F.No. Misc./ECI/39/MW/19/164. Dated:- 26/11/2024.

Faim @ Fahim

v/s

(1) M/s. Universal Sompo General Ins.Co.Ltd.

26/11/2024. (2). Sh. Shakil.

For claimant — Sh. R.K. Hain, Adv - Pt.

For R-1 - Sh. Avishek Kumar, Adv - Pt.

For R-2 - None Pt.

Ld. Submissions addressed by both the Ld. Counsel for the parties, claimant as well as R1 heard in detail. The case of claimant is this that he was the employee of R-2 on his vehicle being No. UK-08-CA-9577 and on 16/10/19 met with an accident when he was on his return trip out of and in the course of his employment. The accident was occurred on 16/10/2019 at about 01:30 AM when the vehicle reached Kaliyar Road, and vehicle met with an accident in this accident claimant was the driver and received injury in his Left Leg. He had taken Hospital Saksham, Dehradun, Roorkee, UK where he had got treatment as he was admitted for about a week. He had spent large amount on his treatment. The case of claimant is this that he had suffered 100% disability for the purpose of his employment and he is not in position to work as he was performing before the accident. Accordingly he claimed 100% Disability.

R-2 owner of the vehicle filed reply and admitted factum of employee employer relationship with claimant with resp. and accident was caused out of and in the course of his employment. Further R-2 submitted that on the day of accident vehicle bearing No. UK-08-CA-9577 was insured with R-1 Ins. Co. M/s Universal Sompo Gen. Ins. Co. Ltd. vide policy No. 2301/95450955/00/000 valid from 16/02/19 to 15/02/20 and R-1 Ins. Co. had charged extra prem. for driver and cleaner of the vehicle. Further R-1 denied about the wages of the claimant + allowance per day as food allowance. Further he stated that claimant was being salary Rs. 12,000/- per month alongwith all allowance towards food. Rest of other contents are denied.

R-1 filed reply wherein he has denied all the contents of claim as well as reply of R-2 and taken objection that claimant was not an employee of R-1.

further R1 also denied that claimant had not received injury in accident out of and in the course of employment and the vehicle in question was not involved in accident as such claimant is not entitled for any compensation under the Act. But in principle admitted that vehicle in question being No. UK-08-CA-9573 (Truck) was insured vide policy No. 2315/59950955/02/000 for the period 16/02/19 to 15/02/2020 midnight in the name of Shakeel and prayed the ~~claim~~ claim is deserved to be dismissed.

Since ~~the~~ factum of employer employee relationship and coverage with R1 is admitted. Claimant examined himself exhibit Aw.1/A his statement was also record on 28/10/21 before this Court, opportunity was granted to Resp to cross examine but failed to cross examine claimant. Further counsel for claimant argued in the matter and Ld. Counsel for R-1 argued only to ~~the~~ extent of Disability of Claimant. As per medical report claimant assessed 20% disabled as such his case is not fit for 100% Disability.

I have heard ~~both~~ the Ld. Counsel appearing in the case and Ld. Counsel relied upon the judgment of Hon'ble Delhi High in FAO No. 17/2021 and CM app. 1170/2021 decided on 22/01/2024 in Para No. 3, Hon'ble Court held in Similar case as is claimant before me and held 100% disabled to claimant for the purpose of his work. Further in case of Pratap Narayan Singh v/s Srinivas Sarkar Hon'ble Apex Court held 20% disability into 100% Disability.

In view of this I am on the view that Claimant met with an accident and disabled for the purpose of his work 100% in view of judgment of FAO 17/2021 and Pratap Narayan. Singh v/s Srinivas ~~Sarkar~~. Accordingly Claimant is entitled to award injury compensation from Respondent jointly or severally.

Since vehicle in question was insured with R-1 on the day of accident. hence R-1 is liable to indemnify to the claimant on behalf of R-2.

For calculation of compensation age of claimant is taken 20 years and 50% of wages of Rs. 8,000/- as restricted in the Act and relevant factor ~~222.71~~ 224.00 and accordingly compensation is calculated as under:

Age - 20 years
Relevant factor - 224.00
60% wages of Rs. 8.000/- = Rs. 4,800/-

4800 x 224.00 = 1075200

In view of above calculation. Claimant is entitled to Received Rs. 10,75,200/- as a injury Compensation from the Respondents. Since vehicle in question was insured with R-1 Ins. Co. Hence R-1 is directed to deposit Rs. 10,75,200/- alongwith 12% interest from the date of accident i.e. 16/10/2019 till its realisation with Commissioner Employees Compensation by way of Demand Draft. Further claimant is also entitled to receive medical expenses Rs. 9,900/- as per section ~~4~~ 4(2A) of the Act. Further despite having notice of accident Resp. did not pay compensation within 30 days As per section 4A of the Act As such Claimant is also entitled 50% penalty of the awarded amount from R-1. In view of above discussion R-1 Ins. Co is directed to deposit awarded amount Rs. 10,75,200/- alongwith 12% Interest from the date of accident i.e. 16/10/2019 till its realisation and alongwith 50% penalty which comes to Rs. 5,37,600/- by way of Pay Order within 30 days from the date of Order i.e. today in favour of Commissioner Employees Compensation, failing which the same shall be recovered as per provision of the Act.

Order is announced in the Open Court.

Copy of Order be given Dasti to all the concerned parties for compliance.

File to be consigned R.R.

26/11/24

Commissioner Under Employee's Compensation Act, 1923 ★ Delhi ★