

**BEFORE SH. S. C. YADAV, COMMISSIONER  
(UNDER EMPLOYEE'S COMPENSATION ACT, 1923)  
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI  
5 – SHAM NATH MARG, DELHI-110054**

No. CEC/I/16/ND/22/ 194.

Dated: 17/01/2025.

**IN THE MATTER OF :**

**Sh. Rajendra Kumar Yadav @ Rajender Yadav @ Babu Ram  
S/o Sh. Brij Raj Singh Yadav @ Vijay Singh,  
R/o Village – Rajapurva, Barganwa, Talgram,  
P/o Amolar, Gusabganj,  
Tehsil – Chhibramau, Distt. Kannauj, U.P.**

**At present:-**

H. No. 126, D-Block,  
Mangolpuri, North – West,  
Delhi – 110083

.....Applicant/Claimant

**VERSUS**

1. **Sh. Ravi Kumar Singh**  
Flat No. 302, Ratan Jyoti Apartments,  
Shastri Nagar, Kanpur,  
Uttar Pradesh
2. **Sh. Rajnish Kumar**  
S/o **Sh. Jawahar Lal,**  
R/o Village Bhitia Dihukpura,  
Post – Lalganj, District – Basti,  
Uttar Pradesh – 272301
3. **M/s ICICI Lombard General Insurance Co. Ltd.**  
Earlier Bharti Axa General Insurance Co. Ltd.  
Space No. 315, 3rd Floor, Aggarwal City Mall,  
Plot No. 04, Road No. 44, Pitampura,  
New Delhi - 110034

.....Respondents

**ORDER**

1. By this order, I will dispose of the claim application dated 25.11.2019 of the applicant/claimant for seeking injury compensation under the Employees Compensation Act, 1923.



2. In the claim petition claimant stated that the he was employed as a driver on vehicle bearing no. UP-74-J-4100 (Bolero Car) which was being managed by Respondent No. 1 and owned by Respondent No. 2. It is further stated that on 04.06.2017 he sustained injuries due to an accident arisen out and during the course of employment. The Claimant used to travel between the Kanpur and Kannauj RTO office. Claimant further stated that on 04.06.2017, the Respondent No. 1 wanted to go to Azamgarh to buy some land. The applicant was driving the vehicle and the Respondent No.1 was sitting on the rear seat. The vehicle had a defect in its Tie-rod which was repaired 5 months back. When the vehicle reached a brick manufacturing plant, near village Baskhari, 20 K.M. prior to Azamgarh, the same defect of Tie-Rod reappeared, and the vehicle suddenly changed its course and ran to one side and the claimant applied brakes immediately, but the vehicle hit a pile of bricks. The vehicle got totally damaged and the applicant sustained grievous injuries. The workers at the bricks manufacturing plant took the applicant and the Respondent No. 1 out of the vehicle and an ambulance was called but it did not come at the location. Thereafter, a police car took both the applicant and the Respondent No. 1 to Govt. Hospital, Baskhari. The Govt. Hospital, Baskhari referred the applicant to higher centre for better treatment. Then due to severity of injuries the nephew of the Respondent No. 1 took the Claimant to R&K Memorial hospital where X-ray was conducted. And after about 2 hours he was referred to Kanpur Hospital where he was operated for his injuries. The applicant was taken to Vedanta Hospital where he got admitted. There he remained admitted for 6 days. After getting discharged he further continued taking treatment. The applicant was again admitted in Vedanta Hospital on 21.06.2017 and remained admitted till 27.06.2017. After getting discharged claimant further continued taking treatment. It is further stated that the claimant incurred heavy expenditure on his treatment. The claimant has become disabled as his pelvic bones got broken due the accident. And after this accident the applicant is not in a position to do any work of his capacity and his movement has been totally restricted and he has become 100% disabled for the purpose of his employment as Driver. His earning capacity has been totally reduced. The vehicle bearing No. UP-74-J-4100 (Bolero Car) was owned by the Respondent No. 2 and at the time of the accident it was being managed by Respondent No. 1 and it was insured with the Respondent No. 3 and an additional premium was also charged under E.C. Act, 1923 by the Respondent No. 3 from Respondent No. 2. Claimant further stated that he was drawing wages @ Rs. 8,000/- per month and food allowance Rs. 300/- per day and he was aged 31 years at the time of his accident. It is further stated that the Respondent No. 1 and Respondent No. 2 are having the notice of the accident since the day of its occurrence and as per the information available with the claimant the Insurance Company has been informed about the accident and injury immediately after the accident took place. The claimant was Driver by profession on vehicle and he has become unable to take up that work. After the accident his body does not support him to have a step onward on his own and he is entirely and completely dependent on an escort. The claimant has become totally disabled as law settled by the Hon'ble Supreme Court of India in Re: Pratap Narain Singh vs. Srinivasa Sabata cited at 1976 ACJ 141. That the



