

**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(I)-35/SWD/2019/ 192.

Dated: 13/01/2025.

IN THE MATTER OF:

Sh. Sonu Singh S/o Sh. Ram Singh
R/o Village Bhagwant Pur,
P.O. Atwa Bhasen, Distt. Hardoi, UP -241204

.....Applicant/Claimant

Versus

1. **M/s Krishna Freight Carrier,
Through Its Proprietor, Sh. S. P. Tomar Ujjawal**
Plot No. 253, 1st Floor,
Nangli Shakrawati Industrial Area,
Delhi-110043
(Near S.D.M.C. Pratibha Vikas Vidyalaya-43)

2. **M/s Shriram General Insurance Co. Ltd.**
1001, Ground Floor,
Arya Samaj Road (Naiwala)
Karol Bagh, New Delhi-110005

..... Respondents

ORDER

1. Vide this order, I will dispose of claim application dated 13.07.2017 filed on 14.07.2017 before this Authority under section 22 of the Employees Compensation Act, 1923 for seeking injury compensation.
2. In the claim petition claimant stated that he was employed as a cleaner by the Respondent No. 1 on his vehicle (Canter) bearing No. HR-55-B-5040 (EICHER – 10.59) and claimant was performing his duty with full devotion and sincerity. It is further stated that on 05.11.2011, the said vehicle driven by its driver was coming from Rudrapur (Uttarakhand) to Delhi for commercial trip and the claimant was working as a cleaner on the said vehicle and the said vehicle was loaded with Generator and on the said day i.e. 05.11.2011, when the said vehicle driven by its driver reached at Hapur Bypass under the jurisdiction of police station Pilkhuwa (U.P.) suddenly the said vehicle was hit by unknown vehicle and ran away from the place of accident. Claimant further stated that in the said accident the claimant Sonu Singh received injuries in both legs and the claimant



was rushed to Saraswati Hospital, Hapur, U.P. Thereafter he was referred to Safdarjung Hospital, Delhi and the claimant was taken treatment till July, 2016. It is further stated that the claimant received injuries in the said accident which occurred out of during and in the course of his employment with respondent No. 1. It is further stated that the claimant was drawing the wages at the rate of Rs.8,000/- per month and the vehicle bearing No. HR-55-B-5040 was insured with Respondent No. 2 i.e. M/s. Shriram General Insurance Co. Ltd. vide Policy No.101047/31/11/ 013372 valid from 05.12.2010 to 04.12.2011. The claimant Sonu Singh was aged about 18 years at the time of said accident. It is further stated that the Respondent is having the notice of accident since the day of occurrence and the claimant incurred approximately Rs.5,00,000/- on his treatment. It is further stated that the claimant was an employee out of during and in the course of his employment with the respondent at the time of accident and he was unfortunately received injury arising on 05.11.2011 and resulting out the claimant became 100% disabled for his work. Claimant filed his original disability certificated vide no. F.1(1)/DDU/MB/2017/8586 dated 08.06.2017 issued from DDU Hospital, GNCTD, Hari Nagar, New Delhi-110064, copy of his treatment record from Safdarjung Hospital, Copy of his Aadhaar Card.

3. Summons were issued to the respondents to file reply/defence in the case.
4. Respondent No. 1 filed reply/defence and stated therein that claim petition is merely abuse of process of law due to the reason that the accident had taken place at Hapur Bypass in Uttar Pradesh so the same cannot be tried here in Delhi. It is further stated that the claimant has neither filed any documentary proof to show the sustainability of his claim as to whether the accident took place in Delhi and nor the claimant has filed copy of FIR therefore, the present claim petition is liable to be dismissed on this very ground. It is further stated that the present claim petition is filed after about 6 years and that to without any documentary proof and witnesses hence the same is barred by limitation Act. It is further stated that the claim petition is not maintainable against the respondent no. 1 merely he is the owner of the vehicle and the said vehicle was already insured with the Respondent No. 2/Insurance Company i.e. M/s Shri Ram General Insurance Company Limited, E-8, EPIP, Sitapura Industrial Area, Jaipur, Rajasthan-302022 vide Policy No. 101047/31/11/013372 from 05.12.2010 to 04.12.2011. Respondent No. 1 admitted that the claimant was working as cleaner and the accident did take place further other contents of the claim petition are denied in toto.
5. Respondent No. 2/Insurance Company filed reply/defence and stated therein that neither there was employer and employee relationship between Respondent No. 1 and injured Sonu Singh and nor the injuries of the claimant was caused in accident during the course of his employment with Respondent No. 1 on vehicle bearing registration no. HR-55-B-



