

**BEFORE SH. S. C. YADAV, COMMISSIONER  
(UNDER EMPLOYEE'S COMPENSATION ACT, 1923)  
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI  
5 – SHAM NATH MARG, DELHI-110054**

No. ECD/140/NW/19/182.

Dated: 26/12/2019.

**IN THE MATTER OF:**

**Smt. Dharam Sheela Devi (Wife of Deceased)**

R/o B-426, Chandan Vihar,  
Nihal Vihar, Nangloi, Nilothi,  
West Delhi, Delhi-110041

.....Applicant/Claimant

**Versus**

**1. Sh. Raghuveer Prasad**

R/o Q-6/129, Mangol Puri  
A-Block, North West Delhi,  
Delhi-110083

**2. M/s Bajaj Allianz General Insurance Co. Ltd.**

7<sup>th</sup> Floor, Najafgarh Road,  
DLF Tower, New Delhi – 110015

..... Respondents

**ORDER**

1. Vide this order, I will dispose of claim application dated 11.12.2019 filed on 23.12.2019 before this Authority under section 22 of the Employees Compensation Act, 1923 for seeking death compensation.
2. In the claim petition claimant stated that the deceased Ishwar Mahto S/o Ramji Mahto was employed as a Driver by the Respondent No.1 on his vehicle bearing No. DL-01-RW-8772. It is further stated that deceased was working with full devotion and sincerity since long. The vehicle bearing No. DL-01-RW-8772 was owned by the Respondent No. 1. Claimant stated that on 26.07.2019 at about 12.00 noon, deceased Ishwar Mahto was going in the jurisdiction near Dhaula Kuan of Police Station Delhi Cantt. Distt. South-West for commercial trip. An unknown vehicle came and driven by its driver in a very rash and high speed, violating the traffic rules hit the vehicle of deceased Ishwar Mahto, as a result of said accident deceased Ishwar Mahto received grievous injuries all over his body and he was immediately rushed to JPNATC/AIIMS where the doctors declared him dead on 26.7.2019 at 12:22 PM and the post mortem vide No.TC-513-19 of deceased was conducted by the doctors of All India Institute



of Medical Sciences, New Delhi. It is further stated that the employee Ishwar Mahto died due to said accident which was arising out of during and in the course of his employment with respondent no. 1. Claimant further stated that the case was registered with police station Delhi Cantt., Distt. South West vide DD No.26PP dated 26.07.2019. It is further stated that the vehicle bearing No.DL-01-RW-8772 was insured with the respondent no.2 vide policy No.OG-20-1102-1803-00000198 w.e.f. 8.4.2019 to 07.04.2020 at the time of accident. It is further stated that the deceased aged about 47 years and was drawing Rs.15,000/- per month as salary at the time of accident/death. It is further stated that the respondent no.1/management is having the notice of accident since the day of occurrence. It is further stated that the deceased unfortunately received grievous injury arising out on 26.07.2019 and he died on the same day due to the said accident. He was an employee of respondent no. 1 at the time of accident and died due to said accident which was arising out of during and in the course of his employment with respondent no. 1. Claimant further stated that the claimant is entitled for death compensation due to the death of deceased Ishwar Mahto from the respondents alongwith interest and penalty. Alongwith claim petition claimant filed copy of PMR vide no. TC-513-19, copy of death certificate of deceased Ishwar Mehto, copy of Driving License of deceased, copy of PSV Driver's Badge of deceased Ishwar Mehto, copy of Aadhaar card of deceased Ishwar Mehto, copy of Aadhar Card of claimant Smt. Dharma Sheela Devi, copy of Insurance Policy of vehicle bearing No. DL-01-RW-8772.

3. Summon were issued to the respondents with direction to file reply/defence in the case.
4. Respondent No. 2 / Insurance Company filed reply wherein it is stated that the claim of claimant is not maintainable against the Respondent No. 2 as the claimant have not filed any relevant document. It is further stated that the deceased was negligent at road, therefore the present claimant has filed the claim petition before this Court to extract money from the Respondent No. 2/Insurance Company. It is further submitted that no proof or any document has been given by the company where the deceased was working for the company which is as per the claim petition. It is further stated that without prejudice to the above contention, the claimant has not filed any document which may show that at the time of the death of the alleged deceased he was working as a driver or that he was earning any sum per month or allowance, therefore, the claim of the claimant is not maintainable. It is further stated that Respondent No. 2 is not liable to pay any amount of compensation to the claimant in case it is proved that there was breach of the terms and conditions of the policy. It is further stated that the Respondent No. 2 has not received any information either from the claimant or from the insured in respect of the alleged accident. It is further stated that neither the claimant nor the Respondent No. 1 has filed relevant documents like copy of permit, FIR copy, copy of Driving License of the driver, the age proof of the alleged deceased driver, proof of employment etc. In the last Respondent No. 2 denied all the contents of the claim petition in toto.





