

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.CEC/DLC/NDD/24/2018 | 361.

Dated: 23/10/2023.

IN THE MATTER OF:

Smt Nilam Devi & Anr.

R/o L-322/2, Laxman Puri, Nabi Karim,
Paharganj, New Delhi-110055

.....Applicant/Claimant

V/s

Acchey Lal S/o Nathni Dass,

R/o L-322/2, Laxman Puri, Nabi Karim,
New Delhi-110055

M/s Future Generali India Insurance Co. Ltd,

Krishana Apra business Square, Plot No D-4/6,
Netaji Subhash Palace, Pitampura,
New Delhi - 110034

.....Respondents

ORDER

1. By this order, I will dispose of claim application dated 01/10/2018 filed by the claimant on 05/10/2018, for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that the deceased Lt. Pragass Dass was a workman employed with respondent no. 1, as a driver on a monthly salary of Rs. 15,000/- to drive DL-1RW-2347. That on 18/04/2018 at about 10:10 AM, while the deceased was driving the TSR, he met with a road side accident near Gate No. 1 of R.M.L Hospital, New Delhi in which the aforesaid TSR turtled and the deceased sustained fatal injuries resulting into the death of the deceased in the hospital. It is further submitted by the claimant that the aforesaid accident took place arising out of and during the course of employment and at the time of accident the deceased was performing his duties under the instructions and directions of the respondent no. 1,



who was the registered owner of the said TSR involved in the accident. That the aforesaid vehicle was insured with respondent no. 2 vide policy bearing no. 2017-V-5352598-FCV, valid from 28/11/017 to 27/11/2018. That the aforesaid accident was reported to P.S. North Avenue vide FIR bearing No. 15/2018 under sec – 279/337/304-A 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 12% interest 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 wherein resp. no. 1 admitted employee employer relationship with deceased and accident caused out of and in the course of his employment. Further respondent admitted that deceased was engaged as a driver on last pay Rs. 300/- per day on vehicle in question. Further respondent submitted that the answering respondent is not liable to pay any amount on account of compensation to the petitioners as the vehicle bearing no. TSR No. DL-1RW-2347 was insured with Future General India Insurance Co. Ltd. i.e. respondent no. 2 vide policy No. 2017-V-532598-FCV. That just after the occurrence of accident which took place on 18/04/2018 at about 10:10 AM near RML Hospital, they informed the respondent no 2 with regards to the aid accident. That since the factum of accident was duly informed to the respondent no. 2 i.e. insurance therefore whatever liability arises on account compensation the same is of the respondent no. 2 i.e. insurance company. It is further submitted by the answering respondent that the deceased workman used to hire the said vehicle i.e. TSR No. DL-1RW-2347, on daily basis as on the date of accident the said vehicle was also taken and the deceased was used to pay Rs. 300/- per day on daily basis. In the last the answering respondent further submitted that they are not liable to pay any amount of compensation, interest and penalty much less as alleged in the prayer of the claim petition of the claimant.
5. Respondent No. 2 filed its reply and submitted that the liability of the answering respondent if any shall be in accordance with policy terms and conditions. The eligibility of petition to seek compensation is subject to compliance of all terms and conditions and specially validity of driving license, permit and fitness is condition precedent to any liability. The answering respondent humbly craves leave to refer to provision of section 149(2) wherein insurers have been right to contest liability on grounds enumerated therein. Therefore liability if any shall be in accordance with the provision of statutes and contract entered between answering respondent and owner i.e. respondent no. 1. It is further submitted by the answering respondent that liability



if any shall be subject to compliance of section 64 VB of insurance Act. In case policy is found not effective on date of accident or any violation is found then answering respondent shall not liable for compensation at all. 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 with cost.

6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. On 22/10/2019 following issues were framed for adjudication:
 1. Whether the deceased died during the course and out of his employment under the respondent no. 1. If, so whether the claimants are entitled to claim death compensation under EC Act?
 2. If, yes what amount?
 3. Any other relief?
8. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex.PW1/A (Wife of deceased Lt. Pragdas Dass). The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex.PW1/1 (Colly 51 pages) i.e. Copy of DAR in FIR No.15/2018 dated 18/4/2018 etc. Her statement was also recorded and was also cross examined by counsel of respondent no. 2 on 04/12/2019.
9. For respondent no 1 Sh. Acchey Lal – filed his evidence by way of affidavit. 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 22/08/2022 and completed on 12/09/2022.
10. For respondent no 2 Smt. Deepa Bisht – 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 28/03/2023.
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 deceased Pragass Dass husband of claimant was employed with respondent no. 1 as a driver on his vehicle in question and out of and in the course of his employment he met with an accident as discussed in para no. 3 above, due to this accident he received grievous injuries resulting into his death. Respondent no. 1 admitted employee-employer relationship and accident caused out of and in the course of his employment. Respondent no. 2 insurance company in principle admitted that the vehicle in question was insured with them, only the objection taken by respondent no. 2 is that liability of respondent no. 2 comes according to policy terms and conditions, having a valid DL, permit and fitness is conditions precedence to any liability. The objection of the respondent no. 2 are in very casual manner, nothing goes against claim of claimant any objection of the respondent. The main condition to award compensation under the Act is whether vehicle in question was insured with insurance company and policy was valid on the day of accident is only important factors to decide the claim. In this case vehicle in question was insured with respondent no. 2 on the day of accident vide Policy bearing no. 2017-V-5352598-FCV, valid from 28/11/017 to 27/11/2018. Regarding the accident an FIR was lodged with P.S. North Avenue vide FIR bearing No. 15/2018 under sec – 279/337/304-A IPC.

To prove the case claimant examined herself and she was also cross examined by the counsel of the respondent. Respondent no. 1 & 2 lead there evidence respectively and were cross examined by counsel for petitioner. I have considered all the pleadings and documents available on records and found that deceased employee was in the employment of respondent no. 1 on the day of accident resulting into death. And the accident was occurred out of and in the course of his employment. In view of this I hold that claimant is entitled to receive injury compensation

Vehicle in question was insured on the day of accident with respondent no. 2. Hence respondents are jointly or severally responsible to pay death compensation to the petitioner under the EC, Act 1923. Since vehicle in question was insured with resp. no. 2 as such resp. no. 2 ins. company is liable to indemnify to the claimant on behalf of respondent no. 1. Accordingly issue no. 1 is decided in favour of claimant and against the respondents.



Issue No. 2 & 3

14. In view of above discussion made, for considering the case of claimant for compensation I am taking age of deceased as 60 years as per age mentioned in 10th class mark-sheet of the deceased and relevant factor as per age 117.41 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/-	:	4000/-
Relevant factor	:	117.41
4000 * 117.41	:	Rs. 4,69,640/-

In view of this calculation claimant is entitled to receive Rs. 4,69,640/- as compensation from the respondent. 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. In view of above discussion, I direct respondent No. 2 **to deposit Rs. 4,69,640/- as compensation along with 12% interest w.e.f. 17/5/2018 till its realization** as per section 12(1) of the EC Act, 1923 **within 30 days** from the date of order by way of Demand draft in favour of "**Commissioner Employees Compensation**", failing, which same shall be recovered as per provision of the Act.

16. Given under my hand and seal of this Authority on this 23rd day of October, 2023.

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

