

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.ECD/206/NW/17/ 229.

Date: 30/06/2023.

IN THE MATTER OF:

Smt. Durgawati Devi & Anr.

R/o 83-B, Village – Asaver,

Teh – Mohammadabad, Distt. Gaziabad, UP – 233227

At Present: -

H.No.-11, Tikona Park,

Village – Samaipur Badli, New Delhi - 110042

...Applicant/Claimant

V/s

Sh. Harish Chander Singh S.o Ramesh Chander Singh

R/o Village Karam Chand Pur,

Post Office – Mahamdabad,

P.S. Mahamdabad, Distt. Gazipur,

U.P – 233227

.....Respondent No 1

M/s Shri Ram General Insurance Co. Ltd.

1001, Ground Floor, Arya Samaj Road,

Naiwala, Karol Bagh, New Delhi – 110005

.....Respondent No 2

ORDER

1. By this order, I will dispose of claim application filed by the claimant on 21/07/2017 for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimants in the claim application submitted that the deceased Lt Sh. Vinod Rajbhar was employed as helper on the truck No. HR-55Q-1803 owned by respondent no 1. The deceased Vinod Rajbhar was of age 22 yrs as per Post-mortem report and was getting Rs. 12,000/- per month. It is further submitted by the claimants that on 01/01/2017 on the instructions of respondent no 1 the deceased was travelling on truck No. HR-55Q-1803 as helper and after unloading the dust at Sarup Nagar, at about 1:35 AM, the deceased wanted to go to his home and was in the process of stepping down from the truck, at the same time the driver started



the truck with zerk, due to this the deceased fell down and got crushed under the wheels of the truck and died on the spot. It is further submitted by the claimants that the post-mortem was conducted in BSA Hospital, Rohini, New Delhi. A case FIR No. 1/17 dated 01/01/2017 U/s 279/304-A IPC was registered in PS Maurya Enclave (North – West Distt.), New Delhi. It is further submitted by the claimants that the driver Rajinder Ram was holding a valid and effective driving Licence at the time of accident. It is further submitted by the claimants that the truck No. HR-55Q-1803 was fully insured with respondent No. 2 vide policy No. 101016/31/16/020835 valid from 01/03/2016 to 28/02/2017. 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. 30,00,000/- along with 12% interest to the petitioners/claimants being the dependants of the deceased employee Sh. Vinod Rajbhar. Along with claim copy of charge sheet and FIR, copy of insurance policy of vehicle, copy of post mortem report bearing no. 11/2017, death certificate of deceased employee Vinod Rajbhar, affidavit of father of deceased Sh. Girdhari, voter I Card of Sh. Girdhari and Aadhar card of mother of deceased and vakalatnama has been filed.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter. Respondents appeared and filed reply on record.
4. Respondent No. 1 did not filed any reply in the matter hence the defence of respondent no 1 was closed on 10/05/2018.
5. Respondent No. 2 filed its reply and submitted that the petition is not maintainable either at law or on facts. That neither there was employer employee relationship between respondent no 1 and deceased Vinod Rajbhar, nor the death of deceased was caused in an accident arise during the course of his employment with respondent no 1 on vehicle bearing Reg. No. HR-55Q-1803 and he was never employed by the respondent no. 1 at any point of time. It is further submitted by the answering respondent that the story put forward by claimants is totally false, wrong, concocted, vague and self-contradictory, as they tried to make the case of Road accident, but when the PMR and FSL investigation not supported the case that the deceased was crushed under the above vehicle as the crush marks were different than the size of the truck then the story of employment on the above truck was concocted, which amounts to misrepresentation three is no proof that the deceased was travelling on the truck at the time of accident, nor any contact details of the phone number of deceased and owner were obtained by Police, nor the travelling details of deceased on the vehicle was proved from any documents. 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.
6. Counsel for petitioner on 10/05/2018 appeared and stated that he does not wish to file rejoinder in response to reply of respondent.



7. On 24/05/2018 following issues were framed for adjudication:
1. Whether there exists employee-employer relationship between the respondent-deceased?
 2. Whether accident leading to death was caused during and out of the course of employment? If, so
 3. What amount of death compensation are the dependants of deceased entitled to? Relief if any.
 4. Which respondent is liable for imposition of penalty u/s 4(A) and to what extent?
8. Matter was fixed for the evidence of the claimant. Claimant no. 2 filed his statement by way of affidavit Ex. PW-1/A (Father of deceased Lt. Vinod Rajbhar). The contents of affidavit are corroborative to those claim petition. The claimant also filed documents Ex. PW1/1 to PW1/4 and Mark X and Mark Y i.e. Certified Copy of the Police report/FIR/PMR (Colly 16 pages), Copy of marksheet of the deceased of class 5th, copy of Aadhar Card of claimant No. 2 i.e. father of deceased, copy of Aadhar card of the claimant no. 1 i.e. mother of the deceased, copy of DL of the driver namely Sh. Rajinder Ram, Copy of Insurance Policy of the vehicle. His statement was also recorded and was also cross examined by counsel of respondent No. 2 on 12/07/2018.
9. For respondent no. 1 Sh. Harish Chand (owner of the vehicle) filed his evidence. Further, despite given various opportunities Respondent failed to appear in witness box for testimony of his statement as such finally on 11/04/2023 right of respondent for leading evidence was closed.
10. For respondent no 2 Sh. Rama Raman – Legal Officer, filed his evidence by way of affidavit Ex. R2W1/1. The contents of affidavit are corroborative to those reply. The respondent no.2 relied upon the documents Ex. R2W1/2 and R2W1/3 i.e. copy of insurance policy certificate and copy of authority letter. His statement was also recorded on 20/09/2018. Further the claimant and respondent no 1 did not cross examine to the witness produced by respondent no 2 Ex R2W1/1.
11. The matter was fixed for arguments. Argument was filed by the claimant and the respondent No. 2. Respondent no 1 failed to lead/file written arguments hence the right of respondent no. 1 to lead/file written argument was closed on 23/05/2023.
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 & 2

