Regd. Post/Speed Post/Dasti

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/SD/D/37/2018/205. Dated: 30/01/2025.

IN THE MATTER OF:

1. **Smt. Tara Bisht W/o Late Rakesh Bisht @ Rakesh Singh**
2. **Ms. Angel Bisht D/o Late Rakesh Bisht @ Rakesh Singh**
   Both R/o Village Chaukhuta,
   Post Satbunga, Ramgarh, District- Nainital,
   Kashialekh, Uttrakhand-263132 .....Applicants/Claimants

Versus

1. **M/s Imperial Holiday Homes Ltd.**
   Prop. No. 2, Community Centre,
   3rd, Floor, East of Kailash,
   New Delhi-110065

2. **Mr.Ganesh Singh Rana, Director,**
   M/s Imperial Holiday Homes Ltd.
   Prop. No. 2, Community Centre,
   3rd, Floor, East of Kailash,
   New Delhi-110065

3. **Sh. Dilmohan Singh, Director,**
   M/s Imperial Holiday Homes Ltd.
   Prop. No. 2, Community Centre,
   3rd, Floor, East of Kailash,
   New Delhi-110065

4. **Sh. Ramesh Kumar Chauhan, Director,**
   M/s Imperial Holiday Homes Ltd.
   Prop. No. 2, Community Centre,
   3rd, Floor, East of Kailash,
   New Delhi-110065

5. **The New India Assurance Co. Ltd.**
   Registered & Head Office : New India Assurance Building,
   87, Mahatma Gandhi Road, Fort, Mumbai-40001

ALSO AT:

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The New India Assurance Co. Ltd.
Delhi Regional Office – I
R G City Centre, 2nd / 3rd Floor, LSC, Block-B
Lawrence Road, New Delhi-110035 ..... Respondents

ORDER

1. Vide this order, I will dispose of claim application dated 01.08.2018 before this Authority under the Employees Compensation Act, 1923 for seeking death compensation.

2. In the claim petition claimant stated that claimants are legal heirs (wife and minor daughter) of the deceased Rakesh Singh Bisht. It is further stated that the claimants are constrained to file this claim petition as the respondents have failed and neglected to pay appropriate compensation to the claimants despite their repeated requests and demands. It is further stated that Deceased Rakesh Singh Bisht S/o Sh. Kheoraj Bisht, aged about 27 years (at the time of his death) was an employee with Respondent No. 1 company from last many years. It is further stated that Respondent No. 2 to 4 are Directors of Respondent No. 1 company and are managing its day to day affairs. They are vicariously liable for all the acts done by and on behalf of Respondent No. 1 company. It is further stated that deceased Rakesh Singh Bisht was employed with Respondent company as a driver and he had been driving dumpers/tankers/trucks of Respondents and had been transporting the material in the same, as per the instruction and directions of the Respondents. Deceased Rakesh Singh Bisht had been working diligently, regularly with hard work, with utmost punctuality and full devotion without any complaint of any nature, whatsoever, from the Respondent side. It is further stated that deceased Rakesh Singh Bisht was working as a driver with Respondent company from last many years and he was drawing a salary amounting Rs. 18,000/- alongwith other allowances and benefits. Therefore, total last drawn salary of deceased Rakesh Singh Bisht was approx. Rs. 23,000/- per month. Deceased Rakesh Singh Bisht was working at the site of the Respondent Company, situated in Village Khabrar, Post Satbunga, District Nainital, Uttrakhand. It is further stated that on 23.05.2017 deceased Rakesh Singh Bisht was driving dumper/teeper bearing registration no. UK-04-CB-0691 of the Respondent company, loaded with sand from Haldwani to Khabrar. One store keeper Late Sh. Harish Rawat was also with him at around 5 to 6 PM when they were approaching near Gulabh Ghati near Kathgodaam, the vehicle got misbalanced and as a consequence of same, the vehicle fall into the runlet/nallah/gorge. It is further stated that due to the accident, Sh. Rakesh Bisht alongwith with Late Harish Rawat suffered serious head injuries as a result of blunt force impact which led to death of both of them, on the spot. It is further stated that deceased Rakesh Bisht was the only bread earner of the family and has left behind his widow house wife (claimant), minor daughter and an old and ailing father, his mother has already expired. It is further stated that claimants are legally entitle to receive the

