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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. 11/CEC/NDD/2020

Dated 07/03/2025

Old No. CEC/SD/D/80/2021

New No. CEC/SED/D/46/2022 11347-1352

In the matter of:

Sh. Ramdin @ Ramadhin Singh S/o Sh. Ajab Singh & Ors.  
All R/o Village Nangla Bhura, Aung, Distt. Mainpuri  
U.P. - 205262

.....Claimant

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

.....Claimant's Counsel

V/s

M/s HDFC Ergo General Life Insurance Co. Ltd.  
Ambadeep Building, 14, K.G. Marg  
Connaught Place, New Delhi-110001

.....Respondent No. 1

Adv. Ankit Kalra  
Chamber No. 1303, Rohini Courts  
Delhi-110085

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

Sh. Rajesh Kumar Mishra S/o Sh. Krishna Murari Mishra  
R/o 977, Block 9<sup>th</sup> Floor, Gaur Cascade Apartment  
Raj Nagar Extension, NH-56, Ghaziabad  
UP - 201017

.....Respondent No. 2

Adv. Anand B. L. Srivastava  
C-157, C.L. Joseph Block  
Tis Hazari Courts, Delhi-110054

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

**ORDER**

1. This order shall dispose of the claim petition filed on 07.10.2020 by Sh. Ramadhin @ Ramdin Singh & Smt. Shitala Devi (Father and Mother of the Deceased Late Sh. Pushpendra (hereinafter referred to as claimant) before the Commissioner under Employee's Compensation Act, 1923 (hereinafter referred to as the Act) at District New

0/c





Delhi, Labour Department, GNCTD and thereafter file was transferred to District South and again 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 Sh. Ramadhin that his son Late Sh. Pushpendra was employed as a Driver in the vehicle UP-14GT-4709 (Truck) which is owned by R-2 i.e. Sh. Rajesh Kumar Mishra. On 25.08.2020, when the said Driver was on his duty. He met with an accident and resultantantly he died; the said vehicle was loaded with medicine and was proceeding from Delhi to Lucknow, about 30KM prior to Lucknow was hit by another vehicle driven in negligent coming from the wrong side. The deceased was extracted from the crushed cabin of the vehicle with the help of the Crain and was taken to Trauma Centre, Lucknow whereafter conducting postmortem, body was handed over to the family and he was cremated at his village. The FIR registered in this case was 309/2020 in PS Banthara on 26.08.2020. The said vehicle was owned by R-2 and was insured by R-1 i.e. M/s HDFC Ergo General Insurance Co. Ltd. vide policy no. 2315202022469602000 for the period 30.11.2019 to 29.11.2020 and additional premium was charged by the R-1 from the R-2. The claimants are dependent upon the deceased and are entitled to receive the death compensation as per the EC Act considering the driver wages as Rs.20,000/- per month and Rs.300 as daily food allowance. The R-2 was having the knowledge about accident since the day one and he has already informed the insurance company about the accident. Regarding jurisdiction issue, the claimant relied upon the certain judgments of Hon'ble High Court and Supreme Court. In the last, the claimant prayed that the death compensation may be granted to the claimant along with interest and penalty. Along with the claim, application for exemption of court fee, Copy of FIR, Postmortem Report, Death Certificate, Police Complaint GD No. 25 and GD No. 39, Pollution, 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 05.11.2020. On this date, the R-1 appeared and subsequently R-2 appeared on 08.12.2020, both of the respondents were provided with the claim copy for filing their reply.
4. In the WS filed by the R-2 on dated 11.02.2021, the objection related to jurisdiction has been taken. The deceased driver was married with Ms. Roshni from Orissa but she has not been made party in this case. No accident was caused due to the fault of the R-2. The insurance company has declared that they have taken the insurance policy from R-1 which was live during the date of accident. They have accepted that the deceased was driving the said vehicle when the accident took place and there is no violation on the part of R-2 in terms of insurance policy.
5. After receiving the preliminary objection, the then CEC Dr. Rati Singh has issued notice to the CEC, U.P. under venue of proceedings informing the Labour Commissioner about the proceedings being heard by the CEC of Delhi.
6. In the rejoinder filed by the claimant on dated 16.03.2021 upon WS of R-2, it is stated that the relationship and death of the deceased at the employment is already proved by the WS. In case, the R-1 has processed the OD Claim of the vehicle, they are also required to





pay compensation to the deceased under EC Act and accordingly prayed the CEC to direct the R-1 to file survey report, final report of the investigator. In the reply to the preliminary objection, the claimant side has mostly denied all the paragraphs from 1 to 8.

