

**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/81/NW/2017/ 455.

Dated: 30/01/2024.

**IN THE MATTER OF :**

1. Abdul Gafur @ Agr. Gafur  
S/o late Hafij Eesafak
2. Shahanaj Khatun  
W/o Abdul Gafur @ Agr.Gafur

**BOTH RESIDENT OF:**

Village GachhitolaBhawanipur,  
Ward No. 8, P.O&P.S.Masurchak,  
District Begusarai, Bihar – 851128

.....Applicants/Claimants

Versus

**Sh. Sachit Bhagat S/o Sh. BaijnathBhagat**  
B-44, Village Bharola, New Subji Mandi,  
Azadpur, Delhi- 110033

**M/s National Insurance Company Ltd.,**  
C-1/3 Laxmi Tower, NaniwalaBagh,  
Azadpur Commercial Complex,  
New Delhi - 110033

.....Respondents

**Order**

1. Vide this order, I shall dispose of the application of the Applicants/Claimants seeking death compensation dated 01.02.2017 under the provision of The Employee's Compensation Act, 1923.
2. Claimant in the claim petition stated that the deceased Sarfaraz Alam was employed with the respondent no. 1 as a cleaner on his vehicle bearing No. HR-55-J-5589-Truck and on 17.05.2016, he met with an accident arising out of and during the course of employment resulting he died on 26.05.2016. The vehicle was on its business trip from Azadpur Mandi to



Muzaffarpur (Bihar) on the direction of respondent no. 1. and the deceased was employed on the said vehicle and the vehicle had gone from Azadpur, Delhi to Muzaffarpur, Bihar having loaded with fruits and at Muzaffarpur the vehicle was unloaded there. Thereafter it was taken to get it loaded by leechi for Delhi from 'leechibagaan'. On 17.05.2016 at about 10:30 pm, when the vehicle reached at 'leechibagan' a high voltage electric line was crossing over head across the garden and the vehicle came in its current range. Due to that sensing the gravity and to save himself the first driver posted on the vehicle jumped from the vehicle but employee Sarfaraj remained entrapped inside the vehicle. Electric current passed on the body and it caused him electrocution, he sustained burn injury. The people present there took him to the hospital. He was got admitted in the hospital. He remained admitted there for about 5 days. During the currency of the treatment, he succumbed to those injuries. It further stated that the vehicle bearing no. HR-55-J-5589-Truck was owned by the respondent no. 1 at the time of the accident/incident and it was insured with respondent no. 2 and an additional premium was charged by the respondent no. 2 from respondent no. 1 under the Employee's Compensation Act, 1923. It was stated that the applicants/claimants being dependents of the deceased employee being his parents and the deceased employee being unmarried at the time of his death they are entitled to compensation. It was further stated that the deceased was drawing wages at the rate of Rs. 9,000/- per month plus @ Rs. 200/- per day as food allowances and he was aged about 18 years at the time of accident/death. The respondent no. 1, owner of the vehicle was having the notice of accident since the day of its occurrence and he has informed the Insurance Company - respondent no. 2 immediately after the accident. The deceased was a workman and died out of and during the course of employment. The applicants/claimants are entitled to receive the compensation as per the Employee's Compensation Act, 1923. They further claimed that they are also entitled to interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50% of the principal amount.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent No. 1 appeared and filed his written statement stating therein that the application as preferred by the applicants /claimants is not maintainable as there is no employee employer relationship between the deceased and the answering respondent. It was further stated that the deceased was never employed with him on his truck. Nor any such accident ever took place on his truck. This entire story is based on false allegations and which has no connection at all with the answering respondent. It was stated that the truck was owned by him and on that particular date and time the vehicle was not present at the place as stated in the claim application. The ownership and the factum of the insurance were not denied by him. It was stated that the claim application be dismissed.
5. The Respondent No. 2 has also filed written statement in their defence. In the written statement by the said respondent, it has been stated that the claim application as filed by the applicants/claimants has been filed without any cause of action as there is no employee employer relationship between the deceased and respondent No. 1. The accident as has been





stated was never caused out of and during the course of employment and while being posted on the vehicle. The vehicle was not at all involved in the alleged accident. There is violation of terms and conditions of the policy and the respondent cannot be asked to indemnify the insured. However, the factum of insurance was admitted and it was admitted that the vehicle was insured with them. It was stated that they being not liable cannot be held liable for death compensation and for interest and penalty. The claim application was sought to be dismissed.

