

IN THE COURT OF 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/32/NW/20 1290.

Dated: 29/08/2023.

In the matter of:

Sh. Imran khan @ Imran
S/o Anavar Khan @ Anwar Khan
R/o Village Mehandipur,
Mallwan, District Hardoi, Uttar Pradesh – 241303

.....Applicant/ Claimant

Versus

1. **M/s South Cargo Carriers Delhi,**
601/611, 6th Floor, PP Tower,
Netaji Subhash Place, Delhi - 110034
2. **M/s New India Assurance Co. Ltd.**
5C/1, 2nd Floor Opposite Liberty Cinema,
New Rohtak Road, Karol Bagh, Delhi – 110005

.....Respondents

Order

1. Vide this order, I shall dispose of the application dated 18.08.2020 seeking injury compensation Under Section 22 of The Employee's Compensation Act, 1923.
2. In the claim petition, it has been stated by the applicant/claimant that he was employed as driver with Respondent no. 1 on vehicle bearing No. NL-01AD-1350. On 03.02.2020, he met with an accident resulting thereby he received grievous injuries during the course of his employment while he was employed as driver by respondent no. 1 on vehicle bearing No. NL-01AD-1350. On 03.02.2020 at about 7:30 a.m., he received grievous injuries in the road accident while driving truck bearing No. NL-01AD-1350, near Pawti, Police Station Haldaur, District Bijnor, Uttar Pradesh. On this trip the vehicle was loaded with 'Gatta'. It was got loaded from Hardoi for Muzzafar Nagar. He was alone on the vehicle at that time. On 03.02.2020 at about 7:30 a.m., he was driving the vehicle and when the vehicle reached near Pawti, under the jurisdiction of the Police Station Haldaur, District Bijnor, Uttar Pradesh, the vehicle was met with an accident. The applicant/claimant was driving in his



lane with a reasonable speed, all of a sudden another vehicle came from the opposite direction and hit the vehicle of him. The cabin of the vehicle was damaged having greater impact towards driver side and the claimant remained entrapped for half an hour. Police came and ambulance was called in. He was taken to Life Line Hospital, Ankur Plaza, Near Roadways bus stand, Bijnour, Uttar Pradesh. The father of the claimant has reached at Hospital immediately after getting information of the accident. The claimant remained admitted for about 06 days and took treatment from that hospital and surgical operations were conducted there and rods were inserted in right leg and right hand. He spent a considerable amount on his treatment. It is further stated that he was employed with Respondent No. 1 as driver and at the time of accident he was driving the vehicle bearing No. NL-01AD-1350 and received injuries during the course of employment. After the accident he was taken to life line hospital, Ankur Plaza, Near Roadways Bus Stand, Bijnour, Uttar Pradesh and he taken treatment in the hospital for a considerable period of time. On 08.02.2020 he was discharged from the hospital. He has received multiple fracture at right leg and fracture at right hand and injuries all over the body. He has incurred about Rs. 2,00,000/- on his treatment for the injuries suffered in the accident as stated above. It is submitted that he was working as driver and was employed with Respondent No. 1 for the last 3 years. He was 24 years old at the time of accident and he was getting a salary of Rs. 20,000/- excluding travelling and food expenses. The incident of road accident was registered under FIR No. 24/2020 under Police Station Haldaur, Bijnour, Under Section 279/337/332 of IPC. It is further stated that at time of accident the he was driving vehicle bearing No. NL-01AD-1350 under the instruction of Respondent no. 1 and at the time of accident the vehicle bearing No. NL-01AD-1350 was owned by the respondent no. 1 and it was insured with respondent no. 2 i.e. M/s The New India Assurance Company Ltd. Vide policy No. 311301311380100005117 valid from 22.02.2019 to 21.02.2020, policy issuing office at 5C/1,2nd Floor Opposite Liberty Cinema New Rohtak Road, Karol Bagh, Delhi – 110005. The employer/respondent no. 1 has notice of the incident and he was requested many times to pay compensation and charges incurred on the medical bills but the Respondent did not make any payment. It submitted that he is entitled to receive compensation on account of injuries and disability suffered from the accident involving vehicle bearing No. NL-01AD-1350. Hence, he is entitled to compensation to the extent of 100% disability and as per section 4(1) (c) & 4(1) (d) of the Employee's Compensation Act he is entitled for permanent disablement and medical expenses along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount.

3. The summonses were sent to the respondents with the direction to appear and to file written statements/documents, if any in their defence.
4. The respondent no. 1 filed written statement stating therein that the claimant was an employee of the answering respondent and was serving for the respondent in the capacity of



a Driver on trip-to-trip basis. It is submitted in the preliminary submission that the vehicle bearing registration no. NL-01-AD-1350 on which the fateful accident happened on 03.02.2020 was insured vide policy no. 311301311380100005117 issued by the The New India Assurance Company Ltd. (A Govt. of India Undertaking). The period of cover of the afore-mentioned policy was from 22.02.2019 to 21.02.2020. In the last it is submitted that since the vehicle on which fateful accident took place was insured, therefore, the liability, if any, clearly falls upon the respondent no. 2 only.