5. Claimant filed rejoinder by which she denied all the contents of the reply of Respondent No.2 and reiterated contents of her claim petition.
6. Respondent No. 1 filed reply wherein it is stated that Respondent No. 1 is the owner of the vehicle bearing no. DL-01-RW-8772. Respondent No. 1 denied that the deceased Ishwar Mahto S/o Ramji Mahto was employed as driver by the Respondent No. 1 at any point of time. Respondent No. 1 also denied that vehicle bearing no. DL-01-RW-8772 was involved in any accident on 26.07.2019 as alleged. It is further denied the case was registered with Police Station – Delhi Cantonment, South West Delhi vide DD No. 26 PP dated 26.07.2019 involving the said vehicle and no police record of such DD Entry or FIR or Investigation emanating from the same have been provided by the claimant. It is further stated the Respondent No. 1 denied that the deceased was an employee of Respondent No. 1 and therefore, it is denied that such accident occurred/arose out of/during and in the course of his employment with Respondent No. 1. It is further stated that claimant is not entitled for any compensation, interest or penalty from the Respondent No. 1 as the deceased was never employed with the Respondent No. 1. In the last Respondent No. 1 denied all the contents of the claim petition of the claimant.
7. Claimant filed rejoinder by which she denied all the contents of the reply of Respondent No.1 and reiterated contents of her claim petition.
8. Respondent No. 1 filed reply of Show Cause Notice dated 23.11.2022 under section 4(a)(3)(b) of the EC Act, 1923 and submitted that since deceased was never the employee of the Respondent No. 1 as a driver and was never employed as a Driver with the Respondent No.1 at any point of time and vehicle in question was not involved in any accident on 26.07.2019 as alleged, hence Respondent No.1 is not liable to any penalty under section 4(a)(3)(b) of the Act. Respondent No. 2/Insurance Company did not file reply of Show Cause Notice dated 23.11.2022.
9. On 28.03.2023 on the basis of pleadings of the parties and documents available on record following issues were framed for adjudication:-
  - i) Whether the deceased Ishwar Mahto was employed by Respondent No. 1, If so ?
  - ii) Whether the deceased Ishwar Mahto died due to accident occurred during the course and out of his employment under the Respondent No. 1 and if so?
  - iii) Whether the claimant is entitled to claim death compensation under EC Act, 1923 and if yes, what amount ?
  - iv) Whether the Respondent is liable to pay penalty under section 4A (3)(b) of the Act?
  - v) Any other Relief ?



10. Matter was fixed for evidence of the parties. Claimant filed her evidence by way of affidavit exhibit PW1/A. The contents of the affidavit are corroborative to those claim petition. Claimant also filed documents such as Copy of Aadhaar Card of deponent and deceased exhibit PW1/1, copy of receipt in favour of patient brought dead / died in emergency department vide PC No. OPD No. 500184237 exhibit PW1/2, copy of certificate from doctor declared dead (Ishwar Mahto) exhibit PW1/3, copy of Raseed Hawalgi Laash of Deceased exhibit PW1/4, copy of death certificate of deceased exhibit PW1/5, copy of Driving License of the deceased exhibit PW1/6, copy of PM Report of deceased marked -A and copy of Insurance Policy of vehicle in question marked-B. Her statement was also recorded on 12.12.2023 and was cross examined by the Counsel for the Respondent No. 1 and Respondent No. 2.
11. Claimant had summoned Record Clerk/Record Keeper of Police Station Delhi Cantt. Sadar Bazar Road, Sadar Bazar Delhi Cantt., New Delhi. On 09.05.2024 Sh. Sanjay Yadav, Head Constable, P.S. – Delhi Cantt. was present and filed JD Register on record (certified copy).
12. For Respondent No. 2 Sh. Praveen Kumar Tiwari, Executive (Legal) filed his evidence by way of affidavit exhibit R2/1. The contents of the affidavit are corroborative to those reply. His statement was also recorded on 05.11.2024 and was also cross examined by the Counsel for Claimant and Respondent No. 1.
13. Claimant and Respondents filed written submission on record. Oral submissions was also heard from the counsel for claimant and respondent no. 1.
14. On the basis of pleadings of the parties and documents available on record, I am giving my findings on the issues framed in the matter as under:-

### **ISSUE NO. 1 & 2**

The case of the claimant is this that her deceased husband Sh. Ishwar Mahto was employed as a Driver by the Respondent No.1 (owner) on his vehicle bearing No. DL-01-RW-8772. The deceased was working with full devotion and sincerity since long. Further the case of claimant is this that on 26.07.2019 at about 12.00 noon, deceased Ishwar Mahto was going in the jurisdiction near Dhaula Kuan of Police Station Delhi Cantt. Distt. South-West for commercial trip and an unknown vehicle came and driven by its driver in a very rash and high speed, violating the traffic rules hit the vehicle of deceased Ishwar Mahto, as a result of said accident deceased Ishwar Mahto received grievous injuries all over his body and he was immediately rushed to JPNATC/AIIMS where the doctors declared him dead on 26.7.2019 at 12:22 PM and the post mortem vide No.TC-513-19 of deceased was conducted by the doctors of All India Institute of Medical Sciences, New Delhi. It is further alleged that the





employee Ishwar Mahto died due to said accident which was arising out of during and in the course of his employment with respondent no. 1 and the FIR with Police Station Delhi Cantt., Distt. South West was registered vide DD No.26PP on 26.07.2019.

