

**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/NE/39/2018/152.

Dated: 30/10/2024.

IN THE MATTER OF :

Sh. Ram Sharan Kushwaha S/o Sh. Kashiram Kushwaha

R/o. H. No. D-1/1316, Gali No. 32,

Near Murina Atta Chakki, Harsh Vihar, Delhi-110093

.....Applicant/Claimant

Versus

1. Sh. Rajesh Singh S/o Sh. Vishwanath Singh

R/o. D-1/153, D-1 Block,

Near Kali Mandir,

Nand Nagari, Delhi-110095

2. M/s HDFC ERGO General Insurance Co. Ltd.

2nd Floor, N – 22, Sector-18,

Gautam Budh Nagar, Uttar Pradesh-201301

..... Respondents

ORDER

1. Vide this order, I will dispose of claim application filed 25.09.2018 before this Authority under section 22 of Employees Compensation Act, 1923 for seeking injury compensation.
2. In the claim petition claimant stated that he was employed as a Driver with Respondent No. 1 on the vehicle bearing no. DL-1-LR-8528 and on 01.04.2018 when the said vehicle was on its business trip, which was got loaded goods from Delhi and claimant started his vehicle and when he reached near AB road Sachin Dhaba in front of Village Titodi, P.S. - Makshi, M.P. a vehicle bearing no. MP-09-CQ-1041 came with rash and negligent manner and hit the vehicle no. DL-1-LR-8528 and due to the accident the claimant sustained injuries all over his body, his right leg had multiple fractures and also had injuries in his chest as per medical report. The claimant further



stated that a case was registered under Police Station P.S. Makshi dated 01.04.2018 and the police officials took the claimant to Dr. Bhim Rao Ambedkar Hospital, Shahjapur, M.P. and he was admitted there for 03 days and he remained admitted from 04.04.2018 to 11.04.2018 in Prime Hospital, Gwalior, M.P. and operation was done and steel plates were fitted in his right leg. It is further stated that after the accident the claimant has been disabled and he is not in a position to do any work of his capacity and has become 100 % disabled for the purpose of his employment as a driver, his earning capacity has been totally reduced. It is further stated that the vehicle bearing no. DL-1-LR-8528 (TATA Truck) was owned by the respondent no. 1 at the time of accident and it was insured with the Respondent No. 2 i.e. M/s HDFC ERGO General Insurance Co. Ltd. at 2nd Floor, N 22, Sector-18, Gautam Budh Nagar, Uttar Pradesh-201301 vide Policy No. 2315200324441605000 valid upto 16.08.2017 to 15.08.2018 and an additional premium was charged by the respondent no. 2 from respondent no. 1 under E.C. Act, 1923. Claimant stated that his last drawn wages was Rs. 17,000/- per month and Rs. 300/- per day as food allowances and at the time of accident he was aged about 64 years. It is stated that the respondent no. 1 was having the notice of accident since the day of its occurrence and the Respondent No. 2 i.e. Insurance Company has been informed immediately after the accident took place. In the last claimant stated that he was employed on the vehicle and the accident caused out of and during the course of his employment and the claimant/applicant is entitled to compensation to the extent of 100 % disability as per section 4(1) (c) & 4(1) (d) of the EC Act, 1923 and 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 application the claimant has filed copy of his aadhaar card, copy of his PAN Card, copy of his Driving License, copy of FIR bearing no. 0091 dated 01.04.2018 and his medical papers/documents.

3. Summons were issued to the respondents with direction to file reply/defense in this case.
4. In response to summon issued to Respondents, respondent no. 1 filed reply/defense in this case and denied employee employer relationship with the claimant. Respondent No. 1 further stated that the claimant filed the said case against the respondent no. 1 with malafide intention to extort money from respondent no. 1. It is further stated that the claimant was never employed with the respondent no. 1 and the claimant is a retired person and having age of more than 64 years at the time of the alleged incident. It is further stated that the claimant has been driving the vehicle of the respondent on the date of incident on the basis of the said job work. Respondent No. 1



further stated that the said accident was occurred due to his rash and negligent driving as stated in FIR No. 0091 dated 01.04.2018 under section 279/304A IPC and the two persons had been killed in this accident and the present claimant is accused in the said FIR and the claimant wants to take advantages of his own wrong. It is further stated that the it is wrong and denied that the respondent no. 1 is having the notice of the accident since the day of its occurrence and the Insurance Company has been informed immediately after the accident took place. It is further stated that the vehicle in question bearing No. DL-1-LR-8528 TATA Truck was owned by Respondent No. 1 and it was insured with Respondent No.2 i.e. M/s. HDFC ERGO General Insurance Company Limited, 2nd Floor N-22, Sector-18, Gautam Budh Nagar, Uttar Pradesh-201301 vide goods carrying comprehensive policy no. 2315200324441605000 valid upto 16.08.2017 to 15.08.2018. Respondent denied that applicant was drawing wages @ 17,000/- per month and Rs. 300/- per day as food allowance since applicant was never employed with Respondent No.1. In the last respondent no. 1 denied all the contents of the claim application of the claimant and prayed that on the basis of this the claim application of the claimant is liable to be dismissed.

