

**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. EC/D/84/ND/2022/ 18S.

Dated: 02/01/2025.

**IN THE MATTER OF:**

1. **Smt. Renu Devi W/o Sh. Dilip Sah (Mother of Deceased)**
2. **Sh. Dilip Sah S/o Sh. Basudev Sah (Father of Deceased)**

**Both R/o - Village Saraiya, Madhuban,**

**East Champaran, Gulwara, Madhuban, Bihar-845420**

.....Applicants/Claimants

**Versus**

1. **Sh. Hari Om S/o Sh. Sher Singh**

(Driver of Tempo DL-11-V-9287)

Village Parkham, Mustafabad,

Mathura, UP-281122

**(On 11.04.2022 R-1 was deleted from the array of parties by the CEC)**

2. **Sh. Kuldeep Rai S/o Sh. Som Nath (Owner/Employer)**

H. No.215, Vinoba Puri, Lajpat Nagar,

New Delhi - 110024.

3. **M/s Bajaj Allianz General Ins. Co. Ltd.**

12<sup>th</sup> Floor, Gopaldass Bhawan,

28, Barakhamba Road, Connaught Place,

New Delhi-110001

(Vide Cover Note # DY1303831326 Dated 08.07.2018

Covering the Risk from 10.07.2018 to 09.07.2019)

..... Respondents

**ORDER**

1. Vide this order, I will dispose of claim application filed on 02.03.2020 before this Authority under section 22 & Penalty under section 4(A) (3-b) of the Employees Compensation Act, 1923 for seeking death compensation.
2. In the claim petition claimants stated that claimants are the unfortunate parents of the deceased workman / employee Rohan Kumar and the respondent no. 2 is the management/ employer of the deceased workman. It is further stated that the deceased



Rohan Kumar was employed as cleaner / helper on Eicher Tempo bearing no. DL-1-LV-9287 by its owner, the respondent no. 2. The deceased was an employee / workman under the provision viii (a) Schedule-II of Section 2(1)(dd) of the Employees Compensation Act, 1923 and he died during the course of his employment in a road traffic accident on 05.07.2019 involving the tempo on which he was performing and discharging his duties within the local limits and jurisdiction of P.S. Alipur, Distt. Outer North, Delhi. It is further stated that the deceased Rohan Kumar S/o Dilip Sah was aged 19 years, (DOB 04.05.2000) was permanent resident of Village Saraiya, Madhuban, East Champaran, Gulwara, Madhuban, Bihar-845420. The claimants are the parents, legal heirs, legal representatives and dependents of deceased workman / employee Rohan Kumar as the deceased workman / employee Rohan Kumar was unmarried at the time of his death and as such there is no other legal heir and legal representative of the deceased workman / employee except the claimants. Claimant further stated that on 05.07.2019 the deceased employee / workman Rohan Kumar was posted on Eicher Tempo bearing registration No.DL-1-LV-9287 owned by the respondent no. 2. When the tempo reached in front of M/s. Tata Motors Ltd., Alipur, Delhi on the GTK Road it collided in the rear of stationary truck bearing no. HR-55-H-1288 from its front side as a result of which the deceased workman travelling on the cleaner / helper seat in the cabin of the tempo was crushed to death. It is further stated that the deceased workman / employee died due to the injuries sustained while performing his duty under the employment, directions and instructions of the respondent/ management/ employer. The deceased workman / employee was working and discharging his duty under employment, directions, instructions and supervision of the respondent / management / employer at the time of his death and as such the respondent/ management/ employer is solely and entirely responsible for the accident and death of the deceased workman / employee. It is further stated that the police of P.S.-Alipur, Distt. Outer North, Delhi was registered a criminal case vide FIR No.0242/2019 dated 05.07.2019 under sections 279/304-A of the IPC on the death of the deceased workman Rohan Kumar in a road traffic accident. Claimant further stated that the deceased workman was getting monthly salary of Rs.10,000/- with daily allowance (batta) of Rs.150/- per day which translate into Rs. 4,500/- per month and as such the deceased workman was earning Rs.14,500/- per month at the time of his death in the said accident. Claimant further stated that the deceased workman was employed and posted as helper/ cleaner on Eicher Tempo bearing no. DL-1LV-9287 by its owner / employer, the respondent no. 2 to help and assist its driver. The deceased workman died while performing duty of cleaner/helper on the same Eicher Tempo and as such the respondent no. 2 has the information, intimation and knowledge of the accident and death of the deceased workman from the very moment, however in spite of the knowledge of the accident and death of the deceased the Respondent has failed to pay / deposit the mandatory compensation with the Hon'ble Commissioner Employee's Compensation within one month of the date of accident / death of the deceased Rohan Kumar i.e.



