



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

No. EC/ D/39/WD/20/1377 — 1382

Dated: 12/03/25

In the matter of:

Smt. Manju & Others
H No. 235, Near Saini Chaupal
Mundka, New Delhi-110041

.....Claimant

Sh. L.K. Dahiya (Adv)
Chamber No. 507, Western Wing
Tis Hazari Court, Delhi-110054.

.....Claimant's Counsel

Vs

Sh. Daljeet S/o Lt. Sh. Ram Kumar
H. No. 235, Near Saini Chaupal
Mundka, New Delhi – 110041.

.....R-1

Sh. Vaibhav
Chamber No. 372, Western Wing
Tis Hazari Courts
New Delhi-110054

.....R-1's Counsel

M/s Go Digit General Insurance Co. Ltd.
91, Spring Board, 7668 Chandra Bhawan
Building 3rd Floor, Nehru Place,
New Delhi – 110019.

.....R-2

Sh. S.P. Jain (Adv.)
39, Western Wing, Tis Hazari Court
Delhi – 110054.

Sh. Shailendra Rai
Chamber No. 316, 3rd Floor
Lawyers Chamber Block
Rohini Courts Complex
Delhi – 110085

.....R-2's Counsel

ORDER





1. This claim under the EC Act, 1923 was initially filed in the West District before the CEC (West) and was heard from November, 2020 till March, 2023 and thereafter case was transferred to HQ with the approval of the competent Authority for speedy disposal. The case heard at HQ from April, 2023 to May, 2024. Case was reserved for order in May, 2024 but could not be passed due to administrative reasons beyond control. With this order, the claim petition is disposed of in the month of March, 2025 by the order of the CEC (South East) after being transferred from HQ to South East.
2. The incident which caused the claimant Smt. Manju, Ms. Manshi, Master Bhavesh, Master Uttam and Smt. Maya Devi together to file claim petition under section 3 of the EC Act, 1923 against the respondent no. 1- Sh. Daljeet and respondent no. 2- M/s Go Digit General Insurance Co. Ltd is that Sh. Baljeet Swami who was employed as a driver with the R-1 on the last drawn salary of Rs. 20,000/- to drive tempo Ashok Leyland vehicle no. DL-01-LAB-6833 which is owned by R-1, met with an accident on 21.03.2020 at Greater Noida and got burn injury leading to death. The said vehicle of R-1 is insured by R-2 vide policy no. D013484243/13032020. The deceased person was carrying valid driving license no. MH3120100017174 for the period 01.06.2006 to 31.05.2026 issued by Maharashtra State Motor Driving Licensing Authority. After the accident the driver could not escape and got trapped inside the vehicle. He was taken to Kailash Hospital Greater Noida by the police personal but was declared brought dead by the hospital. The MLC No. 1526/19-20KHL was prepared by the Hospital and police complaint was registered vide GD No. 011 dated 21.03.2020. After this dead body handed to the family members and last rites were completed. Late Sh. Baljeet was the only earning member in the family, after his death petitioner are facing mental and financial problem. The deceased is survived by his mother, wife, minor children. It is the duty of the R-1 to compensate petitioner who was employed in his vehicle and was drawing the same at time of death. The R-1 failed to pay death compensation and therefore the petitioners issued speed post notice on 19.08.2020 but the R-1 did not reply and therefore they have approached CEC Court. The R-2 is the insurance company who has done policy of the said vehicle and therefore R-2 is responsible for compensation of damaged goods, vehicle, driver etc as per the insurance policy. At the time of death, the deceased was 36 years of age and was physically fit and healthy. Had he been living he has to earn and take care of his family. The claimants held both R-1 and R-2 responsible for payment for compensation amount of Rs. 50 Lakhs along with interest and penalty. The claimant accordingly prayed before the CEC to pass an order granting them relief of death compensation as per the provision of the Act. Along with the claim petitioners have filed documents like Authority letter, application for court fees waiver, affidavit of claimants, etc.
3. On receipt of the claim, summon was issued to the R-1 and R-2 for appearance on 17.11.2020, 29.01.2021, 09.03.2021, 06.08.2021, 08.10.2021, 04.01.2022, 08.02.2021, 24.03.2022, 12.05.2022, 09.06.2022, 04.08.22. During these days, WS and rejoinders were respectively filed by the parties. The Insurance co. is represented through Adv. S.P. Jain/Adv. Shailender Rai and R-1 is represented through Adv. Vaibhav Solanki.