7. On 16.03.2021, the insurance company i.e. R-1 filed their reply giving their views about the case. They have admitted that a policy in the name of R-2 was issued for vehicle no. UP 14 GT 4709 for the period 30.11.2019 to 29.11.2020 which was subject to fulfilment of terms and conditions of the policy. The CEC has no jurisdiction to hear the case based upon section 21 of the Act. No relationship of employer-employee exists between the deceased and the R-2. The claimant has not disclosed whether the deceased was married or unmarried. In case the claimant has filed case before MACT under MV Act, the present case is not maintainable. The documents filed along with the claim does not disclose that the deceased was driving the vehicle UP 14 GT 4709 or he was travelling in the said vehicle. In the para-wise reply on merit, most of the contents of the claim petition was denied by the R-2.
8. The claimant has also filed the rejoinder of reply of the R-1 on 16.03.2021, in which it is stated that the claim is not supported by affidavit and cannot be taken on record. The R-1 has failed to comply with the provisions of IRDAI and concerned Rules. The accident took place in the PS jurisdiction Banthara, District Lucknow, UP vide FIR No. 309 dated 26.08.2020 and the deceased driver was holding the valid license. The postmortem was conducted at the District hospital, Lucknow vide PMR No. 2881/2020 dated 28.08.2020. Regarding jurisdiction, they relied upon the judgment of Malati Sardar V/s National Insurance Co. Ltd. and Oriental Insurance Co. Ltd. V/s Kusha Dalabehra. The contents of the WS of R-1 was rejected by the claimant denying them as incorrect.
9. On dated 21.09.2021, the claimant side moved application for changing the address of the R-1 from K.G. Marg to Nehru Place and thereafter case was transferred from District New Delhi to the District South vide order dated 21.10.2021. Upon receiving the claim filed, notice was issued to all the parties for appearance before CEC, South.
10. On 11.05.2022, following issues were framed:
  - i. Whether the Authority has territorial jurisdiction on the matter?
  - ii. Whether there exists employer-employee relationship between the deceased workman and the respondent?
  - iii. Whether Sh. Pushpendra Kumar sustained fatal injuries out of and during employment and if yes?
  - iv. To what amount claimant are entitled to and what directions are necessary in this regard?
11. Arguments were heard on 08.06.2022 and 20.07.2022 by the then CEC Sh. Amardeep who has passed the detailed speaking order on 20.07.2022 allowing the jurisdiction issue in favour of the claimant and against the respondent.
12. Evidence was not filed by the claimant on 22.08.2022, but filed on 14.09.2022. In the meantime, show cause notice for penalty was issued. The claimant filed his evidence by way of affidavit on dated 14.09.2022 duly attested by Oath Commissioner dated

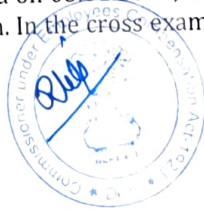






05.09.2022. The evidence was tendered on 08.12.2022 and was partly cross-examined by the R-1's Counsel Sh. Krishan Maurya on this date. The claimant evidence is marked as AW-1/A having signatures at Point 'A' and 'B' and filed supporting documents such as certified copy of FIR AW-1/1, CrPC 174 proceeding as Mark A, GD No. 25 and GD No. 39 as Mark B & C respectively, copy of postmortem report Mark D, aadhar card of deceased father AW-1/2, aadhar card of deceased mother AW-1/3, driving license AW-1/4, aadhar card of deceased Mark E, Insurance policy Mark F, pollution certificate Mark G, Fitness certificate Mark H, Authorization certificate of vehicle Mark I, National Permit of vehicle Mark J.

13. In the part cross-examination, the claimant stated that he studied up to class 10, but he has no any document to prove his qualification, he has no document to prove the employment of his deceased son. After accident, he visited the accident place, but do not know the details of the vehicle who hit from the opposite side, neither have made the said vehicle as party to this case. My son was married and was 27 years of age at the time of accident but he has no children. After the death, my son wife got re-married and left our home and did not return back so we don't know where is she residing. In the continuation of cross examination on 11.01.2023, the claimant stated that my deceased was working with Sh. Rajesh Mishra i.e. R-2 and was going from Delhi to Lucknow on day of accident and no person was accompanying him in the vehicle at the time of accident and there was no conductor. First, I went to the hospital and then to accident site. He has denied all the negative suggestions given by the R-1's Counsel during the cross examination.
14. The claimant has filed evidence of other witnesses Sh. Deewan Singh and Sh. Hridyaram on 28.03.2023 duly attested by Oath Commissioner on 24.02.2023. The evidence of Sh. Deewan Singh and Sh. Hridyaram was tendered on 02.05.2023 and were cross examined on the same day by the Ld. Counsel Sh. Kamaldeep of the R-1.
15. In the cross examination, Sh. Deewan Singh @ Sh. Dilip stated that he is driver by profession and working in Sahibabad and he has a vehicle in his name but he is not carrying any document of the vehicle. The deceased Sh. Pushpendra was my nephew and claimant Sh. Ramadhin is my elder brother. His counsel has explained him the contents of the affidavit, he received a call from unknown person that Sh. Pushpendra has suffered injury thereafter he along with Sh. Hridyaram reached the place of accident and came to know that Sh. Pushpendra has expired and after due legal formalities, body was handed over to them which was taken to Mainpuri for cremation. He stated that the deceased was having a wife but has no children. He stated that the salary of the deceased was Rs.20,000/- and food allowance was Rs.300/- per day. He has denied all the negative suggestions given by the R-1's Counsel. The R-2 Counsel Adv. Anand Srivastava did not cross examine the witness. Exactly, similar statement was given by another witness Sh. Hridyaram during his cross examination by R-1 Counsel Adv. Kamaldeep. The R-2 Counsel Adv. Anand Srivastava did not cross examine the witness.
16. On fixing the matter for respondent evidence which was adjourned for 01.06.2023, 19.07.2023, 23.08.2023, 27.09.2023, 26.10.2023 and finally evidence of R-2 was filed on 07.12.2023 in the shape of Sh. Rajesh Kumar Mishra duly attested by Oath Commissioner dated 31.05.2023. The evidence was tendered on 03.01.2024, which was cross-examined by the Ld. Counsel of claimant Sh. Daksh Nain. In the cross examination, the witness of R-