04.08.2019. It is further stated that the deceased Rohan Kumar died during the course of his employment and discharging his duties under the respondent and the claimants are the legal heirs, legal representatives and dependents of the deceased Rohan Kumar, as such are entitled for death compensation on the death of deceased Rohan Kumar along with interest @ 12% and penalty. It is further stated that the claimants are entitled death compensation @ Rs.4000/- (50% of the highest ceiling of monthly wages of the deceased employee under the Act for the purpose of calculation of death compensation) X 225.22 (relevant age factor under Schedule IV) = Rs.10,08,880/- (Rs. Ten Lakhs Eight Thousand Eight Hundred Eighty only) with interest @ 12% w.e.f. 05.07.2019 (date of death of the deceased Rohan Kumar). It is further stated that the claimants had to spent a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) on the funeral and last rituals of the deceased Rohan Kumar and are also entitled to recover the same from the respondents. In the last claimants prayed that an award of Rs. 10,08,880/- towards the death compensation of the deceased Rohan Kumar and Rs. 25,000/- towards the expenses of funeral with interest @ 12 % from the date of his death alongwith 50% penalty on awarded amount under section 4(A) (3-b) of the EC Act, 1923 may be passes in favour of the claimants and against the respondents. Claimants filed copy of FIR, copy of PM report, copy of Driving License of Respondent No. 1, copy of RC of Vehicle bearing No. DL-1-LV-9287, copy of Insurance Policy No. OG-19-1101-1803-00002438 dated 16.07.2018 valid upto 10.07.2018 to 09.07.2019 midnight, copy of Aadhaar Cards of Claimants alongwith the claim petition.

3. Summons were issued to respondents to file reply/defence in this case.
4. Respondent No. 1 filed reply and stated that the present petition is not maintainable qua the Respondent No. 1 as he is neither the employee of the Respondent No. 2 nor he is connected in any way with the deceased namely Rohan Kumar as claimed by the claimants in the claim petition. It is further stated that Ashok Kumar is the driver of the offending vehicle bearing no. DL-1-LV-9287 and the deceased was employed on the said vehicle as per the records of the police officials. The Respondent No. 1 was the driver of the vehicle bearing no. HR-55-H-1288 at the relevant time. It is further stated that Ashok Kumar who is the driver of the offending vehicle caused accident on 05.08.2019 and hit the standing vehicle of the Respondent No. 1 from behind and thereafter he ran away from the spot. Respondent No. 1 further stated that respondent no. 1 is not liable to pay any compensation to neither the petitioners nor any claim is made qua the Respondent no. 1 by the claimants therefore the Respondent No. 1 is liable to be removed from the array of the parties. Accordingly after considering the pleadings of the Respondent no. 1 he is deleted from the array of the parties.



