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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/D/04/2020

New No. CEC/SED/D/138/2022

Dated 16/12/24

16918-6923

In the matter of:

Smt. Lachhmi W/o Late Sh. Om Prakash
R/o Village Kami
Post - Tharuoldepur
District-Sonipat, Haryana-131001

.....Claimant

Adv. R.K. Nain
Chamber No. 722-723, Tis Hazari Court
Delhi - 110054.

.....Claimant's Counsel

V/s

M/s Bajaj Allianz General Insurance Co. Ltd.
93, Ashok Bhawan, 6th Floor
605-608, Nehru Place
New Delhi-110019

.....Respondent No. 1

Ms. Manu Kushwaha
Chamber No. 463, Patiala House Courts
New Delhi-110001

.....Respondent No. 1's Counsel

M/s Surasksha Express Cargo Services Pvt. Ltd.
Khasra No. 29, Near Hero Moto Corp.
VPO-Malpura NH-08, Dharuhera, Haryana-123106

.....Respondent No. 2

Adv. Bharat Bhushan
Chamber No. 109, Western Wing
Tis Hazari Courts, Delhi-110054

.....Respondent No. 2's Counsel

ORDER

1. This order shall dispose of the claim petition filed on 30.01.2020 by Smt. Lachhmi Mother of the Deceased Late Sh. Jasbir (hereinafter referred to as claimant) before the Commissioner under Employee's Compensation Act, 1923 (hereinafter referred to as the Act) at District South, Labour Department, GNCTD and thereafter file was transferred to District South East O/o Labour Department, GNCTD after creation of New District.





2. The brief of the case as per the petition filed by the claimant Smt. Lachhmi is that her son Late Sh. Jasbir was employed as a Driver in the vehicle HR-55R-7648 (Truck) which is owned by R-2 i.e. M/s Surasksha Express Cargo Services Pvt. Ltd. On 28.12.2019, when the said Driver was on his duty transporting the vehicle with goods from Gurgaon to Gujrat, reached near Kishangarh, his body was over-stressed. Seeing his critical condition, the Dhaba owner called his employer i.e. R-2 and he was asked to take rest, the R-2 reached Kishangarh and shifted his employee to his godown where he was asked to take rest. Thereafter, he was taken to the hospital but he was brought dead. The postmortem was conducted by Government Hospital, Rewari vide PMR No. 844/19 dated 29.12.2019 and the body was handed over to the family. This incidence was registered under Police Station, Sector-6, Dharuhera, Haryana vide DD No. 07 dated 29.12.2019. The said vehicle of the R-2 was insured by R-1 i.e. M/s Bajaj Allianz General Insurance Co. Ltd. vide policy no. OG-19-1134-1803-0000-4343 for the period 14.02.2019 to 13.02.2020 and additional premium was charged by R-1 from the R-2 on the Employee's Compensation Head. The claimant i.e. deceased mother is fully dependent on the deceased, as he was the only earning member in the family and was unmarried at the time of death. His last drawn salary was Rs.16,000/- per month + Rs.300/- food allowance per day. He was at the age of 43 years at the time of accident. It is alleged that the R-2 was having knowledge about the accident and the same was informed to R-1 immediately after the accident. A notice under section 10 of the Act is deemed to be served upon R-1. The claimant has relied upon the judgment of Hon'ble Supreme Court of India in the case titled Malati Sardar V/s National Insurance Co. Ltd., Morgina Begum V/s M.D. Hanumana Plantation Ltd. and Oriental Insurance Co. Ltd. V/s Kusha Dalabehra of Orrisa High Court, United India Insurance Co. Ltd. V/s Smt. Narendra Kaur of Rajasthan High Court with regard to jurisdiction of the CEC Court in this case. It is alleged that the deceased died during and in course of employment with the R-2 and therefore, the claimant (mother of the deceased) is entitled for death compensation under the EC Act. Along with the claim, application for exemption of court fee, Postmortem Report, Death Certificate, Insurance Policy, Vehicle Registration, Fitness Certificate, Permit, Driving License of the deceased, aadhar card of deceased, aadhar card of claimant and Vakalatnama has been filed.
3. On receipt of the claim, summon was issued to the R-1 and R-2 for appearance on 13.02.2020. The insurance Co. (R-1) was represented through Adv. Manu Kushwaha, received copy of claim and filed WS on 05.03.2020. The R-2 represented through Adv. S. S. Yadav, received copy of claim and filed their WS on 15.12.2020.
4. In the WS the R-1 stated that the claim is not maintainable in the absence of any cause of action against them. The claimant has not sent notice u/s 10 of the Act. There is no case of any accident arising out of employment and hence the Act is not applicable. The deceased was not the employee of R-1. The deceased was not carrying any valid driving license. The R-2 has not obtained permit and fitness certificate for driving the said vehicle. As per section 3 of the Act, no accident has taken place and no personal injury has happened. Further stated that the liability on the R-1 is subject to terms & conditions of the insurance policy. Under the insurance contract there is no provision for interest and penalty. The R-1 admitted that the vehicle in question was insured in the name of R-2 vide the policy and period as mentioned in the claim. All other contents of the claim petition were denied by the R-1.





