

IN THE COURT OF SH. S.C YADAV, COMMISSIONER
(UNDER EMPLOYEES' COMPENSATION ACT, 1923)
LABOUR DEPARTMENT, GOVT. OF N.C.T. OF DELHI
5, SHAM NATH MARG, DELHI-110054

No.CEC (D)-13/SWD/18/ 311.

Date: 20/09/2023.

IN THE MATTER OF:

Smt. Krishna W/o Lt. Sh. Randhir Singh

R/o- 2, Jharoda Kalan, Panna Melwan, Delhi - 110043

..... Claimant

V/s

Sh. Jai Deep Dagar,

R/o. H. No. C-3, Main Gogal Nagar,
Najafgarh, New Delhi-110043

....Respondent No.1

M/s. United India Insurance Co. Ltd.

4, Omkar Bhawan, Community Centre,
Naraina, Phase-I, New Delhi-28

....Respondent No.2

ORDER

1. By this order, I will dispose of claim application filed by the claimant on 10/08/2018 for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that the deceased Jitender S/o Lt. Sh. Randhir Singh was working as a driver on vehicle bearing No. HR-55-U-2995. That on 29/04/2018 at about 10:00 PM the deceased was going as a driver in vehicle bearing no. HR-55-U-2995 for filling the CNG and when the said vehicle reached Jain Mandir wali gali near main road, Jharoda Kalan, Delhi, he was murdered during the course of employment and under the employment of respondent no. 1. That the accident took place under the jurisdiction of police station Baba Haridas Nagar, Delhi. It is further submitted by the claimant that the deceased was ages about 26 years at the time of accident. That his last drawn salary was Rs. 10,000/- per month and used to contribute his entire income to them for the maintenance and household expenses. It is further submitted that the employer has notice of accident and he was requested verbally many times to pay the compensation to the petitioner, but he did not make any payment. It is further submitted by the claimant that the deceased was unmarried at the time of accident and the father of deceased has since died. That the accident was registered in Police station Baba Haridas



Nagar, Delhi vide FIR No. 0083/2018 U/s.302/34 IPC. In the last petitioner prayed that since accident of deceased employee occurred out of and in the course of employment with respondents resulting in death hence respondents are liable to pay compensation amounting Rs. 15,00,000/- along with interest and penalty to the petitioners/claimants being the legal heirs of the deceased/ employee.

3. Summon was sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent No. 1 filed its reply and submitted that the vehicle no. HR-55-U-2995 was insured with United India Insurance Co. Ltd., 4, Omkar Bhawan, Community Centre, Naraina Phase-1, New Delhi – 110028 for covering all risks and therefore if the Hon'ble Court comes to the conclusion that the respondents are liable to pay compensation then United India Insurance Company Ltd. is liable to pay the compensation as the vehicle was comprehensively insured with them. It is further submitted by the claimant that at the time of handing the vehicle to the driver the answering respondent had checked the DL of the driver who was holding a valid and effective DL at the time of accident and competent to drive the said vehicle. The answering respondent further submitted that it is matter of record and it is submitted that the deceased Jitender was employee of answering respondent as driver on the vehicle bearing no. HR-55-U-2995 and died during the course of employment. In the last the answering respondent further submitted that the contents of prayer clause of the claim petition filed by the claimant are false, frivolous and mischievous, highly exaggerated and emphatically denied and in the last prayed that the application may kindly be dismissed with heavy cost.
5. Respondent No. 2 filed its reply and submitted that it is not in the knowledge of the answering respondent that the deceased Jitender was in the employment of respondent no. 1 at the time of alleged incident. It is further submitted that the present petition of the petitioner is not maintainable and is liable to be dismissed as deceased had gone to attend marriage and as such was not on duty at the time of alleged incident dated 29/04/2018. That the claim petition of petitioner is not maintainable and is liable to be dismissed as there is nothing on record to show that the deceased was instructed by his employer to get filled CNG in the bus as such the deceased has not died during the course of employment. It is further submitted by the answering respondent that they are not liable to pay any compensation as they have issued the policy with regard to vehicle no. HR-55-U-2995, policy bearing no. 2216053117P105309307 was issued in the name of Sh. Jaideep Dagar, subject to terms and conditions contained therein. That at time of alleged incident the vehicle was not in use and as such the answering respondent is not liable to pay any compensation to claimant. It is further submitted that the deceased has been murdered in a pre-planned manner owing to some previous enmity and has not died in a accident involving the aforesaid vehicle. That there is no MLC and other medical documents to show that the deceased sustained injury and died during the course of employment on vehicle no. HR-55-U-2995. That police complaint clearly reflects that deceased died due to personal enmity and the vehicle was not involved in any manner whatsoever. In the



last the answering respondent further denied rest of the contents in toto and in the last prayed that the application may kindly be dismissed.

6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. On 26/10/2020 following issues were framed for adjudication:
 1. Whether the deceased workman Sh. Jitender Singh died due to the injury arising out of and during the employment under the respondent no 1 and if so, whether the claimant is entitled to claim death compensation under EC Act, if so, what amount and from R-1 or R-2?
 2. Any other relief?
8. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex.WW1/A (Mother of deceased Lt. Jitender Singh). The contents of affidavit are corroborative to those claim petition. The claimant also filed documents Ex.WW1/1 to CW1/5 i.e. Copy of Adhar card of the deceased Jitender, copy of DL of the deceased Jitender and copy of ID card of deponent. Her statement was also recorded and was also cross examined by counsel of respondent no. 2 on 10/03/2021.
9. Despite opportunities respondent no. 1 did not lead any evidence in the matter.
10. For respondent no 2 Smt. Balwant Kaur – Asstt. Manager – filed her evidence by way of affidavit. The contents of affidavits were corroborative to those reply. Her statement was also recorded and was also cross examined by counsel of claimant on 29/03/2022 and completed on 11/05/2022.