5. Respondent No. 2 filed their response. In their written statement it has been stated that the claim petition is not maintainable and denied the all averments made in the claim petition. However, the factum of insurance of the vehicle has been admitted. It stated that alleged vehicle vide NL-01-AD-1350 was insured vide policy no. 311301311380100005117 valid from 22.02.2019 to 21.02.2020, insured in the name of Ms. South Cargo Carrier (Delhi) Address – 601/611, 6th Floor, P.P. Tower Netaji Subhash Place Pitampura New Delhi – 110034.
6. On the pleadings of the parties, the following issues were framed on 18/08/2021 for adjudication:
 1. Whether employee employer relationship exists between claimant and respondent if so?
 2. Whether accident resulting disablement to claimant occurred during and in the course of employment if so?
 3. To what amount of injury compensation claimant is entitled?
 4. Any other relief?
 5. Whether respondent are liable for penalty u/s 4A of the Act and if so to what extent and what amount?
7. Matter was fixed for the evidence of the parties. Claimant examined himself by way of filing his affidavit Ex. AW1/A. The contents of affidavit are corroborated to those claim petition. Claimant also filed documents Ex. AW1/1 to Ex. AW1/4 and Marked Documents 'A' to 'D' i.e. Copy of driving licence, Copy of Aadhar Card, Copy of Disability Certificate, Discharge Summary, Copy of FIR No. 24/2020 under police station Haldaur, Bijnour (colly), Copy of Insurance Policy of the vehicle, Copy of RC & Permit of the vehicle (colly), Copy of medical bills (Rs. 1,56,431/-), Copy of medical treatment documents (colly). Accordingly, the claimant was cross examined by the counsel for the respondents on 31/10/2022.

The claimant has summoned a witness – Lifeline Hospital (Bijnor) and one Sh. Vivek Khanna witness appeared and produced the treatment records. His testimony was recorded and he was cross examined by the parties on 12/01/2023. The testimony of said witness also supported the case of the claimant.



8. Earlier, the Medical Board of Dr. Baba Saheb Ambedkar Hospital Delhi was asked to assess the claimant as to his permanent disability. He was got medically examined and assessed about his physical disability. The said Medical Board of Dr. Baba Saheb Ambedkar Hospital Delhi, had certified his permanent disability as 31% permanent.
9. On 13.06.2023, on behalf of Respondent No. 1, Sh. Raj Kumar Tiwari S/o Sh. Ram Chandra Tiwari, tendered his evidence by way of affidavit and he was cross examined by the counsel for claimant and counsel for respondent no. 2.
10. Respondent No. 2 did not lead any evidence. But as were required to file O.D. details, the documents pertaining to O.D. claims have been placed on record by the insurance company. As per those documents, in the column captioning driver's details, name of the claimant – Imran Khan has been shown posted as driver on the vehicle at the time of accident. His driving licence and validly have been shown. In those documents, net claim amount has been shown amounting to Rs. 3,48,735/-.
11. The case was fixed for arguments and written arguments were filed and oral arguments were also heard.
12. On the pleadings of the parties, documents filed therein and the evidence adduced on their behalf, I have to give my findings in the case as under:

Issues No. 1 & 2:

13. The case of the applicant is that he was employed as driver with the vehicle owned by respondent No. 1 and on 03.02.2020 at about 7:30 a.m., he was driving the vehicle and when the vehicle reached near Pawti, under the jurisdiction of the Police Station Haldaur, District Bijnor, Uttar Pradesh, he was driving in his lane with a reasonable speed, all of a sudden another vehicle came from the opposite direction and hit the vehicle of him. The cabin of the vehicle was damaged having greater impact towards driver side and the claimant remained entrapped for half an hour. Police came and ambulance was called in. He was taken to Life Line Hospital, Ankur Plaza, Near Roadways bus stand, Bijnour, Uttar Pradesh. The applicant filed documents related to accident. He filed copy of FIR No. 24/2020 under police station Haldaur, Bijnour. Medical documents pertaining to his treatment and also discharge summary. The respondent no. 1 filed written statement stating therein that the claimant was an employee of the answering respondent and was serving for the respondent in the capacity of a Driver on trip-to-trip basis. It is submitted in the preliminary submission that the vehicle bearing registration no. NL-01-AD-1350 on which the fateful accident happened on 03.02.2020 was insured vide policy no. 311301311380100005117 issued by