5. Respondent No. 2 filed reply and stated that the claim application of the claimant is not maintainable under the Employees Compensation Act, 1923 for the reasons that deceased Rohan Kumar was neither the employee of the Respondent No. 2 nor the deceased was working as workman with the Respondent No. 2 at any point of time, hence the claimant cannot claim any compensation from the Respondent No. 2 under the Act. It is also stated that Respondent No. 2 was/is not the management/employer of the deceased Rohan Kumar at any point of time nor Rohan Kumar was employed as cleaner/ helper on the vehicle of the Respondent No. 2 bearing no. DL-1-LV-9287. It is further stated claim of claimant is is not maintainable for the reasons that the claimants have intentionally and with ulterior motive with view to cheat this Court impleaded Hari Om as respondent no. 1 in the array of the parties, who at no point of time worked as driver with the Respondent No. 2 as such the claim petition is bad for mis-joinder and non-joinder of necessary party. It is further stated that the respondent no. 1 Hari Om and the claimants Renu Devi and Dilip Shah are the guilty of committing crime with a view to extract money from the respondent no. 2 and both claimants and respondent no. 1 in connivance with each other hatched criminal conspiracy which is now before this Court in which the respondent no. 1 has been made as driver of the offending vehicle no. DL-1-LV-9287 in place of actual and original driver Sh. Ashok Kumar who has never been arrested by the Police till date and the proceedings under section 82 Cr. PC has been initiated by the I.O. of the case FIR No. 0242/2019 dated 05.07.2019, P.S. Alipur, u/s 279/304A IPC. It is further stated that Respondent No. 2 had filed an application before the Hon'ble Court of Sh. S.S. Lamba, CMM, North District, Rohini Court, Delhi the trial court of the cases of P.S. Alipur, Delhi thereby calling status report of the case FIR No. 0242/2019, P.S. Alipur, Delhi and status report was called by the Hon'ble Court from the SHO P.S. Alipur and SHO has submitted its report in which it is clear that the actual driver namely Ashok Kumar is absconder and police officials has initiated proceedings u/s 82 Cr. PC against accused Ashok Kumar who is absconding and evading his arrest. To this effect an order dated 15.02.2022 has also been passed by the Hon'ble Court of Ld. CMM. True copy of the status report filed by the SHO P.S. Alipur in this case and order of the Hon'ble Court are annexed alongwith the reply for perusal of this Court and also for initiating criminal proceedings against the claimants and respondent no. 1 for committing perjury to this Hon'ble Court by filing false claim petition on the basis of false and frivolous documents. In the last Respondent No. 2 denied contents of the claim petition of the claimants.
6. Claimant filed rejoinder by which he denied all the contents of the reply of Respondent No. 2 and reiterated contents of his claim petition.
7. Respondent No. 3/Insurance Company filed reply and stated that claim petition of the claimants is not maintainable under the EC Act, 1923 as the deceased Rohan Kumar was



neither the employee of the replying Respondent No. 2 nor the deceased was working as workman with the respondent no. 2 at any point of time hence the claimants cannot claim any compensation from the answering respondent under the Act. It is also crystal clear from the reply of the Respondent No. 2 which has been filed also does not establishes the employer and employee relationship. It is further stated that the deceased Rohan Kumar at any point of time nor Rohan Kumar was employed as cleaner/helper on the vehicle of the Respondent No. 2 bearing no. DL-1-LV-9287. It is further stated claim of claimant is is not maintainable for the reasons that the claimants have intentionally and with ulterior motive with view to cheat this Court impleaded Hari Om as respondent no. 1 in the array of the parties, who at no point of time worked as driver with the Respondent No. 2 as such the claim petition is bad for mis-joinder and non-joinder of necessary party. It is further stated that the respondent no. 1 Hari Om and the claimants Renu Devi and Dilip Shah are the guilty of committing crime with a view to extract money from the respondent no. 2 and both claimants and respondent no. 1 in connivance with each other hatched criminal conspiracy which is now before this Court in which the respondent no. 1 has been made as driver of the offending vehicle no. DL-1-LV-9287 in place of actual and original driver Sh. Ashok Kumar who has never been arrested by the Police till date and the proceedings under section 82 Cr. PC has been initiated by the I.O. of the case FIR No. 0242/2019 dated 05.07.2019, P.S. Alipur, u/s 279/304A IPC. It is further stated that Respondent No. 3 had filed an application before the Hon'ble Court of Sh. S.S. Lamba, CMM, North District, Rohini Court, Delhi the trial court of the cases of P.S. Alipur, Delhi thereby calling status report of the case FIR No. 0242/2019, P.S. Alipur, Delhi and status report was called by the Hon'ble Court from the SHO P.S. Alipur and SHO has submitted its report in which it is clear that the actual driver namely Ashok Kumar is absconder and police officials has initiated proceedings u/s 82 Cr. PC against accused Ashok Kumar who is absconding and evading his arrest. Respondent further stated that without prejudice to be other contention of the respondent, the answering respondent is not liable to pay any amount of compensation to the claimants in case it is proved that there was breach of the terms and conditions of the policy. It is further stated the without prejudice to be other contention of the respondent, the respondent no. 3 has not received any information either from the applicant or from the insured in respect of the alleged accident, therefore, the respondent no. 3 reserve their right to file amended reply/written statement as and when true and real facts of the case emerged on the record. It is further stated that without prejudice to be other contentions of the Respondent No. 3, the claimants have filed the present claim just to extract amount of compensation from the Respondent No. 3 without any cogent reasons and without any cause of action arisen in their favour. The claimants are liable to be punished for filing false and frivolous case against the Respondent No. 3. The reason for not filing the relevant documents alongwith the application itself shows the malafide intention on the part of the claimants. In the last



Respondent No. 3 denied contents of the claim petition of the claimants and payment of compensation to the claimants as alleged in claim application.

