

BEFORE 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. WC/10/ND/2017/ 68.

Date: 24/03/2023.

IN THE MATTER OF:

Smt. Indu Devi W/o Lt. Rajender
R/o IInd, E-248-C, Kamana,
Vaishali, Ghaziabad, U.P

.....Applicant/Claimant

V/s

Sh. Tushar Aneja & Sh. Jagmohan Aneja, Directors
M/s Grand Carrier Pvt. Ltd.
Shop No. 104, Qutub Road, Sadar Bazar,
Delhi – 110006

.....Respondent

ORDER

1. By this order, I will dispose of claim application dated 03/05/2017 filed by the claimant for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that the respondent is a partnership firm and provides freight carrier vehicles on demand for transportation of loads and manpower for loading and unloading purpose as well and that there are more than 20 employees who work in the said firm to run business. It is further submitted by the claimant no 1 that her husband has been worked with the respondent for more than 30 years till his death on dates 15/10/2016 due to some health complications developed when he was on duty and driving the car of owner/partner namely Sh. Tushar Aneja, who was also accompanying in the car at that time. It is further submitted by the claimant that her husband was admitted in the hospital by the owner where the deceased was declared brought dead. It is further submitted that the post-mortem was being conducted in AIIMS, New Delhi and a DD entry vide no. 54A dated 15/10/2016 was got prepared by the police officials of PS Lajpat Nagar, New Delhi. It is further submitted by the claimant that her deceased husband worked as a care taker-cum-driver with the said respondent. It is further submitted by the claimant no. 1 that the nature of work her husband used to do was he used to went to the residence of owner in the morning by his two wheeler, park his two wheeler there and by car of the owner along with the owner they reach office at Sadar Bazar, Delhi. It is further submitted that the car of the owner of the respondent was driven by her deceased husband, further after arriving at the office, her husband task was to control and supervise all activities of business of firm till late evening and after finishing the daily business work of the firm in late evening, further the deceased duty was to drop the owner in car at their house at Lajpat Nagar, New Delhi. It is further submitted by the claimant that her husband used to work almost 14-15 hours daily. It is further submitted by the claimant that her



deceased husband was drawing monthly wages at the rate of more than Rs. 25,000/- per month. In the last petitioner prayed that since accident of deceased employee occurred out of and in the course of employment with respondent resulting in death hence respondent is liable to pay compensation of Rs. 19,13,625/- along with the interest as per rule to the petitioner/claimant being the legal heirs of the deceased/ employee.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply in the matter. Respondent appeared and filed reply on record.
4. Respondent filed reply and submitted that the matter does not fall under the provisions of the Law, the EC Act 1923. No employment injury has been caused to applicant during the course of employment with the answering respondent. It is further submitted by the respondent that there was no employee employer relationship and hence no cause of action against the respondent has arisen. Further respondent denied that M/s Grand Carrier Pvt. Ltd is a Partnership Firm infact it is a Pvt. Ltd Company duly registered under the companies Act 1956. Further it is also denied by the respondent that company provides manpower for logistic and related services. It is also denied by the respondent that company employed more than 20 employees or that the deceased was ever employed with the concerned company or that the death was caused due to some health complication developed when he was on duty and driving the car of his employer. Respondent also denied that M/s Grand Carrier Pvt. Ltd ever employed more than 5-6 employees nor the deceased was even in the employment of M/s Grad Carrier Pvt. Ltd. respondent/company, infact the deceased was the proprietor of the firm by the name of M/s Singh Carriers. He was infact amongst many vendors supplying vehicles for logistics on commission basis to M/s Grand Carrier Pvt. Ltd. respondent/company. Deceased Sh. Rajender Singh was also supplying vehicles on commission basis to other logistics company. It is further submitted by the respondent that there is no certificate by competent and eligible doctor as per the Act certifying the cause of death as due to stress caused by the respondent. In the last respondent submitted that since the deceased was running his own business hence question of his being in employment with respondent or him being a driver cum care taker for respondent does not arise as such claim is not maintainable against the respondent and liable for dismissal. The respondent further denied rest of the contents of the claim petition in toto.
5. Petitioner rebutted all the contents of Respondent as stated in the reply and reiterated contents of the claim petition in his rejoinder.
6. On 24/07/2018 following issues were framed for adjudication:
 1. Whether there exists employer employee relationship between respondent and deceased, if so?
 2. Whether the accident leading to death happened during and in the course of employment of the respondent? If so
 3. What amount of death compensation is the applicant entitled too? If so? Relief if any?
 4. Is the respondent liable for imposition of penalty u/s 4A and to what extent?



7. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex. CW-1/A (Wife of deceased Rajender Singh). The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. CW1/1 to CW1/10 i.e. Copy of Legal notice dated 29/03/2017, copy of postal receipt, copy of postal AD receipt, copy of sealed envelope returned back, Copy of Adhar Card of deceased Rajender Singh, copy of Adhar Card of Indu Devi, copy of police report Ex. CW1/7 dated 16/10/2016, copy of Hospital receipt of Moolchand Hospital, copy of Post-mortem Report. Her statement was also recorded on 24/07/2018 and she was also cross examined by counsel of respondent on 20/08/2018. Further claimant No. 2 & 3 being the son of late Sh. Rajender Singh filed their affidavit but did not appear in the witness box to tender affidavit. Only Petitioner No. 4 Sh. Hridayeshwar Singh son of deceased Sh. Rajender Singh appeared in witness box and tendered the affidavit but did not appeared in the witness box for cross examine.
8. For respondent Sh. Tushar Aneja filed his evidence by way of affidavit vide Ex. MW1/A. The contents of affidavit are corroborative to those reply and also filed documents Ex. MW1/1 to MW1/4 i.e. copy of post dated cheques, copy of the promissory note given to respondent, copy of letter written to Punjab & Sind Bank for signature verification for loan. His statement was also recorded and was also cross examined by counsel of claimant on 22/10/2020 and cross was recalled on 07/12/2020 and further completed on 08/06/2022.
9. The matter was fixed for arguments. Argument was filed by the respondent and oral submission adduced by the claimant heard in detail.
10. On the basis of pleadings of the parties and documents available on record I am giving my findings on the issues framed in the matter as under:

Issue No.1 & 2

The case of claimant is this that her deceased husband Sh Rajender Singh was employed with respondent since last 30 years as a Driver cum care taker.as alleged by the applicant on 15/10/2016 during the employment of respondent some health complication developed when he was on duty and driving the car of owner / partner Sh. Tushar Aneja, thereby he was admitted in the hospital by the owner which was declared brought dead. For sake of brevity contents of claim is not repeated here as it has been already described in para No. 2 above. Since respondent did not pay compensation under the provision of employees compensation Act thus claimant preferred this claim. Claimant examined herself as a witness in this case to prove her case.

To prove his case Sh. Tushar Aneja, director of M/s Grand Carrier Pvt. Ltd. examined himself as MW1/A and denied claim of the claimant in toto on the ground that claimant was never employed with respondent at any point of time and as such claim is not maintainable against the respondent. Respondent also denied the claim on the ground that deceased Rajender Singh was proprietor of the firm by the name of M/s Singh Carriers and was supplying vehicles for logistics on commission basis amongst vendors as well to M/s Grand Carrier Pvt. Ltd. deceased was also supplying vehicle on commission basis to other



logistics companies also. Since employee employer relationship never existed between deceased Rajender Singh and respondent as such question does not arise for payment of compensation under the Act. Further respondent has taken ground that deceased was transport vendors as were others and had taken advance payment against which he had given post dated 04 cheques Ex. MW1/1 to MW1/2 each amounting Rs. 10,00,000/- in favour of respondent company. Further respondent relied upon Ex MW1/4, which is the letter dated 05/02/2016 written by deceased employee to manager Punjab & Sind Bank Sadar Bazar Delhi- 110006, for verification of his signature for the purpose of taking lone as his account exists in the bank. Ex. MW1/3 is the promissory note given by the deceased employee in favour of respondent. Which is regarding for repayment of loan (Cheque No 792736 & 792737) duly signed by the deceased Rajender Singh as proprietor for Singh Carriers.

After considering pleadings of the case documents available on record I found that claimant did not filed any cogent documents like appointment letter, salary slip, attendance record or any kind of documents which indicates that deceased Rajender Singh was employed with respondent as driver cum caretaker. In cross examination of the claimant, claimant has categorically denied that she has any documents regarding employment her deceased husband with the respondent. It is surprising that as alleged by the claimant that her deceased husband was employed with respondent since last 30 years even though no any kind of document have been produced by the claimant to prove her case. The documents on which claimant relied is the Police report Ex. CW1/7 in her favour same is disputed by the respondent in his cross examination before this authority that by way of force police has written whatever the I.O was stating and was directed to sign without reading whatever he told respondent to write. He has protested for the same but was warned by the Police for consequences. In these circumstances it was very necessary on the part of claimant to call the concerned IO in witness box for testimony of the report Ex CW1/7 but same has not been done. Further claimant also did not submit anything regarding documents Ex MW1/1 and MW1/2 post dated cheques as security and reimbursement of the loan taken by the deceased Rajender Singh and on MW1/3 promissory note written by the deceased Rajender Singh and Ex. MW1/4 letter written to Punjab and Sind Bank for signature verification for laon. From these documents nothing adverse has come in the cross examination of the respondent. As such I have no ground to not consider these documents on which respondent relied. Further nothing has come on record from the side of claimant that death was occurred due to strain and stress.

In the above situation as discussed onus lies upon the claimant to prove her case on merit by way of evidence but claimant failed to prove her case completely against the respondent that her deceased husband was employee of the respondent and death was occurred due to stress and strain out of and in the course of his employment. The judgement on which claimant relied i.e.

1. The Hon'ble Court of Judicature at Gauhati, Agartala Bench in New India Assurance Co. Ltd. Vs Ujjala Debnath & Ors reported in M.F.A(WC) No. 5 of 2000.



2. The Hon'ble Delhi High Court in On Time Travels Pvt. Ltd. Vs Meena & Ors. reported in F.A.O No.385 of 2007.
3. The Hon'ble High Court of Karnataka at Bangalore in Manager, National Insurance Co. Ltd. Vs Mahabooba Bi & Ors reported in M.F.A No. 5172 of 2003 (WC).
4. The Hon'ble High Court of Orissa in Director (T&M), D.N.K. Project and Smt. D. Buchitalli reported in Miscellaneous Appeal No. 332/81.

are not applicable in this case since claimant failed to prove first condition as mandatory under the Act as employee employer relationship. As such issue no. 1 & 2 are decided against the claimant. In view of this issue No. 3 & 4 are not required for any answer.

5. Given under my hand and seal of this Authority on this 24th day of March, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

