

(2009) 05 GAU CK 0040
In the Gauhati High Court
Case No : MFA No. 89 of 2006

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Joga Bordoloi and Another

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 2M

Citation : (2009) 122 FLR 321 : (2009) 1 GLD 314 Supp : (2011) 1 TAC 510

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. S." Dutta, learned Counsel for the appellant and also heard Mr. S.K. Ghosh, learned Counsel for the respondent No. 1. None appears for the respondent No. 2, inspite of notice being served on him.

2. This appeal is preferred against the judgment and order dated 3.2.2005, passed by the Commissioner of Workmen's Compensation, Sonitpur, Tezpur in W.C. Case No. 5 of 2003, holding that the claimant is entitled to compensation of Rs. 4,39,440/- and Rs. 2500/- as penal cost and directing the opposite party No. 2 i.e. Oriental Insurance Co. Ltd. to deposit the entire amount within 30 days from the date of issue of the order.

3. The only point raised by the learned Counsel for the appellant in this case is that as per the evidence of PW-1, her deceased son (workman) used to receive Rs. 3000/- as monthly salary and Rs. 1000/- as monthly allowance. The learned Commissioner has included the said daily allowance of Rs. 1000/- towards calculating the compensation amount, which is not permissible under the Provisions of Section 2M of the Workmen's Compensation Act, 1923.

4. Mr. Dutta, learned Counsel for the appellant, in support of his submission relied on decision in Oriental Insurance Co. Ltd. Vs. Lakhimai Das and Another, , rendered by a Division Bench of this Court, wherein it is held that the daily

allowance should not be included in the monthly wages of the deceased employee (workmen) for the purpose of computing the compensation.

5. According to Mr. Ghosh, learned Counsel" for the respondent, the awarded compensation amount has already been withdrawn on 8.11.2005 and whereas the appeal was admitted only on 26.3.2007. From the impugned judgment, it is found that the learned Commissioner included the fooding allowances to the tune of Rs. 1000/- in the salary of the deceased. The relevant portion of the judgment is quoted below:

From the statement of the O.P. 1 as well as of the PW-1 it could be safely held that the deceased workman was paid salary including of fooding allowances which I find to be a part of his earning at least @ Rs. 4000/- p.m.

Now therefore in view of the above findings the claimant's entitlement for compensation is determined as follows:

50% of Rs. 4000/- x 218.47 : Rs. 4,36,940/- (Rupees four lacks thirty six thousand nine hundred forty) only.

6. The aforesaid calculation is not in accordance with the provisions of the law and also the law laid down by this Court in the aforesaid case of Oriental Insurance (supra) and the same is not sustainable under the Law.

7. Accordingly, the impugned judgment/award dated 9.9.2004, is to be calculated and modified on the basis of admitted monthly salary of the deceased which is Rs. 3000/-. The claimant, thus, would be entitled to compensation as follows:

50% of Rs. 3000/- x 218.47 : 3,27,000/-(Rupees three lacks twenty seven thousand) only.

8. The appellant is liable to pay the aforesaid amount with the interest at the rate of 12% w.e.f. 5.2.2003 till date.

9. Admittedly, the awarded compensation amount of Rs. 4,36,940/- has already been deposited by the Appellant as per the impugned judgment and order dated 3.2.2005. It is provided that the Appellant Insurance Company would be entitled to get back the excess amount paid by it from the claimant after adjustment of the interest amount.

10. The appeal stands allowed with the modification in the original judgment and order as indicated above.