On the other hand respondent no. 1 filed reply and denied contents of claim of claimant on the ground that deceased Sh. Ishwar Mahto was never employed with respondent at any point of time as alleged and vehicle bearing no. DL-01-RW-8772 was not involved in any accident on 26.07.2019 as alleged. Claimant did not file any record to prove her case that deceased Ishwar Mahto was employed with Respondent No. 1.

Respondent No. 2/Insurance Company has also denied claim of claimant on the ground that the deceased was negligent at road hence accident was occurred and to extort money from Respondent No. 2/Insurance Company without any proof documents case has been filed. In nut sell Respondent No. 2 / Insurance Company denied his liability towards payment of any compensation to claimant.

To prove her case claimant examine herself exhibit PW1/1 and had summoned as a witness to record clerk/record keeper of Police Station Delhi Cantt. Sadar Bazar Road, Sadar Bazar Delhi and Head Constable Sh. Sanjay Yadav was present and had filed GD Register wherein at serial no. 26 and 44 PP dated 26.07.2019 wherein about accident detail at Dhaula Kuan Chowk (Road accident + Injured 8010250260 has been mentioned and at serial no. 44 further about accident an information about accident was given to relative of deceased and handing over dead body of the deceased).

In view of above discussion from the report of Police GD register I draw inference that on the alleged day accident was occurred since as per GD register report Police had handed over dead body to relative of the deceased. Further in GD Register time of accident and date has also been mentioned at the place Dhaula Kuan where claimant has alleged place of accident in her claim petition. From these facts it is proved that deceased was employed with respondent no. 1 on his vehicle in question on the day of accident and during the accident he had met with an accident and sustained grievous injuries on all over body and died. Post Mortem was conducted in this case, in view of this I held that accident of deceased Sh. Ishwar Mahto was occurred out of and in the course of his employment with respondent no. 1, as such Issue No. 1 and 2 are decided in favour of claimant and against the respondents.

### **ISSUE NO. 3, 4 & 5**

In view of above discussion made in Issue No. 1 and 2 claimant is entitled received death compensation from the respondents being the widow of the deceased under the provisions of the EC Act, 1923. Since vehicle in question was insured with Respondent No. 2 vide policy no. OG-20-1102-1803-00000198 for the period from 08.04.2019 to 07.04.2020 midnight and the policy was issued in the favour of Respondent No.1 / owner of the vehicle. In respect of



vehicle bearing no. DL-01-RW-8772. In view of this Insurance Company is liable to indemnify to the claimant.

In view of this for calculation of compensation age of claimant is taken 49 years 03 months and 25 days as per Date of Birth 01.04.1970 mentioned on Aadhar Card of Deceased Ishwar Mahto, relevant factor 156.47 and 50 % of wages of Rs. 8000/- as restricted under the Act has been taken for calculation of compensation:

**Rs. 4000 x 156.47 = Rs. 6,25,880/-**

In view of above calculation claimant is entitled to receive death compensation Rs. 6,25,880/- (Rupees Six Lakhs Twenty Five Thousand Eight Hundred Eighty Eight) along with 12 % interest per annum from the date of accident i.e. 26.07.2019 till its realization from the respondents jointly or severally, since the vehicle in question was insured with Respondent No. 2 i.e. Insurance Company, hence, Insurance Company is liable to indemnify to claimant.

Therefore, Respondent No. 2 is directed to deposit **Rs. 6,25,880/- (Rupees Six Lakhs Twenty Five Thousand Eight Hundred Eighty Eight) alongwith 12 % interest per annum from the date of accident i.e. 26.07.2019 till its realization** with Commissioner Employees Compensation by way of demand draft/cheque within 30 days from the date of order.

Further show cause notice dated 23.11.2022 under section 4(a)(3)(b) of the EC Act, 1923 was issued to the respondents to file reply as to why penalty be not imposed upon them Respondent No. 1 filed reply wherein he denied his liability but Respondent No. 2/Insurance Company did not show cause despite given opportunity. Since vehicle in question was insured on the day of accident as such respondent no. 2 / Insurance Company is also liable to pay 25% penalty of awarded amount to claimant. Accordingly 25 % penalty of the ordered amount which comes to **Rs. 1,56,470/- (Rupees One Lakh Fifty Six Thousand Four Hundred Seventy)** is imposed upon Respondent No. 2/Insurance Company.

Therefore in view of above, I direct Respondent No. 2/Insurance Company to deposit the ordered amount alongwith penalty with Commissioner Employees Compensation within 30 days from the date of order by way of demand draft/cheque in favour of Commissioner Employees Compensation failing which same shall be recovered as per provision of the Act.

15. Given under my hand and seal of this Authority on this 26<sup>th</sup> day of December, 2024.

(S.C. Yadav)  
Commissioner

Employee's Compensation Act, 1923