4. In the WS filed by R-2 on 06.08.2021, stating therein that the claim is not maintainable because applicant has not filed any document to establish the death/accident occurred in which the deceased while working as a driver on vehicle no. DL-LA-6833 and working with R-1. No documentary proof of employer-employee relationship has been filed by the claimant. Applicant has not affixed Court fee therefore claim is not maintainable. The liability of insurance company is subject to terms & conditions of insurance company. The applicant has not filed driving license, permit of the vehicle and thus has done violation of conditions of permit and therefore R-1 is liable for compensation. In the para-wise reply, all the contents of the claim from Para 1 to 17 have been denied as wrong and incorrect. The same is supported affidavit of Sh. Heramb Sharma, Associate Manager from M/s Go Digit General Insurance Co. Ltd.
5. In the rejoinder filed by the claimant upon WS of R-2, they have denied the WS contents of Para No. 1 to 9 in their preliminary objections. In the para-wise reply on merit also all the contents of the WS from Para 1 to 17 have been denied as incorrect and misleading.
6. In the WS filed by the R-1 stating therein that the claim is not maintainable as the applicant have not file any document to substantiate that aforesaid vehicle was involved in the present accident. There is no document to prove that the deceased has expired during and in course of employment or the deceased was on duty on the inspection of the R-1. The claimant has not affixed the court fee with the claim. The R-1 has taken the insurance from R-2 vide policy no. D013844243/1303/2020 for the period 13.03.2020 to 12.03.2021. In the para wise reply, the R-1 informed that it is a matter of record with respect to Para No. 1 to 17 except para no. 12 & 16 which has been denied. The WS is supported by affidavit of Sh. Daljeet.
7. In the rejoinder filed by the claimant upon WS of R-1, they have denied the WS contents of Para No. 1 to 7 in their preliminary objections. In the para-wise reply on merit also all the contents of the WS from Para 1 to 17 have been denied as incorrect and misleading.
8. On 04.08.2022, following issues were framed:
 - i. Whether the deceased Sh. Baljeet died due to injury sustained by him during and in course of employment under the R-1, and if yes whether the claimants are entitled to claim compensation under EC Act, 1923, if yes what amount?
 - ii. Any other relief.
9. Evidence by way of affidavit was filed by the claimant side through its witness Smt. Manju duly attested by the Oath Commissioner dated 24.09.2022 exhibited as PW-1/A. Along with the evidence, he has filed documents such as aadhar card exhibit PW-1/1, aadhar card of petitioner no. 2 exhibited as PW-1/2, aadhar card of petitioner no. 3 exhibited as PW-1/3, aadhar card of petitioner no. 4 exhibited as PW-1/4, copy of driving license exhibited as PW-1/5, vehicle insurance policy PW-1/6, death certificate of workmen exhibited as PW-1/7,





aadhar card of workman exhibited as PW-1/7A, GD No. 011 of PS Knowledge Park exhibited as PW-1/8, medical documents exhibited as PW-1/9, registration certificate of the vehicle PW-1/10, legal notice exhibited as PW-1/11. Statement of claimant was recorded over oath on 01.11.2022.

