

**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. ECI/101/NW/18/ **206.**

Dated: **31/01/2025.**

IN THE MATTER OF:

Md. Safik S/o Md. Jamir Miyan
House No. 442, Agar Nagar, Prem Nagar,
Delhi-110086

THROUGH

Delhi State General Employees Union,
D-266, B-62 Group ke Samne,
Chandra Shekhar Azad Colony Industrial Area,
Wazirpur, Delhi-110052

.....Applicant/Claimant

Versus

1. **Sh. Akram**
House No. 2682, Gali No. 199, Onkar Nagar,
Tri Nagar, Delhi -110035
2. **M/s TATA AIG General Insurance Co. Ltd.**
Peninsula Business Park, Tower-A,
15th Floor, G. K. Marg, Lower Parel,
Mumbai-400013
3. **Sh. Vivek Jain,**
Owner of Raj Niwas Gutka
Plot No. 204, Near Bala Ji Dharam Kanta, Prem Nagar Faatak,
Swarg Park, Udyog Nagar, Mundka, Delhi-110041

..... Respondents

ORDER

1. Vide this order, I will dispose of claim application dated 19.09.2018 filed on 19.09.2018 before this Authority under section 10 of the Employees Compensation Act, 1923 for seeking injury compensation.
2. In the claim petition claimant stated that he was working with the respondents for last 04 years and he was working with honesty and loyalty as Driver on vehicle bearing no. HR-74-A-9237 (TATA-407) on wages Rs. 22,000/- per month. It is further stated that on



10.08.2018 claimant was directed by Sh. Vivek Jain, Owner of Raj Niwas Gutka, to load the goods in vehicle bearing no. HR-74-A-9237 (TATA-407) from Plot No. 204, Near Bala Ji Dharam Kanta, Prem Nagar Faatak, Swarg Park, Udyog Nagar, Mundka, Delhi-110041 to reach Old Delhi and when he was returning after unloading the Vehicle from Old Delhi he met with an accident on the Nangloi Flyover due to which he could not reach Mundka. It is further stated that after the accident the Police took him to the Sanjay Gandhi Hospital from where he went to Maharaja Agrasen Hospital for treatment and thereafter to Ram Manohar Lohia Hospital where he was still undergoing treatment. It is further stated that due to the accident his hip got dislocated and the knee joint got completely broken and apart from this the bone of the right leg has also broken in two pieces but the respondent neither getting the treatment as per the agreement nor paying any expenses due to which the claimant had spend thousands of rupees on his treatment. It is further stated that due to the said accident the claimant has suffered 100 % loss of earning capacity as he can no longer work as a driver due to damage to his right leg, the accident compensation for which amounts to Rs. 8,00,000/- as the claimant was 42 years of age at the time of the accident. Claimant further stated that after having knowledge of accident the Respondents neither paid nor deposited compensation amount, hence the claimant is fully entitled to get the accident compensation alongwith 12 % interest and 50 % penalty from the respondents. It is further stated that claimant sent a demand letter/notice demanding accident compensation etc. but the respondent did not make any payment despite receiving the demand letter/notice which is totally illegal. Claimant filed copy of demand letter/notice dated 11.09.2018 which was sent to respondents by him, photocopy of postal receipts, copy of his medical treatment documents, copy of intimation letter which was written to SHO, PS-Nangloi, Delhi, copy of his aadhaar card, copy of his Driving License.

3. Summons were issued to the respondents to file reply/defence in the case.
4. Respondent No. 1 filed reply in the matter and stated therein that the petitioner has approached this Hon'ble Authority with unclean hands and he has suppressed true and material facts from this Authority as such the instant cure is liable to be dismissed with exemplary costs on this grounds along. It is further stated that the petition filed by the claimant is gross abuse of the process of law in as much no proper and valid documents of Compensation/Claim as per the Workmen Compensation Act, under section 10, 1923. It is further stated that the petition been wrongly valued for purpose of unnecessary humiliation of respondent. It is further stated that Md. Safik is the employer of the transport company, Md. Safik was recruited on 01.08.2018, 10 days before his accident/incident. He was recruited on a salary of Rs. 12,000/- Per Month or based on chakkar or round he make by the truck or by the vehicle. It is further stated that on 10.08.2018 Md. Safik met with an accident. It is further stated that Respondent met Md. Safik in the hopsital where he was found drunk, and little injured. Respondent paid Rs.



12,000/- as bill & rest of the expenses to about Rs. 10,000/- (including ambulance, medicine etc.) and gave the medical expenses at his home of about Rs. 40,000/-. Respondent further denied other contents of the claim petition of the claimant. In the last respondent prayed that the claimant is not liable for any relief from this Authority as it is not found that Md. Safik was injured during a working hours/duty or by his truck i.e. TATA-407 bearing registration no. HR-74-A-9237. However in the eye of human rights the respondent has already helped him a lot in terms of monetary and in other ways also, hence there is no such ground or facts which shows that the respondent has to pay the compensation, hence the claim is liable to be dismissed with exemplary cost.