13. The case of claimant is this that he was employed as a helper with respondent no 1 on his truck bearing No HR-55Q-1803 of which respondent no 1. As per claim on the instruction of respondent no 1 the deceased was travelling on truck No. HR-55Q-1803 as helper and after unloading the dust at Sarup Nagar, at about 1:35 AM, the deceased wanted to go to his home and was in the process of stepping down from the truck, at the same time the driver started the truck with zerk, due to this the deceased fell down and got crushed under the wheels of the truck and thereafter he was shifted unconscious condition to the BSA hospital where he died. Post-mortem was conducted in BSA Hospital, Rohini, New Delhi. A case FIR No. 1/17 dated 01/01/2017 U/s 279/304-A IPC was registered in PS Maurya Enclave (North – West Distt.), New Delhi. Since the respondent did not pay the compensation to the dependents of the deceased hence this claim has been filed by the dependants of the deceased Sh. Vinod Rajbhar. Respondent did not file reply in response to claim. One Sh. Harish Chand, registered owner of the vehicle in question filed the affidavit on 25/10/2021 on record wherein he has stated that deceased Vinod Rajbhar was in his employment as a helper on vehicle in question on 01/01/2017 and he died when he was stepping down from the truck. Vehicle in question was insured with respondent no 2. Claimant was getting Rs. 300/- wages per month. But after filing the affidavit respondent no 1 did not appear in witness box for testimony of his statement despite given sufficient opportunities, hence credibility of the affidavit is not considerable. It was the onus of the respondent no 1 to appear in witness box for testimony of his statement, but he failed, as such respondent no 1 could not prove contents of his affidavit dated 16/09/2021 filed on 25/10/2021 on record, hence same cannot be considered. On the other side for respondent no 2 Sh. Rama Raman – legal officer (EX R2W1/1) has appeared as a witness and filed his affidavit. His statement was also recorded on 20/09/2018, by this authority but despite given opportunities respondent no. 1 as well as claimant did not cross examine this witness. Further the respondent no 2 insurance company has taken strong objection that deceased Vinod Rajbhar was employed on the vehicle in question with R1 and the said vehicle was involved in this accident. Final report u/s 173 CrPC is untraced by the police which clearly indicates that the vehicle in question does not involve in the alleged incident. Further in argument Ld. Counsel for the respondent no 2 has submitted that the police has specifically mentioned in the final report that the tyre mark of the said vehicle were totally different from the tyre marks found on the body of the deceased as per FSL report. As such, no such incident took place involving the said vehicle. The petitioners have concocted the false story with connivance with respondent no 1 to get the compensation illegally from the respondent no 2 insurance company. The vehicle in question is falsely been implicated in the said case. I have gone through the pleadings of the parties and documents available on record and found that since the claim of claimants are disputed by the respondent no 2



insurance company thus the onus was on the claimant side to prove his case by way of filing cogent documents in their support to prove employee employer relationship but the claimants did not file any such documents on record. On the other side respondent no 1 owner of the vehicle in question had given statement to the police that deceased Vinod Rajbhar was his employee as a helper on the day of accident on vehicle in question and died during his employment. But despite given sufficient opportunities respondent no 1 did not file reply in this regard before this Authority. However, at the time of evidence respondent no 1 filed his affidavit stating therein the same contention which was given before Police, but did not appear in witness box for testimony. Even respondent no 1 did not appear in witness box to tender his affidavit as such reliability and credibility of statement of respondent no 1 put in doubt which cannot be considered. In view of this onus was upon the claimant to prove his case by way of leading evidence as well as the documents, accordingly I have come to this conclusion that claimants failed to prove employee-employer relationship with respondent no 1. Further respondent no 1 and claimant also failed to prove that accident was occurred with vehicle in question while R2 denied that vehicle in question was involved in this accident. As such under these circumstances though the vehicle in question was insured with R1 on the day of accident, but I cannot pass any direction to R2 to indemnify to the respondent. As such issue No. 1 is decided against the claimant.

14. In view of detailed discussion made above, accordingly issue No. 3 & 4 are not required for any answer. In view of this claimant is not entitled for any relief.

15. Given under my hand and seal of this Authority on this 30th day of June, 2023.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

