

**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/30/NW/2019/ 353.

Date: 18/10/2023.

IN THE MATTER OF:

**Sh. Sheshveer Singh S/o Shri Bacha Ram**  
R/o Village Gurguri, Police Station – Sahawar,  
Post Rakhpur, Kasganj, UP-207123

.....Applicant/Claimant

V/s

**1. M/s Brahmaputra Cargo Carriers Pvt. Ltd.**

**Through its Directors**

54, 1<sup>st</sup> floor, Transport Centre, New Sabzi Mandi,  
Azadpur, Delhi – 110033

**2. M/s The New India Assurance Co. Ltd.**

B.O 311301, 5 C/1, 2<sup>nd</sup> Floor,  
Opp. Liberty Cinema, New Rohtak Road,  
Karol bagh, New Delhi - 110005

.....Respondents

**ORDER**

1. Vide this order, I will dispose of the claim application dated 04/02/2019 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that was employed as a driver on the vehicle No. NL-01N-6528 – Truck owned by and registered in the name of the respondent no. 1 and on 29/04/2018 he received personal injury by an accident arising out of and in the course of employment while he was on duty as driver on the said vehicle. It is further submitted that on 29/04/2018 at about 10:30 PM the vehicle bearing no. NL-01N-6528-Truck was on its business trip and was coming from Sivasagar, Assam side and was going towards Dibrugarh, Assam and the said vehicle met with an accident with another vehicle bearing No. AS-04-AC-8251



(Tripple Dumper) at Disang Rajabari Tiniali on NH. 37, under jurisdiction of Police Station Demow, District Sivasagar, Assam and in the said accident the applicant was badly injured and shifted to nearest hospital i.e. Demow Community Health Centre, District Sivasagar, Assam in emergency at 11:50 PM on 29/04/2018 by the police. It is further submitted that regarding the said accident police report was lodged under case no. 109/8 dated 14/05/2018 in police station Demow, District Sivasagar, Assam under section 279/338/427 IPC. It is further submitted that the vehicle bearing No. NL-01N-6528 Truck was owned by respondent no. 1 at the time of accident and it was insured with respondent no. 2 and an additional premium was charged by the respondent no. 2 from respondent no. 1 under EC Act. That he was working as a driver since 04/04/2016 with respondent no. 1 and was drawing wages @ Rs. 26,000/- per month at the time of accident. That he was aged 40 years and was holding a valid and effective DL bearing No. UP8219970031424 issued by Kasganj Transport Authority on 04/10/1997 and valid till 12/07/2018 at the time of accident. It is further submitted that the said truck bearing No. NL-01N-6528 was fully insured with respondent no. 2 vide policy no. 31130131170100005306 valid from 07/03/2018 till 06/03/2019. That the respondent no. 1 was having notice of the accident since the day of its occurrence. In the last the claimant submitted that the accident had occurred arising out of and during his course of employment and hence respondents are liable to pay compensation under EC Act, 1923 to the extent of 100% disability along with interest @ 12% and penalty to the extent of 50%.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent no. 1 in its reply submitted that the vehicle bearing No. NL-01N-6528 was insured at the time of accident on 29/04/2018. It was insured with respondent no. 2 and additional premium was charged by the respondent no. 2 from the answering respondent under EC, Act. It is further submitted by the respondent no. 1 that the particular of the insurance as under:

Name of the Insurance Company: The New India Assurance Co. Ltd.

Address of serving/Issuing Branch: B.O 311301, 5C/1, 2<sup>nd</sup> Floor, Opp. Liberty Cinema, New Rohtak Road, Karol Bagh, New Delhi – 110005.

Address of Regd. Office: New Indian Assurance Building, 87, M.G. Road, Fort, Mumbai – 400001.

Policy No. - 31130131170100005306.

Period of Validity of Policy: 07/03/2018 to 06/03/2019.