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compensation on account of unfortunate demise of Late Rakesh Singh, during the course of his employment and claimants are entitled to a sum of Rs. 24,94,465/- being the principle amount along with interest @ 18 & p.a. on the said documents, from the date of death till actual realization of the same. Alongwith claim petition claimant filed copy of aadhar card of claimant no. 1 i.e. Smt. Tara Bisht, copy of intimation letter dated 25.05.2017 given to SHO, P.S. Kathgodam by the representative of Respondent No. 1 Company, copy of letter given by I.O. with the request to conduct Post Mortem of Late Sh. Rakesh Singh Bisht, alongwith Post Mortem Report, Copy of death certificate of Late Sh. Rakesh Singh, office copy of legal notice dated 27.02.2018 alongwith original postal receipts, copy of reply dated 28.03.2018 to the legal notice.

3. Summons were issued to the respondents to file reply/defence in the case.

4. Respondent filed reply/defence and stated therein that the claim as such is not maintainable before the Hon'ble Commissioner in terms of proviso to section 21 of the Employees Compensation Act, 1923, as the accident took place in Haldwani, Nainital, Uttrakhand. It is further stated that the claimant is also a resident of District Nainital, the deceased was employed at Nainital and his Driving License was issued in Nainital. It is further stated that vehicle involved was also registered at Nainital. It is further stated that a claim arising out of the same incident and the same cause of action under the Employees Compensation Act, 1923 on identical; grounds filed by the other deceased namely Harish Singh Rawat is in progress before the Ld. Commissioner Employees Compensation, Kumaon Region, Nainital, Uttrakhand. Hence the jurisdiction to adjudicate the present case lies with the Ld. Commissioner Employees Compensation, Kumaon Region, Nainital, Uttrakhand. It is further stated that the salary of the deceased was Rs. 10,000/- per month. Respondent further stated that the vehicle of the respondent was insured with the M/s New India Assurance Co. Ltd, Haldwani, District- Nainital for a period of 14.09.2016 to 13.09.2017 vide the Policy No. 346300311600100001543 against all risk, therefore, liability, if any, to any extent lies against the insurance company. It is further stated that notice sent by the claimant was received by the Respondent which was duty replied to by the respondent through its counsel and was posted to the advocate of the claimant on 28.03.2018. It is further stated that on the date of incident the deceased was driving the vehicle with valid and relevant documents and the driving license. In the last respondent denied other contents of the claim petition of the claimant.

5. Claimant filed rejoinder by which she denied all the contents of the reply of respondent and reiterated contents of her claim petition.

6. Respondent No. 5/Insurance Company filed reply/defence and stated therein that claimant has not filed any Driving License, permit of Vehicle nor any mechanical inspection of vehicle as such it cannot be ascertain without these documents that whether deceased was driving alleged vehicle in accident with all permissible documents. Further Respondent No. 5 has also taken objection that there was no employee employer relationship with deceased and respondent as there was no proof has placed on record. As such Respondent No.5/Insurance Company has denied employee employer relationship. In principle Respondent No. 5 admitted that vehicle in question bearing no. UK-04-CB-0691 was insured with them vide policy no. 3403003116010001643 valid from 14.09.2016 to 13.09.2017 till 11:59 PM. Rest of other contents have been denied.

