

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. WCD/07/CD/2018/449.

Dated: 29/01/2024.

IN THE MATTER OF:

Smt. Barkha & Ors

R/o H No. 5657/20, Gali Hanuman Mandir,
Nabi Karim, Paharganj, Delhi-110055

.....Applicant/Claimant

V/s

1. **Sh Sanjay S/o Sh Tilak Raj,**
R/o 5954, Gali no. 15, Nabi Karim,
Paharganj, New Delhi – 110055
2. **Kotak Mahindra General Insurance Co. Ltd.**
H/78, 7th Floor,
23, Himalaya House, Kasturba Gandhi Marg,
New Delhi – 110001

.....Respondents

ORDER

1. Vide this order I will dispose of the application dated 12/10/2018 of the applicant/ claimant seeking death compensation.
2. The case of claimant is this that her husband (deceased) was employed under the respondent no. 1 on the monthly salary of Rs. 18,750/- and apart from the monthly salary the respondent no. 1 used to pay Rs. 125/- per day for food and other special expenses while the deceased was driving the canter of respondent no. 1 bearing No. DL-1LY-1264. That resp. No. 1 is running its business in the name and style of M/s Exsellece at 5989, 1st floor, Sikligram, Nabi Karim, ND – 110055 in the capacity of an owner/director/proprietor, that the deceased was employed under resp. No. 1 as a driver on the vehicle bearing No. DL-1LY-1264 of respondent no. 1. It is further submitted by the claimant that on 06/02/2018 at about 2:30 PM the deceased Sh. Raju was going to V2 Retail Ltd, Village Mubarakpur, Farukh Nagar, District Gurgaon, Haryana thereby loading ladies hand Bag / purses at the order and direction of respondent no. 1 in the vehicle Canter bearing No. DL-1LY-1264 as a driver from his work



place i.e. Nabi Karim, Delhi along with tax invoices bearing no. GST-165, GST-166 & GST-164 dated 06/02/2018 which was issued by resp. No. 1 in the name of consignee i.e. V2 retail ltd. That when the deceased was coming back after unloading the goods at about 07:00 PM when he reached at Iffco Chowk Flyover at about 12:00 AM but in the meantime at NH-8 the deceased met with a roadside vehicular accident with an unknown vehicle and the unknown vehicle fled away after causing accident and in the fateful accident the deceased sustained multiple grievous injuries i.e. fractures, 2 to 8 Ribs Anteriority B/L, Lacerated wounds, bleeding etc. That the police officials of P.S. Sector – 17/18, Gurugram after receipt of the information of the alleged accident, they reached at the spot of accident and the deceased was sent to the hospital for medical examination in PCR Ambulance but the doctors of the said hospital declared the deceased brought dead. That the post-mortem was conducted at mortuary, Civil Hospital, Gurugram vide no. NET/03/18 dated 07/02/2018 and in the post-mortem report the doctors have opined the cause of death as Shock and Haemorrhage blunt impact. It is further submitted that the matter was investigated by the police officials of PS Sector – 17/18, Distt. Gurugram, Haryana and they lodged a FIR No. 0041 dated 07/02/2018 u/s 279/304A of IPC. The claimant approached the respondent no. 1 physically at his address and apprised respondent no. 1 of all the facts and circumstances with regards to the untimely death of the deceased, but the respondent no. 1 did not listen to the genuine request of the applicants and avoided the matter on one pretext or the other, that the claimants made numerous requests with folded hands to compensate them on behalf of deceased, but all the requests went in to deaf ears of respondent no. 1. 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 of Rs. 14,00,000/- along with 12% interest and penalty to the extent of 50% to the petitioners/claimants being the legal heirs of the deceased/ employee.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent no. 1 filed its reply and submitted that the petition is not maintainable and is liable to be dismissed as the same has been filed by the petitioner without any cause of action by suppressing and fabricating the material facts from this Hon'ble Court. That the petitioner have made false averments and also filed false affidavit in the present petition for which the claimant is liable to be prosecuted u/s 340 of Cr. P.C. It is further submitted by the answering respondent that the deceased had never been employee of the respondent no. 1 nor get any monthly salary from the answering resp. That the deceased Raju was hire on the basis of per day basis and whenever requirement of the driver. In the last the answering respondent further denied rest of the contents in toto and prayed that the application may kindly be dismissed with exemplary cost.
5. Respondent no. 2 filed its reply and submitted that claimant shall prove the alleged facts mentioned in the claim application. That identity of deceased, relationship with resp. No. 1