5. Claimant filed rejoinder by which he denied all the contents of the reply of respondent no. 1 and reiterated contents of his claim petition.
6. Respondent No. 2/Insurance Company has filed reply in the matter and stated therein that the vehicle was insured in the name of Mr. Abdul Mateen, who is not a party to the instant case. The injured is allegedly a workman under Respondent No. 1 and Respondent No. 3 and as such the Respondent No. 2/Insurance Company is not liable to indemnify the Respondent No. 1 & 3. It is further stated that no accident has taken place out of and during the course of employment of petitioner with the Respondent No. 1 & 3 on the vehicle No. HR-74-A-9237. Neither petitioner nor respondent no. 1 & 3 has furnished any documentary proof with the Respondent No. 2/Insurance Company regarding wages and employment of the injured on the said vehicle at the time of alleged accident. Hence the present petition is liable to be dismissed. It is further stated that Respondent No. 2/Insurance Company is not liable to pay any compensation to the petitioner unless and until it is proved that the injured sustained any disability due to the alleged accident arising out of and in the course of employment under Respondent No. 1 & 3 on the vehicle no. HR-74-A-9237. It is further stated that the liability of the Respondent No. 2/Insurance Company in the present case is vicarious arising out of contract of insurance based on certain terms and conditions. Unless and until it is proved that the injured allegedly being driver of the vehicle in question, allegedly involved in the accident, was holding a valid and effective driving license and / or was not otherwise disqualified from holding such license by the competent Authority in respect of the vehicle at the time of alleged accident and / or there was a valid and effective permit and fitness in respect of the vehicle as on the date of alleged accident, the Respondent No. 2/Insurance Company will not be liable to indemnify the respondent no. 1 and 3 or to pay any compensation to the applicant under the policy in question. Respondent No. 2/Insurance Company further stated that without prejudice to the other objections, the Respondent No. 2/Insurance Company as per the contract of Insurance is only liable to indemnify the insured named in the policy in respect of any liability arising under the workman compensation Act in respect to the named employee during the course of his employment under the insured. It is the primary duty of the employer to pay the amount of compensation to the petitioner if



it is found payable by him as an employer whatever amount is payable within 30 days of occurring of such a liability and in case the Respondent No. 1 fails to pay the same he is alone liable to pay the interest and penalty if any imposed by this Hon'ble Authority and the respondent No. 2 is not liable in any manner whatever to indemnify the insured in respect of any such liability of interest or penalty arising out of the aforesaid default. In the last Respondent No. 2/Insurance Company submitted that they are not liable to pay any compensation to the claimant under EC Act, 1923 as they have failed to supply relevant documents regarding the age, wage and employment of the injured with respondent no. 1 and also failed to supply the proper information regarding the alleged injuries of the injured and accident and has thus committed breach of terms and conditions of the Insurance Policy.

7. Claimant filed rejoinder in response to reply filed by the Respondent No. 2/Insurance Company and denied all the contents of the reply of Respondent No. 2 and reiterated contents of his claim application.
8. On 17.01.2020 the following issues were framed for adjudication:-
 - i) Whether employer employee relationship existed between respondent No. 1 and the claimant on the date of accident and if so?
 - ii) Whether the accident leading to injury resulting into permanent disablement occurred in the course out of his employment with respondent and if so whether the claimant is entitled for compensation?
 - iii) To what amount the claimant is entitled, Any other relief?
 - iv) Whether the respondents are liable for penalty and if so to what extend and what amount?
9. Matter was fixed for the evidence of the parties. Claimant filed his evidence by way of affidavit exhibit WW1/A. The contents of the affidavit are corroborative those claim petition. Claimant also filed documents exhibit WW1/1 to WW1/5 i.e. copy of demand notice, copy of postal receipt of demand notice, copy of Aadhaar card of claimant, Driving License of claimant, copy of disability certificate respectively and copy of complaint lodged with PS-Nangloi Mark-A, copy of treatment availed in Maharaj Agraseen Hospital Mark-B, copy of treatment availed RML Hospital Mark-C and Copy of Medical bills Mark-D. He was also cross examined by Counsel for Respondent No. 1, 2 and Respondent No. 3.