It is further submitted by the answering respondent that they got information about the accident from its office bearer at Assam Sh. Ajit Sharma and same was





informed on same day to the insurance company as well as to the local police to fulfil the legal obligation after the accident and all the necessary arrangement was done immediately by the answering respondent to start the every possible treatment to save the injured worker/applicant and discharged all the responsibilities and duty as an employer in the said case. Further respondent denied rest of contents of claim petition in toto and prayed that the answering respondent is not liable to pay the amount of compensation and claim may kindly be dismissed and if this Hon'ble Court may deem fit to put any kind of penalty, then it will be imposed upon the respondent no 2 the insurance company who was informed about the accident and injuries of the worker on 30/04/2018 at 12:12 PM.

5. Respondent no. 2 in its reply submitted that the claim petition is not maintainable against the answering respondent under law as neither any cause of action has occurred to claim nor any cause of action mentioned by the claimant in the claim petition and same is liable to be dismissed with heavy cost. It is further submitted by the answering respondent that the claimant has not furnished any documentary proof to claim/ prove himself that he is the employee of the respondent No. 1 and on this ground alone the present claim filed by the claimant is liable to be dismissed. It is further submitted by the answering respondent that the alleged vehicle vide No. NL - 01N-6528 was insured vide policy No. 31130131170100005306 valid from 07/03/2018 12:00:01 AM to 06/03/2019 11:59:59 PM, issued in the name of M/s Brahmaputra Cargo Carriers Pvt. Ltd. is a motor commercial vehicle package insurance policy and the liability of the company would only arise if the insured have not violated any terms and conditions of the policy and the injury is caused by the use of the motor vehicle. That the claimant has not provided / supplied the copy of his MLC or any other relevant document regarding his injuries and treatment to prove about his injuries sustained to him in both of his legs and regarding expenses on his treatment and the disability certificate if any. Further respondent denied rest of contents of claim petition in toto and prayed that the claim petition is liable to be rejected and may be dismissed against the answering respondent with heavy cost.

6. Claimant not filed rejoinder in the matter.

7. On 04/10/2019 following issues were framed for adjudication:

1. Whether relationship as employer-employee existed between respondent and claimant on the date of accident and if so?
2. Whether the accident leading injuries occurred during and in the course of employment and if so?



3. To what amount of compensation claimant is entitled. Any other relief?
4. Whether the respondents are liable for penalty to what extent and what amount?
8. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. PW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. PW1/B, PW1/C, PW1/E, PW1/F and Ex. PW1/G and Mark PW1/D and Mark PW1/I to PW1/7 i.e. copy of DL of Sheshveer Singh, Copy of PAN card, Copy of Appointment letter, copy of Aadhar card, copy of Medical bill/consultancy fee etc (colly 47 pages), Photograph of the claimant after accident, copy of insurance Policy of vehicle, Police report dated 29/05/2018 regarding accident, copy of fitness certificate and national permit, copy of FIR No. 109/18 regarding accident, copy of inspection report. His statement was also recorded on 24/12/2021 and was also cross examined by counsel of respondent No. 1 and 2 on 31/03/2022. The matter was fixed for respondent evidence.
9. For respondent no 1 Sh. Sunil Kumar – AR for respondent no. 1 – filed his evidence by way of affidavit. The contents of affidavits were corroborative to those reply. But during the course of proceeding on 20/2/2023 respondent no. 1 appeared and stated that they do not want to lead evidence and requested to close the same, hence on request of respondent no. 1 RE was closed.
10. Further respondent No. 2 moved an application praying therein that they want to examine 02 witness i.e. Licensing Authority, Kasganj UP and Circle inspector – Lajpat Nagar, Delhi Traffic Police. Both the summoned witnesses appeared on 28/07/2022 and filed the requisite documents as desired in the application of respondent no 2. Further statement of Sh. Rajesh Rajput – ARTO – Kasganj, UP was also recorded on 24/08/2022 and was cross examined by the counsels.
11. Written argument was filed by the respondent no 2 and counsel for claimant and oral submissions were also heard.
12. On the pleading of the parties, evidence adduced on their behalf and the arguments addressed thereon, I have to give my findings as under:-