8. On 12.12.2023 the following issues were framed for adjudication:-
  - i) Whether deceased Rohan Kumar died out of and in the course of his employment with Respondent No. 2 ?
  - ii) If so, what relief and what directions necessary in this regard ?
9. Matter was fixed for the evidence of the parties.
10. Claimant No. 2 Sh. Dilip Sah examined himself by way of filing evidence exhibit PW1/A. The contents of the affidavit are corroborative those claim petition. Claimant also filed documents exhibit PW1/1 to PW1/8 i.e. Copy of Aadhaar card of deponent and other claimants, copy of Aadhaar card of deceased Rohan Kumar, copy of accident information report, copy of final report under section Cr.PC in respect of FIR No. 242 dated 05.07.2019 of PS - Alipur, Delhi, copy of general diary number 009A dated 05.07.2019, copy of FIR No. 0242 dated 05.07.2019, copy of Post Mortem Report No. 583/19 dated 06.07.2019 of deceased Rohan Kumar, copy of affidavit of Kuldeep Rai, Respondent No. 2 dated 17.05.2022 (COLLY 04 Pages) and copy of Insurance Policy of vehicle bearing no. DL-1-LV-9287 mark PW1/B respectively. His statement was also recorded on 01.08.2024 before this Authority and was also cross examine by the counsel of Respondent No. 3/Insurance Company.
11. No one for Respondent No. 2 was present to cross examine the claimant no. 2 Sh. Dilip Sah (Father of Deceased).
12. For Respondent No. 3/Insurance Company Sh. Praveen Kumar Tiwari, Executive Legal of the company filed his evidence by way of affidavit exhibit R3/1. The contents of affidavit are corroborative those reply. He was also cross examine by the counsel of claimants on 05.11.2024.
13. Claimant and Respondent No. 3 filed written submissions on record and also oral submission was heard in detail on 21.11.2024 from the Counsel for Claimant and Respondent No. 3.
14. I have gone through the pleadings of the parties and documents available on record and accordingly I am giving my findings on the issues framed in the matter as under:



## ISSUE NO. 1

The case of the claimants is this that the claimants are the parents of the deceased Rohan Kumar (Mother and Father). Their deceased son Rohan Kumar was employed as a cleaner / helper on Icher tempo bearing no. DL-1-LV-9287 owned by the Respondent No. 2. The deceased was an employee/workman under the provision of VIII (a) Schedule 2 of Section 2 (1) (dd) of the Employee's Compensation Act, 1923. His deceased son Rohan Kumar died during the course of his employment on 05.07.2019 involving the tempo (vehicle in question) on which he was on duty within the local limits and jurisdiction of PS-Alipur, District-Outer North, Delhi. The claimant has described facts of the accident occurred on 05.07.2019 like this, that when the tempo in question reached in front of M/s TATA Motors Limited, Alipur, Delhi on GTK Road the vehicle in question collided the rear of stationery truck bearing no. HR-55-H-1288 from its front side as a result of which the deceased workman travelling cleaner/helper seat in the cabin of tempo was crushed to death. The deceased Rohan Kumar died due to grievous injuries sustained out of and in the course of his employment. PS – Alipur, District-Outer North, Delhi has registered an FIR bearing no. 0242 dated 05.07.2019 under section 279/304-A of the IPC. The vehicle in question was insured with Respondent No. 2 on the day of accident vide Policy No. OG-19-1101-1803-00002438 dated 16.07.2018 valid upto 10.07.2018 to 09.07.2019 midnight (PW1/8). Post mortem was also conducted bearing no. 583/2019 on 06.07.2019 in Babu Jag Jivan Ram Memorial Hospital, Jahangir Puri, New Delhi – 110033. In PMR cause of death / opinion has been mentioned as **“Death is due to haemorrhagic shock consequent to multiple injuries to the body. All injuries are ante - mortem in nature, fresh in duration prior to death and caused by blunt force/surface impact”**. It is further stated that at the time of death deceased was 19 years of age as per date of birth 04.05.2000 and was drawing salary Rs 10,000/- per month plus daily allowance Rs. 150/- thus he was getting Rs. 14,500/- salary per month.

The Respondent No. 2 in reply has denied employee employer relationship and accident as alleged by claimants. Accordingly Respondent No. 3 has also denied any liability towards payment of compensation. In principal Respondent No. 3/Insurance Company has admitted factum of coverage of vehicle in question under policy no. OG-19-1101-1803-00002438 dated 16.07.2018 valid upto 10.07.2018 to 09.07.2019 midnight.

