

**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/72/NW/18/ 204.

Dated: 30/01/2025.

**IN THE MATTER OF :**

1. Mohammad Kaif S/o Late Mohammad Ali @ Mohd. Ali Khan
2. Rokaiyah D/o Late Mohammad Ali @ Mohd. Ali Khan

**Presently At:** House No. 2045/160, Ganesh Pur, Tri Nagar, Delhi-110035

**Permanent Resident of :** Village Ladhuwai Post Office, Maryadpur Police Station  
Madhuwan , District Mau, Uttar Pradesh-221602

3. Sabana Khatoon W/o Late Mohammad Ali @ Mohd. Ali Khan
4. Aisa Parveen D/o Late Mohammad Ali @ Mohd. Ali Khan (Through Mother Sabana Khatoon)
5. Afreen Khatoon D/o Late Mohammad Ali @ Mohd. Ali Khan (Through Mother Sabana Khatoon)
6. Taiba D/o Late Mohammad Ali @ Mohd. Ali Khan (Through Mother Sabana Khatoon)

**Claimant No. 3 to 6 are R/o.** Gram Post Mahrona Chhat, District-Devariya, Uttar Pradesh

.....Applicants/Claimants

**Versus**

1. Sh. Vishal Kumar Sharma S/o Sh. Anand Prakash,  
R/o. H. No. D-55, Sector-49,  
Gautam Budh Nagar, Uttar Pradesh-201301

**ALSO AT:**

A.M. Road, Nagaland Mororchung,  
Mororchung-796601

2. M/s The New India Assurance Company Ltd.  
12/1, 2<sup>nd</sup> Floor, Jeevan Raksha Building,  
Asaf Ali Road, New Delhi-110002

..... Respondents



## ORDER

1. Vide this order, I will dispose of claim application dated 26.03.2018 filed on 23.08.2018 before this Authority under Employees Compensation Act, 1923 for seeking death compensation.
2. In the claim petition claimant stated that the Deceased Late Mohammad Ali @ Mohd. Ali Khan S/o Late Sh. Warif Khan R/o. Village Ladhuwai, Post Office Maryadpur, Police Station – Madhuwan, District - Mau Uttar Pradesh – 221602 was driving vehicle bearing No. NL-02-N-4056 under employment with Respondent No. 1 as a driver. It is further stated that he met with an accident on 08.11.2017 at about 08:00 PM at Main Road Chijargi Sector-63, Noida, Uttar Pradesh, under the jurisdiction of Police Station Phase III Janpat, District Goutam Budh Nagar, Uttar Pradesh during the course of employment of Respondent No.1. It is further stated that the deceased died due to injuries in the accident while changing the wheel of crane bearing no. NL-02-N-4056 and the vehicle was insured at the time of accident vide policy cover note no. 32150031160200007568 from 27.12.2016 02:39:36 to 26.12.2017 11:59:59 PM. It is further stated that the deceased was aged about 35 years at the time of accident and his last drawn salary was Rs. 15,000/- per month. The deceased used to contribute his entire income to the petitioners for the maintenance and house hold expenses of the petition who was fully dependent upon him. It is further stated 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 stated that the deceased was married and petitioner No. 2 & 3 are his children. The deceased was also living with Sabana Khatoon. Who was also married and who left her husband. The deceased had three children from illegitimate relationship with Sabana Khatoon. The petitioner are impleading as Claimant/petitioner No. 4 to 6. It is further stated that the applicant is entitled to receive compensation of Rs. 15,00,000/- on account of premature death of the deceased, loss of dependency and mental torture and shock suffered by the claimants/petitioners. It is further stated that the Respondent No. 1 and 2 are liable to pay compensation to the petitioner, as the deceased died in the account during the course of employment with Respondent No. 1 and 2. In the last claimant/petitioner prayed that the petitioners may kindly be awarded compensation as admissible under the Act with interest and the respondents be directed to pay penalty for not depositing the compensation within time. Claimant/petitioner also filed copy of criminal documents (Colly 10 pages), copy of aadhaar card of Rokaiyan, copy of aadhaar card of Mohammad Kaif, copy of aadhaar card of Mahajbi, copy of Insurance Policy of vehicle bearing no. NL-02-N-4056, copy of certificate of fitness of vehicle in question, copy of certificate of registration of vehicle bearing no. NL-02-N-4056.