5. Claimant filed rejoinder by which he denied all the contents of reply of Respondent No.1 and reiterated contents of his claim application.
6. Respondent No. 2 filed reply and stated that the claimant has not sustained any permanent or temporary partial or total disablement as a result of the injuries sustained in the alleged accident as per the list of injuries provided under the Schedule I of the Act and as such no cause of action arises under the Act and the petition is liable to be rejected under Order 7 Rule 11 of the Civil Procedure Code. It is further stated that the claim of claimant is liable to be dismissed on the ground that the petitioner has exposed himself to the added peril by his own imprudent act of driving the alleged vehicle in a rash and negligent manner as is evident from the contents of the FIR and Chargesheet filed by the claimant. It is further submitted that the petitioner was not holding effective and valid driving license on the day of accident nor was competent or qualified to hold the same and therefore, Respondent No. 2 has no liability to indemnify the Respondent No. 1 and the Respondent No. 1 owner of the vehicle was not holding a valid permit and hence the Respondent No. 2 is not liable to indemnify. Rest of other contents has been denied in toto.



7. On 18.03.2020 the following issues were framed for adjudication:-

- i. Whether the claimant is entitled for injury compensation from the Respondent No. 1 and Respondent No. 2 ?
- ii. Whether the employee employer relationship exists between the Respondent No. 1 and claimant ?
- iii. Whether the accident occurred during and in the course of employment ?
- iv. Whether the claimant is entitled for interest and penalty as per section 4A of the Act ?
- v. Any other relief ?

8. Matter was fixed for the evidence of the claimant. Claimant filed his statement by way of affidavit exhibit WW1/A. The contents of affidavit are corroborative those claim petition. Claimant also filed documents exhibit WW1/1 to WW1/7 i.e. Copy of Aadhar Card, PAN Card, Driving License, Medical Treatment of Bhim Rao Hospital – Mark – A, Discharge summery of Prime Hospital, Statement of Sh. Rajesh Singh, FIR and disability certificate from GTB Hospital. His statement was also recorded on 01.12.2020 before the Authority. He was also cross examine by Respondent No. 2 on 01.12.2020. On 19.04.2023 claimant was also cross examined by the Counsel for Respondent No. 1.
9. For Respondent No. 1 Sh. Rajesh Singh S/o Sh. Vishwanath Singh filed his statement by way of affidavit exhibit R1W1/A, the contents of affidavit are corroborative those reply and his statement was also recorded on 03.06.2024 and he was also cross examined by the Counsel for Claimant.
10. For Respondent No. 2 did not appear to lead evidence as such his evidence was closed on 20.08.2024 and the matter was fixed for the arguments of the parties. Claimant filed his written submission on record and argued accordingly.
11. Respondents did not file or argued the matter despite given sufficient opportunities.



12. On the basis of pleading of the parties and documents available on record I am giving my finding on the issues framed in the matter as under:-

Issue No. 1, 2 & 3

The case of claimant is this that he was employed as a professional commercial driver with Respondent No. 1 on the vehicle bearing no. DL-1-LR-5828. On 01.04.2018 he was going from Delhi to Barwaha, M.P by its business purpose from goods loaded in the vehicle in question, when he reached near Sachin Dhaba on Agra – Bombay Road in front of village Titodi, P.S. Makshi, M.P. then a vehicle bearing registration no. MP-09-CQ-1041 came from rash and negligent manner and hit his vehicle in question very forcefully and due to the accident claimant sustained grievous injuries all over his body including in his right leg had multiple fractures and as per disability certificate no. 280/124/2/2023 dated 22/02/2023 he become 90 % disabled. After the accident he had taken treatment in Dr. Bhim Rao Ambedkar Hospital, District Hospital, Shahjahapur, M.P. and was admitted from 01.04.2018 to 02.04.2018 and also MLC was prepared at same hospital and after that he was admitted in Prime Hospital in Gwalior, M.P. from 04.04.2018 to 11.04.2018 and was operated in his right leg and plates were fitted in his right leg and thereafter, he was admitted in City Hospital, Trauma Center, Loni Road, East Gokulpuri, Delhi from 02.01.2022 to 06.01.2022 and again admitted from 12.08.2022 to 16.08.2022 and operated both of times and also getting OPD treatment is going on. An FIR was also registered with P.S. – Makshi on 01.04.2018. In the treatment he spent about Rs. 1,12,515/- for that medical bill summery for injured claimant has been placed on record. The respondents did not pay injury compensation despite the vehicle in question was insured and both the respondents had having knowledge of accident, thus he filed this claim for compensation.