Further respondent No. 2 examined another witness i.e. Sh. Naveen Kumar Sharma - Investigator and further tendered the evidence and was also cross examined by counsel of claimant on 25/01/2023.
11. The matter was fixed for arguments. Written arguments were filed by the parties.
12. 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

13. The case of claimant is this that the deceased Jitender S/o Lt. Sh. Randhir Singh was working as a driver on vehicle bearing No. HR-55-U-2995. That on 29/04/2018 at about 10:00 PM the deceased was going as a driver in vehicle bearing no. HR-55-U-2995 for filling the CNG and when the said vehicle reached Jain Mandir wali gali near main road, Jharoda Kalan, Delhi, he was murdered during the course of employment and under the



employment of respondent no. 1. That the accident took place under the jurisdiction of police station Baba Haridas Nagar, Delhi. It is further submitted by the claimant that the deceased was aged about 26 years at the time of accident. That his last drawn salary was Rs. 10,000/- per month and used to contribute his entire income to them for the maintenance and household expenses. It is further submitted that the employer has notice of accident and he was requested verbally many times to pay the compensation to the petitioner, but he did not make any payment. It is further submitted by the claimant that the deceased was unmarried at the time of accident and the father of deceased has since died. That the accident was registered in Police station Baba Haridas Nagar, Delhi vide FIR No. 0083/2018 U/s.302/34 IPC. Since the respondents did not pay the compensation and this claim has been filed before this Authority.

On the other side respondent no. 1 in his reply admitted employee-employer relationship stating therein that deceased was his employee and further submitted that deceased died during the course of employment and vehicle in question was insured with respondent no. 2 insurance company on the day of accident. On this basis respondent no 1 submitted that if this court comes to the conclusion that the respondents are liable to pay compensation then United India Insurance Co. Ltd. is liable to pay the compensation as the vehicle was comprehensively insured with them. In prayer respondent no. 1 stated that claim petition is false, frivolous and mischievous, highly exaggerated and emphatically denied and in the last prayed that the application deserves for the dismissal.

Respondent no. 2 insurance company also filed reply wherein they have taken main objection that claim petition is not maintainable on the ground that deceased had gone to attend marriage and as such he was not on duty at the time of alleged incident dated 29/04/2018. Further respondent has taken objection that nothing has been placed on record to show that he was instructed by his employer to get filled CNG in the bus, as such he has not died during the course of employment. Respondent in principle admitted that vehicle bearing No. HR-55U-2995 was insured with them under policy No. 2216053117P105309307 which was issued in favour of Jai Deep Dagar, subject to terms and conditions contents therein. Since at the time of alleged incident vehicle was not in use and as such answering respondent is not liable to pay any compensation to claimant because that evidence of Ms. Krishna ExWW1/A (mother of deceased) has admitted in cross examination that she has gone to marriage of her niece along with her son Vijender and deceased Jitender and had come back from marriage at about 11:00 PM, which clearly establish that decease was in the marriage and was not on duty on 29/04/2018. Moreover from the evidence it has also come on record that working hours of deceased was 06:30 AM to 10:00 PM and in this case as per claim the incident of murder occurred after 11:00 PM, which is clearly mentioned in the FIR. As such respondent no. 2 is not liable to pay compensation to the claimant.

To prove her case claimant examined herself by way of evidence Ex. WW1/A. Respondent no. 1 did not lead any evidence. Respondent no. 2 examined 2 witnesses Ex. R2W1/A - Asstt. Manager and Ex. R2W2/A - Sh. Naveen Kumar Sharma – Investigator.



On the basis of pleading of the parties and documents available on record and evidence adduced by the parties it is not disputed between deceased workman and respondent no. 1 that deceased was in the employment of respondent no. 1 and on the day of incident of murder of deceased the vehicle in question was insured with respondent no. 2 insurance company. The main issue in this case is this, whether incident of murder of deceased was occurred out of and in the course of his employment or not and if yes whether claimant is entitled for any compensation from the respondents?. From the facts of the case and pleading of the parties it is admitted fact by the claimant that on the day of incident of murder of deceased, she along with her sons namely Bijender and deceased Jitender had gone to attend marriage of her niece and had come back from marriage at about 11: 00 PM , when he was going for filling of CNG incident of murder had taken place. But nothing has been submitted by respondent no. 1 in his reply that on the day of incident of murder of deceased employee was instructed to drive the vehicle in question and at 11:00 PM on returning on his instruction he was going to filling the CNG when incident of murder was took place. Even claimant has also placed any such documents to prove her case that on the instruction of respondent no. 1 claimant was going to filling CNG in bus after 11:00 PM and the incident occurred. In cross examination of claimant she had admitted this facts that they had gone to attend the marriage of her niece. The contents of FIR are also on the same line as discussed above.

After examining all the facts of this case from all the angle it has come out that deceased had gone to attend his family marriage function which was his personal affairs and the incident of murder was occurred. This cannot be termed that incident of murder of deceased was out of and in the course of his employment. Claimant has failed to prove this issue. As per provision of the Employee's Compensation Act, 1923, 2 conditions are necessary to claim the compensation (1). Employee-employer relationship to be must between employee and employer, (2). Accident must be occurred out of and in the course of his employment with respondent, only then the employer is liable to pay compensation to the claimant in case of injury of injury or death. In this case these 2 factors are not found exists. As such I hold that claimant failed to prove her case as such not entitled for any compensation under the Employee's Compensation Act, 1923. In view of above discussion the issue no. 1 is decided against the respondent.

Issue No. 2

In view of discussion made in issue no. 1 claimant is not entitled for any relief.

14. Given under my hand and seal of this Authority on this 20th day of September, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