7. Respondent No. 5 moved an application for verification of Driving License No. UK-0420120092161 issued in the name of Rakesh Singh from RTO, Haldwani, Nainital, Uttrakhand. Sh. Kaustuvanand Pant, Senior Assistant in Transport Department, Uttrakhand, RTO Haldwani present as a witness and in his cross examination by Counsel for Respondent No.5 his statement was recorded before this Auhtority on 31.10.2022 who deposed that deceased employee Rakesh Bisht was holding License to drive Light Motor Vehicle but he was not having a Hill Endorsement under his Driving License bearing no. UK-0420120092161. Further he deposed that deceased Rakesh Bisht was not having a valid driving license to drive DUMPER, TAPER, TRUCK etc. or any other transport vehicle. Witness also produced documents exhibit RW2/A to RW2/G i.e. Extract of DL, Certified copy of Form –IV for application for permission of Driving, Form No. III Learner License, Certified copy of Form No. II renewal of Learner License, Certified copy of OPD Slip with medical certificate, Certified copy of Voter ID of Late Sh. Rakesh Bisht and certified copy of Date of Birth respectively.

8. On 16.09.2021 the following issues were framed in the matter for adjudication:-

   i) Whether deceased Late Rakesh Bisht was met with an accident out of and in the course of his employment resulting thereby he died ?

   ii) If so what relief and directions necessary in this regard ?

9. Matter was fixed for the evidence of the parties.

10. The Claimant Smt. Tara Bisht has filed her evidence by way of affidavit exhibit AW-1/A. The contents of the affidavit are corroborative those claim petition. Claimant also filed documents Exhibit AW1/1 to AW1/6 i.e. copy of aadhaar card, copy of complaint written by respondent no. 1 through Sh. Mahender Singh, given to SHO, Kathgodam, copy of report filed by the Police u/s 174 Cr. PC and post mortem report, copy of death certificate, copy of legal notice, copy of reply respectively. Her statement was also

recorded on 18.07.2022. She was also cross examined by Ld. Counsel for Respondent No. 1 to 4 and Respondent No. 5.

11. For Respondent No. 1 Sh. Triumbak Miglani, Senior Manager appeared in witness box and filed his evidence by way of affidavit exhibit RW1/A. The contents of affidavit are corroborative those reply. RW1/A has also filed documents exhibit RW1/1 Resolution, Registration Certificate of Vehicle bearing no. UK-04-CB-0691 RW1/2 – mark-1, permit of vehicle Mark-2, Driving License Mark-A and Policy Certificate of Insurance exhibit RW1/4. His statement was also recorded on 11.05.2023 and was cross examined by Counsel for claimant. Another witness has been examined by Respondent No. 1 exhibit RW2/A. He was also cross examined by Counsel for Claimant and Respondent No. 5.

12. For Respondent No. 5/Insurance Company Sh. Puneet Malhotra, Assistant Manager appeared and filed his evidence by way of affidavit exhibit R5/W1/1A. His statement was also recorded on 04.07.2024. The contents of affidavit are corroborative those reply. He was also cross examined by Counsel for Respondent No. 1 to 4.

13. Respondent No. 5 filed written submission on record and other respondents have made oral submissions which was heard on 21.11.2024.

14. On the 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

The case of the claimant is this that the Deceased Rakesh Singh Bisht S/o Sh. Kheoraj Bisht, aged about 27 years (at the time of his death) was an employee with Respondent No. 1 company from last many years and the deceased Rakesh Singh Bisht was employed with Respondent company as a driver and he had been driving dumpers/tankers/trucks of Respondents and had been transporting the material in the same, as per the instruction and directions of the Respondents. Deceased Rakesh Singh Bisht had been working diligently, regularly with hard work, with utmost punctuality and full devotion without any complaint of any nature, whatsoever, from the Respondent side. It is further stated that deceased Rakesh Singh Bisht was working as a driver with Respondent company from last many years and he was drawing a salary amounting Rs. 18,000/- alongwith other allowances and benefits. Therefore, total last drawn salary of deceased Rakesh Singh Bisht was approx. Rs. 23,000/- per month. Deceased Rakesh Singh Bisht was working at the site of the Respondent Company, situated in Village Khabrar, Post Satbunga, District Nainital, Uttrakhand. It is further stated that on 23.05.2017 deceased Rakesh Singh Bisht was driving dumper/teeper bearing registration no. UK-04-CB-0691 of the Respondent company, loaded with sand from Haldwani to Khabrar. One store

