

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/80/NW/18/292.

Date: 31/08/2023.

IN THE MATTER OF:

Sh. Vivek Yadav S/o Sh Braj Bhan Yadav

R/o Village Rajesh Pura,
Belahar, Mainpuri, UP - 205265

...Claimant

V/s

M/s Bombay Kandla Transport Pvt. Ltd.

58, 1st Floor, Transport Centre,
New Sabzi Mandi, Azadpur, Delhi-110033

.....Respondent No.1

M/s New India Assurance Co. Ltd.

7E, Jhandewalan Extension, New Delhi - 110055

.....Respondent No. 2

ORDER

1. Vide this order, I will dispose of the application dated 23/07/2018 filed by the applicant/claimant for seeking injury compensation.
2. Claimant in the claim petition stated that he was employed by the respondent no 1 as a driver for a year and lastly was drawing wages @ Rs. 15,000/- per month. That on 25/05/2018 midnight and morning of 26/05/2018 he was driving the vehicle bearing registration no. HR-55V-8200, was coming from Devgarh and was proceeded towards Chakoi and at about 02:00 AM, when the vehicle reached near Hariandi Mode, there was Head to Head collusion with another vehicle No. BR-21-GA-2255, which was being driven rashly and negligently by his driver, as a result of this head to head collusion, he sustained grievous injuries in his both legs and was moved to Atul Nursing Home, 1/58, Delhi Gate, Agra, where he was treated and discharged on 14/6/2018. It is further submitted by the claimant that he was diagnosed with multiple fractures in both legs and accordingly the plates were inserted in both the legs and during the course of treatment, surgical operations were conducted and cut marks are visible in both of his legs and his treatment is still continuing. It is further submitted by the claimant that all the medical expenses were borne by him to the tune of approximately Rs. 2,50,000/- and he was



subsequently discharged from the hospital. It is further submitted by the claimant that the said accident was reported to PS Chander Mandi, District Jamui, Bihar vide complaint dated 27/5/2018. That the vehicle involved in the accident i.e. HR-55V-8200 was insured with respondent no 2. In the last the claimant submitted that the accident had occurred arising out of and during his course of employment and after the said accident he is unable to perform any job/work, which he was doing/performing prior to the accident, hence respondents are liable to pay compensation of Rs. 15,00,000/- along with 12% interest.

3. Summon were sent to the respondents with direction to appear before this Authority to file reply in the matter.
4. Respondent no. 1 in its reply submitted that they cannot be held liable for the so called payment of injury compensation together with interest, as the vehicle in question i.e. bearing no. HR-55V-8200 was insured with respondent no. 2 vide Policy No. 31010031170100000503 which was valid from 26.5.2017 to 25.5.2018 and further Policy bearing no. 3101003118010000039 valid from 25.5.2018 to 24.5.2019. It is further submitted by the answering respondent that after the occurrence which took place on the midnight of 25/05/2018 and morning of 26/05/2018 at about 02:00 AM, they provided all the medical facilities and other facilities to the injured/workman and all medical expenses on the treatment of claimant were borne by the answering respondent. That the answering respondent also intimated the insurance company with whom the offending vehicle was insured i.e. respondent no. 2, as early as possible. Further respondent denied rest of contents of claim petition in toto and prayed that the answering respondent is not liable to pay the amount of compensation as the vehicle in question was insured with respondent no. 2 and whatever the liabilities arises on account of the said accident of the respondent no 2.
5. Further Respondent No. 2 in its reply submitted that all the allegations, averments and contentions urged in the claim petition are denied individually and collectively. That the accident occurred due to head on collusion between the two vehicles and the alleged accident occurred due to the rash and negligent driving of injured while driving the vehicle bearing no. HR-55V-8200 (Truck) at the time of accident. That the vehicle bearing no. HR-55-V8200 – Truck was insured with the answering respondent vide policy no. 31010031180100000539 w.e.f. 26/05/2018 to midnight 25/5/2019 issued in the name of M/s Bombay Kandla Transport on certain terms and conditions of the policy. It is further submitted by the answering respondent that they shall not be liable to indemnify any amount of compensation, if awarded to the claimants as it appears that all the time of the alleged accident, the alleged



vehicle no. Bearing registration no. HR-55-V-8200 was not in perfect road worthy condition and must be violation of rules and regulation at the time of the alleged accident. Further respondent denied rest of contents of claim petition in toto and prayed that the claim petition deserve to be dismissed against the answering respondent.

