

Through Speed Post



BEFORE SH. AMARDEEP, COMMISSIONER
(EMPLOYEE'S COMPENSATION ACT, 1923)
GOVT. OF NCT OF DELHI, LABOUR DEPARTMENT
(SHAHDARA & NORTH EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

No. F. CEC-D/NE/16/2021 1162-65

Dated: 26/5/23

In the matter of: -

1. Sh. Dandan Singh S/o Sh. Saryug Singh
2. Smt. Soniya Devi W/o Sh. Dandan Singh
3. Shatrudhan Kumar S/o Sh. Dandan Singh
R/o Village-Sukarbegchak,
Khusrupur, Patna, Bihar-803202

Also at:

Sh. Dandan Singh S/o Sh. Saryug Singh
H.No. 244/20C Old No. 102,
Shivaji Gali Gandhi Nagar, Basti, Delhi-110031

.. Claimants

V/s

Sh. Rajesh Kumar S/o Sh. Yamuna Prasad
R/o Village Sukarbegchak
P.O. & P.S. Mhusrupur,
Khusrupur, Patna, Bihar-803202

... Respondent No.1

Bajaj Allianz General Insurance Company Ltd.
93, Ashok Bhawan, 6th Floor, 608, 605,
Nehru Place Flyover, New Delhi-110019

.. Respondent No.2

Order

1. Vide this order, I shall dispose of the claim application dated 08.08.2021 filed by the claimant under Employee's Compensation Act, 1923 (hereinafter referred to as an 'Act') claiming death compensation from the respondents.
2. That the deceased Sujit Kumar S/o Sh. Dandan Singh R/o Village Sukarbegchak Khusrupur, Patna, Bihar-803202 aged about 28 years was an employee and employed as Kalasi with the respondent no.1

namely Sh. Rajesh Kumar S/o Sh. Yamuna Prasad R/o Village Sukarbegchak, P.O. & P.S. Mhusrupur, Khusrupur, Patna, Bihar-803202 on the truck bearing registration no. BR10G6872. It is further submitted that on 11.05.2016 at about 06:00 A.M., the deceased Sujit Kumar was performing his duties that of Kalasi in the above said truck and the same was on the business trip from Sayikpur District Gaya to Patna. It is also submitted that the said truck was driven by its driver, namely, Sh. Dinesh Singh loaded with the sand from Sayikpur District Gaya to Patna and on reaching Tarapur Ahara, the above said driver lost control of the said truck, due to which, the said truck was overturned and the deceased Kalasi Sujit Kumar had sustained grievous injuries all over his body including severe head injury due to these injuries the deceased Kalasi Sujit Kumar was died on the spot itself. Thereafter, the local police of P.S. Ekangar Sarai, S.D.E. District Nalanda registered a case vide no.70/16 dated 11.05.2016 U/s 279/304A IPC, and took the dead body of the deceased Kalasi Sujit Kumar to Sadar Hospital, Biharsharif, where the post mortem was conducted by Dr. Priya Ranjan, M.O. and he prepared P.M. vide no.40 dated 11.05.2016. The deceased Kalasi Sujit Kumar was died when he was on duty and performing duties that of the Kalasi in the aforesaid truck. That the truck bearing registration no. BR10G6872 was owned by the respondent no.1 at the time of accident/incident and it was also insured with the respondent no.2 i.e. Bajaj Allianz General Insurance Company Ltd. vide policy no. OG162416180300001420 for the period from 05.12.2015 to 04.12.2016 and an additional premium was charged by the respondent no.2 from respondent no.1 under E.C. Act. That the applicants being father and mother of the deceased Kalasi Sujit Kumar, are dependent upon the sole earning of the deceased. That the deceased was drawing wages at the rate of Rs.10,000/- per month plus Rs.200/- per day on account of food allowances. That the respondent no.1, owner of the said truck is having the notice of accident since the day of its occurrence and he has informed the same to the respondent no.2 immediately after the accident. Even otherwise, a notice under Section 10 of the EC Act has been served upon the respondent no. 1. That the deceased was an employee/Kalasi and died out of and during the course of his employment. The applicants are entitled to receive the compensation as per EC Act. They are also entitled to interest @ 12% p.a. from the date of accident i.e. 11.05.2016 till realization and penalty to the extent of 50% of the Principal Amount. That there is a delay about one year and 10 months in filing the present application. For the condonation of the aforesaid delay a separate application for condonation of delay is being filed along with the application. They prayed that this Honble Court may

graciously be pleased to the respondents to deposit the amount of compensation as per EC Act.

