

**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. CEC/NW/I/173/16/ 196.

Dated: 20/01/2025.

IN THE MATTER OF :

Sh. Lakhan Singh S/o Sh. Surender Singh S/o Sh. Lala Ram
R/o Village Mohalla,
Talab Kala, Taal Gram, Kannauj,
Uttar Pradesh

At Present:-

Juggi No. C-420, Saheed Sukhdev Nagar,
Wazirpur Industrial Area, Delhi 110052

.....Applicant/Claimant

VERSUS

1. Sh. Vivek Yadav @ Vivek Kumar
M/s R. S. Yadav
R/o Village- Ujagarapur,
P/o & P/s- Kusmata,
Distt- Mainpuri, U.P.

2. M/s. Tata AIG General Insurance Co. Ltd.
310-311, 3rd Floor, Ashoka Estate,
Barakhamba Road, Connaught Place,
New Delhi – 110001

..... Respondents

ORDER

1. By this order, I will dispose of the claim application dated 20.12.2016 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 a driver on vehicle bearing no. UP-75-M-6919 owned by Respondent No. 1 and on 08.11.2015, he met with an accident out of and during the course of employment resulting thereby he received grievous injury on his right leg. It is further stated that on 08.11.2015, the vehicle was on its business trip from Agra onward. On 08.11.2015 at about 9:00 P.M. when the vehicle reached near Joga Mor, Bewar, District Mainpuri, another bus came from the opposite direction which of UP roadways and collided with this vehicle. The claimant was driving the vehicle and he sustained grievous injuries on all over his body especially on his right



leg thereafter he was taken to hospital and took treatment and after that he was shifted to another bigger hospital to buttress treatment. After this accident the claimant is not in a position to do any work of his capacity and has become 100% disabled for the purpose of his employment as driver. Claimant further stated that his earning capacity has been totally reduced. The vehicle bearing No. UP-75-M-6919 was owned by Respondent No. 1 at the time of accident and it was insured with Respondent No. 2 i.e. M/s TATA AIG General Insurance Company Ltd., and an additional premium was charged by the Respondent No. 2 from Respondent No. 1 under the Employee's Compensation Act, 1923. Claimant further stated that he was drawing wages @ Rs. 8,500/- per month and Rs. 200/- per day as food allowances and he was aged 33 years at the time of accident. It is further stated that the Respondent No.1 is having the notice of the accident since the day of its occurrence. The claimant was driver by profession and he has become totally disabled and not able to take up physical work and as per law settled by the Hon'ble Supreme Court of India in Re: Pratap Narain Singh Deo vs. Srinivasa Sabata cited at 1976 ACJ 141 it is a case of total disablement. The claimant was an Employee and the accident was caused out of and during the course of employment, hence 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 and medical expenses along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount. Alongwith claim petition claimant filed copy of FIR bearing No. 0318 dated 08.11.2015, copy of his medical treatment documents.

3. Summonses were sent to the respondents for filing their reply in their defense.
4. In response of the summons the Respondent No. 1 had appeared but no reply had filed on his behalf and he discontinued to appear.
5. The Respondent No. 2 has filed reply in their defense and stated therein 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 of claimant is based on the wrong and false facts and false documents i.e. Driving License. The Claimant had shown his Driving License as UP7619960000018 but on verification from concerned Transport Authority (Farrukhabad, Uttar Pradesh) and their report No. 09/Sh. Pra./Vaad/2024 dated 03.01.2025 the said Driving License Number is belonging to Sh. Rakesh Kumar Verma not with claimant. On this ground Respondent No. 2 denied his liability towards payment of compensation to the claimant. However, it has been stated by them that as per the record available with them policy No. 0101082414 was issued by them in the name of Sh. Vjvek Yadav, Respondent No. 1 for a period from 31.03.2015 to 30.03.2016. Respondent No. 2 prayed the claim application be dismissed.



6. On 13.06.2023 the following issues were framed for adjudication:-

I. Whether claimant met with an accident out of and in the course of his employment resulting thereby he became 30% disabled?