3. Summon were issued to respondent to file reply/defense in the case.
4. Respondent No. 1 filed reply in his defense and stated therein that the vehicle no. NL-02-N-4056 was insured with Respondent No. 2 i.e. The New India Assurance Company Limited situated at 12/1, 2<sup>nd</sup> Floor, Jeevan Raksha Building, Asaf Ali Road, New Delhi-110002 vide policy cover no. 32160031160200007568 valid from 27.12.2016 to 26.12.2017 and therefore if the Hon'ble Court comes to the conclusion that the respondents are liable to pay compensation then Respondent No. 2 is liable to pay the compensation as the vehicle was comprehensively insured with them. Respondent further stated that the claim petition is admitted to the extent that the deceased Mohammad Ali @ Mohd. Ali Khan S/o Late Sh. Warif Khan was employed with Respondent No. 1 as driver and he met with an accident on 09.11.2017 at about 06:50 PM while working as a driver with the Respondent No. 1. It is further admitted to the extent that he was about 40 years and drawing Rs. 15,000/- per month. In the last Respondent No. 1 admitted the contents of claim petition of the claimant/petitioner.
5. Respondent No. 2/Insurance Company has filed reply and stated therein that without prejudice and Respondent is filing statement to the claim petition in the present matter because it does not want any adverse order passed against it by the present Authority. The present applicants have not filed the relevant documents on which they are relying for their claim like employment certificate, cogent address proof, documents to prove relation with alleged deceased etc. It is further stated that there is no documents filed/annexed by the claimants herein to show/prove that the employer employee relationship existed between the alleged deceased and the Respondent No. 1. It is further stated that the Respondent No. 2 shall not be liable to indemnify any amount of compensation, if awarded to the claimants, in case, it appears that at the time of the alleged accident, the alleged Crane bearing Registration No. NL-02-N-4056, was being used in violation of the Terms and Conditions of Relevant Insurance Policy. It is further stated that the alleged deceased has not been received any fatal injury during the course of the employment as no document has been place on record regarding employment. It is assuming but not admitting that the claimants have made a false story just to extract money from the Respondent No. 2. It is further stated that the alleged crane bearing no. NL-02-N-4056, was insured vide policy no. 3216003160200007568, valid from 27.12.2016 02:39:36 PM to 26.12.2017 11:59:59 PM, issued in the name of Sh. Vishal Kumar Sharma, Address H. NO. D-55, SEC.-49, Noida, Uttar Pradesh, is a Commercial Vehicle Liability only policy and the liability of the company would only arise if the insured have not violated any terms and conditions of the policy and if the injury is caused by the use of the insured vehicle. Until and unless it is proved that the fatal injury received by the deceased during the employment and during the use of vehicle, the insurance company is not



liable to pay any compensation to the claimants/petitioners. It is further stated that as per provision of the Act the insured/owner of the vehicle in question is liable for the penalty as the insured did not satisfy the compensation within stipulated period. The insurance company is not liable to pay any penalty and interest. Even otherwise as per the provision of the Act herein it is the duty of the employer to pay the compensation to the injured within stipulated period from the date of alleged accident and thereafter, the employer will file claim to insurance company and then the insurance company after analyzing the claim may reimburse the compensation amount. In the present case no payment was made by the employer of the injured. Hence the claim is liable to be dismissed. It is further stated that the claimants/petitioners herein have concealed material fact from this Authority. It is necessary to submitted that the alleged second wife of the alleged deceased lodged a FIR U/S 302 I.P.C. vide FIR No. 0970/2018, PS: Phase 3, Distt. Gautam Budh Nagar, UP wherein she had alleged that her husband was murdered and not died due to accident. The claim petition may be dismissed on this ground only due to concealment of facts from the Court. Respondent No. 2 further denied other contents of the claim petition of the claimants.