5. In the rejoinder filed by the claimant on 18.03.2020, it is stated that the WS of R-1 is not supported by any affidavit supplied to them and hence may not be taken on record. The R-1 cannot take the defense of territorial jurisdiction in view of the judgments already given by them in the claim petition. The deceased was working in an unorganized sector where appointment letter and salary slip was not issued to him and based upon judgment of Hon'ble Supreme Court of India in the case titled Maghar Singh V/s Jaswant Singh, the claimant cannot wrongly point a finger at the respondent as his employer. Hon'ble Supreme Court of India in the Tebhabai V/s Raj Kumar Keswani has said that there is no reason why the claimant would file a case on false ground. In the EC Act, 1923 the strict provision of evidence act is not applicable as per the Hon'ble High Court direction in the case titled Parmeshwaram V/s M.K. Parmeshwaram Nair. The R-1 may be directed to comply with the provision of clause 9 of the IRDAI regulations of 2002. The claimant relied upon the judgment of Hon'ble High Court in the case United India Insurance Co. Ltd. V/s Ashwani Kumar & Ors. in which a strict view was taken against the insurance company for raising frivolous plea to avoid their legal liability. The claimant prayed the CEC to impose cost upon the R-1 as per Supreme Court judgment Leelabai V/s Seema Chauhan. Apart from this, all the contents of the WS were objected by the claimant as wrong statement and denied accordingly.
6. In the WS filed by the R-2, the objection related to jurisdiction has been taken. The employment of Sh. Jasbir was also denied by the R-2, the R-1 has denied the incident that happened in Kishangarh and informed that the deceased was not driving the said vehicle from Gurgaon to Gujarat. His vehicle in question is insured by R-1 and therefore is not liable to pay any compensation amount and accordingly prayed to dismiss the claim.
7. In the rejoinder filed by the claimant upon WS of R-2, it is stated that the same is not supported by any affidavit and hence is liable to be rejected and direction be issued for filing supporting affidavit. The R-2 is lying the fact that claimant was not his employee because in the Police complaint dated 29.12.2019, it is mentioned that the deceased employee was posted in the vehicle at the time of the incident. It is the burden of the R-2 to prove that the deceased was not his employee and was not driving the vehicle. The same has been decided by Hon'ble Court in case Mackinon Mackenzie & Co. Pvt. Ltd. V/s Ibrahim Mahmood Issak and Mackinon Mackenzie & Co. Pvt. Ltd. V/s Ritta Fernandes. Apart from this, all the contents of the WS were objected by the claimant as wrong statement and denied accordingly.
8. On 13.01.2021, following issues were framed:
 - i. Whether there exists employer-employee relationship between R-2 and the deceased Sh. Jasbir Singh?
 - ii. Whether the death of Sh. Jasbir was caused due to and out of employment with the respondent?
 - iii. And if yes, to what amount of compensation he is entitled to and what directions are necessary in this regard?
 - iv. Relief.





