

BEFORE 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.ECI/117/ND/2022/ 462.

Date: 09/02/2024.

IN THE MATTER OF:

Sh. Kalu Singh

R/o Nahal, Nahal, Aligarh,
Uttar Pradesh – 202131

Through Counsel Sh. R.K Nain

Ch. 722-723, Western Wing,
Tis Hazari Courts, Delhi - 110054

....Applicant/Claimant

V/s

M/s South Haryana Goods Carrier Pvt. Ltd.

H.O. 3A/2, Gali No. 14, Badli Railway Station Road,
Sameypur, Delhi - 110042

M/s Universal Sompo General Insurance Co. Ltd.

Unit No. 903 & 904, 9th Floor,
GDITL Tower, Netaji Subhash Place,
Pitampura, New Delhi - 110034

.....Respondents

ORDER

1. Vide this order, I will dispose of the application of the applicant/claimant dated 02.07.2019 seeking injury compensation.
2. In the application preferred by the applicant, it has been stated that he was employed as driver on vehicle bearing no. DL-55W-9259 owned by respondent no. 1 and on 02-09-2018 he met with an accident arising out of and during the course of employment and he received grievous injury on his right leg. On 02-09-2018 the applicant was coming from Hyderabad to Delhi having goods loaded in the vehicle. On his way back while being at Khamgaon, Distt. Akola instantly a cow emerged on the road just in front of the vehicle and to avoid a hit in the animal the applicant who was driving the vehicle veered his vehicle aside but it could not be controlled and got overturned. After overturn, the vehicle caught fire and the applicant had



sustained serious burn injuries on his body. He was taken to hospital and he remained there for two days. Thereafter a representative of respondent No. 1 reached there and he took the applicant to Delhi and was got admitted in L.N.J.P. Hospital, Delhi. He remained admitted in that hospital for about 10 days. He incurred a considerable amount on his treatment and on other ancillary amenities. It has been stated that after the injury, which has not been cured, he has sustained serious physical impairment. He was directed to have him examined by the Medical Board, of the Govt. Hospital. He faced the medical board, Aruna Asaf Ali Hospital, Govt. of N.C.T., Delhi. And he has been assessed to the extent of 18%. He says that though the medical board has assessed him to be partially impaired, but as he was a driver and after this impairment he is no more in a position to continue with his occupation which he was doing driving a transport vehicle. He has cited judgment whereby he has claim for compensation to the extent of 100%. He has also claimed for interest and penalty as per the provision of the Act.

3. Summon was sent to the respondents with direction to appear before this Authority to file reply in the matter. Initially the employer who was the sole respondent did not appear. Proceeded ex-parte. After that they appeared and justified their non-appearance. The application was considered and as they stated the vehicle was insured, the insurance company was arrayed as respondent No. 2.
4. Respondent No. 1 filed written statement. In the written statement filed by the said respondent, it was stated that the claim application was not maintainable, and it was liable to be dismissed under Order VII Rule 11 C.P.C. They said that the jurisdiction does not lie in Delhi. It was further stated that they provided all help to the claimant, and he was even paid some amount say to the tune of Rs. 30,000/- as ex-gratia payment. They said that the injury caused to the applicant is partial and it is not a case of 100% loss of earning capacity. They sought the application to be dismissed with exemplary cost.
5. Respondent No. 2, the insurance company, in spite of notice, opted not to appear. Later on appeared and filed an application which was not in proper form. They did not take step in getting that processed in accordance with the law.
6. On the pleadings of the parties, the following issues were framed on 22/07/2022 for adjudication:
 - i. To what amount of compensation the claimant is entitled to?
 - ii. Any, other relief?
 - iii. Whether the respondent are liable for penalty and if so what extent and what amount?
7. Matter was fixed for the evidence of the claimant. Claimant filed his statement by way of affidavit Ex.AW1/A. The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex. AW1/1 to AW1/5 and Marked as A to C i.e. copy of disability certificate, copy of medical treatment documents, copy of Aadhar Card, copy of



Election identity card, Copy of photograph after the accident, copy of OD claim receipt for the very same accident, copy of insurance policy, copy of certificate of registration of the vehicle.. His statement was also recorded on 25/07/2023 and was also cross examined by counsel of respondent No. 2 on 25/07/2023 and counsel of respondent no. 1 on 08/08/2023.