10. In the cross-examination Smt. Manju stated before Sh. Vaibhav Solank, Ld. Counsel of R-1 that she studied up to class 5 and is a housewife having three children Malik, Bhavish and Uttam. They studied in the Rajender Modern School, her expenses are Rs.18000/- to Rs.19000/- per month. She earned by selling milk for Rs.5/6000 per month, the balance amount she receives from her parent and relatives as loan. The deceased Sh. Baljeet Swami was my son who was driving Tempo of R-1 earning Rs.19,000/- to Rs.20,000/- per month at the time of his death.
11. Evidence by way of affidavit was filed by the witness Smt. Maya duly attested by the Oath Commissioner dated 24.09.2022 exhibited as PW-1/A. Along with the evidence, she has filed documents such as aadhar card exhibit PW-2/1. Statement of witness was recorded over oath on 01.11.2022.
12. In the cross-examination Smt. Maya stated before Sh. Vaibhav Solank, Ld. Counsel of R-1 that she is an illiterate housewife and her expenses are Rs.18,000/- to Rs.20,000/- per month. She earned by selling milk for Rs.5/6000 per month, the balance amount she receives from her parent and relatives as loan. The deceased Sh. Baljeet Swami was my son who was driving Tempo of R-1 earning Rs.19,000/- to Rs.20,000/- per month at the time of his death.
13. On 19.04.2023, an application was moved by the M/s Go Digit General Insurance Co. Ltd. under Order 9 Rule 7 of the CPC for setting aside ex-parte order. In this application, they stated that the previous counsel left the case and therefore they could not appear before the Authority. They have not received the Court notice till date, the reason for their absence is non-deliberation and unintentional and they have filed this application within the limitation period. No supporting affidavit is enclosed with this application, however vakalatnama of Adv. Shailendra Rai is filed.
14. On 05.06.2023, the reply was filed by claimant side stating that the R-1 was ex-parte and the present application is for creating delay All the contents of the application of Para No. 1 to 6 has been denied by the claimant side duly supported by affidavit of Smt. Manju, Smt. Maya and duly signed by Adv. L.K. Dahiya.
15. The setting aside application was allowed vide separate speaking order dated 27.09.2023 by imposing a cost of Rs.4000/- upon the R-2 which was to be paid on NDOH 05.10.2023. The R-2 stopped appearing after the setting aside application was allowed and they were again imposed cost of Rs.8000/- making it total to Rs.12,000/-.
16. The counsel of R-2 moved an application for waiving of the cost on 14.12.2023 which was partially allowed and cost was reduced from Rs.12,000/- to Rs.7500/-. Vide order dated 04.01.2024. The R-2 has paid the cost on 01.02.2024.
17. On 01.02.2024, Smt. Manju & Smt. Maya was cross examined by Ld. Counsel of R-2. In the cross-examination Smt. Manju stated that they are residing in the same building with the R-1





but living at different floors, she admitted that Sh. Baljeet & Sh. Daljeet are real brothers and the deceased was taking care of the vehicle, she has denied that the vehicle was purchased for Sh. Baljeet to take care of his livelihood. Sh. Daljeet is in the business of DJ Music. After the accident, the vehicle was taken away by some agency and she has no knowledge about vehicle being taken back on superdari. She is selling milk for last 18 years and earning Rs.5-6000/- per month by selling the milk. The accident took place at Pari Chowk, Greater Noida and she is not the eye witness. The details of the MLC is mentioned in the hospital records referred to SHO. She has not filed any salary/income proof of the deceased. She admitted that she understands the contents of the affidavit. She has denied all the negative suggestions given by the R-2's Counsel. In the cross examination, Smt. Maya stated that she has four children Daljeet, Manjeet, Manisha & Baljeet (deceased). Baljeet was her elder son and they were residing in same building, presently she is staying with Smt. Manju. She is getting pension of Rs.2500/- per month. The said vehicle was purchased by 1.5 years back and she has not contributed any amount in purchase of the vehicle. She is selling the milk from the cattle owned by her and earning Rs.5/6000/- per month by selling the milk. She is not the eye witness of the accident, the MLC and PMR is not filed in the court record. However, MLC No. 1526/19-20 dated 21.03.2020 is mentioned in the hospital report given to SHO. She understands the contents of the affidavit drafted by her advocate on her oral submission. She has denied all the negative suggestions given by the R-2's Counsel.

18. The evidence by way of affidavit of R-1 by Sh. Daljeet duly attested by Oath Commissioner dated 13.02.2023 as RW-1/A. Along with evidence, he has filed the documents such as aadhar card exhibited as RW-1/1, insurance policy RW-1/2, registration certificate RW-1/3, fitness certificate RW-1/4, permit certificate RW-1/5, Ex.RW-1/4 & Ex.RW-1/5 exhibited, letter of cancellation of registration exhibited as RW-1/6. The statement of Sh. Daljeet was recorded over oath on 13.03.2024.

19. In the cross examination, Sh. Daljeet in the presence of Ld. Counsel of opposite party (Claimant) Sh. L.K. Dahiya stated that he is aware about the contents of the claim petition and affidavit. He informed that deceased was working as a Driver on his commercial vehicle for last 06/07 years and drawing salary of Rs.20,000/- per month, no appointment letter was issued to Sh. Daljeet as he is having a small work. The vehicle was registered with the insurance company R-2.