9. On 21.01.2021, application under Order VI Rule 6 & 7 of the CPC was filed by the claimant side for summoning record clerk from Police Station, Sector-6, Dharuhera, Rewari, Haryana with the records of DD No. 013 and 07 dated 29.12.2019 and PMR Report 844/19 dated 29.12.2019. Upon this, the concerned PS was directed to produce those records before the CEC. None appeared on behalf of the said Police Station where the DD Entry was made.
10. Evidence by affidavit of Smt. Lachhmi (mother of deceased) was filed on 18.02.2021 and matter was adjourned for cross examination. After two adjournments given on 03.03.2021 and 22.03.2021 Smt. Lachhmi was chief examined on 01.04.2021 and was cross examined by the Ld. Counsel Smt. Manu Kushwaha of R-1 on 01.04.2021. In the evidence, the claimant relied upon documents such as copy of postmortem report exhibit AW-1/1, copy of death certificate of deceased exhibited as AW-1/2, copy of insurance policy of the vehicle exhibited as AW-1/3, copy of tax registration fitness permit of vehicle exhibited as AW-1/4, copy of driving license and aadhar card of deceased exhibited as AW-1/5, copy of aadhar card of claimant exhibited as AW-1/6, copy of bank passbook of claimant exhibited as AW-1/7.
11. In the cross examination, Smt. Lachhmi stated that she has two sons and two married daughters, the deceased Jasbir was unmarried. I am residing in my village with my married son. My deceased son was working with M/s Surasksha Service Cargo Services Pvt. Ltd. The deceased was residing at Dharuhera and used to visit his village in 3-6 months after completing his trips. The employer i.e. R-2 has informed her over telephone about the death of his son. She does not have any document in respect of his deceased son service with the R-2. In the suggestions, she emphasized that she has not filed false case against the respondents, the deceased was employed with R-2, the deceased died during the course of employment, the deceased was holding a valid license.
12. The claimant has filed evidence of three other witnesses Sh. Himmat Singh, Sh. Attar Singh and Sh. Surender on 05.07.2021. After granting opportunities for cross examination and issuing summons to the parties. The evidence of Sh. Himmat Singh, Sh. Attar Singh and Sh. Surender was tendered on 02.09.2021. Sh. Surender and Sh. Attar Singh were cross examined by the Ld. Counsel Manu Kushwaha of the R-1 on 27.09.2021. Sh. Himmat Singh was cross examined by the Ld. Counsel Manu Kushwaha of the R-1 on 25.10.2021.
13. In the cross examination of Sh. Surender, it is stated by the witness that he is working as a machine operator and received information about the accident by telephone through his son. The deceased was his brother and he was informed by him that use to work with R-1. He was handed over the body of his deceased brother on 29.12.2019 by the Rewari Hospital in the presence of Police.
14. In the cross examination of Sh. Himmat Singh, it is stated by the witness that he belongs to the same village where the deceased and his mother was residing. He got the information about the death of Jasbeer. He was the part of the group who received his dead body and cremated in the village. He denied that he is giving false statement about the death in order to help the petitioner Lachhmi to get compensation.





