

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/131/NW/15/ 385.

Date: 30/11/2023.

IN THE MATTER OF:

Smt. Deepa Kanyal @ Deepa Devi & Ors

W/o Lt. Sh. Hari Prasad

R/o H.No. 58, Village – Kothera,

P.S. Gangoleehat, District – Pithoragarh, U.P-262501

...Applicant/Claimant

V/s

Sh. Himanshu Kumar S/o Sh. Ravinder Kumar

R/o. H.No. 1039, Dr. Mukerjee Nagar, Delhi – 110019

M/s Reliance General Insurance Co. Ltd.

Flat No. 10-15, 14th Floor, Vijay Building,

17, Barakhamba Road, Connaught Place, Delhi – 110001

.....Respondents

ORDER

1. By this order, I will dispose of claim application filed by the claimant on 21/07/2015 for seeking death compensation under the Employees Compensation Act, 1923.
2. Claimant in the claim application submitted that the deceased Lt Hari Prasad @ Hoshiyar Singh S/o Lt Durga Ram was employed with Respondent no. 1 as a driver on the vehicle bearing No. DL-1LX-2955 (Tata 407) and the respondent no. 1 is the registered owner of the vehicle bearing No. DL-1LX-2955 (Tata 407). That the deceased was professional driver having 5 years of experience and possessed valid driving licence to drive commercial vehicle. That the deceased was aged 37 years at the time of death and his last drawn wages was Rs. 3300/- per month plus Rs. 200/- daily to meet out day to day expenses. That on 19/12/2009 while driving the vehicle no. DL-1LX-2955 (Tata 407) during the course of his employment the deceased met with an unfortunate accident resulting in on spot death. An FIR was reported followed by charge sheet. That the owner and the insurance were aware of accident from the very first day. In the last petitioner



prayed that since accident of deceased employee occurred out of and in the course of employment with respondent resulting in death hence respondent is liable to pay compensation along with interest and penalty to the petitioners/claimants being the legal heirs of the deceased/ employee.

3. Summon was sent to the respondent with direction to appear before this Authority to file reply in the matter.
4. Respondent No. 1 filed its reply and submitted that the deceased Lt. Hoshiar Singh was employed with the answering defendant in capacity of driver and the deceased was drawing a salary of Rs. 3300/- plus diet and expenses. That during one of the voyage deceased met with an unfortunate accident and resultantly died. The legal heirs of deceased were given due care and attention by the answering respondent. That the insurance company had notice of the accident in question as the own damage claim was lodged with them. That the vehicle in question was fully insured with respondent no. 2.
5. Respondent No. 2 filed its reply and submitted that the present application for compensation is not maintainable as the petitioners had earlier filed a petition before Motor Accident Claims Tribunal, North District, Rohini Court, Delhi and have already received compensation in pursuance to a compromise award passed therein and the present petition is barred by section 167 of the Motor Vehicle Act. That the deceased Hari Prasad was driving vehicle bearing No. DL-1LK-2955 on 19/12/2009 when it was hit by vehicle bearing No. HR-69-8910. In the said accident the deceased died. That the petitioners thereafter filed a petition/suit bearing no. 88/2010 in the Motor Accident Claims Tribunal (Outer-I), Rohini Courts, Delhi and in the said case, the petitioners and owner of the offending vehicle compromised the case in the sum of Rs. 1,60,000/-. That the petitioners/applicants have not come to this Hon'ble Court with clean hands and have suppressed material facts. The present petition is therefore liable to be dismissed on this ground alone. It is further submitted by the answering respondent no. 2 that the vehicle bearing no. DL-1LK-2955 was insured with the answering respondent vide policy bearing no. 1306792334006531 valid from 31-8-2009 to 30-08-2010 subject to its terms and conditions. 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 with 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 31/08/2023 following issues were framed for adjudication:
 1. Since the matter was settled before the MACT Court, in view of this whether claim is maintainable under EC Act or not?
 2. Whether Hari Prasad died out of and in the course of his employment?
 3. And, if so, what relief and direction necessary in this regard?



8. Matter was fixed for the evidence of the claimant. Claimant filed her statement by way of affidavit Ex.PW1/A (Wife of deceased Lt. Hari Prasad @ Hoshiar Ram @Hoshiar Singh). The contents of affidavit are corroborative to those claim petition. The claimant also filed document Ex.PW1/1 to Ex. PW1/13 i.e. Copy of Election ID Card, Copy of Ration Card, Copy of FIR No. 412/2009, Copy of Final Report pertaining to FIR no. 412/2009, Copy of medical OPD Ticket, copy of medical legal injury report, copy of post mortem report along with Mortuary slip, copy of cremation slip issued by Nigam Bodh Ghat dt. 21/12/2009, copy of certificate issued by Nigam, copy of certificate issued by Tehsildar, copy of registration certificate along with fitness and permit of vehicle DL1LK2955, copy of insurance cover note. Her statement was recorded and was also cross examined by counsel of respondent no. 2 on 21/09/2023 and further despite sufficient opportunities provided the respondent no. 1 failed to cross examine the claimant, hence on 09/10/2023 right of respondent no. 1 to cross examine the claimant was closed.

9. Further despite sufficient opportunities provided to the respondent no. 1 failed to lead any evidence in the matter, hence on 09/10/2023 right of respondent no. 1 to lead evidence was closed.

On 09/10/2023, Sh. Vijay Kumar AR for respondent no. 2 appeared and stated that respondent no. 2 does not want to lead any evidence in the matter. Hence taking under consideration the statement the right of respondent no. 2 was closed.

10. The matter was fixed for arguments. Written argument was filed by the respondent and oral submissions adduced by both the parties were heard.