20. In the cross-examination, Sh. Daljeet in the presence of Ld. Counsel of R-2 Sh. Shailender Rai that he is the real brother of the deceased Sh. Daljeet and postal address of both are the same. He has not filed any document of salary proof of the deceased. He is working as a DJ sound business in Mundka. He has denied that the said vehicle who met with an accident was purchased for the livelihood of deceased Sh. Baljeet. All the responsibilities of the vehicle were with the deceased including the maintenance part. He has denied all the negative suggestions given by the R-2 Counsel.

21. In the written arguments filed by the R-2, they have confirmed that the policy is issued by them in favour of R-1. The owner of the vehicle and the deceased were brothers and therefore, relationship of employer and employee between them did not arise, the deceased was not covered under the definition of Section 2(n) of the EC Act, 1923. There was no Contract of employment between them and they have been living together. No independent witness was examined in this case. A brother cannot be the employee of another brother. As





regards, penalty on insurance company, they are not liable to reimburse the same as it is the liability of the R-1.

22. In the written argument, the R-1 Sh. Daljeet stated that he is the owner of the tempo having registration No. DL-01-LAB-6833 and the workman Sh. Baljeet was his employee as a driver in the vehicle. The said vehicle was insured by R-2 vide aforementioned policy. He admitted the accident that occurred on 21.03.2020 in which Sh. Baljeet died as the said vehicle caught fire and he was struck in the tempo.
23. On 15.05.2024, the claimant also filed written argument in which they stated that R-1 is the owner of the vehicle DL-01-LAB-6833 and used to drive his vehicle as driver and was employed by R-1. The deceased was having valid driving license issued by Maharashtra State Motor Driving License Authority. His last drawn salary was Rs.20,000/-. The said vehicle was insured by R-2. The claimant along with the children and mother has filed claim for getting death compensation of Rs.50,00,000/- and interest till date along with the penalty. They have filed 11 sets of exhibited documents and in the cross examination nothing negative has come up against the claimant. During the cross examination, the respondent has not been able to disprove the case. The R-1 in his cross examination has admitted the salary and employment of the deceased workman. The R-2 did not produce any witness nor filed any evidence to counter the claim of the petitioners. In the end they prayed to pass decree in their favour and against the respondents.
24. Written arguments were filed by the R-2 on 24.04.2024 in which they stated that the deceased is not covered under the definition of workman. No documentary proof has been filed to establish the contract of employment with claimant and R-1. No independent witness was examined and the purpose for which the vehicle was used has not been disclosed. Further, a brother cannot be engaged as an employee in the vehicle owned by another brother. Both R-1 and claimant have joint hands to take the insurance claim. As regards, penalty the insurance company stated that they are not liable to re-imburse the penalty amount to the claimant because this is the liability of employer.
25. Written arguments were filed by the R-1 on 15.05.2024 in which they stated that he was the owner of Tempo Ashok Leyland having no. DL01-LAB-6833 and the workman was his employee as a Driver of the said vehicle. The R-2 has insured the said vehicle vide policy no. D013844243/13032020. The said driver was driving the Tempo and near Galgotia Campus on Noida-Greater Noida Road under the jurisdiction of PS - Knowledge Park met with an accident, the vehicle caught the fire and R-1 is not responsible for any compensation.
26. Written arguments were also filed by the claimant side through her Counsel on 15.05.2024, in which he stated that R-1 is the owner of the commercial vehicle and the workman Late Sh. Baljeet Swami was driving the said vehicle having valid license no. and period issued from Maharashtra met with an accident and died. The petitioner is the wife along with other dependents (son, daughter of the deceased) and are the LR also. The deceased after the accident was taken to Kailash Hospital by the Police but he was declared brought dead and accordingly GD and MLC were conducted and the body was handed over to the family. The claimant held responsible both R-1 and R-2 for the non-payment of death compensation. The claimant has filed eleven documents exhibited in her evidence. The respondent has failed to disprove the case during the cross-examination. In the evidence of R-1, he has admitted that





the deceased was his employee. The R-2 did not lead any evidence which suggest that they don't want to prove the case in their favour.