15. In the cross examination of Sh. Attar Singh, it is stated by the witness that he residing in the same village of the deceased and petitioner. He received information about death from Sh. Surender who is the brother of the deceased. The deceased Jasbeer was my distant relative (nephew). Few of the village residents collected the deceased body and cremated it in the village at the same day.
16. On dated 05.05.2022, R-2 was proceeded ex-parte as they were not appearing despite various summons after filing the WS. On 02.06.2022, application was filed by the R-2 through his counsel for setting aside ex-parte order dated 05.05.2022 under Order IX Rule 7 of the CPC. This application was heard on merit and was allowed on 28.09.2022 subject to the cost of Rs.5000/- to be paid to the claimant on next date. The cost was paid by the R-2 on 11.01.2023.
17. The R-1 and R-2 were granted sufficient opportunity to file their evidences. The R-2 has filed his evidence by way of affidavit of Sh. Sumit Narwal on 19.04.2023. Sh. Sumit Narwal never appeared before the CEC for recording his chief and presenting before the opposite party for cross-examination of his statement.
18. On 18.10.2023, since the R-1 has failed to file evidence, final opportunity was granted to them with the cost of Rs.3000/-. The R-1 failed to file evidence on 29.11.2023, 12.12.2023, 08.02.2024 and 28.02.2024 therefore opportunity of filing RE of R-1 was closed. The opportunity for R-2 to lead evidence was also closed on the same day and R-2 was accordingly ex-parte once again.
19. On 28.02.2024, the claimant side moved an application under Order XXII Rule 3 of the CPC for bringing the LR of claimant Smt. Lachhmi on record. The claimant side represented through Sh. Surender (elder son of Smt. Lachhmi) through the counsel informed that the original claimant Smt. Lachhmi has expired on 21.11.2023 supported by her death certificate along with the amended memo of party. According to the amended memo 03 LRs namely Sh. Surender, Smt. Kamlesh and Smt. Krishna have been impleaded in place of Smt. Lachhmi.
20. On 15.05.2024, claimant side filed their written arguments, copy of which was supplied to the R-1 in which they once again narrated the entire claim petition. For the purpose of jurisdiction, the claimant relied upon the judgment of Supreme Court of India in the New India Assurance Co. V/s Shyam Sundar, Morgina Begum V/s M.D. Hanuma Plantation Ltd., Malati Sardar V/s National Insurance Co. Ltd., Oriental Insurance Co. Ltd. V/s Kusha Dala Behra (Orissa High Court) and United India Insurance Co. Ltd. V/s Smt. Narender Kaur (Rajasthan High Court). The R-1 in his WS has admitted that the vehicle is insured by them for the period in question in the name of R-2 subject to the terms & conditions of the policy. The R-2 in his WS has also admitted that vehicle was insured by R-1 and therefore R-1 is liable for compensation. In the cross-examination of the claimant Lachhmi, witnesses Attar Singh, Surender and Himmat. No contradiction has been pointed out by the R-1. As per the bank statement of claimant, entries are received from R-2 i.e. the employer by way of NEFT on 10.02.2020 through R-2. The R-1 i.e. Insurance Company and R-2 i.e. Employer both have not filed any RE despite giving many opportunities. The passbook entry shows that the deceased had relationship with the R-2. As per the insurance regulation it is the duty of the insurance company to investigate the





accident but the same has not been done in this case. The claimant relied upon the judgment of Hon'ble Supreme Court of India in the case titled Tibhabai and Ors. Vs Rajkumar Keswani & Ors. in which death compensation was allowed on the basis of oral evidence, Maghar Singh v/s Jaswant Singh in which the court stated that principals of evidence are strictly not applicable before CEC and the applicant need not prove his case beyond doubt. Further reliance is made on Madhya Pradesh High Court Order Smt. Mangla Ben V/s Dilip Motwani & Ors. in which the onus of non-employment was shifted on the employer and not on the employee. The claimant relied upon the judgment of Shivaji Dayanu Patil V/s Vatschala Uttam More in which it is said that the Act is a beneficial legislation. The judgment of Broach Municipality V/s Raiben Chimanlal & Ors. The Gujrat High Court has observed that fact and circumstance of present case has to be related with the death. Further, with regard to interest and penalty the claimant side rely upon the judgment of Pratap Narayan Singh Deo V/s Srinivasa Sabata and Ved Prakash Garg V/s Premi Devi.