applicant/claimant was employed on the vehicle and the accident caused out of and during the course of his employment. The applicant/claimant is entitled to compensation to the extent of 100% disability and as per section 4(1) (c) & 4(1) (d) of the Employee's Compensation Act he is entitled for temporary and permanent disablement along with interest @ 12% p.a. from the date of accident till realization and penalty to the extent of 50%. Alongwith the claim petition claimant filed copy of his medical treatment documents, copy of registration details of vehicle bearing No. UP-74-J-4100 (Bulero Car), copy of his Driving License, copy of his Aadhaar Card, printout of his photographs with vehicle in question.

3. Summons were sent to the respondents for filing their reply in their defense.
4. In response of the summons the Respondent No. 1 had appeared, and he has filed his written statement, in his written statement he has denied the factum of employment and accidental injuries to the claimant. After filing reply respondent no. 1 did not present in proceedings hence, thereafter he was proceeded ex-parte as he deliberately stopped appearing before the Authority. Further on the application of the claimant the Respondent No. 1/Ravi Kumar appeared before the Hon'ble Court on 05.08.2022 whereby he has categorically stated and admitted the factum of accident and injuries to claimant. The testimony of the Respondent no. 1 is reproduced as under –

*“.....I was present with Rajender in vehicle bearing no. UP-74-J-4100 (Bolero). The vehicle was being driven by Rajender. The said vehicle met with an accident. I sustained grievous injuries.....”*

5. The Respondent No. 2/owner of the vehicle in question had instructed his relative to appear on his behalf, who appeared but no response was filed on behalf of Respondent No. 2. And thereafter there was no representation on behalf of Respondent No. 2 therefore he was proceeded ex-parte after sending umpteen summons for appearance.
6. The Respondent No. 3/ Insurance Company was also served notice. Who appeared before this Authority and filed an affidavit alongwith a document i.e. Insurance Information Bureau portal record, stating that the vehicle was not insured with them and was insured with Bharti Axa General Insurance company Ltd. and an Own Damage Claim of the said vehicle of Rs. 90,000/- was also paid for the date of accident i.e. 04/06/2017 by Bharti Axa General Insurance Company Ltd.
7. Thereafter, the claimant moved an application to implead M/s ICICI Lombard General Insurance Company Ltd. in which Bharti Axa General Insurance Company Ltd. had merged. Thereafter, M/s ICICI Lombard General Insurance Company Ltd. were impleaded as Respondent No. 3 and summons were issued to them but despite service of summons they also failed to appear before this Court therefore they were also proceeded



ex-parte. The application filed by Respondent No. 3 for recalling of ex-parte order was also rejected as they failed to provide any sufficient reasons for allowing their application. It is further submitted that on the application of the claimant the summons were sent for production of OD Records to the Respondent No. 3 but despite the repeated directions no records were produced by them. However the factum of payment of OD Claim of Rs. 90,000/- for the accident in question stands proved from the documents on record.

8. The matter was fixed for evidence by the parties. The claimant has filed his evidence by way of affidavit exhibit AW-1/A alongwith supporting documents i.e. copy of Disability Certificate, copy of Medical Treatment Documents, Details of Medical Bills (Rs. 1,05,001/-), copy of Aadhar Card, copy of Driving Licence, Photographs of the claimant and copy of OD Claim particulars of the vehicle. Accordingly, the applicant/claimant was cross examined by the Ld. Counsel for the Respondent No. 3/Insurance Company but no contradiction was pointed out in the cross examination. Apart from that the treatment paper dated 04/06/2017 of Samudayik Swasthya Kendra, filed by the Applicant for the injuries also mention "RTA" which corroborate the fact that he met with a road traffic accident and the date of accident and the nature of injury are matching with the averments in the claim application.
9. Respondents did not file any evidence. Since despite given sufficient opportunities respondents did not lead any evidence to prove their case as such they were proceeded ex-parte on 22.08.2023. In these circumstances I have left no option except to consider claim of the claimant for injury compensation.
10. The case was fixed for arguments and written arguments were filed and oral arguments were also heard.
11. 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:

#### **FINDINGS:**

In the claim application it has been stated by the claimant that he was employed as a driver on vehicle bearing no. UP-74-J-4100 (Bolero Car) which was being managed by Respondent No. 1 and owned by Respondent No. 2. On 04.06.2017 he sustained injuries due to an accident arisen out and during the course of employment. The applicant used to travel between the Kanpur and Kannauj RTO office. On 04.06.2017, the Respondent No. 1 wanted to go to Azamgarh to buy some land. The applicant was driving the vehicle and the Respondent No.1 was sitting on the rear seat. The vehicle had a defect in its Tie-rod which was repaired 5 months back. When the vehicle reached a brick manufacturing plant, near village Baskhari, 20 K.M. prior to Azamgarh, the same defect of Tie-Rod reappeared, and the vehicle suddenly changed its course and ran to one side. The applicant applied brakes immediately, but the vehicle hit a pile of bricks. The vehicle got totally damaged and the



applicant sustained grievous injuries. The workers at the bricks manufacturing plant took the applicant and the Respondent No. 1 out of the vehicle and an ambulance was called but it did not come at the location. Thereafter, a police car took both the applicant and the Respondent No. 1 to Govt. Hospital, Baskhari. The Govt. Hospital, Baskhari referred the applicant to higher centre for better treatment. Then due to severity of injuries the nephew of the Respondent No. 1 took the Applicant to R&K Memorial hospital where X-ray was conducted. And after about 2 hours he was referred to Kanpur Hospital where he was operated for his injuries. The applicant was taken to Vedanta Hospital where he got admitted. There he remained admitted for 6 days. After getting discharged he further continued taking treatment. The applicant was again admitted in Vedanta Hospital on 21.06.2017 and remained admitted till 27.06.2017. After getting discharged he further continued taking treatment. The Applicant incurred heavy expenditure on his treatment. The applicant has become disabled as his pelvic bones got broken due the accident. And after this accident the applicant is not in a position to do any work of his capacity and his movement has been totally restricted and he has become 100% disabled for the purpose of his employment as Driver. His earning capacity has been totally reduced.

That the evidence by way of affidavit filed by the claimant alongwith the documents and the admission of Respondent no. 1 about the fact that the claimant was driving the vehicle when the vehicle met with an accident establishes the fact that the claimant/applicant was present in the vehicle at the time of accident and he sustained grievous injuries which resulted into disability of 90% as per certificate for the persons with disability issued by Office of the Medical Superintendent, Aruna Asaf Ali Govt. Hospital, Delhi vide certificate no. 1525 dated 25.09.2024. In support of his case Counsel for claimant relied upon on the following judgments:

That the Hon'ble Apex Court in the case titled as **Smt. Tebha Bai & Ors. Vs. Raj Kumar Keshwani & Ors.** cited at 2018 (7) SCC 705 has found the sole testimony of the claimant a sufficient proof about the occurrence of accident when there is no inconsistency in it.

In addition to what has been submitted above the applicant further submits that the principles of Evidence Act are not strictly applicable in the proceedings before the Commissioner and it is not incumbent on the part of the applicant to get his case proved beyond doubt. In this regard, I like to draw the attention of this Hon'ble Court towards a judgment of the Hon'ble Supreme Court of India in a case titled as **Maghar Singh vs. Jaswant Singh**, cited at 1997 ACJ 517.

On the issue of burden of proof was discussed by the Hon'ble Supreme Court of India in the case titled as "**Shahajahan & Anr. Vs. Shri Ram Gen Insurance Co. Ltd. & Anr.**" cited at **2021 SCC Online SC 3133** in Civil Appeal No. 6775 of 2021.

Given the above discussions, I hold that the accident has been caused and in that accident the applicant had sustained personal injuries. He has become disabled due to those injuries. The insurance company has not given any evidence. The said issue is decided in favour of the applicant and against the respondents.



The issue of injury of and during the course of employment has since been decided in favour the applicant against the respondents. In the forgoing paragraph above, next comes as to what amount of compensation and any other relief the applicant is entitled.

#### **RELIEF:**

In the claim application the applicant/claimant has been stated that was drawing wages @ Rs. 8,000/- per month and food allowance Rs. 300/- per day. But as per maximum limit prescribed at that particular point of time, his wages is taken as Rs. 8,000/- per month. In the claim application, he has further stated that he was aged 31 years at the time of accident. The date of birth of the applicant in his Aadhar Card has been given 11.01.1986. Hence his age is taken 31 years. The applicant had got him medically examined and as per the Certificate issued by the Medical Board of Aruna Asaf Ali Government Hospital Delhi has assessed his 90% permanent disabled. The documents and the Medical Certificate show that the claimant may not be able to do any physical work of the nature. In this regard, the question as to reduction in earning capacity was argued by the both parties. Ld. Counsel for the claimant argued that the as the workman was working as driver which he was doing to prior this accident, hence this is a case of 100% loss of earning capacity. Finding the nature work, it should be accepted that it is case of 100% disablement and in this regard the Ld. Counsel for the claimant has relied on the ruling of the Hon'ble Supreme Court of India – *Pratap Narain Singh vs. Srinivasa Sabata* cited at 1976 ACJ 141 whereby the Apex Court has held that the workman was no more in a position do take up and do that work which he was doing hence the disablement was assessed 100%. Similarly *Supreme Court in Mohan Soni vs. Ram Avtar & Ors.*, 2102 ACJ 583.