On the other side Respondent No. 1 denied employee employer relationship on the ground that there was no employee employer relationship with claimant and the respondent. The claimant has filed this claim to extort money from the respondent. In reply and evidence Respondent No. 1 has admitted that the claimant had been driving the vehicle of the Respondent No. 1 on the day of incident on the basis of the job work and the said accident was occurred due to rush and negligent driving of claimant as per FIR No. 0091 dated 01.04.2018 under section 279/304A IPC. Respondent No. 2 in principle admitted that vehicle in question was insured vide goods carrying comprehensive policy bearing no. 2315200324441605000 valid upto 16.08.2017 to 15.08.2018 . Rest of other contents are denied by the Respondent No. 2.



I have gone through the above submission of both the parties and evidence of claimant and Respondent No. 1, accordingly it is established that on the day of accident claimant was driving the vehicle in question owned by Respondent No. 1 on the basis of the job work as such job work is also considered as a employment and the person who is employed on job work is also be considered as a employee and the owner who had employed employee on job work is to be considered as a employer. From this observation I am holding that claimant was the employee of the Respondent No. 1 on the day of accident as he was admittedly employed as job work employee on vehicle in question of Respondent No. 1 and met with an accident out of and in the course of his employment when he was on his professional trip by loading goods from Delhi to Barwaha, M.P. In view of this respondent no. 1 is liable to pay injury compensation to the claimant. Since vehicle in question was insured on the day of accident from Respondent No. 2 i.e. HDFC ERGO General Insurance Company Limited is liable to indemnify to claimant on behalf of Respondent No. 1. As such issue no. 1, 2 & 3 are decided in favor of claimant and against the respondents. Accordantly for calculation of injury compensation age of claimant is taken 60 years 11 months and 08 days as per Date of Birth 24/04/1957 mentioned on PAN Card of claimant, and 60 percent of wages Rs. 8000/- i.e Rs. 4800/- and relevant factor – 117.41. Accordingly compensation is calculated as under :

$$4800 \times 117.41 = \text{Rs. } 5,63,568/-$$

Issue No. 4

In view of above calculation claimant is entitled to receive injury compensation Rs. 5,63,568/- (Rupees Five Lakhs Sixty Three Thousand Five Hundred Sixty Eight) along with 12 % interest per annum from the date of accident i.e. 01.04.2018 till its realization from the respondents jointly or severely, since vehicle in question was insured with Respondent No. 2 i.e. Insurance Company hence Insurance Company is liable to pay ordered amount to claimant. Therefore, Respondent No. 2 is directed to deposit **Rs. 5,63,568/- (Rupees Five Lakhs Sixty Three Thousand Five Hundred Sixty Eight) alongwith 12 % interest per annum from the date of accident i.e. 01.04.2018 till its realization** with Commissioner Employees Compensation by way of demand draft/cheque within 30 days from the date of order. Further show cause notice dated 27.03.2019 was issued to the respondents under section 4A (3) (b) of the EC Act, 1923 to file reply as to why penalty be not imposed upon them but no reply as been filed by the respondents as such 25 % penalty of the ordered amount is imposed upon Respondent No. 1 owner of the vehicle because he had not informed to



the insurance company on time i.e. within 30 days of the accident for payment of injury compensation as such Respondent No. 1 is liable to pay 25 % penalty of ordered amount Rs. 5,63,568/- , In view of this respondent no. 1 is also directed to deposit 25 % penalty of ordered amount which comes to **Rs. 1,40,892/- (Rupees One Lakh Forty Thousand Eight Hundred Ninty Two)** within 30 days from the date of order in favor of Commissioner Employees Compensation by way of demand draft/cheque.

Issue No. 5

As per claim of the claimant he has spent huge amount as per medical bills summery placed on record as such I am of the view that as per section 4 (2a) of the EC Act, 1923 is entitled to receive actual medical expenditure incurred by him for his treatment injuries caused during the course of employment. In view of this claimant is entitled to receive Rs. 1,12,515/- (Rupees One Lakh Twelve Thousand Five Hundred Fifteen) from Respondent No. 2 i.e. Insurance Company. Accordingly I direct Respondent No. 2 i.e. Insurance Company to deposit **Rs. 1,12,515/- (Rupees One Lakh Twelve Thousand Five Hundred Fifteen)** with Commissioner Employees Compensation within 30 days from the order by way of demand draft/cheque.

In view of above direction, if respondents failed to comply above directions, ordered amount shall be recovered as per provisions of the Employees Compensation Act, 1923.

13. Given under my hand and seal of this Authority on this 30th day of October, 2024.

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