10. Respondent No. 1 filed his evidence by way of affidavit dated 18.12.2020 on record. Matter was adjourned for Chief and Cross of Respondent No. 1 but despite given sufficient opportunities respondent no. 1 did not appeared in witness box for testimony as such his right was closed on 02.08.2022 and matter was fixed for evidence of Respondent No. 2.
11. Respondent No. 1 and 3 had filed application dated 20.03.2023 under order 9 Rule 7 read with section 151 CPC for setting aside ex-parte order dated 02.08.2022. After due opportunities and hearing to Respondent No. 1 and 3 vide order dated 06.06.2023 application was dismissed as no justified ground was found for recalling order in question. On 25.07.2023 during the proceedings on the request of both the counsel for parties opportunity was granted to explore possibility of settlement but ultimately settlement could not possible due to divergent view of parties. Accordingly matter was fixed for evidence of Respondent No. 2/Insurance Company but despite given sufficient opportunities Respondent No. 2 failed to lead any evidence as such right of respondent no. 2 was closed on 21.08.2024 and matter was fixed for arguments from the parties.
12. Claimant and Respondent No. 1 and 3 (joint) have filed written submissions on record. Respondent No. 2/Insurance Company also filed written submission on record.
13. Oral submissions were also heard from the parties on 07.01.2025.
14. On the basis of pleadings of the parties and documents available on record, I am giving my findings on the issues framed in the matter as under:

ISSUE NO. 1 & 2.

The case of the claimant is this that he was working with the respondents for last 04 years and he was working with honesty and loyalty as Driver on vehicle bearing no. HR-74-A-9237 (TATA-407) on wages Rs. 22,000/- per month. On 10.08.2018 claimant was directed by Sh. Vivek Jain, Owner of Raj Niwas Gutka, to load the goods in vehicle bearing no. HR-74-A-9237 (TATA-407) from Plot No. 204, Near Bala Ji Dharam Kanta, Prem Nagar Faatak, Swarg Park, Udyog Nagar, Mundka, Delhi-110041 to reach Old Delhi and when he was returning after unloading the Vehicle from Old Delhi he met with an accident on the Nangloi Flyover due to which he could not reach Mundka and resulting thereby he met with an accident and disabled 68 % in Right Lower Limb as per Certificate issued by RML Hospital, New Delhi. Further in cross examination of claimant it has come out that claimant was employed by Respondent No. 1 since last 04 years but he has no documents in support of his claim. Further he was employed in Vehicle of Respondent No. 1 and he has no knowledge whether Respondent No. 1 was working as supervisor of Respondent No. 3 Abdul Mateen and salary was being paid by respondent no. 1.



In view of above, it is established that claimant was working with Respondent No. 1 while as alleged vehicle bearing no. HR-74-A-9237(TATA 407) was insured one Sh. Abdul Mateen but Abdul Mateen was not made array of the parties in this case and insurance policy bearing no. 105629325301 was issued in the name of Sh. Abdul Mateen, House No. 6, Block No. 3, Village – Ghasera, near Masjid, Gurugram, Haryana. In view of this Respondent No. 2/Insurance company is not liable in indemnify to the claimant. Accordingly respondent no. 1 is liable to pay compensation to the claimant. Respondent No. 1 after filing his evidence on record did not appear in witness box for testimony as such it appears that Respondent No. 1 has no ground to defend his case. Accordingly Issue No. 1 and 2 are decided in favour of claimant and against the Respondent No. 1.

ISSUE NO. 3.

In view of discussion made in Issue No. 1 and 2 holding entitlement of claimant to receive injury compensation as such for calculation of compensation age of claimant is taken as 43 years (01.01.1975 as BOD mentioned in his Aadhar Card) and relevant factor 175.54 and 60% wages of Rs. 8000/- as restricted under the Act. Accordingly compensation is calculated as under and 68 % disability as assessed by Medical Board:

$$\frac{\text{Rs. } 4800 \times 175.54 \times 68\%}{100} = \text{Rs. } 5,72,962/-$$

In view of above calculation claimants is entitled to receive injury compensation Rs. 5,72,962/- (Rupees Five Lakhs Seventy Two Thousand Nine Hundred Sixty Two) along with 12 % interest per annum from the date of accident i.e. 10.08.2018 till its realization from the Respondent No. 1

Therefore, Respondent No. 1 is directed to deposit **Rs. 5,72,962/- (Rupees Five Lakhs Seventy Two Thousand Nine Hundred Sixty Two) alongwith 12 % interest per annum from the date of accident i.e. 10.08.2018 till its realization** with Commissioner Employees Compensation by way of demand draft/cheque within 30 days from the date of order in favour of **Commissioner Employees Compensation** failing which same shall be recovered as per provision of the Act.

ISSUE NO. 4.

Show Cause Notice regarding issue no. 4 is required to be issued to the respondents and same is being issued.

15. Given under my hand and seal of this Authority on this 31st day of January, 2025.

(S.C. Yadav)
Commissioner

Employee's Compensation Act, 1923