2 stated that the wife of the deceased Mrs. Roshni and is not aware whether where she is presently living nor having any contact number of her.

17. On 04.04.2024, both the respondents appeared through their counsels informed that they do not want to file any/further evidences and therefore next date was fixed for arguments.
18. On 15.05.2024, claimant side filed their written arguments, copy of which was supplied to the R-2 in which they once again narrated the entire claim petition. They re-iterated that the Truck was owned by R-2 and the time of accident which was insured by R-1 vide policy no. 2315202022469602000 for the period 30.11.2019 to 29.11.2020 and additional premium was also charged by the R-1 from the R-2 under EC Act, 1923. In the WS, the insurance has denied the averments in the claim but has accepted the facts that the said vehicle was insured. The R-2 in his WS admitted the fact of employer-employee relationship and the death of their employee in the accident was driving the said vehicle holding a valid driving license for the aforesaid policy. After framing of issues, the claimant has filed series of documents exhibit 1 to 4 and Mark A to J. The claimant has supported the claim through two witness Sh. Deewan Singh and Sh. Hridyaram, all were cross examined by the respondent counsel. By going to the contents of FIR, it is clear that the deceased employee was a Driver of the R-2 and died during and in course of employment. Insurance company has failed to fulfil his obligations as per IRDAI Rules. The claimant has relied upon the judgment of State of Mysore V/s SS Makapur in which the Hon'ble Supreme Court stated that the quasi-judicial Tribunal are not bound to follow the strict procedure as laid down for the Court regarding rule of evidence. Claimant also relied upon judgment of Mackinnon Mackenzie and Co. Pvt. Ltd. V/s Ibrahim Mehmood Issak and Rita Fernandez case where burden of proof lied with the employer. As regards, issue of interest and penalty and indemnification by the Insurance Co. The claimant relied upon the judgment of Pratap Narayan Singh Deo V/s Srinivasa Sabata and Ved Prakash Garg V/s Premi Devi.
19. On 03.07.2024, the R-2 Counsel informed that they would not file the arguments and will rely upon their WS. On the same day, R-1 and R-2 was issued show cause u/s 4(A)3(b) of the EC Act to explain why penalty should not be imposed against R-1/R-2. Earlier also, the show cause notice was issued vide notice dated 10.11.2022.
20. On 22.07.2024, oral arguments were heard in this case in the presence of Ld. Counsel of claimant and respondent and opportunity was granted to respondent to file written arguments along with supporting judgments. Proceedings were concluded for order to be announced. The R-2 has filed their written arguments after 03 days of reserving the order.
21. Written submissions were filed by the R-1 after concluding the proceedings on 25.07.2024 in which they stated that claim is not maintainable because the main beneficiary i.e. wife who has not been impleaded as party in this case, because this has surfaced during evidence stage. R-1 has not disclosed whether any driver in the name of Sh. Pushpendra Kumar was employed by them. The claimant has not provided any service record to prove the employment of the deceased. In the absence of relationship, the R-1 is not liable to indemnify the R-2. No proof of salary of Rs.18,000/- is placed on







record. The insurance company has not received any intimation w.r.t. death of employee during the course of employment. Moreover, the jurisdiction is also out of the Delhi.