6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. On 26/07/2019 following issues were framed for adjudication:
  1. Whether employer-employee relationship exists between the respondent and the deceased Sh. Sarfaraz Alam and if so?
  2. Whether accident leading to death occurred during and in the course of employment and if so?
  3. Whether the claimants are entitled for compensation under the Act?
  4. Any other relief?
7. Matter was fixed for the evidence of the claimant. Claimant – Abdul Gafur @ Agr. Gafur, filed his own evidence by way of affidavit Ex. AW1/A. The contents of affidavit are corroborative to those claim petition the claimant also filed documents copies of medical bills, Copies of Medical Bills amounting Rs. 37151/-, Copy of Voter ID Card of deceased, Copy of Aadhar Card and Voter ID Card of father of the deceased, Copy of Aadhar Card and Voter ID Card of mother, Copy of vehicle particulars of vehicle No. HR-55-J-5589. His statement was also recorded and was also cross examined by counsel of respondent no. 1 on 29/11/2019.

Further claimant examined another 02 witness in the case i.e. Md. Anwar and Md. Alim. Statement of Md. Anwar was recorded on 16/01/2020 and Statement of Md. Alim was recorded on 20/02/2020 and he was further cross examined by counsel of respondent no. 1 on 20/02/2020 and by respondent no. 2 on 06/09/2022.
8. All the documents filed by the claimant, testimonies of claimant and witnesses duly proves the case of the claimant and the factum of employment and accident/death of the deceased employee out of and during the course of employment. Apart from the applicant/claimant has filed the treatment papers and medical bills and in the said documents the date and place of accident and the nature of injuries are matched with the averments in the claim.
9. For respondent No. 1 Sh. Sachit Bhagat – filed his evidence by way of affidavit Ex. RW1/1. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant and counsel of resp. no. 2 on 13/06/2023.



10. For respondent No. 2 Sh. Raghunath Pawar – Assistant Manager – filed his evidence by way of affidavit Ex. R2W1/A. The contents of affidavits were corroborative to those reply. His statement was also recorded and was also cross examined by counsel of claimant and counsel of resp. no. 1 on 05/09/2023.
11. The case was fixed for arguments and written arguments were filed by the parties and oral 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:

### **Issue No. 1 & 2**

The case of the applicants/claimants is this that the vehicle was on its business trip from Azadpur Mandi to Muzaffarpur (Bihar) on the direction of respondent no. 1. and the deceased was employed on the said vehicle and the vehicle had gone from Azadpur, Delhi to Muzaffarpur, Bihar having loaded with fruits and at Muzaffarpur the vehicle was unloaded there. Thereafter it was taken to get it loaded by leechi for Delhi from 'leechibagaan'. On 17.05.2016 at about 10:30 pm, when the vehicle reached at 'leechibagaan' a high voltage electric line was crossing over head across the garden and the vehicle came in its current range. Due to that sensing the gravity and to save himself the first driver posted on the vehicle jumped from the vehicle but employee Sarfaraj remained entrapped inside the vehicle. Electric current passed on the body and it caused him electrocution, he sustained burn injury. The people present there took him to the hospital. He was got admitted in the hospital. He remained admitted there for about 5 days. During the currency of the treatment, he succumbed to those injuries. It further stated that the vehicle bearing no. HR-55-J-5589-Truck was owned by the respondent no. 1 at the time of the accident/incident and it was insured with respondent no. 2 and an additional premium was charged by the respondent no. 2 from respondent no. 1 under the Employee's Compensation Act, 1923.

The applicants gave evidence. More importantly there are two evidence – one the testimony of Mohd. Anwar who deposed that he was posted on the truck as second driver whereas first driver was Mohd. Naushad and the deceased Mohd Sarfaraz was posted as cleaner. It was stated that the truck had gone to Muzaffarpur while having the load from Delhi. It was emptied and thereafter it was directed to have it loaded with 'leechi'. While proceeding to have it loaded they proceeded towards the bagaan. On the way there was high voltage electric line passing overhead. The truck, however, had a touch and the current was passed through the truck. Due to the current the cleaner Sarfaraz sustained burn injuries. Due to those injuries he was got admitted in the hospital for treatment where he succumbed.

Respondent No. 2 filed its investigation report. In the report, it has been stated that the investigator visited the place of the deceased. He met there with the parents of the deceased and took their version. He also contacted some prominent person in the village. From both the angles





he got information that the deceased was posted on a vehicle in Delhi. He was got burn injuries due to electrocution. He was got admitted for treatment and during treatment he expired. The investigation report captions hospital documents. In those documents it has been mentioned that the deceased employee was admitted in the hospital due to burn injuries. During treatment he expired.

During arguments, the matter was vehemently argued by the counsel for the insurance company that there is no F.I.R. and P.M.R. in that situation it would be difficult to deem it proved that the death had been caused out of and during the course of employment. It was further argued that the investigation report as filed by the insurance company cannot be used for the purpose of proving the case of the claimant. The need is that the case must be proved by the evidence of the claimants and by the documents brought by them. Respondent No. 1 also argued that the deceased was never employed on his truck nor there was any occasion wherein the alleged employee had sustained any alleged injury on his truck. It was argued that the entire narrative is based on false averments. Both the counsel for respondent No. 1 and respondent No. 2 argued that the case suffers with insufficiency of evidence more so as could be seen brought by the applicants/claimants.