5040 and he was never employed by the Respondent No. 1 at any point of time, however the claimant not provided any documents regarding their employment on vehicle bearing no. HR-55-B-5040 as cleaner with Respondent No. 1, therefore employer and employee relationship is denied for want of knowledge. It is further stated that the PA for owner/cleaner was charged by respondent for covering the owner/cleaner in case if the insured vehicle met with self-inflicted accident, therefore the liability of respondent is confined to the own damages cause to insured vehicle, any injury to third party, owner/cleaner in any self-inflicted road accident and not otherwise. It is further stated that as per the section 134(c) of the Motor Vehicle Act, 1988, it is mandatory duty of the insured/respondent no. 1 herein to furnish the particulars of policy, date, time and place of accident, particulars of injured and name of the cleaner and particulars of driving license, but the insured/respondent no. 1 has not complied with statutory demand, hence the respondent no. 2 is not liable to indemnify the insured or pay any compensation and the case is liable to be dismissed against the respondent for non compliance of statutory demand. It is further stated that under section 158 (6) of M.V. Act, 1988, it is the mandatory duty of the concerned police authorities to forward all the relevant documents to the concerned insurer within 30 days from the date of information, but the Police failed to forward the documents and not complied with the statutory demand. Respondent No. 2 further denied all the contents of the claim petition of the claimant.

6. Respondent No. 2 filed reply of Show Cause Notice dated 13.12.2022 under section 4-A (3)(b) of the EC Act, 1923. Wherein it is stated that Respondent No. 2/Insurance Company is not liable to pay compensation as well as penalty to the claimant as there was no employee employer relationship between claimant and Respondent No. 1. Further Respondent No. 1 has not given any information about the incident. Respondent No. 2 has charged the premium of paid driver only but did not charged premium under Workman Compensation Act, 1923. In view of this Respondent No. 2 denied his liability towards payment of penalty under section 4-A of the Act.
7. Claimant filed rejoinder by which he denied all the contents of the reply of Respondents and reiterated contents of his claim petition.
8. On 13.12.2022 the following issues were framed for adjudication:-
 - i) Whether this Authority has territorial jurisdiction to entertain this claim or not?
 - ii) If so whether accident occurred out of and in the course of employment with Respondent No. 1 ?
 - iii) And is so whether Penalty is to be imposed upon the Respondents ?
 - iv) And if so what relief and directions in this regard ?



9. Matter was fixed for the evidence of the parties.
10. Claimant filed his evidence by way of affidavit exhibit PW1/A. The contents of affidavit are corroborative those claim petition. Claimant has also filed documents exhibit PW1/1 to PW1/6 i.e. Copy of Aadhaar Card of deponent, Disability certificate of deponent, Discharge summary vide MRD No. 108767, 2441, 13498/12, 88344, 115740 (Colly. 09 pages) and OPD treatment record (Colly 10 and 11 pages) mark-A, Medical Bills of Deponent (Colly 33 pages), Photograph of Vehicle and professional card of Respondent No. 1 and copy of insurance policy of vehicle in question Mark-PW1/6. His statement was also recorded on 07.08.2023 before this Authority. He was also cross examine by the Counsel for Respondent No. 1 and 2.
11. Claimant had summoned documents/records regarding Own Damage Claim in respect of vehicle bearing No. HR-55-B-5040 in regard of accident occurred on 05.11.2011 from Respondent No. 2/Insurance Company. In reply filed on 22.02.2024 by Respondent No. 2 shown inability to produce to OD Claim as prayed by the Claimant since record of OD Claim is very old as such they are unable to produce the same.
12. Respondent No. 1 and 2 did not lead any evidence to prove their case despite given sufficient opportunities to the respondents as such right of respondents was closed on 21.08.2024 and matter was fixed for hearing final arguments from the parties.
13. Claimant and Respondent No. 2/Insurance Company filed written submission on record. On 03.12.2024 oral submissions was also heard from Claimant and Respondent No.2 heard in detail.
14. In view of above I have gone through the pleadings of the parties and documents available on record on the basis of that I am giving my findings on the issues framed in the matter as under:

ISSUE NO. 1

The case of claimant is this that the claimant Sonu Singh was employed as a cleaner by the Respondent No. 1 on his vehicle (Canter) bearing No. HR-55-B-5040 and claimant was performing his duty with full devotion and sincerity and on 05.11.2011, the said vehicle driven by its driver was coming from Rudrapur (Uttarakhand) to Delhi for commercial trip and the claimant was working as a cleaner on the said vehicle and the said vehicle was loaded with Generator and on the said day i.e. 05.11.2011, when the said vehicle driven by its driver reached at Hapur Bypass under the jurisdiction of police station Pilkhuwa (U.P.) suddenly the said vehicle was hit by unknown vehicle and ran away from the place of accident. Respondent No. 1 and Respondent No. 2 had taken objection that accident was not occurred within the territorial jurisdiction of this Authority since accident was occurred near Hapur Bypass jurisdiction of Police Station



Pilkhuwa, Uttar Pradesh and claimant was also not residing under the jurisdiction of this Authority i.e. in Delhi, hence claim is not maintainable before this Authority and liable to be rejected. Claimant has filed claim application against the Respondent No. 1 the owner of the vehicle in question through his Proprietor Sh. S.P. Tomar Ujjawal who is residing at Delhi i.e. at M/s Krishna Freight Carrier, Plot No. 253, 1st Floor, Nangli Shakrawati Industrial Area, Delhi-110043, (Near S.D.M.C. Pratibha Vikas Vidyalaya-43). As such as per provision of the EC Act, 1923 jurisdiction of this Authority is applicable in this case. Regarding the territorial jurisdiction section 21 of the EC Act, 1923 provides as under:

Venue of proceedings and transfer. — —

(1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which

(a) the accident took place which resulted in the injury; or

(b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.

(2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also



transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard:

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

In view of above provision of the Law case of claimant is covered under section 21 (1) (c) of the Act. Since owner of the vehicle has registered office in Delhi as such claimant is entitled to file claim within the jurisdiction of the Commissioner where the employer has his registered office. In view of this Authority is empower to entertain claim of claimant as such Issue No. 1 is decided in favor of claimant.

ISSUE NO. 2

The case of claimant is this that the claimant Sonu Singh was employed as a cleaner by the Respondent No. 1 on his vehicle (Canter) bearing No. HR-55-B-5040 and claimant was performing his duty with full devotion and sincerity and on 05.11.2011, the said vehicle driven by its driver was coming from Rudrapur (Uttarakhand) to Delhi for commercial trip and the claimant was working as a cleaner on the said vehicle and the said vehicle was loaded with Generator and on the said day i.e. 05.11.2011, when the said vehicle driven by its driver reached at Hapur Bypass under the jurisdiction of police station Pilkhuwa (U.P.) suddenly the said vehicle was hit by unknown vehicle and ran away from the place of accident. In this accident claimant has received 58 % disability in relation to both lower limbs as per Disability Certificate issued by Medical Board, DDU Hospital, Govt. of NCT of Delhi, Hari Nagar, New Delhi vide report no. F1(1)/DDU/MB/2017/8586 dated 08.06.2017. Further the case of claimant is this that despite having notice of accident neither Respondent No. 1 nor Respondent No. 2 paid any compensation to the claimant. It is further stated that vehicle in question was insured with Respondent No. 2/ Insurance Company vide Policy No.101047/31/11/ 013372 valid from 05.12.2010 to 04.12.2011. On the day of accident and Respondent No. 1 had claimed OD of his vehicle from Respondent No. 2. As alleged by the claimant. On



summoned OD Record Respondent No. 2 failed to produced the same on the ground that record is so old. As such it is presumed that owner of vehicle had claimed the OD of vehicle in question from Respondent No. 2/Insurance Company. Further claimant submitted that he has incurred approximately Rs.5,00,000/- on his treatment. But as per medical treatment documents placed on record Exhibit PW1/4 (Colly 33 pages) summery details of medical bills is verified of Rs. 20,079/- only.