22. 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 Sh. Ramadhin and Smt. Sheetala Devi (father and mother of the deceased) Late Sh. Pushpendra (married) wherein their son died during and in course of employment after being hit by another vehicle coming from wrong side while the deceased was driving the said vehicle.
- b) In the claim, there is no mentioning about the deceased wife, however during the cross-examination the claimant informed that the deceased was married with Ms. Roshni and she left her husband when he died within a month.
- c) The FIR, the postmortem, the GD Entry and other documents confirm that the accident took place while he was driving the said vehicle of the R-2.
- d) The R-2 has accepted that the deceased was his employee and was driving the said Truck when he was hit by an accident and later died.
- e) The R-2 has in his WS has stated that the R-1 has insured his vehicle and the policy was live at the time of accident. However, no statement with regard to OD Claim has been declared by the R-1/R-2.
- f) The issue of jurisdiction has already been decided by the then Ld. CEC Sh. Amardeep.
- g) The case was transferred from New Delhi to South and then to District South East based upon varying territorial jurisdiction with the Delhi Government.
- h) In the cross examination of the claimant and his two witnesses, nothing adverse against each of them.
- i) The R-1 has not lead any evidence nor produced any witness. The R-2 has appeared himself as a witness but has not said anything adverse against the deceased and the claimants.
- j) The deceased was having a wife named Ms. Roshni, who has not been made party in this case or she may not be aware about her legal rights.
- k) Since, there is an admission on the part of R-2 regarding the employment, accident and insurance policy, there is nothing to believe that the claim of the deceased is not false and fabricated.





- l) The relationship between the R-2 and deceased was of employer-employee and between R-1 and R-2 as insurer and insured.
- m) The rights of deceased wife Ms. Roshni can be protecting by offering her suitable compensation at the time of disbursement or entertaining her claim in case she appears before the CEC till the final disposal of the case.

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. No adverse document has been placed on record by the R-1 so as to allow their contention on non-availability of employer-employee relationship and violation of any terms & conditions of the Insurance Policy. No grounds are available for the CEC to take decision of disallowing the claim petition of deceased's father and mother and rejecting the death compensation claim.

23. 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 Sh. Ramadhin @ Ramdin & Ors. is found to be entitled for death compensation, along with interest, penalty, funeral expenses 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.
24. As per the Act, the death compensation in this case is calculated on the basis of age, relevant factor and wage limit of the deceased employee in respect of accident occurred on 25.08.2020 and subsequent death. In this case, no salary record of deceased employee Late Ms. Asha is available in case file, the same is restricted to Rs.15,000/- as per the maximum prevailing wage limit notified by the Government under the Act as per latest notification No. 71 (E) dated 03.01. 2020 the monthly wages for the purpose of sub section 1 of section 4 have been notified as Rs. 15,000/- with effect from the date of publication of this notification





in official gazette. The age and age factor of the claimant is considered as 27 years and 213.57 as per Schedule IV of the Act. The age is taken as 20 years on the basis of Postmortem report issued by AIIMS Hospital.

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

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

$$\begin{aligned} & 50\% \text{ of monthly wages} \times \text{age factor} \\ & = 50/100 \times 15000 \times 213.57 = \text{Rs.}16,01,775/- \end{aligned}$$

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.16,01,775/- (Sixteen Lakhs One Thousand Seventy Hundred Seventy-Five Only)

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. within one month from date of accident i.e. 25.09.2020. Therefore, the respondents are also liable to pay interest @ 12% of the principal amount of Rs.16,01,775/- as per section 4A(3)(a) of the Act. The said interest is calculated w.e.f. 25.09.2020 till 22.07.2024 (the date on which proceedings were concluded for decision). The interest amount for the default period (03 years 09 months 27 Days) therefore comes to Rs.7,35,215/- 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.7,35,215/- (Seven Lakhs Thirty-Five Thousand Two Hundred Twenty-Five 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 should 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 @ 30% which comes to Rs.4,80,533/- and similarly the R-2 is also imposed penalty amount @ 10% which comes to Rs.1,60,178/-.

25. In view of above, the petition is decided in favour of the LR's of the claimant - Sh. Ramadhin @ Ramdin Singh (who is the father of the deceased at the time of filing the claim). Accordingly, the







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Respondent no. 1 i.e. M/s HDFC Ergo General Insurance Co. Ltd. is directed to pay "the full of the principal amount, interest, funeral expenses and penalty all total amounting to Rs.28,22,523/- (Rupees Twenty-Eight Lakhs Twenty-Two Thousand Five Hundred Twenty-Three Only) in the name of Commissioner Employees Compensation, South East within 30 days of passing of this order.

26. The employer i.e. R-2 is required to deposit only the penalty amount of Rs.1,60,178/- (Rupees One Lakh Sixty Thousand One Hundred Seventy-Eight Only) in the name of Commissioner Employees Compensation, South East within 30 days of passing of this order.
27. It is pertinent to mention that failure 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. 23.07.2024 till the period of deposit shall be added in the amount mentioned in the above Para.

Given under my hand and seal of this 24 day of March, 2025.

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