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keeper Late Sh. Harish Rawat was also with him at around 5 to 6 PM when they were approaching near Gulabh Ghati near Kathgodaam, the vehicle got misbalanced and as a consequence of same, the vehicle fall into the runlet/nallah/gorge. It is further stated that due to the accident, Sh. Rakesh Bisht alongwith with Late Harish Rawat suffered serious head injuries as a result of blunt force impact which led to death of both of them, on the spot. It is further stated that since accident of the deceased Sh. Rakesh Bisht was occurred out of and in the course of his employment with respondents resulting thereby he died. As such claimants are entitled to receive death compensation from the respondents.

In reply respondent no.1 admitted factum of employer employee relationship and accident occurred out of and in the course of employment of deceased Rakesh Bisht. Respondent No. 5/Insurance Company also filed reply and taken technical objection that deceased Rakesh Bisht was not having valid driving license to drive dumpers/tankers/trucks it was proved by witness summoned from RTO Haldwani, Uttrakhand who supported contents of Respondent No. 5 that deceased Rakesh Bisht was not having valid license to drive dumpers/tankers/trucks in Hill Area. To drive vehicle in Hill area endorsement in DL is necessary to drive in hill area. On this ground Respondent No. 5 denied any liability towards payment of compensation to the claimants. But in principle Respondent No . 5 admitted that vehicle in question was insured with Respondent No. 5 on the day of accident.

Since from the above discussion, it is proved that deceased Rakesh Bisht was the employee of the Respondent No. 1 and who met with an accident out of and in the course of his employment resulting thereby he died. The objection of Respondent No. 5 is also considerable that the deceased was not having endorsement in his DL to drive in Hill Area which is also serious objection, it was duty of the Respondent No. 1 to ensure that every person who drive vehicle is fit and having valid DL to drive in hill area which respondent failed to ascertain. But vehicle in question was insured on the day of accident as such Respondent No. 5/Insurance Company is liable to indemnify to the claimants with liberty to recover awarded amount from Respondent No. 1.

ISSUE NO.2

In view of above discussion in Issue No. 1 claimants are entitled to receive death compensation from respondents jointly or severely. For calculation of compensation age of deceased is taken as 26 years (08.10.1990 as BOD mentioned in his Aadhar Card) and relevant factor 215.28 and 50% wages of Rs. 8000/- as restricted under the Act. Accordingly compensation is calculated as under:

Rs. 4000 x 215.28 = Rs. 8,61,120/-

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In view of above calculation claimants are entitled to receive death compensation Rs. 8,61,120/- (Rupees Eight Lakhs Thirty One Thousand One Hundred Twenty) along with 12 % interest per annum from the date of accident i.e. 23.05.2017 till its realization from the respondents jointly or severely, since the vehicle in question was insured with Respondent No. 5 i.e. Insurance Company, hence, Insurance Company is liable to indemnify to claimant.

Therefore, Respondent No. 5 is directed to deposit **Rs. 8,61,120/- (Rupees Eight Lakhs Thirty One Thousand One Hundred Twenty) alongwith 12 % interest per annum from the date of accident i.e. 23.05.2017 till its realization** further Respondent No. 5 is also directed to deposit 50 % penalty of awarded amount which comes to **Rs. 4,30,560/- (Rupees Four Lakh Thirty Thousand Five Hundred Sixty)** 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.

15. Given under my hand and seal of this Authority on this 30th day of January, 2025.

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

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