

**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. ECD/72/NW/2020/ 160.

Dated: 22/11/2024.

**IN THE MATTER OF :**

1. Smt. Sangita Devi W/o Late Sanjeev Bhagat
2. Laxmi Kumari D/o Late Sanjeev Bhagat
3. Sonali Kumari D/o Late Sanjeev Bhagat
4. Shivam Kumar S/o Late Sanjeev Bhagat
5. Shyam Sunder Bhagat S/o Late Ishwarchand Bhagat
6. Smt. Savitri Devi W/o Sh. Ishwarchand Bhagat

All R/o. Village- Mohani Chakla,  
P.O. Banmankhi, Mohnia Chakla,  
District – Purnia, Bihar – 854102

.....Applicant/Claimant

**Versus**

**M/s Hans Golden,**  
**Office at:-** 108, Panna Mohalla,  
Mangolpur Kallan,  
Delhi-110085

..... Respondents

**ORDER**

1. Vide this order, I will dispose of claim application dated 15.12.2020 filed on 21.12.2020 before this Authority under section 23 & 4 of Employees Compensation Act, 1923 for seeking death compensation.
2. In the claim petition claimant stated that her deceased husband Sh. Sanjeev Bhagat was employee of Respondent as a cleaner on Rs. 18,000/- salary per month on the truck bearing no. DL-1-LS-1577 owned by Respondent, at the time of accident deceased Sanjeev Bhagat was about 27 years old. It is further stated that on 30 – 31.08.2019 in midnight at around 2 AM driver of Truck Bearing No. DL-1-LS-1577 reached Balour Chowk, Bahadurgarh-Jhajjar, Haryana, one unknown truck hit in front of the truck bearing no. DL-1-LS-1577 at that time of said accident front body of the truck completely damaged and cleaner namely Sanjeev Bhagat sustained injuries on



his own seat in Truck, at the time of the accident said truck was parked / stopped in side the road and driver ran away from the spot. It is further stated that the Respondent is the owner of the vehicle bearing no. DL-1-LS-1577 and fully responsible to compensate to the claimants. It is further stated that deceased left in the family his wife, three children and his mother – father behind and all of his family members were totally dependent on him and he was the only bread earner in his family. It is further stated that in the said accident was registered vide FIR No. 176/2019 under section 279/304A, Police Station – Sadar Bahadur Garh on 31.08.2019 and Postmortem was conducted in Civil Hospital – Bahadurgarh, District - Jhajjar, Haryana vide PMR No. GH/BG/283/2019 dated 31.08.2019. It is further stated that the driver of the said truck was driven rash and negligent manner and who ran away from the spot left the present situation at that time driver suddenly informed to police officials in case cleaner alive but first aid not available to injured who succumbed on his seat in truck. Claimant filed copy of FIR, Copy of RC of Vehicle bearing no. DL-1-LS-1577, copy of Fitness Certificate of Vehicle, copy of PM Report, copy of aadhaar card of Smt. Sangita Devi, copy of aadhaar card of Laxmi Kumari, copy of aadhaar card of Sonali Kumari, copy of aadhaar card of Shivam Kumar, copy of aadhaar card of Shyam Sundar Bhagat, copy of aadhaar card of Savitri Devi, copy of Voter Identity Card of deceased Sanjeev Bhagat, copy of PAN Card of deceased Sanjeev Kumar Bhagat. In the last claimant prayed to this Court that award an compensation to the tune of Rupees 40,00,000/- in favor of claimants and against the respondent alongwith 12 % interest and penalty.

