
(2021) 02 OHC CK 0014
In the Orissa High Court
Case No : F.A.O. No.168 Of 2012

Divisional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Rajani Devi Routa And Another.

RESPONDENT

Date of Decision : 11-02-2021

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4A(3)(a)(b), 30

Citation : (2021) 02 OHC CK 0014

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : Mahitosh Sinha, P.R. Sinha, P.K. Mahali

Final Decision : Dismissed

Judgement

Biswanath Rath, J.

1. This matter involves a judgment in W.C. Case No.41/1998, passed by the Commissioner for Employees Compensation, Berhampur, Ganjam. In

spite of appearance of set of counsels for respondent no.1, nobody attended for hearing. Appeal is heard with involvement of counsel for Appellant

only.

2. The background involving the case is that while the deceased-workman working as a driver under the owner-respondent no.1 herein, coming from

Berhampur to Phulbani, feeling uneasiness got down from the Bus and was immediately taken to the Hospital at Bhanjanagar by the owner and some

members of the Bus Union and the workman succumbed to injuries in the Hospitals itself. It is on the premises that the husband of the claimant was

getting Rs.100/- per day besides fooding allowance etc. and he was 40 years old at the time of accident, when the claim petition was filed, claim was

made accordingly.

3. Upon service of notice, the owner and the Insurance Company appeared as O.P.1 and O.P.2. Filing the plea, O.P.1 stated that on 25.9.1997, he

allowed the driver to drive the Bus bearing Registration No.AP-5T-3377 from Berhampur to Phulbani and back. It is also admitted that the driver

received personal injury by accident, arising out of and in course of his employment, resulting in death of deceased-driver on 29.5.1997. The owner

also admitted that the deceased while working under O.P.1 suffered from heavy bodily pain and there is also admission of taking the deceased to

hospital by him. Insurance Company-O.P.2 on its appearance filed written statement denying the claim and the fact of accident in course of and

arising out of employment.

4. Entering into evidence and on the basis of materials available on record, the Commissioner closed the proceeding. The Commissioner while finding

all the issues in favour of the claimant including coverage of the accident through insurance policy taken support, directed the Insurance Company to

deposit amount of compensation of Rs.1,86,748/- within one month from the date of pronouncement of the judgment, failure of which, the claimant

was to be benefitted with 50% penalty and 12% interest following the provision of Section 4A(3)(a)(b) of the Workmen's Compensation Act.

5. Sri Sinha, learned counsel appearing for the appellant challenged the judgment on several premises, such as, the deceased did not suffer in course of

and arising out of employment, there is no material worth proving that the deceased was in employment under O.P.1, there is no medical support to

establish the deceased suffered death on account of such injury, further there is also no material to establish the liability of the Insurance Company

by producing any insurance cover.

6. Taking into account the discussion in the judgment impugned herein, this Court finds, the appellant miserably failed in establishing either of the

stands taken herein. On the other hand, on perusal of the impugned judgment, this Court finds, there is clear recording of the admission of O.P.1, the

owner therein, who had admitted that the deceased was not only a driver at the relevant point of time but also sustained injuries by way of severe

chest pain while driving the bus and attempted to make it clear that the accident occurred in course and arising out of employment. Not only that the

owner also attempted to establish the claim of covering the compensation aspect through Insurance Company by producing the cover note.

7. Perusal of the impugned judgment, this Court also finds, the claimant has examined at least five witnesses. O.P.2, the appellant herein, has been

provided opportunity to cross-examine each of the witnesses and in fact, the Insurance Company has cross-examined each of the witnesses.

Unfortunately, there was no suggestion to find substance in the grounds taken herein during cross-examination. This Court finds surprise in the

submission of the learned counsel for the appellant that there was no filing of copy of the policy and medical certificate involving the death of the

deceased. The claimant was also not there for consideration of the issue by the court below.

8. Looking to the discussions in the judgment, this Court finds there is clear recording by the Commissioner of filing of the photocopies of the

Insurance Policy, Medical Certificate and Death Certificate involving the deceased as well as the Driving Licence of the deceased. For the clear

recording of the Commissioner, this Court finds, there is no substance in the argument of the learned counsel for the appellant, not only that it is also

observed that there is no endeavour at the instance of the Insurance Company, who even though contested in the proceeding before the Authority

below but did not attempt to damage the case of the claimant on the aspect of Insurance Policy, in absence of which, this Court finds no scope for

interfering in the impugned judgment. The Appeal thus stands dismissed for having no merit.

9. The compensation amount since already in deposit before the Commissioner, considering that this is an accident of the year 1998 and the award

involved of the year 2012, this Court directs release of the compensation amount along with other benefits, as provided under the award involved

herein, including interest accrued on deposit of the compensation amount all through by releasing the same in favour of the workman within a period of

fifteen days. Appellant is directed to bring the notice of the judgment of this Court to the Commissioner concerned within 10 days. Registry is also

directed to send a copy of the judgment to the concerned Commissioner. For non-appearance of counsel for the claimant herein, this Court also directs

the Commissioner to send a special messenger notice at the cost of the Insurance Company to the residence of the claimant to ensure her appearance

before the Commissioner's Office for receiving the compensation. For special messenger notice, the Insurance Company is directed to deposit a sum of Rs.1,000/-before the Commissioner along with copy of the judgment of this Court.