21. On 22.07.2024, oral arguments were heard in this case in the presence of Ld. Counsel of claimant and R-1 and opportunity was granted to file written arguments along with supporting judgments on next date of hearing.
22. On 22.08.2024, matter was fixed for arguments by the R-1 which was not filed by them on that date due to the health issue of the main counsel. Since, the oral arguments were already heard on 22.07.2024, proceedings were concluded for order to be announced in open court on 18.09.2024. On this date, the order could not be announced because the insurance company requested time to file their written submissions.
23. Written submissions were filed by the R-1 after concluding the proceedings on 25.09.2024 in which they stated that the application under the Act is not maintainable because deceased Jasbeer was not the employee of R-2 and they relied upon the WS of R-2. The petitioner is not entitled for any compensation under the Act. They relied upon the judgment of National Insurance Co. Ltd. V/s Sharanappa & Ors. in which the elder brother is not entitled for compensation. Further submitted that no FIR was lodged and only GD Entry was recorded in this case. Further submitted that if at all order is passed in favour of claimant, the interest @ 6% only may be imposed.
24. In view of above-mentioned contexts, following are the vital facts which is highlighted beneath which have appropriate relevance with the case:
 - a) The claim is preferred by the Smt. Lachhmi mother of the deceased Late Sh. Jasbir (unmarried) wherein her son died during and in course of employment being overstressed at duty and died due to intra-cranial bleeding and its complications.
 - b) During the course of proceedings, the claimant Smt. Lachhmi expired and his case is now being represented by her LRs.
 - c) The incident was reported by DD Entry on 29.12.2019 at PS – Sector 6, Dharuheda, Haryana. The death occurred in the Rewari hospital, PMR conducted in Govt. Hospital Rewari on 29.12.2019.





- d) The employer i.e. R-2 in his WS has refused to accept that the deceased was his employee and was on business trip as mentioned in the claim. However, the R-2 has not cross-examined the claimant and all her three witnesses on the issue of employer-employee relationship.
- e) The R-1 has denied the fact mentioned in the claim petition however has accepted that they have done the insurance of the vehicle R-2 under which the deceased was found driving at the time he falls ill and died while taking to the hospital.
- f) The claimant in her evidence has filed PMR, Insurance policy, death certificate, vehicle registration related documents, DL Identity proof, bank statement etc. As per the bank statement of Smt. Lachhmi, he has received Rs.25,000/- in Oct., 2020 from the R-2 i.e. Employer. This goes a long way in identifying the relationship between the deceased and the R-2.
- g) In the evidence of three witnesses, the death has been verified to have happened during the duty hours and while taking to hospital for treatment. In the cross-examination of these three witnesses, nothing adverse have come against the claimant side to establish that the claimant was not the employee of R-2 and that he is not covered under EC Act, 1923.
- h) The R-1 and R-2 conduct during the proceedings was also not up to the expectation of the CEC and therefore two times cost have been imposed upon them. The R-1 i.e. the insurance company has failed to pay the cost of Rs.3000/- to the claimant.
- i) The vehicle was insured by the R-1 in favour of the R-2 and therefore R-2's employees are automatically covered under the provisions of the insurance as legal liability under EC Act, 1923.
- j) As per the judgment of the various Courts, the R-1 here has to fit into the shoes of the R-2 and should pay the compensation to the applicant directly without going into the longer process of reimbursement to the employer and later on employer paying the employee/applicant. The shorter route is preferable because it saves the valuable time of the parties and the beneficiary get benefited after passing of CEC order and without entering into legal communications with the R-1 and R-2, unnecessarily.
- k) In response to the show cause notice issued for interest and penalty u/s 4(A)3(b) of the Act, no response was received from R-1 and R-2.

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-1/R-2. As per the judgment of Hon'ble 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. The Hon'ble Supreme Court has held that the owner/employer who has taken a plea that the deceased was not his employee but that remained only a plea unsupported by any evidence on record. The onus of proof therefore shifts upon the respondent to prove that the deceased was not his employee.

25. After considering 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 late Smt. Lachhmi (now deceased) through her LRs is found to be entitled for death compensation, along with interest, penalty, funeral expenses and unpaid cost as per the provisions laid down under the Act. Since, the vehicle of the employer R-2 was insured by R-1 and therefore, the liability of Employer i.e. R-2 is being shifted to R-1 as the insurance has indemnified the same. The death compensation along with interest, funeral and which is the liability of the employer i.e. R-2, is in this case is required to be paid by the insurance company i.e. R-1.
26. As per the Act, the death compensation is calculated on the basis of age and relevant factor of the deceased employee. In this case, no salary record of deceased employee Late Sh. Jasbir is available in case file, the same is restricted to Rs.8000/- as per the maximum prevailing wage limit notified by the Government under the Act in respect of accident occurred on 28.12.2019. The age of the claimant is taken as 43 years on the basis of Death Certificate issued by Govt. of Haryana and the age factor of 43 years is 175.54 as per Schedule IV of the Act.