must be proved with cogent evidence before the court of law. It is further stated that negligence on the part of driver of alleged offending vehicle is sine qua none for maintaining an application under the Employee's Compensation Act, 1923 in respect to employee covered u/s 147 of motor vehicle Act but as per FIR no. 0041/2018, PS sector 17/18 Gurugram – Haryana driver of unknown driver was solely responsible for accident and injury thereof hence claim application against the answering respondent no. 2 is not maintainable. That the original insurance policy issued by the answering respondent no. 2 is in possession of the respondent no. 1. In the last the answering respondent further denied rest of the contents in toto and prayed that the application may kindly be dismissed with exemplary 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 07/01/2020 following issues were framed for adjudication:
 1. Whether accident occurred during the course of employment of the respondent- 1 and what amount is entitled claimant under the compensation Act?
 2. 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). The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex.CW1/1 to CW1/7 and Marked P1 to Mark P3, i.e. Legal Notice and Postal receipt, Copy of Aadhar card and death certificate of deceased, copy of Aadhar card of petitioner no. 1 to 4, information report for document lost (DL) of deceased Raju, Copy of FIR, DL, Cover note of the insurance policy, permit, fitness certificate, National permit and pollution certificate of offending vehicle, copy of goods receipts, copy of PMR of deceased Raju. Her statement was also recorded and was also cross examined by counsel of respondent no. 1 on 31/03/2022 and resp. No. 2 on 11/05/2022.
9. For respondent No. 1 Sh. Sanjay Kumar – filed his evidence by way of affidavit Ex. RW1. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 28/06/2023 and by counsel of respondent no. 2 on 07/08/2023.
10. For respondent No. 2 Sh. Musaib Khan – filed his evidence by way of affidavit Ex. R2W1. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant on 07/11/2022 and by counsel of respondent no. 1 on 21/11/2022.
11. The matter was fixed for arguments. Written arguments were filed by the claimant and respondent no. 1 & 2 and oral submissions were also heard in detail.



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. That the case of the petitioner is this that her husband (deceased) was employed under the respondent no. 1 on the monthly salary of Rs. 18750/- and apart from the monthly salary the respondent no. 1 used to pay Rs. 125/- per day for food and other special expenses while the deceased was driving the canter of respondent no. 1 bearing No. DL-1LY-1264. That resp. No. 1 is running its business in the name and style of M/s Exsellece at 5989, 1st floor, Sikligram, Nabi Karim, ND – 110055 in the capacity of an owner/director/proprietor, that the deceased was employed under resp. No. 1 as a driver on the vehicle bearing No. DL-1LY-1264 of respondent no. 1. It is further submitted by the claimant that on 06/02/2018 at about 2:30 PM the deceased Sh. Raju was going to V2 Retail Ltd, Village Mubarakpur, Farukh Nagar, District Gurgaon, Haryana thereby loading ladies hand Bag / purses at the order and direction of respondent no. 1 in the vehicle Canter bearing No. DL-1LY-1264 as a driver from his work place i.e. Nabi Karim, Delhi along with tax invoices bearing no. GST-165, GST-166 & GST-164 dated 06/02/2018 which was issued by resp. No. 1 in the name of consignee i.e. V2 retail ltd. That when the deceased was coming back after unloading the goods at about 07:00 PM when he reached at Iffco Chowk Flyover at about 12:00 AM but in the meantime at NH-8 the deceased met with a roadside vehicular accident with an unknown vehicle and the unknown vehicle fled away after causing accident and in the fateful accident the deceased sustained multiple grievous injuries i.e. fractures, 2 to 8 Ribs Anteriority B/L, Lacerated wounds, bleeding etc. That the police officials of P.S. Sector – 17/18, Gurugram after receipt of the information of the alleged accident, they reached at the spot of accident and the deceased was sent to the hospital for medical examination in PCR Ambulance but the doctors of the said hospital declared the deceased brought dead. That the post-mortem was conducted at mortuary, Civil Hospital, Gurugram vide no. NET/03/18 dated 07/02/2018 and in the post-mortem report the doctors have opined the cause of death as Shock and Haemorrhage blunt impact. It is further submitted that the matter was investigated by the police officials of PS Sector – 17/18, Distt. Gurugram, Haryana and they lodged a FIR No. 0041 dated 07/02/2018 u/s 279/304A of IPC. The claimant approached the respondent no. 1 physically at his address and apprised respondent no. 1 of all the facts and circumstances with regards to the untimely death of the deceased, but the respondent no. 1 did not listen to the genuine request of the applicants and avoided the matter on one pretext or the other, that the claimants made numerous requests with folded hands to compensate them on behalf of deceased, but all the requests went in to deaf ears of respondent no. 1. Respondent no. 1 in his reply submitted that deceased was hired on daily basis and not on permanent basis. In cross examination respondent no. 1 admitted employee-employer relationship with deceased and accident occurred out of and in the course of his employment. On the day of accident deceased was driving the vehicle in question. He used to pay Rs. 500/- as daily wage in cash. On his instruction deceased Raju @ Kalu was on his professional trip for delivering the goods by vehicle in question. He was also reached at accident spot. On the other side respondent no. 2



