

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/47/NW/19/ 429.

Dated: 29/12/2023.

IN THE MATTER OF:

Sh. Sudhir Kumar Yadav S/o Sh. Satya narayan Yadav

R/O Village – Raamji Tola, Thana – Nohta,
Ward No. 2, Shahpur, Zilla – Saharsa, Bihar

...Applicant/Claimant

V/s

Sh. Virender Kumar Yadav

R/o H.No – 99/100, Sector- 8,
Delhi - 110085

M/s Magma HDI General Insurance Co. Ltd.

Magma House, 24 Park Street, Kolkata - 700016

.....Respondents

ORDER

1. Vide this order, I will dispose of the application dated 18/04/2019 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that he was employed as a Driver with respondent no. 1 for past 1 year on monthly salary of Rs. 16,962/-. That the respondent no. 1 not provided any legal facilities like appointment letter, attendance card, leave book, pay slip, annual and casual leave, overtime money, ESI etc to him, which he demanded verbally from the respondent. That on instructions of respondent no. 1 on 01/12/2018 he was driving six wheeler tata 1109 No. DL-1-M-6684 to collect cement from Delhi at Khushkheda Rewari Cement Plant and when he reached near Dharuheda, Honda Chowk the dumper vehicle running ahead suddenly applied brakes due to which his vehicle collided with the back of the dumper and a fatal accident occurred and he suffered serious injuries. That in the above accident the employee suffered multiple fractures and injuries all over his body and face, due to which even after treatment, he



has not been able to be as physically capable as before and thus he has become 50% disabled. That he had been treated from Maharaj Aggarwal Hospital, Punjabi Bagh, New Delhi and approximately Rs. 4 lakh has been spent on treatment etc. 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 tune of Rs. 18,99,744/- along with interest @12% interest from the date of accident and penalty to the extent of 50% of the principal amount and treatment expenses to the tune of Rs. 4,00,000/-.

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 present application of the claimant is not maintainable as the same is based on the concealment of the facts. That the vehicle was fully insured and covered under the insurance with M/s Magma HDI General Insurance Company Ltd., vide policy No. P-0019100021/4103/100010 valid upto 19/04/2019 and that if any liability this Hon'ble court deems, then the insurance company is liable for the same. It is further submitted by the answering respondent that there was no demand of facilities ever made by the claimant from the respondent at any point of time, that the answering respondent is not the private Ltd. Company and is not bounded to provide such kind of facilities to the claimant. That it is self admitted fact of the claimant that it was the vehicle / Dumper next to the vehicle of answering respondent who applied the sudden brake and this incident happened. That the claimant himself should have been more cautious and vigilant and if he would have been more cautious then this incident could have been averted, hence the answering respondent is not responsible or liable for any such incident. Further answering respondent denied rest of contents of claim petition in toto and prayed that the answering respondent is not liable to pay any compensation to the applicant as answering respondent had got the proper insurance policy done and if applicant is entitled to any such claim then it will be from the insurance company – resp. no. 2 and further prayed that as the claim being stand on the false, wrong and frivolous statement of facts, therefore the application of the claimant may be dismissed with exemplary cost.
5. Respondent no. 2 filed its reply and submitted that the vehicle bearing no.DL-1M-6684 was insured by the answering respondent vide policy number P0019100021/4103/100010 for the period commencing from 20/04/2018 to 21/04/2019 subject to terms and condition of the policy in the name of Mr. Virender Kumar Yadav. That the said vehicle was being used in violations of terms and



condition of aforesaid insurance policy, hence the insurance company is not liable to pay any amount to the applicant and is entitled to be exonerated. That the said vehicle was used without any permit and in these circumstances insurance company is not liable to pay any amount to the applicant. That the driver was also not possessing valid and effective DL to drive the said vehicle, hence no liability can be fastened on the answering respondent. Further answering respondent denied rest of contents of claim petition in toto and prayed that the present petition is liable to be rejected as the petitioner has no relationship with the respondent no. 1 of any nature and hence the present case is not maintainable and liable to be dismissed with cost.

6. That on 25/11/2020 AR of Claimant appeared and gave statement that he does not wish to file rejoinder.
7. On 25/11/2020 and 24/09/2021 following issues were framed for adjudication:
 1. Whether the accident leading to injury has occurred during and in the course of employment and if so to what amount of compensation is he entitled? Any other relief?
 2. Whether the respondents are liable for penalty under section 4A and if so to what extent and what amount?
8. Matter was fixed for the evidence of the claimant. Claimant filed statement by way of affidavit Ex. WW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents Ex. WW1/1 to WW1/14 i.e. copy of demand notice dated 16/02/2019, copy of speed post receipt, Copy of MLC, Medical treatment documents and original bills, copy of RC of vehicle, copy of Authorization certificate of NP, copy of insurance policy, copy of fitness certificate, copy of certificate issued by transport department, copy of DL, copy of disability certificate issued by Bhagwan Mahavir Hospital, copy of complaint dated 05/08/2021 made to SHO Dharuhera, Gurgaon, Haryana, Copy of speed post receipt, copy of Aadhar Card of claimant. His statement was also recorded and was also cross examined by counsel of respondent no. 2 on 05/12/2022. Further respondent no. 1 was provided opportunity to cross examine the claimant, but resp. No. 1 failed to do so, hence on 14/02/2023 opportunity of resp. No. 1 to cross examine the claimant was closed.
9. For respondent No. 1 Sh. Hemant Kumar Singh, Advocate appeared and gave statement that respondent no. 1 does not wish to lead any evidence in the matter, as such taking his statement under the consideration the evidence stage of respondent no. 1 was closed on 18/04/2023.