The Respondent No. 1 has admitted in reply to the extent that claimant was working as a cleaner and the accident did take place as alleged in claim and further he had taken OD Claim from the Respondent No. 2/Insurance Company. Since respondent no. 1 has admitted factum of employee employer relationship and accident caused out of and in the course of his employment resulting thereby claimant disabled 58 % in relation to both lower limbs as per Disability Certificate issued by Medical Board, DDU Hospital, Govt. of NCT of Delhi, Hari Nagar, New Delhi vide no. F1(1)/DDU/MB/2017/8586 dated 08.06.2017. As such it is proved from the reply of the Respondent No. 1, owner of the vehicle in question, who is the best evidence in the matter that accident of the claimant was occurred out of and in the course of his employment as such Issue No. 2 is decided in favour of claimant in view of this Respondents are liable to pay compensation to the claimant jointly or severely. Since vehicle in question was insured on the day of accident with Respondent No. 2/Insurance Company as such Respondent No. 2 is liable to indemnify the claimant on behalf of Respondent No. 1. In view of this for calculation of compensation age of claimant is taken 18 years on the day of accident from his Date of Birth i.e. 01.01.1994 (Mentioned in his Aadhaar Card) and 50 % of Rs. 8000/- and relevant factor i.e. 226.38 and 58 % disability. Accordingly calculation is made as under:

$$\frac{\text{Rs. } 4000 \times 226.38 \times 58}{100} = \text{Rs. } 5,25,201/-$$

In view of above calculation claimant is entitled to receive Rs. 5,25,201/- (Rupees Five Lakhs Twenty Five Thousand Two Hundred One) from respondents jointly or severely. Since vehicle in question was insured with Respondent No. 2/Insurance Company hence Insurance Company has liable to indemnity to the claimant.

ISSUE NO. 3

Regarding Issue of Penalty Show Cause Notice bearing no. EC(I)-35/SWD/2019/311-312 dated 13.12.2022 by Speed Post was sent to the Respondents to Show Cause as to why penalty under section 4-A(3)(b) of the Act is not to be imposed upon them. Notice of Respondent No. 1 was returned back with postal remarks that “**No Such Person**”. Respondent No. 2/Insurance Company filed reply and denied that the Respondent No. 2/Insurance Company is not liable to pay any penalty in this case as no additional



premium was charged under Workman/Employees Compensation Act, 1923 to cover all the risks of the Driver of the vehicle bearing no. HR-55-B-5040. Insurance Company charged the premium of paid driver only and no premium was being charged under the Workman/Employees Compensation Act, 1923. Further Respondent has taken objection/ground that there was no employee employer relationship between the claimant and Respondent No. 1. As such Respondent No. 2/Insurance Company denied any liability towards payment of penalty to the claimant. In this case Respondent No. 1 owner of the vehicle in question had appeared and filed reply and thereafter he remain absent from the proceedings and moreover show cause notice sent on his address returned back with postal remarks “No Such Person” meaning thereby Respondent No. 1 has adopted very careless approach in this case. Further Respondent No. 1 has tried to escape from his legal liability towards payment of compensation under the Act to the claimant as such taking serious view against Respondent No. 1 owner of the vehicle, I imposed penalty of 25 % on the Respondent No. 1 and this will be in the interest of justice to the claimant.

ISSUE NO. 4

In view of discussion made in Issue No. 2 and 3, I direct Respondent No. 2/Insurance Company to deposit **Rs. 5,25,201/- (Rupees Five Lakhs Twenty Five Thousand Two Hundred One)** alongwith 12 % interest per annum from the date of accident i.e. 05.11.2011 till its realization and Respondent No. 1 is directed to deposit 25% penalty on awarded amount which comes to **Rs. 1,31,300/- (Rupees One Lakh Thirty One Thousand Three Hundred)** 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 13th day of January, 2025.

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

