

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.CEC/I/WD/35/17/288.

Date: 28/08/2023.

IN THE MATTER OF:

Sh. Shahanajar

R/o H.No – 07, Pocket – D,
DDA Flat, New Ranjit Nagar, New Delhi – 110008

Permanent Address

House No. 04, Ladpur Kalan,
District – Haridwar, Uttarakhand – 247664

..Applicant/Claimant

V/s

Sh. Shahazad s/o Ayyaz,

R/o H.No 22, Tehsil- Roorkee,
Distt.- Haridwar, Uttarakhand- 247667

.....Respondent No. 1

M/s United India Insurance Co. Ltd.

Kanchanjunga Building, 8th Floor,
18, Barakhamba Road, New Delhi - 110001

.....Respondent No. 2

ORDER

1. This claim petition was disposed of vide order dated 05/07/2022. Aggrieved by this order The respondent no. 2 filed FAO bearing No 245/2022 and CM APPL No 41414/2022 through his counsel before the Hon'ble High Court of Delhi. Hon'ble High Court of Delhi vide order dated 27/04/2023 set aside impugned order dated 05/07/2022 only to the extent of imposition of penalty and directed the parties to appear before this said forum on 15/05/2023 for fresh consideration on the aspect of imposition of penalty.
2. In view of order of Hon'ble High Court as discussed above, I will dispose of the claim application only to the extent of penalty.
3. In compliance of order dated 27/4/2023 of Hon'ble High Court AR of petitioner and respondent no 1 in-person appeared, none appeared for respondent no. 2 on 15/5/2023. Accordingly



summon dated 16/5/2023 was sent to respondent no. 2 M/s United India Insurance Pvt. Ltd. for appearance on the proceedings. Accordingly on 08/06/2023 counsel for claimant and respondent in person and counsel for resp. No. 2 were present. Show cause notice dated 08/06/2023 was issued to the respondents u/s 4A(3)(b) of the EC Act, 1923 to show cause in writing as to why penalty be not imposed upon them. Respondent no. 1 filed reply on 26/7/2023 in response to show cause notice wherein it is stated that section 4A notice is not maintainable against the respondent no 1 due to answering respondent within 04 day of accident informed to respondent no 2 at Roorke insurance Office and place of accident Sasaram Insurance office. On the basis of information respondent no. 2 insurance company conducted survey within 10 days after information. The vehicle in question was fully insured and extra charges for driver and others were paid to the insurance company as such respondent no. 1 is not liable for payment of penalty u/s 4A of the Act. It is further submitted that respondent no 2 insurance co. had settled all the claim of accidental truck and the repairing charges after submitting the bill by way of transferring the bill amount through NEFT before filing the claim. On this ground respondent no 1 denied his liability towards payment of penalty.

4. Respondent no. 2 also filed reply/submission wherein it is submitted that respondent no. 1 owner failed to intimate the respondent company in respect of occurrence of alleged accident in any manner and never applied for own damage claim from respondent no 2 as such respondent no 2 has no liability regarding the present claim petition and also not liable to pay penalty u/s 4A of EC Act, 1923. In nutshell respondent no 2 submitted that penalty cannot be imposed upon them, employer is liable for the penalty if any u/s 4A of the Act.
5. I have heard the pleadings of the respondents on the issue of penalty.
6. The brief contents of the claim is this that claimant Sh. Shahanajar was employed with respondent no 1 as a driver since last 03 years on vehicle bearing No. UK-08-CA-3595 – Truck and he met with an accident on 19/1/2016 when he was on his professional trip from Jabreda glass factory to Kolkata. Near Aurangabad Bihar he met with an accident on 19/01/2016 and in this accident he received grievous injuries on his both legs arisen out of and during the course of his employment and became 100% disabled for his job as a driver as he lost his 100% earning capacity. The vehicle in question was insured with respondent no. 2 insurance co. M/s United India Insurance Co. vide policy No. 2502033115P108245831 for the period from 20/10/2015 to 19/10/2016. The issue of payment of compensation had already been decided by this Authority by its order dated 05/07/2022, when respondents failed to discharge there responsibility jointly or severally. After considering the pleadings of the parties to the extent of penalty I am giving my findings on this issue only.
7. As per section 4A – “*compensation to be paid when due and penalty for default*”. As per sub-section 1 of 4A – “*compensation under section 4 shall be paid as soon as it falls due.*” Section 4A(3)(b) provides for provision of penalty on delay payments to the sum not exceeding 50% of such amount.



8. In this case respondent no. 1 as claimed the accident claim from respondent no 2, which was transferred by way of NEFT meaning thereby that respondent no 2 was having information regarding the accident as such respondent no 2 should discharged his legal responsibility towards payment of compensation to the claimant immediately after receiving the information after due process if any. But respondent no 2 in their reply submitted that they have no knowledge about the accident as respondent no 1 had not informed them, while in reply respondent no 1 stated that respondent no 2 insurance company has paid accidental benefits of insured vehicle. In view of this respondent no 2 insurance company is liable to pay penalty u/s 4A(3)(b) of the Act.
9. Accordingly respondent no. 2 is directed to pay 50% penalty of ordered amount Rs. 10,46,592/- (vide order dated 05/07/2022) to the claimant. Therefore in view of this respondent no 2 is directed to deposit penalty amount to the tune of **Rs. 5,08,296/- (Rupees Five Lakh Eight Thousand Two Hundred Ninety Six only)** within 30 days from the date of order by way of Demand draft in favour of "Commissioner Employees Compensation", failing, which same shall be recovered as per provision of the Act.
10. Given under my hand and seal of this Authority on this 20th day of August, 2023.

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