3. Summon was issued to the respondent with direction to file reply/defense in this case.
4. In response to summon issued to Respondent, respondent filed reply/defense in this case and stated that the present claim is not maintainable against the defendant as the deceased namely Sanjeev Bhagat was never an employee of M/s Hans Golden As such respondent is not liable to pay any compensation to the claimants. It is further stated that the averments made in the claim are false, frivolous, vague, contradictory and are baseless. Respondent further stated that in the intervening night of 30 – 31.08.2019 the Munshi/Care taker of Respondent Firm namely Sh. Kanahaya had made a call to 100 number PCR from his Mobile No. 9958464090 and reported the loss of vehicle bearing no. DL-1-LS-1577, it is also submitted that the vehicle was not given to any Sanjeev Bhagat (alleged cleaner) by the respondent or any of his representative not there was any booking with the firm to supply any goods or any other thing at Bahadurgarh, it is denied that the deceased was under employment of the respondent at any relevant point of time. It is also denied that the vehicle was given to Sh. Sanjeev Bhagat for any purpose associated with the business of M/s Hans





Golden or any other person work of the proprietor. In the last respondent prayed that the present claim is liable to be dismissed / reject.

5. No rejoinder has filed by the claimant.
6. On 12.11.2021 the following issues were framed for adjudication:-
  - i. Whether the employer-employee relationship existed between the deceased Sajeev Bhagat and respondent M/s Hans Golden ?
  - ii. Whether accident resulting into death of deceased is caused out of during the course of employment and if so to what amount of death compensation the dependents of deceased are entitled to ?
  - iii. Relief If any ?
  - iv. Whether the Respondent are liable for penalty and if so, what extend and what amount ?
7. Respondent filed show cause reply under section 4A of the EC Act, 1923 as directed by Commissioner Employees Compensation on 12.11.2021. Respondent denied that as per section 4A of the Act they are liable to pay penalty if any to the claimants since there was no employee employer relationship with deceased Sanjeev Bhagat.
8. Matter was fixed for the evidence of the parties. Claimant No. 1 Smt. Sangeeta Devi Wife of Deceased Sanjeev Bhagat has filed evidence by way of affidavit exhibit CW1/A. The contents of affidavit are corroborative to those claim petition. Her statement was also recorded on 28.03.2022 claimant also filed documents exhibit CW1/1 to CW1/6 as discussed in Para No. 2 above and was also cross examined by the Counsel for Respondent.
9. On the application dated 24.12.2021, I.O. Police Station - Sadar Bahadurgarh, District - Jhajjar, Haryana was summoned vide notice dated 07.04.2022 to appear as a witness alongwith FIR No. 0176/2019 alongwith complete record pertaining to the FIR before the Commissioner Employees Compensation for giving his evidence as a witness. Another witness on 13.05.2022, but on 13.05.2022 I.O. was not appeared, hence another summon dated 24.05.2022 was sent to I.O. through SHO, P.S. - Bahadurgarh, District- Jhajjar, Haryana for appearing on 13.06.2022 at 01:00 PM but again the concerned I.O was failed to appear for evidence. Again on 19.07.2022 Dasti Summon was served upon I.O. concerned for appearance on 12.08.2022 at 12:00 Noon before the Commissioner Employees Compensation. On 12.08.2022 ASI Sh. Rajpal was appeared before the CEC and stated that he is not I.O. in this case and



sought adjournment with the request for appearance of concerned I.O. alongwith complete records pertaining to FIR No. 0176/2019 and matter was adjourned till 22.09.2022 till 01:00 PM. On 22.09.2022 Head Constable Sh. Ramesh, P.S. Sadar Bahadurgarh, District – Jhajjar, Haryana was appeared and had filed report under 173 CrPC.