8. For respondent No. 1 Sh. Rohtash – filed his evidence by way of affidavit Ex. RW1/A. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant and respondent no. 2 on 05/12/2023. In their evidence affidavit it was stated that the vehicle was on its return trip from Hyderabad to Delhi. The applicant had been hired on ad-hoc basis for the first time. While the vehicle reached near Akola it met with an accident at a place named as Khaongaon. Manager of respondent No. 1 namely Shri M.C. Verma reached Govt. Medical College and Hospital, Akola. He brought the claimant to Delhi and got him admitted in L.N.J.P. Delhi. He filed documents as to the treatment of the claimant. It was further stated that they had given some amount to the claimant to the tune of Rs. 30,000/- as ex-gratia to help him. The respondent No. 1 also further stated their stand by filing an application stating therein to seek permission to file certain documents. In the said application it was stated that they have been offered the O.D. Claim upto 83% of the Insured declared value (IDV) and appended copy of snapshot of the Own Damage Claim of the Vehicle.
9. In spite of availing opportunity, no evidence was adduced by the respondent No. 2. Nor any investigation report which they use to conduct in respect of a claim filed against them.
10. On the basis of the pleading of the parties, evidence adduced by them and the arguments addressed by the parties, I have to give my findings as under:

ISSUE NO. 1

11. The case of the applicant is that on 02-09-2018 he was coming from Hyderabad to Delhi having goods loaded in the vehicle. On his way back while being at Khamgaon, Distt. Akola instantly a cow emerged on the road just in front of the vehicle and to avoid a hit in the animal the applicant who was driving the vehicle swerved his vehicle aside but it could not be controlled and overturned. The vehicle caught fire and the applicant had sustained serious burn injuries on his body. He was taken to hospital and he remained there for two days. Thereafter the representative of respondent No. 1 reached there and he took the applicant to Delhi and he was got admitted in L.N.J.P. Hospital, Delhi. He remained admitted in that hospital for about 10 days. He gave his evidence. In that regard he filed his affidavit. The contents of the affidavit were corroborative that of the claim application. Along with the affidavit, the applicant filed medical treatment documents, documents as to his identity, O.D. Claim receipt, policy of the vehicle, R.C. etc. He was cross examined by the counsel of respondents. Respondent No. 1 gave their evidence. In their evidence – affidavit it was stated that the vehicle was on its return trip from Hyderabad to Delhi. The applicant had been hired on ad-hoc basis for the first time. While the vehicle reached near Akola it met with an



accident at a place named as Khaongaon. Manager of respondent No. 1 namely Shri M.C. Verma reached Govt. Medical College and Hospital, Akola. He brought the claimant to Delhi and got him admitted in L.N.J.P. Delhi. He filed documents as to the treatment of the claimant. It was further stated that they had given some amount to the claimant to the tune of Rs. 30,000/- as ex-gratia to help him. The respondent No. 1 also further stated their stand by filing an application stating therein to seek permission to file certain documents. In the said application it was stated that they have been offered the O.D. Claim upto 83% of the Insured declared value (IDV) and appended copy of snapshot of the Own Damage Claim of the Vehicle. In spite of availing opportunity, no evidence was adduced by the respondent No. 2. Nor any investigation report which they use to conduct in respect of a claim filed against them. The counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court titled as – (laying down principle on sufficiency of evidence) **Mackinnon Mackenzie & Co. Pvt. Ltd vs. Ibrahim Mahmmod Issak - cited 1969 ACJ 422 – wherein it been has laid down as under:**

“ 6.

Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inference. On the one hand the Commissioner, must not surmise, conjecture or guess, on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead, L.C. in Lancaster v. Blackwell Colliery Co. Ltd., observed:

“if the facts which are proved to give rise to conflicting inference or equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the applicant contends, then the Arbitrator is justified in drawing an inference in his favour.”

In view of the above discussions, the claim of the applicant and the version of respondent No. 1 – the owner of the vehicle – there remains no dispute about the occurrence of accident and sustainment of injuries to the claimant. Given that I hold that the accident has been caused out of and during the course of his employment on vehicle bearing No. DL-55W-9259 owned by respondent No. 1. The said issue is decided in favour of the applicant and against the respondents.