6. Claimant filed rejoinder by which he denied contents of reply filed by respondents and reiterated the contents of his claim application.
7. On 02/08/2019 following issues were framed for adjudication:
 1. Whether employee-employer relationship exists between the claimant and respondent 1 and if so?
 2. Whether the accident leading to injury occurred during and in the course of employment and if so?
 3. To what amount of compensation is the claimant entitled, any other relief?
 4. Whether claimant is entitled for penalty and upto what extent?
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, WW1/3 & WW1/5 and mark WW1/2 & WW1/4 i.e. copy of Medical bills (colly 19 pages), copy of Police complaint, copy of DL, Copy of Insurance Policy, Copy of Demand Notice. His statement was also recorded and was also cross examined by counsel of respondent No. 2 on 21/11/2022. The matter was fixed for respondent evidence.
9. Further the respondent no. 2 moved an application for summoning the witness i.e. record clerk from RTO-Mainpuri, UP. A summon was issued with direction to the witness to appear before the Authority on 06/03/2023.

On 06/03/2023 Sh. Sanjeev Yadav S/o K.C Yadav, Sr. Asstt. Clerk, RTO, Mainpuri, Uttar Pradesh – 205001 appeared his statement was recorded and he was further cross examined on 06/03/2023 by the counsel of respondent no 2 and claimant.
10. Further despite given sufficient opportunities to the respondents, respondents failed to lead evidence in the matter, hence the matter was further fixed for leading arguments.
11. Written argument was filed by the respondent no 2. And counsel for claimant adduced oral submission in the matter.



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 & 2:

13. The case of claimant is this that he was employed by the respondent no 1 as a driver for a year and lastly was drawing wages @ Rs. 15,000/- per month. That on 25/05/2018 midnight and morning of 26/05/2018 he was driving the vehicle bearing registration no. HR-55V-8200, was coming from Devgarh and was proceeded towards Chakoi and at about 02:00 AM, when the vehicle reached near Hariandi Mode, there was Head to Head collision with another vehicle No. BR-21-GA-2255, which was being driven rashly and negligently by his driver, as a result of this head to head collision, he sustained grievous injuries in his both legs and was moved to Atul Nursing Home, 1/58, Delhi Gate, Agra, where he was treated and discharged on 14/6/2018. It is further submitted by the claimant that he was diagnosed with multiple fractures in both legs and accordingly the plates were inserted in both the legs and during the course of treatment, surgical operations were conducted and cut marks are visible in both of his legs and his treatment is still continuing. It is further submitted by the claimant that all the medical expenses were borne by him to the tune of approximately Rs. 2,50,000/- and he was subsequently discharged from the hospital. As per disability certificate bearing No 1402 dated 08/04/2021 issued by Dr. Baba Saheb Ambedkar Hospital claimant become 20% disable in relation to right lower limb. It is further submitted by the claimant that the said accident was reported to PS Chander Mandi, District Jamui, Bihar vide complaint dated 27/5/2018. That the vehicle involved in the accident i.e. HR-55V-8200 was insured with respondent no 2 on the day of accident. Since, the factum of employee employer relationship and accident occurred out of and in the course of employment with respondent no 1 are admitted as such respondent no 1 is liable to pay the injury compensation to the claimant. Since vehicle in question was insured on the day of accident of the claimant as such respondent no 2 insurance company is liable to indemnify to claimant on behalf of respondent no 1. Accordingly issue no. 1 & 2 is decided in favour of claimant and against the respondents.

ISSUE No. 3 & 4

14. As made discussion above for relief I am taking age of claimant as 22 years (as per Aadhar Card No. 240885542412) and relevant factor 221.37 and 60% of last drawn wages restricted to 8,000/- and 20% disability, as such calculation is made as under:

$$\frac{221.37 \times 4800 \times 20}{100} = \text{Rs. } 2,12,515/-$$



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

15. Show cause notice dated 13/08/2019 was issued to the respondents with direction to file the reply as to why penalty be not imposed upon them but none respondents filed the reply in this regard. Further on this issue the respondent No. 1 in his reply stated that immediately after the accident he had informed to the insurance company respondent no 2 about the accident took place on 25/06/2018 but no supporting documents has been placed on record. As such contents of respondent no 1 is not considerable. As per section 4(A) it was the onus upon the employer to pay compensation to the claimant as soon it falls due but respondent no 1 failed to do so. Further it was the duty upon the respondent no 1 to prove on record by way of documents well in time he has informed to the respondent no. 2 for discharging his liability under the Act as the vehicle in question was insured on the day of accident. As such delay has caused on the part of resp. no. 1 As such keeping in view the facts and circumstances, I impose a penalty of 25% of the principal amount on the respondent No. 1.
16. Therefore, the applicant/claimant is entitled to receive injury compensation from respondent. Accordingly I direct Respondent No. 2 insurance company to deposit **Rs. 2,12,515/- (Rupees Two Lakh Twelve Thousand Five Hundred and Fifteen Only)** on account of compensation payable to the applicant/claimant along with interest @ 12% P.A. w.e.f. 24/06/2018 till its realization and further an amount of **Rs. 71,507/- (Rs. Seventy One Thousand Five Hundred seven Only)** towards medical expenses as per section 4(2A) of the Act and the respondent No. 1 is further directed to **deposit 25% penalty of awarded amount i.e. Rs. 53,129/- 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 31st day of August, 2023.

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

