
(2021) 02 OHC CK 0013
In the Orissa High Court
Case No : F.A.O.NO.197 Of 2012

Branch Manager, United India Insurance Co. Ltd., Angul	APPELLANT
Vs	
Raghunath Behera & Another	RESPONDENT

Date of Decision : 12-02-2021

Acts Referred:

Workmen's Compensation Act, 1923 — Section 30

Citation : (2021) 02 OHC CK 0013

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : R.C.Sahoo

Final Decision : Disposed Of

Judgement

Biswanath Rath, J.

1. This is an Appeal at the instance of Insurance Company as against the judgment passed by the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Angul involving W.C. Case No.52/2007.

2. Factual background involving the case is that the claimant being the victim put up a claim application before the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Angul submitting that he was working as a Helper under Respondent No.2, Opposite Party No.1

therein in his Truck bearing Regn. No.OR-19-C-9354 having a National Permit. It is stated, on 8.8.2007 at about 4.30 A.M., while the Helper,

Raghunath Behera along with the Driver of the Truck were proceeding on N.H.-4 to their destination near Balapur of Maharastra to their destination

near Balapur of Maharastra, when the said Truck was about to over come one parked Truck bearing Regin. No.CG-04-J-8363, suddenly another Bus

came from the front side and to avoid head head on collision, the Driver turned the Truck to its left side, as a result the Truck dashed on the backside

of the parked Truck causing Raghunath Behera, the Applicant sustaining multiple injuries on several parts of the body. After the accident the injured

was shifted to the Government Hospital, Ankola of Maharashtra and after two days of treatment there, he returned to Angul where he was treated in

the District Hospital, Angul. It is claimed that due to such accident, the injured sustained fracture injuries on his left leg below the knee and lost his

index finger and phalanx of both the hands and sustained bleeding injuries on several parts of his body. The Claimant claimed that for such accident,

he became permanent disabled at 100%. The Claimant also claimed his age was 18 years at the relevant point of time and further claimed his wages

to be Rs.2200/- per month. Thus the Claimant made a claim of Rs.2,98,822/- along with other benefits as provided in the Statute.

3. Contesting the case, the O.P.-Owner entered appearance but did not file any written statement. However, the Insurance, O.P.2 appeared and filed

Written Statement disputing the entire claim application thereby disowning its liability.

4. Based on rival contentions of the parties, the Authority Below framed the following Issues :-

â??a) Whether Raghunath Behera was a â??workmanâ?? within the meaning of the W.C. Act, 1923 ?

b) Whether he met with an accident arising out of and in course of his employment ?

c) Whether the amount of compensation claimed is due or any part of that amount ?

d) WhetherÂ O.Ps.Â areÂ liableÂ toÂ payÂ such compensation as is due ? If so, by whom payable ?â??

5. Entering into trial, the Claimant also examined witnesses thereby attempting to establish the injury he suffered involving a Truck having the policy

coverage through Policy No.034001/31/07/01/00000075 valid from 28.4.2007 till 27.4.2008 issued by O.P.2. The Insurance Company even though

resisted the claim but however did not lead any evidence in its defence. Answering the issue, the Commissioner ultimately finding the accident arising

in course and arising out of employment finally shifting the responsibility on O.P.2 for there being a valid Insurance Policy, directed O.P.2 to indemnify

O.P.1 and consequently, directed to deposit a sum of Rs.2,98,822/- towards compensation within thirty days of the judgment, failing which there was

also direction to attract other benefits provided under the Workmen's Compensation Act.

6. Sri R.C.Sahoo, learned counsel for the Appellant though not disputing the accident involving the applicant in course and arising out of employment

and also the coverage the accident through Insurance Policy No.034001/31/07/01/00000075 valid from 28.4.2007 till 27.4.2008, however contended

that the quantum involving the compensation on the premises that in presence of medical supporting establishing 40% of disability, there is no material

available with the Commissioner to come to conclusion that there is loss of disability of 40% leading to loss of earning at 100%. Sri Sahoo taking this

Court to the discussions of the Authority below, particularly on Issue No.(c) attempted to substantiate its claim through the recording therein. Bringing

to the notice of the recording of the Authority below to the effect that on analysis of evidence led from the side of the Applicant, it is seen that there is

no substantial evidence to hold that the Applicant lost his earning capacity. Sri Sahoo, learned counsel for the Appellant, therefore, contended that

there is no logical leading to the conclusion taking disability of 40% to be 100% lost of earning capacity and thus made request to the Court at least to

remit the matter back to the Commissioner to give a right conclusion on the loss of earning capacity and thereby reducing the aspect of compensation

amount involved.