10. On 03.04.2023 evidence of respondent was closed but on application dated 16.05.2023 filed on 17.05.2023 for seeking opportunity to lead evidence. Accordingly application dated 16.05.2023 on respondent was allowed and order dated 03.04.2023 was recalled. Accordingly respondent filed evidence by way of affidavit of Sh. Jagmohan Yadav S/o Sh. Hansraj Yadav exhibit RW1/A. His statement was also recorded on 19.09.2023 and was also cross examined by Counsel for Claimant. The witness RW1/A reiterated contents of reply of respondent.
11. Respondent also examine to Sh. Kanahiya Kumar S/o Sh. Munshi Mehta, Manager of Respondent i.e. M/s Hans Golden, Exhibit RW2/A. His statement was also recorded on 19.10.2023 who had deposed on oath and reiterated contents of the reply. Further he stated that on 31.08.2019 he had called 100 number from his Mobile No. 9958621290 about the theft of the vehicle, however, after sometime the deponent received call from Bahadurgarh Police Station where the deponent has stated that the vehicle met with the accident. He further stated that this case is false filed by Smt. Sangeeta Devi, Claimant as the Sh. Sanjeev Bhagat was never in the employment of M/s Hans Golden. He was also cross examined by Counsel for claimant on 19.10.2023.
12. Counsel for respondent filed an application dated 16.08.2024 on record to summon concerned I.O. who had refused to accept summon in closed envelope, to call in witness box. But on 12.09.2024 during the proceedings counsel for Respondent had stated that he will not press to summon I.O. P.S. Bahadurgarh as a witness further in this case.
13. Both the parties have filed written submission on record. Oral submissions were also heard on 12.09.2024.
14. I have gone through the pleadings of the parties, documents available on records and evidence adduced in the matter and accordingly I am giving my findings on the issues framed in the matter as under:





## Issue No. 1 & 2

The case of claimant is this that her deceased husband Sh. Sanjeev Bhagat was employee of Respondent on his vehicle bearing no. DL-1-LS-1577 on last drawn wages Rs. 18,000/- per month and on 30 – 31.08.2019 in midnight at around 2 AM driver of Truck Bearing No. DL-1-LS-1577 reached Balour Chowk, Bahadurgarh-Jhajjar, Haryana, one unknown truck hit in front of the truck bearing no. DL-1-LS-1577 at that time of said accident front body of the truck completely damaged and cleaner namely Sanjeev Bhagat sustained injuries on his own seat in Truck, at the time of the accident said truck was parked / stopped in side the road and driver ran away from the spot. In this accident deceased Sanjeev Bhagat had received grievous injuries and resulting thereby he died. An FIR was also lodged with P.S. Sadar Bahadurgarh, bearing No. 0176/2019 dated 31.08.2019, and Post Mortem was also conducted on 31.08.2019 bearing PMR NO. GH/BG/283/2019 in Civil Hospital, Bahadurgarh, District-Jhajjar, Haryana. The claimant further stated that despite having knowledge of accident respondent did not pay compensation under EC Act, 1923.

In reply respondent denied employee employer relationship with deceased on the ground that deceased Sanjeev Bhagat was never in the employment of respondent. To prove her case claimant examined herself exhibit CW1/A. Respondent also examined two witnesses exhibit RW1/A Sh. Jagmohan Yadav and RW2/A Sh. Kanahiya Kumar S/o Sh. Munshi, Manager of Respondent.

I have considered all the pleadings of the parties in this case. The respondent has denied employee employer relationship with deceased Sanjeev Bhagat on the ground that deceased had not employee of the respondent and claimant did not file any documents on record regarding establishing employee employer relationship between deceased Sanjeev Bhagat and respondent. Claimant examine herself to prove her case but in cross examination claimant did not able to disclose or tell the name of the respondent of the deceased Sanjeev Bhagat. The onus was lies upon the claimant to prove her case but she failed. In this regard respondent relies upon various judgment i.e. Kanpur Electricity Supply Co. Ltd. V/s Shamim Mirza (2009) 1 SCC 20, -- Babu Ram V/s Govt. (NCT of Delhi), 2018 SCC OnLine Del, 7243, -- Workmen of Nilgiri Coop. Mkt. Society Ltd. V/s State of T. N., (2004) 3 SCC 514, -- John V/s Secy., Thodupuzha Taluk Shop and Commercial Establishment Worker's Union, (1973 Lab IC 398) the Kerala High Court, -- Swapan Das Gupta V/s The First Labour Court of W.B. (1976 Lab IC 202 (Cal)), -- Sunil Kumar V/s State W.P. ( C ) 2931/2024 and CM APPL No. 12084/2024 passes by the Hon'ble High Court of Delhi, wherein Hon'ble Courts held that onus lies upon the claimant to prove employee employer



relationship. On this ground respondent denied any liability towards payment of compensation to the claimants.