3. The claimant has also filed an application for condonation of delay wherein he has stated that claimants are illiterate and they have been regularly approaching respondent no.1 to pay the compensation. That in the first week of accident, the respondent no.1 has assured that he will make the payment of compensation but did not make payment on the one or the other pretext. Finally, in the month of February, 2021, he refused to pay the compensation, therefore, the claimant filed this claim. He states that the delay is not intentional and they will suffer irreparable loss and injury if their application is not allowed.
4. The Employees Compensation Act is a social welfare legislation, which has been enacted by the Parliament to provide relief to the injured workman or to the dependents of the workman in case of his death due to the injuries sustained by him during the course of his employment. So that the workman/dependents do not suffer due to the disability sustained by the workman. Further, the respondents have not taken any objection to the delay in filing the claim, therefore, delay is condoned.
5. Summon was issued to both the respondents with the direction to appear and file their written statement. Respondent no. 2 appeared and filed his written statement stating therein that the petitioner has presented the petition claiming compensation by alleging claimant as a workman however in support vital documents as mandated by law are not filed. The answering respondent humbly craves to refer the list of documents required for the purpose of adjudication of claim as under- Employee-Employer relationship-Documents, proof of service of statutory notice, driving license of the claimant-since it is claimed that he was driver on the vehicle, permit-fitness of the vehicle, death certificate, post mortem report, medico-legal record, complete details of voyage with document such as toll slips etc., proper age proof of claimant, relationship proof, proper residence proof, complete medical treatment details including bill, etc, police report-complete police record to be filed, details of other fellow traveler or passengers and details of driver of other vehicle. It is submitted that in absence of above mentioned documents the claim of the claimant cannot be entertained even by Hon'ble Commissioner leave aside the answering respondent. Therefore, the compensation if any would fall due only after submissions and verification of these documents. The submission of these documents is necessary for the purpose of adjudication of the present claim petition. That no tota of documents

has been produced in support of alleged employer-employee relationship with the claim petition. Absence of documentary support renders the petition not tenable under the provision of Employee Compensation Act, 1923. The claimant has deliberately opted not to disclose alleged medical treatment besides complete medical record. The petitioner has not approached this Hon'ble Court with clean hands. The contention of para 1 to 9 are denied. It is denied that the deceased was working as driver/khalasi and while working on 11.05.2016 met with an accident. It is denied that the time of accident the deceased/workman left behind the following legal heirs/dependent, who were totally/partially dependent upon his earnings. It is denied that the factum of accident was in due knowledge of both the respondents, therefore, it was not found necessary to serve a notice to the Respondents. It is denied that the claimants are entitled to a lump sum amount of compensation together with interest from the date of accident till the date of payment, as both the respondents have failed to pay the amount of compensation to the claimants within the stipulated period of 30 days.

6. Respondent No.1 also filed his written statement wherein he stated that the deceased Sujit Kumar S/o Sh. Dandan Singh R/o Village Sukarbegchak Khusrupur, Patna, Bihar was working as a Khalasi in the truck of the answering respondent bearing no.BR-10G-6872, on 11.05.2016 the said truck was on the business trip from Sayikpur District Gaya to Patna at that time the said truck was driven by the driver namely Sh. Dinesh Singh and on reaching Tarapur Ahara, said truck met with an accident and Sujit Kumar sustained injuries on his person and died on the spot itself. It is submitted that the deceased was getting Rs.8,000/- per month as salary and Rs.100/- per day as food allowance. That, it is submitted that the answering respondent is not liable to pay the compensation, interest, penalty, etc. since at the time of accident the truck was fully insured with the respondent no.2. The claimant filed his rejoinder wherein he reiterated his claim and denied the contentions of the respondent no.2.