7. Considering the submission of Sri Sahoo, learned counsel for the Appellant, this Court entering into the observation involving the claim of the parties

finds, there is no denial to the accident taken place involving the Truck having a valid Insurance Policy at the relevant point of time. Further there

remains no dispute that the accident arose in course and out of employment. Further there is also no dispute that there being a valid Insurance Policy,

the liability on Opposite Party No.1 is to be repudiated by Opposite Party No.2, Insurance Company. The limited challenge involving the impugned

order being a mechanical assessment to reach the conclusion of 100% earning capacity in view of medical supporting establishing 40% disability, this

Court entering into the factual aspect involving injury by the Claimant finds, undisputedly the Claimant sustained multiple injuries on several part of his

body. It is also not disputed that the Claimant was 18 years of age at the time of accident and working as a Helper in the Truck having National

Permit. Looking to the medical supporting, this Court finds, for the Certificate issued by the Chief District Medical Officer, there is following injury

sustained by the Claimant. The Claimant suffers from amputation of left hand Index Finger two Phalanges and right hand Index Finger one Phalanx

and post traumatic defects of left leg. There is a disability certificate of the competent authority observing that Claimant suffered disability to the

extent of 40%. However, looking to the nature of injury and the suffering of the Claimant, there may be a case that coming to 100% loss of earning

capacity might be mechanical, and therefore, this Court even though finds, there is a case of re-assessment on the loss of earning capacity but

however, keeping in view the accident taken place on 8.8.2007 and in the meantime, thirteen years have passed, there is not even payment of a single

pie to the Claimant, even there being a case for reduction in compensation and for the full stay of such disbursement by this Court, this Court

observes, for the ground of challenge, the Appellant Counsel could have volunteered to the Court for granting stay to some extent instead of granting

full stay on disbursement of the amount resulting there is no grant of compensation.

8. Keeping all these in view and the long suffering of the Claimant for full stay of disbursement for all these years, this Court instead of remitting the

matter to the Commissioner for Workmen's Compensation, however keeping in view the age of the Claimant and the loss he has sustained at his

youth being a Helper of a Truck and in absence of any evidence to prove the contrary, this Court taking a pragmatic view reduces the loss of earning

from 80% as earning capacity and reduces the compensation of Rs.2,98,822/- by 20%, which comes to Rs.2,39,106/- (Rupees two lakh thirty-nine

thousand one hundred six). For retention of the whole compensation amount with the Commissioner, this Court partly allowing the Appeal on reduction

of the compensation amount to Rs.2,39,106/- (Rupees two lakh thirty-nine thousand one hundred six) directs for release of the said amount including

interest earned in the meantime for the same in favour of the Claimant by ensuring his production at the Special Messenger cost of the Insurance

Company. The entire exercise will be undertaken within a period of four weeks from the date of production of a copy of this judgment. The balance

compensation amount of Rs.59,716/- (Rupees Fifty-Nine thousand seven hundred sixteen) plus interest accrued on the same in the meantime may be released in favour of the Insurance Company also along with interest accrued on the same in the mean while. Considering that the impugned judgment was passed on 30.1.2012 and the deposit being made on 18.6.2012, the Claimant will also be entitled to interest @ 6% on the compensation of Rs.2,39,106/-(Rupees two lakh thirty-nine thousand one hundred six) from the date of judgment till the date of deposit before the Commissioner, which amount shall be calculated by the Insurance Company and paid to the Claimants. As agreed, the interest factor involving the above direction may also be deducted from the balance receipt of Insurance from the Commissioner and to be paid to the workman-Claimant.

9. The FAO stands disposed of accordingly.

10. The parties may utilise the soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notification No.4587 dated 25.3.2020.