On the other side claimant relied upon the FIR, Police Report under section 173 CrPC Filed by P.S. Sadar Bahadurgarh, wherein after the investigation report states that vehicle in question i.e. DL-1-LS-1577 was met with an accident on 31.08.2019 and as per evidence collected regarding accident by the Police it was found that deceased Sanjeev Bhagat S/o Sh. Shyam Sunder was met with accident and resulting thereby he died and accordingly body was sent for the post mortem and accident vehicle no. DL-1-LS-1577 was taken in custody. Further the respondent had examined 02 witnesses exhibit RW1/A and RW2/A had supported contents of the respondent and in affidavit stated that vehicle in question was stolen on 31.08.2019 and called on 100 number from his Mobile No. 9958621290 (Exhibit RW2/A) and after sometime RW2/A i.e. Sh. Kanahiya Kumar, Munshi/Manager/Care Taker of respondent had received a call from P.S. Sadar Bahadurgarh that vehicle in question had met with an accident. But no FIR regarding the theft of vehicle was lodged in concerned Police Station. Further respondent failed to produced records of other employees working with them to ascertain that respondent was maintaining proper records of workers working with them under the Labour Laws it was the responsibility of the respondent to prove by documents that they are maintaining proper records and issuing proper service proof to the workers who are working with them. But in this case respondent could not prove such records to prove his case beyond doubts so I have left no option to considered the contents of the claimant that respondent had not provided any service documents to her deceased husband during his service period. As such from the report of the Police under CrPC 173 and as per police investigation body of deceased Sanjeev Bhagat was sent for post mortem report as the body was found from vehicle in question on the day of accident. In the case of Employee's Compensation being the social welfare legislation enacted by Parliament of India no strict evidence act is applicable, from the circumstantial evidence of the case according to that Commissioner can draw inference about the accident. From this observation it is proved that deceased Sanjeev Bhagat was met with an accident on the vehicle of respondent. As such I hold that there was employee employer relationship with deceased Sanjeev Bhagat and respondent and accident was caused out of and in the course of employment with respondent as such claimant being the dependents of the deceased Sanjeev Bhagat are entitled to receive compensation from the respondent. Hence Issue No. 1 & 2 are decided in favor of claimant and against the respondent.





**Issue No. 3 & 4**

In view of above discussion for calculation of death compensation age of deceased Sanjeev Bhagat is taken 28 years 05 months according to Date of Birth 03/03/1991 mentioned on PAN Card of deceased, and 50 percent of wages Rs. 8000/- as restricted under the Act and relevant factor – 211.79. Accordingly compensation is calculated as under :

$$4000 \times 211.79 = \text{Rs. } 8,47,160/-$$

In view of above calculation claimants are entitled to receive Rs. 8,47,160/- () alongwith 12 % interest from the date of accident i.e. 31.08.2019 till its realization from the respondent. Further respondent did not pay compensation within 30 days from the date of accident to the claimant being the dependents of the deceased, as such respondent is liable to pay 25 % penalty of the awarded amount as the respondent failed to file any justified ground as to why penalty is not imposed upon them in response to show cause notice of this case.

Therefore, Respondent is directed to deposit **Rs. 8,47,160/- (Rupees Eight Lakhs Forty Seven Thousand One Hundred Sixty) alongwith 12 % interest per annum from the date of accident till its realization alongwith 25 % penalty of awarded amount which comes to Rs. 2,11,790/- (Rupees Two Lakhs Eleven Thousand Seven Hundred Ninty)** with Commissioner Employees Compensation by way of demand draft/cheque within 30 days from the date of order failing which ordered amount shall be recovered as per provisions of the EC Act, 1923 .

15. Given under my hand and seal of this Authority on this 92<sup>nd</sup> day of November, 2024.

(S.C. Yadav)

Commissioner

Employee's Compensation Act, 1923

