

**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. ECI/131/NW/2019/ **193.**

Dated: **13/01/2025.**

IN THE MATTER OF :

**Sh. Kailash Chandra Salvi @ Kailash,
S/o Sh. Govind Ram
R/o Mada ki bassi, Nardas ka Guda,
Deogarh, Rajasmand, Rajasthan – 313331**

.....Applicant/Claimant

Versus

1. **M/s Ritu Logistics,**
Near Jaipur Golden Transport,
Sanjay Gandhi Transport Nagar,
Delhi – 110042

Also at:-

Plot No. 12,13,14, Near Prince Handicrafts,
Nakoda Industrial Area, Basni II Phase,
Jodhpur, Rajasthan - 342005

2. **M/s. Magma HDI General Insurance Co. Ltd.**
Unit 473, 4th Floor, Agarwal Cyber Plaza-II,
Pitampura, Delhi – 110034

..... Respondents

ORDER

1. By this order, I will dispose of the claim application dated 27.11.2019 filed before this Authority under section 22 of Employees Compensation Act, 1923 for seeking injury compensation.
2. In the claim petition claimant stated that he was employed as cleaner on vehicle bearing No. HR-55-R-2315 owned by Respondent No. 1 and on 04.06.2018, he was posted as cleaner on the vehicle and he met with an accident arisen out of and during the course of employment resulting thereby he sustained grievous injuries on his legs, especially in his left leg. On 04.06.2018, the vehicle was on its return trip from Bombay to Delhi. It was loaded with Cartoons. The goods were loaded from Bhiwandi. They started on 02.06.2018 for return trip. On 04.06.2018 when the vehicle reached near Udaipur, the vehicle was in police checking line, all of a sudden another vehicle came in rash and high speed and hit the applicant/claimant resulting thereby he sustained injury on left leg and it



was badly crushed. It is further stated that the Driver namely Pintu took him to Government Hospital, Udaipur. He remained admitted for about a week. He has incurred a considerable amount on his treatment. Surgery was conducted and rods were affixed. After this accident the applicant/claimant is not in a position to do any physical work of his capacity and has become 100% disabled for the purpose of his employment as cleaner. His earning capacity has been totally reduced. The vehicle bearing no. HR-55-R-2315 was owned by the Respondent No. 1 at the time of the accident and it was insured with the Respondent No. 2 i.e. M/s Magma HDI General Insurance Company Ltd., vide policy no. P0118200003/4107/100233, for the period from 18.10.2017 to 17.10.2018 and an additional premium was charged under the Employee's Compensation Act, 1923 by the Respondent No. 2 from Respondent No. 1. Claimant further stated that he was drawing wages @ Rs. 9,000/- per month and food allowance Rs. 200/- per day and he was aged 21 years at the time of his accident. Claimant further stated that the Respondent No.1 is having the notice of the accident since the day of its occurrence and the Respondent No. 2/Insurance Company has been informed immediately after the accident took place. The applicant/claimant was cleaner by profession on transport vehicle and he has become unable to take up that work. The work requires a lot strenuous work such as wheeling out of tyre in case of puncture and other heavy work of doing tarpaulin, attending to the enroute vehicle requirements and other ancillary work by doing prompt boarding and deboarding from the vehicle. The claimant has become totally disabled as law settled by the Hon'ble Supreme Court of India in Re: - Pratap Narain Singh Deo vs. Srinivasa Sabata cited at 1976 ACJ 141, and more recently Mohan Soni vs. Ram Avtar Tomar & Ors., cited at 2012 ACJ 583. The claimant was employed on the vehicle and the accident caused out of and during the course of his employment. The claimant is entitled to compensation to the extent of 100% disability and as per section 4(1) (c) & 4(1) (d) of the Employee's Compensation Act, 1923 he is entitled for temporary and permanent disablement along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%. Alongwith claim petition claimant filed his medical treatment documents, details of vehicle bearing no. HR-55-R-2315, Copy of his Aadhaar card.

3. Summonses were sent to the respondents for filing their reply in their defense.
4. In response of the summons the representative of the Respondent No. 1 had appeared but no reply had filed and discontinue to appear. Hence, the said respondent was proceeded Ex-Parte.
5. The Respondent No. 2 has filed reply in his defense and stated that the claim of the claimant is not maintainable as there is no employee employer relationship between the claimant and the Respondent No. 1. It is further stated that the case is based on the wrong and false facts and false documents. It has been further stated that this Authority has no jurisdiction to entertain the claim. It is prayed by them that the claim application be dismissed.