Calculation of Principal Amount in respect of deceased employee Late Sh. Jasbir:

As per Section 4(1)(a) of the Act in this case death of an employee, claim amount is calculated as under:

$$\begin{aligned} & 50\% \text{ of monthly wages} \times \text{age factor} \\ & = 50/100 \times 8000 \times 175.54 = \text{Rs.}7,02,160/- \end{aligned}$$

Since, the liability has been shifted from R-2 to R-1, the Insurance Company is held liable to pay the principal amount of Rs.7,02,160/- (Seven Lakhs Two Thousand One Hundred Sixty)

Calculation of Interest:

Apart from above, since the employer/insurance company has failed to release the entitled death compensation amount within specified period as mentioned in the Act i.e.





*Issued Pursuant to Order of the
Court, B.M. Court*

within one month from date of accident i.e. 28.12.2019. Therefore, the respondents are also liable to pay interest @ 12% of the principal amount of Rs.7,02,160/- as per section 4A(3)(a) of the Act. The said interest is calculated w.e.f. 28.01.2020 till 22.08.2024 (the date on which proceedings were concluded for decision). The interest amount for the default period (04 years 06 months 24 Days) therefore comes to Rs.3,84,784/- which the respondents have to deposit along with the principal amount.

Since, the liability has been shifted from R-2 to R-1, the Insurance Company is held liable to pay the interest of Rs.3,84,784/- (Three Lakhs Eighty-Four Thousand Seven Hundred Eighty-Four Only)

Calculation of Funeral Expenses:

Since, the liability has been shifted from R-2 to R-1, the R-1 is also held liable to pay the funeral expenses of Rs.5000/- as mentioned in the Act.

Calculation of Penalty Amount:

In this case, show cause notice dated 13.01.2021 was already issued by the then CEC directing both the respondents to explain why penalty should not be imposed. Since, no reply received on this behalf from both R-1 & R-2 and therefore this Court is of the opinion that penalty @ 15% each shall be imposed upon both R-1 & R-2 which would be just and fair to compensate for delayed payment. The R-1 is accordingly imposed penalty amount @ 15% which comes to Rs.1,05,324/- and similarly the R-2 is also imposed penalty amount @ 15% which comes to Rs.1,05,324/-.

27. In view of above, the petition is decided in favour of the LR's of the claimant - Late Smt. Lachhmi (who was the mother of the deceased at the time of filing the claim and expired on 21.11.2023). Accordingly, the Respondent no. 1 i.e. M/s Bajaj Allianz General Insurance Co. Ltd. is directed to pay "the full of the principal amount, interest, funeral expenses, cost imposed on 18.10.2023 and penalty all total amounting to Rs.12,00,268/- (Rupees Twelve Lakhs Two Hundred Sixty-Eight Only) in the name of Commissioner Employees Compensation, South East within 30 days of passing of this order.
28. The employer i.e. R-2 is required to deposit only the penalty amount of Rs.1,05,234/- (Rupees One Lakh Five Thousand Two Hundred Thirty-Four Only) in the name of Commissioner Employees Compensation, South East within 30 days of passing of this order.
29. It is pertinent to mention that failure to deposit the aforesaid amount by R-1 and by R-2 within 30 days of passing of this order, shall attract the recovery proceedings against both R-1 and R-2 as per the provisions of the EC Act. In case the ordered amount is not deposited by R-1 and R-2 within 30 days of passing of this order additional interest w.e.f. 22.08.2024 till the period of deposit shall be added in the amount mentioned in the above Para.

Given under my hand and seal of this 16th day of December, 2024.

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