7. On completion of pleadings following issues are framed:

(i) Whether the claimants Sh. Dandan Singh & Ors. are entitled for death compensation on account of death of Sh. Sujit Kumar during the course of employment and/or arising out of employment with respondent no.1?

(ii) And if so, to what amount and other relief are the claimants entitled to and from whom i.e. respondent no.1 or respondent no.2?

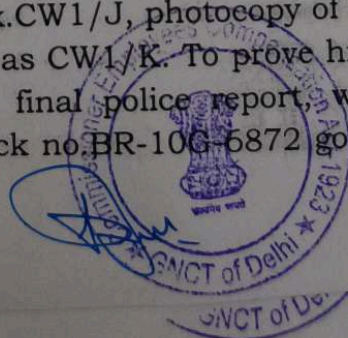
- G20
8. The Claimant filed his evidence and he was cross examined by the counsel of respondent no. 2. Respondent No.1 and 2 submitted that they do not want to lead any evidence. Arguments heard.
 9. I have gone through the claims, replies and documents filed by the parties and my findings are as under:-

Issue No.1

The claimant in his claim has stated that Sh. Sujit Kumar was employed with the respondent no.1 as a Kalasi on truck bearing no.BR-10G-6872. That on 11.05.2016 at about 06:00 A.M. while he was on duty on his truck and was going from Sayikpur District Gaya to Patna after loading sand in the truck, on reaching Tarapur Ahara, the driver lost control of the truck, due to which, the truck got overturned. Due to the overturning of the truck bearing no.BR-10G-6872, Sh. Sujit Singh fell down and sustained grievous injuries all over his body and died on the spot.

The respondent no.1 in his written statement has admitted that Sh. Sujit Kumar was employed as a Khalasi by him on his truck bearing no.BR-10G-6872. On 11.05.2016, around 06:00 AM while he was on duty on the truck, which was going from Sayikpur District Gaya to Patna, on reaching to Tarapur Ahara, the truck overturned and Sh. Sujit Kumar fell down and sustained injuries all over his body and died on the spot. The respondent no.2 in his written statement has stated that the claimant has not filed documents like driving license, fitness permit, death certificate, post mortem report, employer-employee relationship proof, etc. It is further stated that there is no document to show employer-employee relationship. It is denied that the deceased was working as Driver/Khalasi and while working on 11.05.2016 met with an accident.

The claimant Sh. Dandan Singh examined himself as CW1/1 and exhibited, Certified copy of final report filed by IO in FIR No.70/16 dated 11.05.2016 as Ex.CW1/A, certified copy of FIR as Ex.CW1/B, photocopy of death certificate as Ex.CW1/C, photocopy of post mortem report marked as CW1/D, photocopy of insurance policy marked as CW1/E, photocopy of fitness certificate of vehicle marked as CW1/G, photocopy of driving license marked as CW1/H, photocopy of aadhar card of Sh. Dandan Singh as Ex.CW1/I, photocopy of aadhar card of Smt. Soniya Devi Ex.CW1/J, photocopy of aadhar card of Sh. Shatrudhan Kumar marked as CW1/K. To prove his claim, the claimant relies on Ex.CW1/A i.e. final police report, wherein it is mentioned that on 11.05.2016 truck no.BR-10G-6872 got overturned



near Tarapur Ahara and khalasi Sh. Sujit Kumar died. The truck was loaded with Balu/sand. It is further stated that accident has taken place by reckless and negligent driving by its driver. Further, as per post mortem report which is Mark-D, cause of death is- in my opinion death occurred due to head injury resulting from mentioned injury caused by hard/heavy and blunt object.

The respondent no.2 in his written statement has stated that the claimant has denied Employer-Employee relationship and presence of Sh. Sujit Kumar on the truck bearing no.BR-10G-6872 at the time of alleged accident on 11.05.2016. The respondent no.2 did not file/lead his evidence to prove his contention. On that contrary, the evidence lead by the claimant corroborates with the claim. Further, the respondent no.1 has categorically admitted that on 11.05.2016 Sh. Sujit Kumar was employed by him as a Khalasi on his truck bearing no.BR-10G-6872 and he met with an accident while on duty, due to which he died on spot.