6. On 31.01.2024 the pleadings of the parties, the following issues were framed for adjudication:
- i) Whether claimant met with an accident out of and during in the course of his employment and if so what relief and what directions are necessary in this regard ?
7. The matter was fixed for evidence by the parties. The claimant – Sh. Kailash Chandra Salvi @ Kailash, has filed his evidence by way of affidavit exhibit AW1/A alongwith supporting documents i.e. Copy of Disability Certificate, copy of Aadhar Card, copy of Medical Treatment Documents and copy of Insurance Policy of the vehicle. The applicant/claimant was cross examined by the Ld. Counsel for the Respondent No. 2. The claimant also adduced one witness namely Sh. Devendra Kumar Salvi, the said witness has recorded his statement and he was cross examined by the counsel for the Respondent/Insurance Company. In addition to the above the claimant has summoned the records from Maharana Bhupal Government Hospital, Udaipur (Rajasthan) - the summoned witness has appeared he has produced the records of the claimant. Apart from the applicant/claimant has filed the treatment papers for the injuries. In a medical treatment document of RNT Medical College and attached Hospital showing Date of Admission as 04/06/2018. The date of accident and the nature of injury are also matching with the averments made in the claim application. Respondent no. 2 did not file any evidence.
8. The case was fixed for arguments and written arguments were filed and oral arguments were heard.
9. On the pleadings of the parties, documents filed therein and the evidence adduced on their behalf, I have to give my findings in the case as under:

ISSUE NO. 1

In the claim application it has been stated by the claimant that he was employed as a cleaner on vehicle bearing No. HR-55R-2315 owned by Respondent No. 1 and on 04.06.2018, he was posted as cleaner on the vehicle and he met with an accident arisen out of and during the course of employment resulting thereby he sustained grievous injuries on his legs, especially in his left leg. On 04.06.2018, the vehicle was on its return trip from Bombay to Delhi. It was loaded with Cartoons. The goods were loaded from Bhiwandi. They started on 02.06.2018 for return trip. On 04.06.2018 when the vehicle reached near Udaipur, the vehicle was in police checking line, all of a sudden another vehicle came in rash and high speed and hit the applicant/claimant resulting thereby he sustained injury on left leg. It was badly crushed. Driver namely Pintu took him to Government Hospital, Udaipur. He remained admitted for about a week. He has incurred a considerable amount on his treatment. Surgery was conducted and rods were affixed. After this accident the applicant/claimant is not in a position to do any physical work of



his capacity and has become 100% disabled for the purpose of his employment as cleaner. His earning capacity has been totally reduced.

The applicant/claimant had produced evidence by way of affidavit and documents and the case of the claimant stands proved that the applicant was present in the vehicle at the time of accident and he sustained injury in that accident by way of those evidences. On the issue of sufficiency of evidence the counsel for the applicant has relied on the case by the Hon'ble Apex Court in the case titled as **Smt. Tebha Bai & Ors. Vs. Raj Kumar Keshwani & Ors.** cited at 2018 (7) SCC 705 wherein the Hon'ble Apex Court has found the sole testimony of the claimant a sufficient proof about the occurrence of accident when there is no inconsistency in it. In addition to what has been submitted above the applicant further submits that the principles of Evidence Act are not strictly applicable in the proceedings before the Commissioner and it is not incumbent on the part of the applicant to get his case proved beyond doubt. In this regard, he has drawn my attention towards a judgment of the Hon'ble Supreme Court of India in a case titled as **Maghar Singh vs. Jaswant Singh**, cited at 1997 ACJ 517.

On the sufficiency of evidence the applicant has cited the principle laid down by the Hon'ble Apex Court in *Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ibrahim Mahmood Issak* cited at 1969 ACJ 422.

The counsel for the applicant has further argued that the burden of proof is not always on the applicant and it changes according to the situation in case the evidence is within the domain of the respondent then it become his obligation to bring that evidence otherwise adverse inference would be drawn against that respondent. Hon'ble Supreme Court of India in the case titled as "**Shahajahan & Anr. Vs. Shri Ram Gen. Insurance Co. Ltd. & Anr.**" cited at 2021 SCC Online SC 3133 in Civil Appeal No. 6775 of 2021 whereby the Hon'ble Apex Court has held as under –

"8. Apart from the said fact, we find that the owner has taken a plea that the deceased was not engaged as a Driver, but that remained only a plea, unsupported by any evidence on record. It is the owner who had the best evidence to depose whether the deceased was engaged by him or not. In the absence of the best evidence, the findings recorded by the Commissioner could not have been interfered with by the High Court.

9. Consequently, we find that the order of the High Court suffers from patent illegality. Therefore, the same is set aside and the order passed by the Commissioner on 16.11.2016 is restored. The amount of compensation along with interest be paid within two months."

It has been further argued that even if a person is employed for a short period the risk would be covered by the employment injury. The definition of the employer as per section 2(e) of the Employee's Compensation Act covers a situation of "let on hire" and "lent on hire" the person would be in employment on whose work the hazard is emerged out. In this regard he has relied on the judgment by the Hon'ble Supreme Court of India in a case titled as **Zila Sahakari Kendrya Bank Maryadit Vs. Shahjadi Begum & Ors.**, cited at 2006 ACJ 2845,



Given the above discussions, I am of the view that the applicant was working on the truck bearing No. HR-55R-2315. I'm guided by the principle laid down by the Hon'ble apex Court I hold that the accident has been caused and in that accident the applicant had sustained personal injuries. He has become disabled due to those injuries. On the contrary the insurance company has not given any contra evidence worth it. Given the facts – pleadings and evidence, I am bound by law as in *Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ibrahim Mahmood Issak* (supra) to take an inference in favour of that the accident has been caused out of and during the course of employment. The said issue is decided in favour of the applicant and against the respondents.