II. If so, what relief and directions necessary in this regard ?

7. The matter was fixed for evidence by the parties. The claimant – Sh. Lakhan Singh, has filed his evidence by way of affidavit Exhibit AW1/A alongwith supporting documents i.e. *Copy of Disability Certificate, copy of Medical Treatment Documents, copy of Aadhar Card, copy of FIR bearing No. 318/15 dated 08.11.2015, Police Station Bewar, District Mainpuri, Uttar Pradesh, copy of complaint about the accident to S.H.O. Police Station Bewar, District Mainpuri, Uttar Pradesh and copy of Particulars of the vehicle bearing No. UP-75-M-6919.* Accordingly, the applicant/claimant was cross examined by the Ld. Counsel for the Respondent No. 2 but no contradiction was pointed out in the cross examination. In addition to the above the claimant has summoned the records from Saubhagya Hospital, Kanpur and the said hospital has produced the documents/medical records of the claimant. Apart from the applicant/claimant has filed the treatment papers for the injuries. In the treatment papers, the History of accident is mentioned as RTA and the date of accident and the nature of injury are matching with the averments in the claim application.

8. Respondent No. 1 did not file any evidence.

9. On behalf of the Respondent No. 2, Ms. Akhalya (Manager of M/s Tata AIG General Insurance Company Ltd.) has filed her evidence by way of affidavit Exhibit R2W1/A and she was cross examined by the counsel for the claimant.

10. The case was fixed for arguments and written arguments were filed and oral arguments were also heard.

11. 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 driver on vehicle bearing no. UP-75M-6919 owned by Respondent No. 1 and on 08.11.2015, he met with an accident out of and during the course of employment resulting thereby he received grievous injury on his right leg. On 08.11.2015, the vehicle was on its business trip from Agra onward. On 08.11.2015 at about 9:00 P.M. when the vehicle reached near Joga Mor, Bewar, District Mainpuri, another bus came from the opposite direction of UP roadways and collided with this vehicle. The claimant was driving the vehicle and he sustained grievous



injuries on all over his body especially on his right leg thereafter he was taken to hospital and took treatment and after that he was shifted to another bigger hospital to buttress treatment. After this accident the claimant is not in a position to do any work of his capacity and has become 100% disabled for the purpose of his employment as driver. 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. The available witness with parties was the co-worker present in the vehicle at the time of accident. At the instance of the claimant co-worker namely Sh. Jaaleshwar was summoned to appear. The exercise of the summons was done umpteen times through concerned S.H.O. and SSP as well but that witness could not be present for his evidence. That gives weight to the efforts of the applicant.

The applicant/claimant has relied on the judgment of the Hon'ble Supreme Court of India in a case titled as **Maghar Singh vs. Jaswant Singh, cited at 1997 ACJ 517**, wherein it has been seen that in the work of that type no practice can be found to have appointment letter. In another case settled by the Apex Court in a case titled as **Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ibrahim Mahmood Issak** cited at 1969 ACJ 422, wherein it has been held that rules of Evidence Act and C.P.C. are not applicable under the Act and the Commissioner seeking the material can weigh the possibility and take an inference which should be logical.

On the issue of burden of proof the Hon'ble Supreme Court of India in "**Shahajahan & Anr. Vs. Shri Ram General Insurance Co. Ltd. & Anr.**" cited at **2021 SCC Online SC 3133** in Civil Appeal No. 6775 of 2021 it was held that the burden of proof is not always on the claimant and in circumstances it is shifted on the employer as well.

The counsel for the Respondent No. 2 has vehemently argued that the driving licence bearing No UP7619960000018 as stated by the applicant in his cross examination was got verified and it has been shown to be issued in the name of some other person. Hence it needs be presumed that the applicant was not working as a driver. In this regard, the counsel for the applicant has argued that it seems some time it is difficult for a person occupationally to be driver and less educated to remember the driving licence number of 8-10 digits. The oral testimony and his memory may be inaccurate. When he has categorically stated that the driving licence was lost and it was never needed as he himself had been disabled to drive a vehicle. This plea could be seen to be convincing. The counsel for the applicant has further argued that even if the worst is presumed the insurance company can, at the most, claim recovery rights from the owner. He placed his reliance on the judgment of the Hon'ble Supreme Court in **Gurmail Singh vs. Bajaj Allianz General Insurance Co. Ltd.**, cited in SLP (C) No. 13472 of 2015 wherein identical situation the Hon'ble Apex Court had granted recovery rights to the insurance company. Hence the said plea to defeat the claim of the applicant does not seem to be correct.