the The New India Assurance Company Ltd. (A Govt. of India Undertaking). The period of cover of the afore-mentioned policy was from 22.02.2019 to 21.02.2020. It is submitted that since the vehicle on which fateful accident took place was insured, therefore, the liability, if any, clearly falls upon the respondent no. 2 only. Respondent No. 2 -insurance company filed written statement and the facts narrated in the claim application were denied but it was admitted that alleged vehicle bearing No. NL-01-AD-1350 was insured vide policy no. 311301311380100005117 valid from 22.02.2019 to 21.02.2020, insured in the name of Ms. South Cargo Carrier (Delhi – 601/611, 6th Floor, P.P. Tower Netaji Subhash Place Pitampura New Delhi – 110034. The insurance company filed documents pertaining to vehicle damage. Given that, there remains no doubt that the vehicle met with an accident and in that accident, the applicant who was driving the vehicle in question, sustained injuries. Taking the applicant as driver of the vehicle the insurance company has paid vehicle damage (O.D.) claim. Hence I hold that the accident has been caused out of and during the course of employment. The issue is decided in favour of the applicant and against the respondents.

Issues No. 3 & 4:

14. In the claim application the claimant has stated that he was getting a salary of Rs. 20,000/- excluding travelling and food expenses. But as per the notification issued by Central govt. as per power conferred on them by Section 4 of the Act the wage is given Rs. 15,000/- per month and his wages is taken as Rs. 15,000/- per month accordingly. In the claim application, he has further stated that he was aged 24years at the time of accident but as per his driving Licence his date of birth is 10.07.1993, by taking that into consideration his age by the calculation comes to 26 years and is taken accordingly. He was directed to face Medical Board, Dr. B.S.A. hospital to have him physically examined and Medical Board of Dr. Baba Saheb Ambedkar Hospital Delhi has assessed his physical disablement to the extent of 31% permanent. The documents and the Medical Certificate show that the claimant may not be able to do any physical work of the nature. In this regard, the question as to reduction in earning capacity was argued by the both parties. Ld. Counsel for the claimant argued that as the applicant/claimant was a driver by occupation which he was doing prior this accident, this is a case of 100% loss of earning capacity. Finding the nature of work, it should be accepted that it is case of 100% disablement and in this regard the Ld. Counsel for the claimant has relied on the ruling of the Hon'ble Supreme Court of India – *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 and do that work which he was doing hence the disablement was assessed 100%. Similarly the Hon'ble Supreme Court in - *Mohan Soni vs. Ram Avtar & Ors.*, 2102 ACJ 583, has held accordingly. The relevant paragraph of the judgment is read as under:-

“....., it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does



his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect."

Thereafter the Hon'ble High Court in **National Insurance Co. Ltd. Vs. Ranjit Singh @ Rana** in FAO 246 of 2007 cited at 2009 SCC Online Del 3826 had discussed the issue of loss of earning capacity, whereby 15% physical disablement was considered as 100% loss of earning capacity.

Hon'ble High Court of Delhi in **New India Assurance Co. Ltd. Vs. Mohd. Ajmer** – FAO 259 of 2013 it has been held that a driver with injury in his leg having disablement to the extent of lesser is certainly a case of 100% loss of earning capacity as he is not able to move freely and he finds difficulty in squatting, he cannot use his leg for pressing brakes and accelerator etc. He cannot even stepped up to enter driver's seat. This is because of the reason that he is no more capable to drive a transport vehicle. Additionally a man with disability who cannot hold full control over the vehicle can be risky for the other road users.

Given the above discussions, I hold that this is a case of total loss of earning capacity and the claimant is entitled to compensation accordingly.

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

i) Relevant factor in the age of 26 years	:	215.28
ii) 60% of wages @ Rs. 15,000/- pm (notified on 03/01/2020 By Govt. of India)	:	Rs. 9,000/-
iii) Amount of compensation		
<u>215.28 X 15000 X 60</u>	:	Rs. 19,37,520/-
100		

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

17. The applicant/claimant is entitled to receive injury compensation from Respondent No. 1 but as the said Respondent i.e. Respondent No. 1 has taken an insurance coverage hence in spirit of indemnifying the insured, the Respondent No. 2 i.e. M/s The New India Assurance



Co. Ltd., is directed to deposit an amount of **Rs. 19,37,520/- (Rupees Nineteen Lakhs Thirty Seven Thousand Five Hundred Twenty Only)** on account of compensation payable to the applicant along with interest @ 12% p.a. w.e.f. 02.03.2020 till its realization, through pay order in favour of "**Commissioner Employee's Compensation**" within a period of 30 days from pronouncement of this order failing which the same shall be recovered as arrears of land revenue.

Issues No. 5:

18. As the applicant/claimant was entitled to receive compensation within 30 days from the date of his accident – per law by the Hon'ble Supreme Court in *Pratap Narain Singh vs. Srinivasa Sabata* cited at 1976 ACJ 141 and subsequent Judgments thereafter on the point, the Applicant/Claimant becomes entitled to penalty as per Section 4A(3)(b). Respondents are directed to show cause as to why penalty to the extent as in the provision be not imposed on them.

19. Given under my hand and seal of this Authority on this 29th day of August, 2023.

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