**New India Assurance Co. Ltd. Vs. Moharman & Anr.** – FAO 17/2021 – *Case of Cleaner-Physical Disability of 20% held 100% loss of earning capacity* and other connected matters  
**New India Assurance Co. Ltd. Vs. Pushkin Tiwari & Anr.** – FAO 21/2021 *Case of Driver –Physical Disability of 18% held 100% loss of earning capacity* and **New India Assurance Co. Ltd. Vs. Furkan @ Mohd. Furkan & Anr.** – FAO 305/2022 *Case of Driver – Physical Disability of 39% held 100% loss of earning capacity.*

**The National Insurance Co. Ltd. vs. Sanjay Kumar Dass @ Sanjay Kumar Singh & Anr.** - FAO 172/2021 *Case of Driver - Physical Disability of 40% held 100% loss of earning capacity.*

The Hon'ble High Court in the case titled as **National Insurance Company Ltd. Vs. Hari Om & Anr.** In **FAO 264 of 2010** cited at 2011 SCC Online Del 328, whereby the Hon'ble High Court has confirmed the order the Ld. Commissioner whereby the loss of earning capacity was provided at the rate of 100% loss of earning capacity having 13% physical disablement.



The Hon'ble Apex Court in the case titled as "Mohan Soni vs. Ram Avtar & Ors., 2012 ACJ 583" has discussed the issue of loss of earning capacity.

The applicant/claimant gave his evidence and he remained physically present and his condition does not render him capable to drive a vehicle. He unable to walk, sit on his heels, thus he cannot mount on the transport vehicle. The situation of the applicant/claimant and the facts are covered by that one and more recently the Hon'ble High Court of Delhi in a judgment in New India Assurance Co. Ltd. Vs. Mohd. Ajmer – FAO 259 of 2013 whereby it has been ruled that a driver with injury in his leg having disablement to the extent of lesser is certainly a case of 100% loss of earning capacity. He is not able to move freely and he finds difficulty in squatting, he cannot use his leg for pressing brakes and accelerator etc. He cannot even step up to enter driver's seat. This is because of the reason that he is no more capable to drive a transport vehicle. Hence, I hold that the loss of earning capacity the claimant is entitled to compensation.

In the given wage, age and loss of earning capacity the applicant/claimant is entitled to compensation as under:

- i) Relevant factor of 31 years : 205.95
- ii) 60% of wages @ Rs. 8,000/- pm : Rs. 48,00/-
- iii) Amount of compensation

$$\frac{205.95 \times 8000 \times 60}{100} : \text{Rs. 9,88,560/-}$$

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

Therefore, the applicant/claimant is entitled to receive injury compensation from Respondent No. 1 but as the said Respondent No. 1 has taken an insurance coverage hence in sprit of indemnifying the insured, the Respondent No. 3 i.e. M/s ICICI Lombard General Insurance Co. Ltd., is directed to deposit in this court an amount of **Rs. 9,88,560/- (Rupees Nine Lakhs Eighty Eight Thousand Five Hundred Sixty Only)** on account of compensation payable to the applicant along with interest @ 12% p.a. w.e.f. 04.06.2017 till its realization and claimant is also entitled to receive actual medical expenses incurred on his treatment as per section 4(2A) of the EC Act, 1923 as such claimant has submitted treatment bills exhibit AW-1/3 (Colly) with details on medical bills amounting Rs. 1,05,001/-. As such Respondent No. 3/Insurane Company is also directed to deposit **Rs. 1,05,001/- (Rupees One Lakh Five Thousand One Only)** as medical expenses through Cheque/Demand Draft in favour of **"Commissioner Employee's Compensation"**. Seeing the conduct of the insured, the insurance company is granted recovery rights from the owner of the vehicle. Section 150 of the Motor Vehicles Act puts responsibility on the insurance company to satisfy the judgments and awards against insured person.



The ordered amount be deposited within a period of 30 days from pronouncement of the order in this court failing which the same shall be recovered as arrears of land revenue.

As the applicant/claimant was entitled to receive compensation within 30 days from the date of his accident – per the law by the Hon'ble Supreme Court in *Pratap Narain Singh vs. Srinivasa Sabata* cited at 1976 ACJ 141, the Applicant/Claimant becomes entitled to penalty as per Section 4A(3)(b), they (respondents ) are called upon to show cause as to why a penalty to the extent as in the provision be not imposed on them.

12. Given under my hand and seal of this Authority on this <sup>17</sup> day of January, 2025.

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