ISSUE NO. 2 & 3:

12. In the claim application it has been stated that the applicant was aged 32 years at the time of accident. The applicant's date of birth as has been shown in his adhaar card is 01.01.1986. Given that the applicant had completed 32 years of his age on the day of accident. I hold that the applicant was 32 years old at the time of accident. As to the wages of the workman, it has been stated that the applicant was drawing wage @ Rs. 12,000/- per month plus Rs. 200 per day as food allowances. But as per Section 4 of the Act and the Gazette notification in this respect, his wage could be taken Rs. 8000/- as applicable on the day of accident. Hence his wage is taken Rs. 8000/- per month. The applicant was directed to have him medically examined as to his disablement. He was examined and physical assessment was done by the Medical Board, Aruna Asif Ali Hospital, Govt. of N.C.T. He has been assessed to have physical disablement to the extent of 18% - showing his accidental burn over left U/L/L/L and left face. The impairment is in his legs. Thereby he is not with a fit body. He is no more in a position to undertake the driving work. The continuance of the said work may not be harmful only for him but while being on the public road with restrictive use of body can cause much damage to the other road users as well. The counsel for the applicant has vehemently argued that the applicant was doing the work of driving which was being performed by the use of his physical body. Given the disability and having extensive restrictive use of his body he is no more in a position to do the driving of transport vehicle which he was doing before accident. With the broken body he is not able to do much physical work more so unable and ineligible to undertake driving work. On the other side the counsel for respondent No. 2 has argued that the impairment which the claimant has shown does not exist. Hence it is not a case of loss of any earning capacity. He can take up other work if not driving. While countering this argument the counsel for the applicant has relied on the case law as given by the Hon'ble Supreme Court and High Courts and in bed roll of judgments it is a case of total loss of earning capacity. He has placed his reliance on - *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 the work of carpentry with the one hand. Seeing that as per schedule the physical disablement could be 60 or 65% but as far as loss of earning capacity is concerned it was a case of total loss of earning capacity. 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. Ltd Vs. Shri Ranjit Singh @ Rana -

Shri Ranjit Singh @ Rana FAO. No.246/2007 he was held entitled for 100% loss of earning capacity. In another judgment of Hon'ble High Court Andhra Pradesh (per Hon'ble Justice N.V. Ramana) in the case titled as *Rayapati Venkateswara Rao vs. Mantai Sambasiva Rao & Anr.*, cited at II (2001) ACC 300, decided. Hon'ble Mr. Justice N.V. Ramana, in his Judgment held that the applicant was employed as cleaner on the truck and because of his injury on leg due to fracture he would not be able to do cleaner on a transport vehicle/ truck and he was held entitled for 100% loss of earning capacity. In the matter in hand, the applicant has disablement in his lower limbs. He is not able to walk with full confidence, his body would certainly be not able to do the driving work requiring the complete fitness of the body with the present state of body hence I hold that this is case of total loss of his earning capacity.



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

- | | | | |
|------|------------------------------|---|------------|
| i) | Relevant factor of 32 years | : | 203.85 |
| ii) | 60% of wages @ Rs. 8000/- pm | : | Rs. 4800/- |
| iii) | Amount of compensation | | |

$$\frac{203.85 \times 8000 \times 60}{100} : \text{Rs. 9,78,480-}$$

The applicant/claimant is also entitled to interest as per Section 4A of the 'Act' @ 12% per annum from 30 days after the accident.

14. That as regards to the prayer of the claimant for imposing penalty upon the respondents, the matter is discussed and argued by the parties. After hearing the parties and in view of the facts, it is found that this is a case where the accident has been reported and criminal case has also been registered. The employer is having the notice of accident since the day of its occurrence and the insurance company is having the notice of accident. But the said employer did not take any step in getting the workman to receive compensation hence he is responsible to prolong the payment of compensation. The counsel for respondent No. 2 has vehemently argued that as far penalty is concerned the insurance company cannot be made liable. Keeping in view the facts and circumstances, I impose a penalty of 50% of the principal amount on respondent No. 1.

15. 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 Universal Sompo G.I.C. Ltd. is directed to deposit before this Authority an amount of **Rs. 9,78,480/- (Rupees Nine Lakhs seventy eight thousand four hundred eighty only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 01.10.2018 till its realization. Respondent No. 1 is directed to pay and deposit an amount of Rs.4,89,240/- as penalty through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of the order before this Authority.

16. Given under my hand and seal of this Authority on this 9th day of February, 2024.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