6. Claimant filed rejoinder by which she denied all the contents of reply of Respondent No. 2 and reiterated contents of her claim application.
7. Show Cause Notice dated 01.09.2022 and 07.10.2024 was issued to the respondents to show cause as to why penalty under section 4-A (3) (b) of the Act be not imposed upon them.
8. In response to Show Cause Notice Respondent No. 1 has filed his reply and stating therein that the vehicle in question was insured with Respondent No. 2/Insurance Company and the accident took place within the jurisdiction of Police Station – Phase-3, Janpat, Goutam Budh Nagar, UP thus Police case was registered under said Police Station dated 09.11.2017. It is further stated that the Respondent No. 1 has intimated the Insurance Company/Respondent No. 2 just after occurrence of the accident alongwith documents. Respondent No. 1 further stated that there is no delay on the part of the Respondent No. 1 and the Respondent No. 2 has facilitated and provided all types help to the bereaved family of the deceased employee. All the relevant documents were supplied to the Respondent No. 2/Insurance Company. Therefore it is the Respondent No. 2 who is taking all types of frivolous plea to defeat the lawful compensation to the dependents of the deceased employee therefore they are liable for penalty and compensation.
9. Respondent No. 2 also filed reply in response to Show Cause Notice and stated therein that at the time of alleged accident there was no employer employee relationship between the Respondent No. 1 and the deceased, so therefore Respondent



No. 2/Insurance Company is not liable to pay any compensation in this matter. Even the legible as well as translated copy o documents has not been filed with the claim application. There was also material discrepancies and concealment of facts by the claimant/petitioner. Respondent No. 2/Insurance Company further stated that a detailed reply in the claim application has already been submitted by the Respondent No. 2/Insurance Company and the same may be consider as part of this reply as well.

10. On 19.01.2023 the following issues were framed for adjudication:-

- i. Whether deceased Mohd. Ali Khan was died due to accident out of and in the course of employment?
- ii. If so whether dependents of the deceased employee are entitled to death compensation from respondents, if so from whom ?
- iii. If penalty is imposable upon the respondent's or not?
- iv. If so what directions in this regard & relief, if any?

11. Claimant No. 2 i.e. Mohammad Kaif has filed amended memo of parties supported with affidavit informing therein that during proceedings Claimant No. 1 i.e. Mahajbi (Mother of Claimant No. 2 Mohammad Kaif) died. Copy of Death certificate of Mahajabi has also filed.

12. Matter was fixed for the evidence of the parties. Claimant No. 1 i.e. Mohammad Kaif filed his evidence by way of affidavit exhibit PW1/A. The contents of the affidavit are corroborative those claim petition. Claimant has also filed documents exhibit PW1/1 to PW1/6 i.e. Copy of aadhaar card of Mohammad Kaif, Copy of aadhaar card of Mother Mahajbi, copy of disability certificate of mother Mahajbi, copy of aadhaar card of sister Rokaiyah, copy of disability certificate of sister Rokaiyan, copy of criminal documents (Colly 10 Pages) respectively and copy of DL Mark-A. His statement was also recorded on 24.05.2023 and was also cross examined by Counsel for Respondent No. 2/Insurance Company. Respondent No. 1 despite given sufficient opportunity to cross examine claimant but he failed to do so.

13. For Respondent No. 1 i.e. Sh. Vishal Kumar present in witness box and his cross examination was done by Counsel for the Respondent No. 2.