RELIEF:

Next issue comes as to what amount of compensation and other relief the applicant is entitled to. In the claim application the applicant/claimant has stated that he was drawing wages @ Rs. 9,000/- per month and food allowance Rs. 200/- per day. But as per maximum limit prescribed by the Central Govt. Notification for that particular point of time, his wages is taken as Rs. 8,000/- per month. In the claim application, he has further stated that he was aged 21 years at the time of accident. The date of birth of the applicant in his Aadhar Card has been given 12.04.1997. Thus, on the day of accident the applicant/claimant had completed 21 years of his age. Hence, his age is taken 21 years for calculation. The applicant had got him medically examined and as per the Certificate issued by the Medical Board of Aruna Asaf Ali Government Hospital Delhi has assessed his 25% permanent disabled. The documents and the Medical Certificate show that the claimant may not be able to do any physical work of the nature. In this regard, the question as to reduction in earning capacity was argued by the both parties. Ld. Counsel for the claimant argued that the as the workman was working as cleaner which he was doing prior to this accident as his occupation, after sustainment of injury, he has been rendered unfit to do his work of cleaner on any vehicle more so any physical work. Though his physical disablement might not be total but the loss of his earning capacity be treated as total. Finding the nature of work, it should be accepted that it is a case of 100% loss of earning capacity and in this regard the Ld. Counsel for the claimant has relied on the ruling of the Hon'ble Supreme Court of India – *Pratap Narain Singh vs. Srinivasa Sabata* cited at 1976 ACJ 141 whereby the Apex Court has held that the workman was no more in a position to take up and do that work which he was doing hence the disablement was assessed 100%. The Ld. Counsel of the claimant has drawn my attention and has placed the judgment of Hon'ble High Court of Delhi in the case titled as *National Insurance Co. vs. Pappu & Anr.*, FAO 289/2004 – Pappu was working as cleaner and in the case partial physical disablement he was held entitled for 100% loss of earning capacity and another judgment of Hon'ble High Court Andhra Pradesh in the case titled as *Rayapati Venkateswara Rao vs. Mantai Sambasiva Rao & Anr.*, cited at II (2001) ACC 300, decided by Hon'ble Mr. Justice N.V. Ramana, Further reliance was placed on in a recently passed Judgment - **New India Assurance Co. Ltd. Vs. Moharman & Anr.** - FAO 17/2021 – *Case of Cleaner- Physical Disability of 20% held 100% loss of earning capacity*. Hence I hold that the applicant has got the reduction in his earning capacity to 100%.



In the given wage, age and loss of earning capacity the applicant/claimant is entitled to compensation as under:

i) Relevant factor of 21 years	:	222.71
ii) 60% of wages @ Rs. 4800/- pm	:	Rs. 48,00/-
iii) Amount of compensation		
$\frac{222.71 \times 15000 \times 60}{100}$:	Rs. 10,69,008/-

The applicant/claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from the date of accident.

Therefore, the applicant/claimant is entitled to receive injury compensation from Respondent No. 1 but as the said Respondent No. 1 has taken an insurance coverage hence in spirit of indemnifying the insured Respondent No. 2 i.e. M/s Magma HDI General Insurance Company Ltd., is directed to deposit in this court an amount of **Rs. 10,69,008/- (Rupees Ten Lakhs Sixty Nine Thousand Eight Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% p.a. w.e.f. 04.06.2018 till its realization, through Cheque/Demand Draft in favour of "Commissioner Employee's Compensation" within a period of 30 days from pronouncement of the order in this court failing which shall be recovered as per provisions of law. As the applicant/claimant was entitled to receive compensation within 30 days from the date of his accident – per the law by the Hon'ble Supreme Court in *Pratap Narain Singh vs. Srinivasa Sabata* cited at 1976 ACJ 141, the Applicant/Claimant becomes entitled to penalty as per Section 4A(3)(b), they (respondents) are called upon to show cause as to why a penalty to the extent as in the provision be not imposed on them but despite this no reply has been filed by the Respondents. Respondent No. 1 had appeared in the proceeding but thereafter stopped to appear in the proceedings and even did not file any reply as such he was proceeded Ex-Parte as such conduct of Respondent No. 1 was not found satisfactory as such I found deem fit to impose 35 % penalty of awarded amount on Respondent No. 1. Therefore, Respondent No. 1 is also directed to deposit 35 % penalty of awarded Rs. 10,69,008/- which comes to **Rs. 3,74,152/- (Rupees Three Lakhs Seventy Four Thousand One Hundred Fifty Two Only)** through Cheque/Demand Draft in favour of "Commissioner Employee's Compensation" within a period of 30 days from pronouncement of the order in this court failing which shall be recovered as per provisions of law.

10. Given under my hand and seal of this Authority on this 13th day of January, 2025.

(S.C. Yadav)
Commissioner
Employee's Compensation Act, 1923