The evidence adduced by the applicant and more so the police report shows the applicant's name has been mentioned gives scope to take a view that the applicant was there in the vehicle. The insurance company has not given any evidence. Rather they have failed to bring the record for O.D. Claim and there was nothing categorically on their part. It is therefore reasonable to take an inference that the applicant sustained injury while being posted on the vehicle and he sustained injury out of and during the course of his employment on the vehicle. The said issue is decided in favour of the applicant and against the respondents.

ISSUE NO. 2

The issue of injury of and during the course of employment has since been decided in favour the applicant against the respondents. In the forgoing paragraph above, next comes as to what amount of compensation and any other relief the applicant is entitled In the claim application the applicant/claimant has been stated that was drawing wages @ Rs. 8,500/- per month and Rs. 200/- per day as food allowances. But as per maximum limit prescribed at 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 33 years at the time of accident. The date of birth of the applicant in his Aadhar Card has been given 01.01.1984. Thus, on the day of accident the applicant had completed 31 years of his age. Hence his age is taken 31 years. 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 30% 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 driver which he was doing to prior this accident, hence this is a case of 100% loss of earning capacity. Finding the nature work, it should be accepted that it is case of 100% disablement 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 do take up and do that work which he was doing hence the disablement was assessed 100%. Similarly *Supreme Court in Mohan Soni vs. Ram Avtar & Ors.*, 2102 ACJ 583.

New India Assurance Co. Ltd. Vs. Moharman&Anr. - FAO 17/2021 – *Case of Cleaner-Physical Disability of 20% held 100% loss of earning capacity* and other connected matters
New India Assurance Co. Ltd. Vs. Pushkin Tiwari &Anr. - FAO 21/2021 *Case of Driver - Physical Disability of 18% held 100% loss of earning capacity* and **New India Assurance Co. Ltd. Vs. Furkan @ Mohd. Furkan &Anr.** - FAO 305/2022 *Case of Driver - Physical Disability of 39% held 100% loss of earning capacity*. The applicant/claimant gave his evidence and he remained physically present and his condition does not render him capable to drive a vehicle. He unable to walk, sit on his heels, thus he cannot mount on the transport vehicle. The situation of the applicant/claimant and the facts are covered by that one and more recently the Hon'ble High Court of Delhi in a judgment in *New India Assurance Co. Ltd. Vs. Mohd. Ajmer* – FAO 259 of 2013 whereby it has been ruled that a driver with injury



in his leg having disablement to the extent of lesser is certainly a case of 100% loss of earning capacity. He is not able to move freely and he finds difficulty in squatting, he cannot use his leg for pressing brakes and accelerator etc. He cannot even step up to enter driver's seat. This is because of the reason that he is no more capable to drive a transport vehicle. Hence, I hold that the loss of earning capacity the claimant is entitled to compensation. In the given wage, age and loss of earning capacity the applicant/claimant is entitled to compensation as under:

i).	Relevant factor of 31 years	:	205.95
ii)	60% of wages @ Rs. 8,000/- pm	:	Rs. 48,00/-
iii)	Amount of compensation		
	$\frac{205.95 \times 8000 \times 60}{100}$:	Rs. 9,88,560/-

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, the Respondent No. 2 i.e. M/s Tata AIG General Insurance Company Ltd., is directed to deposit in this court an amount of **Rs. 9,88,560/- (Rupees Nine Lakhs Eighty Eight Thousand Five Hundred Sixty Only)** on account of compensation payable to the applicant along with interest @ 12% p.a. w.e.f. 08.11.2015 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 the same shall be recovered as arrears of land revenue. However Respondent No. 2 is at liberty to recover ordered amount from Respondent No. 1 as per provision of the Act. 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.

12. Given under my hand and seal of this Authority on this 20th day of January, 2025.

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