The counsel for the applicant has argued that the stand of the respondent is not based on true picture. He has argued that a witness had come to the court and had stated that he was posted on the truck. He is witness to the employment injury. He had knowledge that the deceased was got admitted in the hospital post sustainment of electrocution injuries. The report by the insurance company also confirms the treatment of the deceased post sustainment of burn injuries. Given that material he has relied on the judgment by the Hon'ble Supreme Court in the case titled - *Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ibrahim Mahmood Issak cited at 1969 ACJ 422*, the Hon'ble Supreme Court has laid down law and a relevant extracted portion is read as under:

"Para no. 6.....

*In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessary prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inference. On the one hand the Commissioner, must not surmise, conjecture or guess, on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead, L.C. in Lancaster v. Blackwell Colliery Co. Ltd., observed:*

*"if the facts which are proved give rise to conflicting inference or equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally*



*consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."*

He further relies on another Judgment wherein the onus has been shown that of the employer where he has special knowledge to bring that. In case he fails to bring that adverse inference be drawn against him. The said case - *Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ritta Fernandez* cited at 1969 ACJ 419, rules as under:

*".....Whether the death arose out of and in the course of employment – The test is whether there was any casual connections between the death and his employment – Employer must produce evidence within his special knowledge, otherwise adverse inference should be drawn."*

13. The present case is duly covered by the above judgments for two reasons. One the testimony of the witness who came and depose to state the fact of employment and injury caused during the course of employment gives inspiration that one would not come to tell falsity in the court and for a person as the claimants are. He has categorically stated that the deceased was posted on the truck and he suffered electrocution while being posted thereon. Hence I find here a sufficient material to take inference in favour of the claimants and against the respondent on the guiding principle as laid down by the Hon'ble Apex Court in *Mackinnon Mackenzie vs. Ibrahim* (supra). In addition to that the owner of the vehicle had failed to bring any evidence which he could have brought where for onus was heavy on him. That gives reason to take an inference against him. Given the above discussions, I hold that the death has been caused out of and during the course of employment. Hence, the issue no. 1 & 2 are decided in favor of claimant and against the respondents.

### **Issue No. 3 & 4**

14. In the claim petition the applicants/claimants have stated that the deceased employee was drawing wages @ Rs. 9,000/- per month plus @ Rs. 200/- per day as food allowances. Respondent No. 1 has denied the existence of employee employer relationship between the deceased and respondent No. 1 hence there was no question of telling the wages. One witness namely Mohd Anwar who appeared as witness has stated that the deceased was cleaner on the vehicle and he was being paid Rs.3,000/- per month. But as per law the minimum wage applicable in Delhi at the time accident was Rs. 9568/- for the unskilled workman. As per the Gazette Notification by the Central Govt. for that particular point of time it is Rs. 8,000/- which is mandated to be taken as wage and his wages is taken as Rs. 8,000/- per month. In the claim petition, they have further stated that the deceased employee was aged 18 years at the time his accident. His Aadhar card is on record and as per Aadhar card his date of birth has been shown 01.01.1997. Meaning thereby the deceased had completed 19 years of his age on





the day of death. Hence his age is taken 19 years. In view of the age of deceased and wage applicable for the purpose of the Act, death compensation would be as under:

i)	Relevant factor of 19 years of age	:	225.22
ii)	50% of wages @ Rs. 8,000/- pm	:	Rs. 4,000/-
iii)	Amount of compensation :		
	225.22 X 4000	:	Rs. 9,00,880/-

The applicants/claimants are also entitled to interest as per Section 4A (3)(a) of the 'Act' @ 12% per annum from 30 days after the accident and Rs. 5,000/- towards funeral charges. The applicants are also entitled to medical expenses to the tune of Rs. 37151/-.

15. Therefore, the applicants/claimants are entitled to receive death compensation from Respondent No. 1 but as the said Respondent No. 1 has taken an insurance coverage hence in spirit of indemnifying the insured, the Respondent No. 2 i.e. M/s National Insurance Company Ltd., is directed to deposit an amount of **Rs. 9,00,880/- (Rupees Nine Lakhs Eight Hundred Eighty Only)** on account of compensation payable to the applicant/claimant with interest @ 12% p.a. w.e.f. 25.06.2016 till its realization, and Rs. 37,151/- as medical expenses through pay order in favour of "**Commissioner Employees Compensation**" within a period of 30 days from pronouncement of the order in this court failing which the same shall be recovered as per provisions of law.

16. Given under my hand and seal of this court on this 30<sup>th</sup> day of January, 2024.

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