14. Respondent No. 2/Insurance Company did not lead any evidence in the matter.

15. Written submission have been filed by all the parties and oral submissions were also heard.



16. 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 his Deceased father Late Mohammad Ali @ Mohd. Ali Khan S/o Late Sh. Warif Khan R/o. Village Ladhuwai, Post Office Maryadpur, Police Station – Madhuwan, District - Mau Uttar Pradesh – 221602 was driving vehicle bearing No. NL-02-N-4056 under employment with Respondent No. 1 as a driver and he met with an accident on 08.11.2017 at about 08:00 PM at Main Road Chijargi Sector-63, Noida, Uttar Pradesh, under the jurisdiction of Police Station Phase III Janpat, District Goutam Budh Nagar, Uttar Pradesh during the course of employment of Respondent No.1 and deceased died due to injuries in the accident while changing the wheel of crane bearing no. NL-02-N-4056 and the vehicle was insured at the time of accident vide policy cover note no. 32150031160200007568 from 27.12.2016 02:39:36 to 26.12.2017 11:59:59 PM. Claimant has submitted that since death of deceased was occurred out of and in the course of his employment as such petitioner are entitled to receive death compensation from the respondents jointly or severally. Respondent No. 1 admitted factum of employee employer relationship and accident of deceased Mohammad Ali @ Mohd. Ali Khan out of and in the course of his employment. Further Respondent No. 1 was appeared in witness box and also stated that deceased Mohammad Ali @ Mohd. Ali Khan was his employee and met with an accident out of and in the course of his employment. Though the Respondent No. 2/Insurance Company has denied submission of the Respondent No. 1 but in principle factum of coverage of vehicle in question under insurance policy is admitted. Since Respondent No. 1 admitted the factum of employee employer relationship and accident out of and in the course of employment resulting thereby deceased employee Mohammad Ali @ Mohd. Ali Khan was died. In view of this claimants are entitled to receive death compensation from the Respondents jointly or severally. Since vehicle in question was insured with respondent no. 2/Insurance Company on the day of accident hence Respondent No. 2 is liable to indemnify to the claimants on behalf of Respondent No. 1.

**ISSUE NO. 3 & 4.**

Show Cause Notice 01.09.2022 and 07.10.2024 was issued to the respondents u/s 4-A (3) (b) of the EC Act, 1923. Respondent No. 1 filed reply and submitted that after the accident Respondent No.1 intimated about the accident to the Respondent No.2/Insurance Company on time through letter dated 16.11.2017 which was received by the Respondent No. 2 on 17.11.2017. Since Respondent No.1 intimated about the accident to the Respondent No.2/Insurance Company so thereafter it was responsibility of the Respondent No.2 to pay death compensation to the petitioners



but despite this no compensation under EC Act, 1923 was paid to the claimants. As such Respondent No.2/Insurance Company is liable to pay 25% penalty of awarded amount to claimants.

As per discussion made in Issue No. 1 & 2 holding entitlement of claimants to receive death compensation as such for calculation of compensation age of deceased is taken as 40 years (18.12.1976 as BOD mentioned in Driving License) and relevant factor 184.17 and 50% wages of Rs. 8000/- as restricted under the Act. Accordingly compensation is calculated as under:

**Rs. 4000 x 184.17 = Rs. 7,36,680/-**

In view of above calculation claimants are entitled to receive death compensation Rs. 7,36,680/- (Rupees Seven Lakhs Thirty Six Thousand Six Hundred Eighty) along with 12 % interest per annum from the date of accident i.e. 08.11.2017 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. 7,36,680/- (Rupees Seven Lakhs Thirty Six Thousand Six Hundred Eighty) alongwith 12 % interest per annum from the date of accident i.e. 08.11.2017 till its realization** further Respondent No. 2 is directed to deposit 25 % penalty of awarded amount which comes to **Rs. 1,84,170/- (Rupees One Lakh Eighty Four Thousand One Hundred Seventy)** with Commissioner Employees Compensation by way of demand draft/cheque within 30 days from the date of order in favour of **Commissioner Employees Compensation** failing which same shall be recovered as per provision of the Act.

17. Given under my hand and seal of this Authority on this 30<sup>th</sup> day of January, 2025.

(S.C. Yadav)  
Commissioner

Employee's Compensation Act, 1923