insurance company has denied the claim of the claimant on the ground that respondent no. 1 did not provide any documents of the alleged accident to them. Driver of vehicle in question was not having DL to drive a transport vehicle, as such this is the breach of terms and condition of insurance policy. Further respondent has taken objection that he has written a letter to the insured demanding DL of the deceased but no respondent was received from the insured. On this ground respondent no. 2 denied there liability towards payment of any compensation in this case. In principle respondent no. 2 admitted that vehicle in question was insured for the period from 17/4/2017 to 16/04/2018 under policy No. 10100012100 which was issued in the name of Sh. Sanjay owner of the vehicle.

Considering the submissions of the parties as above it is proved that on the day of accident deceased Raju @ Kalu was employed with respondent no. 1 and met with an accident resulting thereby he died. FIR and post-mortem was also conducted in this case. It is proved that on the instruction of resp. no. 1 owner of the vehicle in question deceased was on his professional trip and on 06/02/2018 he met with an accident and resulting thereby he died, thus employee-employer relationship, connection with accident and employment has been proved. Further it is also proved that on the day of accident vehicle in question was insured with resp. no. 2 insurance company. Regarding DL of the deceased resp. no. 1 in his cross application admitted that he had checked the DL of the deceased, as such contention of resp. no. 2 is not considerable. Moreover for awarding the compensation under this Act employee-employer relationship, casual connection with accident is important factors. Since vehicle in question was insured as such respondent no. 2 cannot deny his legal liability towards payment of compensation under the Act. Therefore I held that deceased was in the employment with respondent no. 1 on the day of accident on vehicle in question resulting thereby he died as such legal heir of the deceased i.e. petitioners are entitled to receive death compensation from the respondents jointly or severally. Since vehicle in question was insured on the day of accident as such insurance company is liable to indemnify the petitioners on behalf of the respondent no. 1. As such the issue no. 1 is decided in favour of petitioners and against the respondents.

Issue No. 2

14. In view of above discussion made. I hold that claimant is entitled to receive death compensation under the EC Act 1923 from respondent. For considering the case of claimant for compensation I am taking age of deceased as 34 years as per Date of Birth mentioned in Aadhar card No. 903714032541 of the deceased and relevant factor as per age 199.40 and 50% of Rs. 8000/- as restricted under the Act.

Accordingly compensation is calculated as under:

50% of Rs. 8000/-	:	4000/-
Relevant factor	:	199.40

4000 * 199.40	:	Rs. 7,97,600/-
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In view of this calculation claimant is entitled to receive Rs. 7,97,600/- 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. 7,97,600/- as **compensation along with 12% interest w.e.f. 05/03/2018 till its realization 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. Regarding the issue of penalty separate show cause notice to be issued to all the concerned parties with direction to show cause as to why penalty be not imposed upon them.
17. Given under my hand and seal of this Authority on this 29th day of January, 2024.

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