27. 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. Manju wife of the deceased along with her children and mother claiming death compensation from R-1 and/or R-2.
- b) The death occurred in January, 2020 and therefore the salary limit for the purpose of calculation can be restricted maximum up to Rs.15000/-.
- c) In the WS filed by the R-2, they denied the claim stating that the documentary proof of employment is not available.
- d) In the WS of R-1, they have informed that the said vehicle was registered by R-2.
- e) In the evidence lead by Smt. Manju and Smt. Maya, nothing adverse has come on record during her cross-examination conducted by R-1 and/or R-2 Counsel.
- f) The cost was twice imposed upon the R-2 which shows their negligent act and their negative attitude towards the court proceedings.
- g) It is admitted that the policy exists issued by R-2 in favour of the R-1 which is valid and live during the accident period.
- h) The inability of the R-2 to lead any evidence or producing any witness shows that they did not want to seriously contest the case.
- i) The admission on the part of R-1 about the status of employment of the deceased and similar statement given by Smt. Manju & Smt. Maya, there is nothing that CEC can take adverse while taking a decision to decline the claim.
- j) Absence of appointment letter and other service records does not make the deceased non-employee of the R-2.
- k) The existence of relationship of brotherhood does not automatically make it impossible to imagine that the two brothers cannot act as employer and employee between themselves.

28. 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 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 respondents to prove that the deceased was not his employee.





29. 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 Smt. Manju & 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-1 was insured by R-2 and therefore, the liability of Employer i.e. R-1 is being shifted to R-2 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-1, in this case is required to be paid by the insurance company i.e. R-2.

30. 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 records of deceased employee Late Sh. Baljeet Swami 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 of the claimant is taken as 36 years on the basis of postmortem report issued by Chief Medical Officer, District Gautam Budh Nagar and the age factor of 36 years is 194.64 as per Schedule IV of the Act.

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

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

$$\begin{aligned} & 50\% \text{ of monthly wages} \times \text{age factor} \\ & = 50/100 \times 15000 \times 194.64 = \text{Rs.}14,59,800/- \end{aligned}$$

Since, the liability has been shifted from R-1 to R-2, the Insurance Company is held liable to pay the principal amount of Rs.14,59,800/- (Fourteen Lakhs Fifty-Nine Thousand Eight Hundred 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. 21.04.2020. Therefore, the respondents are also liable to pay interest @ 12% of the principal amount of Rs.14,59,800/- as per section 4A(3)(a) of the Act. The said interest is calculated w.e.f. 21.04.2020 till 15.05.2024 (the date on which proceedings were concluded for decision). The interest amount for the default period (04 years 24 Days) therefore comes to 48.8% of the principal amount = Rs.7,12,382/- which the respondents have to deposit along with the principal amount.

Since, the liability has been shifted from R-1 to R-2, the Insurance Company is held liable to pay the interest of Rs.7,12,382/- (Seven Lakhs Twelve Thousand Three Hundred Eighty-Two Only)





Calculation of Funeral Expenses:

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

Calculation of Penalty Amount:

On perusal of the case file, it is observed that no notice for penalty has been issued u/s 4(A)3(b) of the EC Act, 1923 against the R-1 and/or R-2 therefore the penalty is not being imposed at this point of time because it would lead to gross injustice to R-1 and/or R-2.

31. In view of above, the petition is decided in favour of the claimant Smt. Manju (who was the wife of the deceased) along with other claimants. Accordingly, the Respondent no. 2 i.e. M/s Go Digit General Insurance Co. Ltd. is directed to pay "the full of the principal amount, interest, funeral expenses, all total amounting to Rs.21,77,182/- (Rupees Twenty-One Lakh Seventy-Seven Thousand One Hundred Eighty-Two Only) in the name of Commissioner Employees Compensation, South East within 30 days of passing of this order.
32. It is pertinent to mention that failure the aforesaid amount by R-2 within 30 days of passing of this order, shall attract the recovery proceedings against R-2 as per the provisions of the EC Act. In case the ordered amount is not deposited by R-2 within 30 days of passing of this order additional interest w.e.f. 15.05.2024 till the period of deposit shall be added in the amount mentioned in the above Para.
33. With this order, both R-1 i.e. Sh. Daljeet and R-2 i.e. M/s Go Digit General Insurance Co. Ltd. are hereby given show cause to give their explanation as to why penalty @ 50% should not be imposed upon each of them for making delay in the payment of death compensation amount u/s 4(A)3(b). Both have to appear in person or through their AR on next date of hearing fixed for **03.04.2025 at 10:30 AM.**

Given under my hand and seal of this 12th day of March, 2025.

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