In view of above, it is held that Sh. Sujit Kumar sustained fatal injuries out of and during the course of employment with the respondent no.1. Therefore, the claimants are entitled to compensation.

Issue No.2

Since the issue no.1 has been decided in favour of the claimants, therefore, the claimants are entitled to compensation under the provisions of Employees Compensation Act which is calculated as under:

As far as wages of the deceased is concerned, the claimant has stated that the deceased was getting Rs.10,000/- per month. However, as provided under section 4(1-B) the wages for the purpose of calculation of compensation is taken as Rs.8,000/-, accordingly the compensation is calculated as under-

Age of the deceased = 28 years

(i) Relevant factor of 28 years of age = 211.79

(ii) 50% of last drawn salary @ Rs 8,000 p.m. = 4,000/-

(iii) Amount of Compensation = $211.79 \times 4,000 = \text{Rs.}8,47,160/-$

10. In view of above facts and circumstances and the documents placed on record, it is held that the claimant is entitled to receive an amount of Rs.8,47,160/- as death compensation plus Rs.5,000/- as funeral

expenses as provided U/s 4(4) in respect of death of deceased from the respondent.

11. As per the provisions of the Act, the respondent should have made the payment of compensation within one month from the date it fell due i.e., but the respondent failed to do so. Section 4A(3) of the Act provides where "any employer is in default in paying the compensation due under this Act within one month from the date it fell due, Commissioner shall direct that the employer shall in addition to the amount of arrears, pay simple interest thereon @ 12% per annum or such higher rates not exceeding the maximum lending rates of any scheduled bank as may be specified by the Central Government." In view of the provisions laid down U/s 4A(3), the claimant is held entitled to interest on the awarded amount @ 12% w.e.f. 11.05.2016 till the date of realization of the compensation amount.
12. A show cause notice under section 4(A)(3)(b) for imposition of penalty was issued to both the respondents. Respondents have not shown any reasonable ground for not making payment of compensation to the claimant. Therefore, the claimant is also held entitled to Rs.2,11,790/- i.e. 25% of the awarded amount as penalty.
13. The respondent no.1 has taken insurance policy no. OG162416180300001420 for the period from 05.12.2015 to 04.12.2016 from respondent no.2. The claimant is entitled to receive compensation from respondent no.1 being the Employer of the deceased workman Sh. Sujit Kumar, however, the respondent no.1 has taken insurance policy from respondent no.2, which was valid on the date of accident, therefore, the respondent no.2 is held liable to make payment of compensation amount of Rs. 8,47,160/- along with interest @ 12% w.e.f. 11.05.2016 till the date of realization of the awarded amount and Rs.5,000/- towards funeral charges.
14. Now, therefore, the Respondent No-2 i.e. Bajaj Allianz General Insurance Company Ltd., 93, Ashok Bhawan, 6th Floor, 608, 605, Nehru Place Flyover, New Delhi-110019 is hereby directed to deposit Rs. 8,47,160/- (Rupees Eight Lac Forty Seven Thousand One Hundred Sixty Only) along with simple interest @ 12% per annum w.e.f. the date of accident i.e. 11.05.2016 till the date of payment and Rs.5,000/- towards funeral charges. Further, the Respondent No.1 i.e. Sh. Rajesh Kumar S/o Sh. Yamuna Prasad, R/o Village Sukarbegchak, P.O. & P.S. Mhusrupur, Khusrupur, Patna, Bihar-803202 is directed to deposit an amount of Rs.2,11,790/- (Rupees Two Lac Eleven Thousand Seven Hundred Ninety Only) towards

penalty imposed on him by way of Demand Draft / Pay Order in favour of "**Commissioner Employees Compensation, District North-East**" within 30 days from today, failing which proceedings to recover the amount of compensation as well as the interest and penalty, as an arrear of land revenue, shall be initiated as per the provisions of Section 31 of the Act.

Given under my hand and seal on this 26th day of May, 2023.

COMMISSIONER, EMPLOYEES COMPENSATION



(AMARDEEP)