To prove case claimant examined himself as exhibit PW1/A and Respondent No. 3 examine Sh. Praveen Kumar Tiwari, Executive Legal, Exhibit R3/A.

I have considered all the materials available on records and found that accident was occurred on 05.07.2019 wherein deceased Rohan Kumar met with grievous injuries and died out of and in the course of his employment. The FIR lodged in the case also supports



the case of claimants regarding accident of vehicle in question. PM Report has also disclosed that deceased Rohan Kumar was died due to grievous injuries sustained in this accident. Further Respondent No. 2 who had denied employee employer relationship but did not lead any evidence to prove his case despite giving various opportunities. Claimant No. 2 in cross examination conducted by the Counsel of Respondent No. 3 stated that Respondent No. 2 had paid Rs. 35,000/- to the Claimants for taking dead body of the deceased as a Ambulance Fare. Form all these facts indicates to prove case of claimants. As such I hold that death of deceased Rohan Kumar was occurred out of and in the course of his employment when he was performing his duties on vehicle in question owned by Respondent No. 2. Since Respondent No. 2 did not lead any evidence and even did not cross examine statement of Claimant No. 2. Nothing has come adverse to the claimants in cross examination by the Counsel for Respondent no. 3/Insurance Company. As such Respondents are liable to pay death compensation to the claimants being the dependents of the deceased Rohan Kumar as per provision of the EC Act, 1923. Since the vehicle in question was insured with Respondent No. 3/Insurance Company on the day of accident hence Respondent No. 3 is liable to indemnify the claimants on behalf of Respondent No. 2.

## **ISSUE NO. 2**

In view of discussion made above in issue no. 1 for calculation of compensation age of the deceased Rohan Kumar has been taken 19 years 02 months and 01 days as per his DOB – 04.05.2000 mentioned in Aadhaar Card Bearing no. 5439-5934-2247, relevant factor 225.22 and 50 % wages of Rs. 8000/- as restricted under the Act. Accordingly compensation is calculated as under:

$$225.22 \times 4000 = 900880/-$$

In view of above calculation claimants are entitled to received Rs. 9,00,880/- ( Rupees Nine Lakhs Eight Hundred Eighty) from the respondent alongwith 12 % interest from the date of accident i.e. 05.07.2019 till its realization, since Respondents did not pay compensation as per section 4 A of the Act despite having knowledge of accident and claimants were compelled to file litigation. Since vehicle in question was insured with Respondent No. 3 on the day of accident hence Respondent No. 3/Insurance Company is liable to indemnify in this case, as such Respondent No. 3/Insurnace Company is directed to deposit **Rs. 9,00,880/- ( Rupees Nine Lakhs Eight Hundred Eighty) alongwith 12 % interest P.A. from the date of its occurrence i.e. 05.07.2019 till its realization within 30 days from the date of order by way of Cheque/Demand Draft in favour of Commissioner Employee's Compensation.** Further regarding penalty Show cause Notice dated 14.12.2023 was given to the Respondents to show cause as to why penalty be not imposed upon them under section 4-A (3) (b) of the EC Act, 1923. But despite this



no one has filed reply in respect of Show Cause Notice. As such considering the facts of the case and conduct of Respondent No. 2/Owner of the vehicle who was legally bound to inform Insurance Company on the day of accident immediately but he did not discharge his duty and tried to escape from liability under the Act even in the proceedings after filing reply Respondent No. 2 disappeared from the proceedings and did not support his case. As such it will be appropriate to penalize Respondent No. 2/Owner of the Vehicle by way of imposing 50% penalty of awarded amount which comes to **Rs. 4,50,440/- (Rupees Four Lakhs Fifty Thousand Four Hundred Forty Only)**. Hence I impose 50 % penalty of awarded amount on Respondent No. 2/Owner of the vehicle . Accordingly respondent No. 2/Owner of the Vehicle is also directed to deposit **Rs. 4,50,440/- (Rupees Four Lakhs Fifty Thousand Four Hundred Forty Only)** as a penalty within 30 days from the date of order by way of cheque/demand draft in favour of **Commissioner Employee's Compensation**, failing which ordered amount shall be recovered by way of land revenue from the Respondents.

15. Given under my hand and seal of this Authority on this 2<sup>nd</sup> day of January, 2025.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