10. Respondent no. 2 despite given opportunities failed to lead evidence in the matter. Hence on 10/07/2023 the right of respondent no. 2 to lead evidence was closed.
11. Written argument was filed by the claimant and despite opportunities given the respondent no. 1 & 2 failed to file written arguments, hence the right of respondents to file arguments was closed on 13/12/2023 and oral submissions adduced by the claimant was heard in detail.
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:

13. The case of claimant is this that he was employed as a Driver with respondent no. 1 for past 1 year on monthly salary of Rs. 16,962/-. That the respondent no. 1 not provided any legal facilities like appointment letter, attendance card, leave book, pay slip, annual and casual leave, overtime money, ESI etc to him, which he demanded verbally from the respondent. That on instructions of respondent no. 1 on 01/12/2018 he was driving six wheeler tata 1109 No. DL-1-M-6684 to collect cement from Delhi at Khushkheda Rewari Cement Plant and when he reached near Dharuheda, Honda Chowk the dumper vehicle running ahead suddenly applied brakes due to which his vehicle collided with the back of the dumper and a fatal accident occurred and he suffered serious injuries. That in the above accident the employee suffered multiple fractures and injuries all over his body and face, due to which even after treatment, he has not been able to be as physically capable as before and thus he has become 50% disabled. That he had been treated from Maharaj Aggarwal Hospital, Punjabi Bagh, New Delhi and approximately Rs. 4 lakh has been spent on treatment etc.

Respondent no. 1 filed reply wherein in principle they have admitted factum of employee-employer relationship and accident occurred out of and in the course of his employment as respondent has stated that vehicle of respondent on which claimant was driving the same was occurred accident due to the vehicle / dumper next to the vehicle of resp. who applied sudden break and the incident was happened. The accident could be avoided if the claimant himself should have been more cautious and vigilant. It establishes that accident of claimant was occurred out of and in the course of his employment with resp. no. 1. Further in reply respondent admitted that vehicle in question is insured with resp. no. 2 M/s Magma HDI Gen. Ins. Co. Ltd. vide policy no. P0019100021/4103/100010 for the period commencing from 20/04/2018 to



21/04/2019, hence if any liability court deems then the insurance company resp. no. 2 is responsible for.

Respondent no. 2 insurance company denied averments made by the resp. no. 1. Further submitted that vehicle in question was insured with them for the period from 20/04/2018 to 21/04/2019 subject to terms and conditions of the policy, which was issued in the name of resp. no. 1 Virender Kumar Yadav. Further respondent no. 2 taken stand that vehicle was being used in violation of terms and condition of the insurance policy, hence the insurance company is not liable to pay any amount to the claimant and is entitled to be exonerated. Alleged vehicle was used without any permit and driver was not possessing valid and effective DL, hence no liability can be fastened upon resp. no. 2. Despite given sufficient opportunities respondent no. 2 insurance company did not lead any evidence to prove his case on merit. On other hand necessary documents such as RC, Fitness certificate of the vehicle in question, National permit and the DL of the driver i.e. claimant has been placed on record by the claimant, as such contents of the respondent no. 2 is not considerable.

In view of this after considering all the pleadings and documents placed on record it is proved that claimant Sh. Sudhir Kumar Yadav has met with an accident out of and in the course of his employment and accordingly as per disability certificate issued by Bhagwan Mahavir Hospital, GNCTD bearing no. 256824 dated 06/09/2019, he was assessed 27% permanent disability and he is entitled injury compensation accordingly. Since vehicle in question was insured with resp. no. 2 on the day of accident as such resp. no. 2 is liable to indemnify to the claimant on behalf of resp. no. 1. Accordingly issue no. 1 is decided against the respondent and in favour of claimant.

14. As made discussion above for relief I am taking age of claimant as 25 years (as per date of birth mentioned in Aadhar Card No.580294329135) and relevant factor 216.91 and 60% of last drawn wages restricted to 8,000/- and 27% disability, as such calculation is made as under:

$$\frac{216.91 \times 4800 \times 27}{100} = \text{Rs. } 2,81,115/-$$

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



ISSUE No. 2

15. The applicant has claimed that he is also entitled to penalty to the extent of 50% as per under Section 4-A (3) (b) of the Workmen's Compensation Act now Employee's Compensation Act. The respondents were issued show cause notice dated 01/02/2021 as to why penalty be not imposed against them. But no reply has been filed by the respondents. The accident took place on 01.12.2018 but till date the applicant/dependant has not received any compensation amount. Nothing has been done by the respondents. Keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondents.
16. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent No.2 insurance company to deposit **Rs. 2,81,115/- (Rupees Two Lakh Eighty one Thousand one Hundred and fifteen Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 01/01/2019 till its realization and further an **amount of Rs. 1,34,443/- (Rs. One Lakh Thirty Four Thousand Four Hundred Forty Three Only)** towards medical expenses the respondent No.1 is further directed to **deposit 25% penalty of awarded amount i.e. Rs. 70,278/- 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 29th day of December, 2023.

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

