cross examination nothing adverse has come out against the claimant.
- f) The eye witness was examined in chief and cross examined by both the counsels and during the cross examination nothing adverse has come out against the claimant.
- g) The insurance company failed to lead evidence which means that they had nothing to prove in their favour and against the claimant.
- h) The R-1 in his evidence has produced his identity and vehicle related documents along with the OD Claim which he has received from the R-2.
- i) The R-1 is signing the documents while responding to the claim petition sometimes in the capacity of Sh. Dalbeer Singh and sometimes representing as Sh. Dalbeer Shukla. The name of Sh. Dalbeer Singh is mentioned in the vehicle RC Document and in the insurance policy.
- j) While deciding this case, it is appropriate to pass an order with respect to Principal Amount, Interest and Penalty because show cause notice and reply is already placed on record.

26. Findings

Considering the above-mentioned facts, the CEC is of the opinion is that although the claimant has not been able to provide any employment proof, the adverse has not been proved by the R-2. As per the judgment of Honble Supreme Court of





India in the case titled Smt. Tebhabai & Ors. v/s Rajkumar Keswani & Ors. has found that the sole testimony of the claimant is a sufficient proof about the occurrence of the accident when there is no inconsistency in it. The Hon'ble Supreme Court of India in the case Maghar Singh v/s Jaswant Singh held that it is not incumbent on the part of the applicant to get his case proved beyond doubt. In another case titled Shahjahan & Ors. v/s Shriram General Insurance Co. Ltd. & Ors. In this case, the R-1 has already admitted that Fulchandra was his employee/ driver and in view of this Issue No. (i) is decided in favour of the claimant.

Non filing of RE and non-production of witness by the R-2 shows that they have nothing on record to prove the objections which have been taken by them in their WS.

The R-1 has admitted that he has received certain amount from the R-2 towards OD Claim, this means that the insurance policy was a valid one and according to it the driver is also required to compensated in case of accident arises out of employment. In view of this, the issue no. (ii) is decided in favour of the claimant and against the R-2.

Based upon the documents on record, reply and arguments of the employer, the CEC is of the considered view that all the issues framed in this case is decided against the respondents and in favour of the claimant. Hence, the claimant Sh. Fulchandra is found to be entitled for injury compensation as per the provisions laid down under the Act. The injury compensation along with interest, which is the liability of the employer i.e. R-1, is in this case required to be shifted upon R-2 because R-2 (Insurer) has to indemnify the R-1 (Insured).

Based upon the various pronouncements of various judgments and settled law related to assessment of 100% loss of earning capacity even if actual disability is less, this case is considered as a fit case to grant relief allowing the calculation to be based on 100% instead of 30%. Further, the R-2 has not been able to establish that the injured employee Driver is performing the work of driving the heavy vehicle which would not otherwise entitle him for 100% calculation of loss of earning capacity.

27. The injury compensation has been calculated on the basis of age and relevant factor of the injured employee and 60% monthly wages of the employees (Rs.8000/- is restricted under the Act as per the rates notified by the Gov. of India prevalent on the day of accident. In this case, no salary record of claimant is available in case file, the same is restricted to Rs.8,000/- as per the maximum limit notified under the Act. As per the disability report he has become 30% disabled, the person is not able to perform the normal work therefore as prayed by the claimant side the disability as considered as 100% which is also as per the judgment of the Hon'ble Supreme Court in various cases.





rigorously with the R-2 with respect to release of accident compensation and therefore they are found liable for penalty in this case @ 10% of the Principal Amount which comes to Rs.90,988/- (Rupees Ninety Thousand Nine Hundred Eighty-Eight Only). In this case, the R-2 has released the OD Claim amount to the R-1 but has not released accident compensation to the claimant. The reply filed by the R-2 on show cause is not satisfactory and hence R-2 is liable to pay penalty in this case @ 40% of the Principal Amount which comes to Rs.3,63,952/- (Rupees Three Lakhs Sixty-Three Nine Hundred Fifty-Two Only)

31. DIRECTIONS

In view of above, the petition is decided in favor of the claimant Sh. Fulchandra and accordingly, the R-2 being the Insurance Company is directed to pay the principal amount, full amount of interest and 40% of penalty totaling to Rs.21,90,370/- (Rupees Twenty-One Lakhs Ninety Thousand Three Hundred Seventy Only) as mentioned above.

In view of above, the petition is decided in favor of the claimant Sh. Fulchandra and accordingly, the R-1 being the Employer is directed to pay 10% of penalty totaling to Rs.90,988/- (Rupees Ninety Thousand Nine Hundred Eighty-Eight Only) as mentioned above.

Accordingly, the R-2 i.e. M/s The Oriental Insurance Company Ltd. and R-1 i.e. Sh. Dalbeer Shukla is directed to pay the amount as mentioned in above paragraphs which includes principal amount, interest within 30 days of passing of this order. Failure to do so may attract recovery proceedings against each of them as per the provisions of the EC Act. In case the ordered amount is not deposited within 30 days of this order, additional interest w.e.f. 27.08.2024 till the actual date of realization shall be added in the amount mentioned as mentioned above.

Given under my hand and seal of this 2nd day of March, 2025.

(U.K. SINHA)
COMMISSIONER UNDER
EMPLOYEE'S COMPENSATION