11. 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

12. Claimant in the claim application submitted that the deceased Lt Hari Prasad @ Hoshiyar Singh S/o Lt Durga Ram was employed with Respondent no. 1 as a driver on the vehicle bearing No. DL-1LX-2955 (Tata 407) and the respondent no. 1 is the registered owner of the vehicle bearing No. DL-1LX-2955 (Tata 407). That the deceased was professional driver having 5 years of experience and possessed valid driving licence to drive commercial vehicle. That the deceased was aged 37 years at the time of death and his last drawn wages was Rs. 3300/- per month plus Rs. 200/- daily to meet out day to day expenses. That on 19/12/2009 while driving the vehicle no. DL-1LX-2955 (Tata 407) during the course of his employment the deceased met with an unfortunate accident resulting in on spot death. That the owner and the insurance were aware of accident from the very first day despite that respondents did not pay any compensation under the EC



Act, 1923 to the petitioners. In principle respondent no. 10 admitted employee-employer relationship and accident caused out of and in the course of employment resulting thereby employee Lt Hari Prasad @ Hoshiyar Singh died. An FIR bearing no. 412/2000 dated 20/12/2009 was registered with PS Alipur and post mortem was also conducted. Claimant examined herself to prove her case and she was also cross examined by counsel for respondent no. 2. Respondents did not lead any evidence in this case. The main objection of the respondent no. 2 insurance company is this that present application under EC Act, 1923 for seeking death compensation is not maintainable because petitioners had earlier filed a petition bearing No. 88/2010 before Motor Accident Claim Tribunal – North District, Rohini, Delhi and have already received compensation in persuasion to a compromise award passed therein. The matter was settled in the sum of Rs. 1,60,000/- before the MACT Tribunal. In view of this present petition is barred by section 167 of the Motor Vehicle Act. Respondent no. 2 further submitted that matter is also barred by limitation.

In written submission petitioners reiterated contents of claim application on the ground that claimant has settled the claim under Motor Vehicle Act and liberty was sought from the MACT Court to file new claim under EC Act, 1923 since the insurer of offending vehicle did not make any payment to the petitioners as such this claim has been filed.

13. I have gone through the contents of the claim application and reply of the respondent no. 1 available on record and found that neither claimants nor respondent no. 1 has disclosed this facts in their claim and reply respectively that earlier claimant had filed petition before MACT court and matter was compromised between the petitioners and the respondent no. 1. This facts was hidden by claimants and the respondent no. 1. It was mandatory for the claimants to disclose this fact in his claim petition and also it was necessary for respondent no. 1. But none of them had disclosed the facts about the compromise as discussed above arrived between the parties before MACT Court. This facts has been brought only by the respondent no. 2 insurance company only then this Authority has come to know that any settlement was done between the parties.

In written submission Ld Counsel for respondent no. 2 insurance company relied upon the judgement of Hon'ble High Court of Delhi titled as Elsamma Johan & Anrs. v/s Brintex sales corporation 2015 ACJ 2818. In this case and the facts of the present case are similar. The claimants petition for compensation was dismissed under EC Act, 1923 as they had earlier filed a petition under MV Act and had received compensation therein. The claimants had challenged this order of dismissal and relied upon the judgement of Hon'ble Supreme Court in the matter titled as Oriental Ins. Co. Ltd v/s Dyamavva. The Hon'ble court held that section 167 of MV Act is complete barred for invoking two remedies i.e. 1st under either of the 02 Acts and thereafter two other Acts i.e. MV Act and



EC Act. That there cannot be two claims filed for same cause of action. Further reliance pressed by the appellants upon the judgement of Supreme Court in the court of Dyamavva is misconceived because in that case, the dependants exercise their option by first approaching the motor accident claim tribunal by filing a petition on 30/05/2023. Thereafter, the employer in that case had suo moto approached the Commissioner u/s 8 of the EC act for deposition of compensation. It is this suo-moto action of the employer of depositing compensation u/s 8 that was treated by the apex court in the case Dyamavva as not amounting to exercising an option by dependant's u/s 167 of MV Act. Further Hon'ble apex court accordingly said that since in the facts in Dyamavva case, it was not the dependants who had approached the Authority under EC Act, but it was the employer who took suo moto action of deposit u/s 8 the same will not result in the barring or continuation of proceedings and passing of award under the MV Act and which latter proceedings were initiated prior to 30/05/2023, the suo moto deposit was made by the employer u/s 8 of the EC Act subsequently under its letter dated 04/11/2023. In view of these observations Hon'ble Apex Court did not find any merit in the appeal, and the same was, therefore dismissed.

Further in the present case, the present proceedings have not resulted from suo – moto deposit of amount by employer u/s 8. The present case has been filed by the claimants themselves after taking compensation from the MACT Court. Therefore the present petition is barred by section 167 of MV Act and the present claim is not maintainable accordingly.

As discussed above in detail it is established that claimants had settled the claim before the MACT court with the respondent no. 1 and received the settled amount and only thereafter filed this claim for compensation under EC Act, 1923. Neither claimant nor the respondent no. 1 disclosed this facts in their claim and the reply respectively. The judgement on which respondent no. 2 relied in this case as discussed above is completely applicable. No person can take benefits/compensation for same cause under two different Acts. In view of this the present petition is barred by section 167 of MV Act. Accordingly, claim petition filed by the claimant is not maintainable under EC Act, 1923. Hence issue no. 1 is decided accordingly.

14. In view of discussion made in issue no. 1, issue no. 2 & 3 are not required for further any adjudication.
15. Given under my hand and seal of this Authority on this 30th day of November, 2023.

B/30/11/23
(S.C. Yadav)
Commissioner
Employee's Compensation Act, 1923