**ISSUE No. 1 & 2:**

13. The case of claimant is this that he was employed as a driver on the vehicle No. NL-01N-6528 – Truck owned by and registered in the name of the respondent no. 1 and on 29/04/2018 he received personal injury by an accident arising out of and in the course of employment while he was on duty as driver on the said vehicle. It





is further submitted that on 29/04/2018 at about 10:30 PM the vehicle bearing no. NL-01N-6528-Truck was on its business trip and was coming from Sivasagar, Assam side and was going towards Dibrugarh, Assam and the said vehicle met with an accident with another vehicle bearing No. AS-04-AC-8251 (Tripple Dumper) at Disang Rajabari Tiniali on NH. 37, under jurisdiction of Police Station Demow, District Sivasagar, Assam and in the said accident the applicant was badly injured and shifted to nearest hospital i.e. Demow Community Health Centre, District Sivasagar, Assam in emergency at 11:50 PM on 29/04/2018 by the police and police report was lodged under case no. 109/18 dated 14/05/2018 in police station Demow, District Sivasagar, Assam under section 279/338/427 IPC. Respondent no. 1 admitted factum of employee employer relationship and accident caused out of and in the course of employment. Vehicle in question was insured with respondent no. 2 at the time of accident. respondent no. 2 insurance company opposed the claim on the ground that FIR lodged by the claimant approximately 02 months and 14 days after the date of alleged incident, which indicate manipulation of the facts and in story as alleged by the claimant. After the accident driving license was got renewed by the claimant with concealment of the facts that he is physically permanent disabled person. In this regard transport authority from Kasganj witness summoned was present and gave his evidence that on the basis of disclosure of the facts DL of the claimant has been renewed. Further claimant has not produced any documents regarding his employment with respondent no. 1. The medical board of the Aruna Asaf Ali Govt. Hospital has assessed 30% disabled to the claimant in relation to his right lower limb, wherein in note board has observed that the condition of the claimant is non progressive / not like to improve. In view of discussion since respondent no. 1 admitted employee-employer relationship and accident caused out of and in the course of employment of claimant as such no further doubt is arise about relationship of respondent and the claimant. FIR has also been lodged in this case in the place where accident was occurred i.e. Assam hence it cannot be presumed that the story of accident has been created. Therefore I hold that claimant met with an accident out of in the course of his employment with respondent no. 1. Since vehicle in question was insured on the day of accident with respondent no.2 and additional premium was charged from respondent no. 1 under workmen compensation policy as such respondent no. 2 insurance company is liable to indemnify the claimant on behalf of respondent no. 1. Accordingly issue no. 1 & 2 are decided against the respondent and in favour of the claimant.



ISSUE No. 3 & 4

14. As made discussion above for relief I am taking age of claimant as 40 years (as per Aadhar Card No.282357371410) and relevant factor 184.17 and 60% of last drawn wages restricted to 8,000/- and 30% disability, as such calculation is made as under:

$$\frac{184.17 * 4800 * 30}{100} = \text{Rs. } 2,65,205/-$$

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

15. Regarding the issue of penalty the respondent No. 1 vide e-mail dated 30/04/2018 has informed the respondent no. 2 insurance company regarding the occurrence of the said accident, but having the knowledge of the accident well in time the respondent no. 2 insurance company did not take the necessary steps to pay the compensation to the claimant. Hence, keeping in view the facts and circumstances, I impose a penalty of 50% of the principal amount on the respondent no. 2 insurance company.
16. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent No. 2 insurance company. Accordingly I direct Respondent No. 2 to deposit **Rs. 2,65,205/- (Rupees Two Lakh Sixty Five Thousand Two Hundred and Five Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 28/05/2018 till its realization and the respondent No. 2 is further also directed to **deposit 50% penalty of awarded amount i.e. Rs. 1,32,602/- within 30 days** through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of the order before this Authority.

17. Given under my hand and seal of this Authority on this 18<sup>th</sup> day of October, 2023.

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

