
(1999) 10 OHC CK 0015
In the Orissa High Court
Case No : M.A. No. 280 of 1995

Rankanidhi Padhi

APPELLANT

Vs

Kondha Nayak

RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:

Citation : (2000) 3 LLJ 1456 : (2000) 1 OLR 70

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

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Misra, J.—The respondent had filed W.C. Case No. 130/1991 in the Court of the Commissioner for Workmen's Compensation/ Ganjam, Bcrhampur (in short, the "Commissioner") claiming compensation on account of the death of her daughter on the allegation that the deceased had died in an accident arising out of and in course of employment while working as a labourer in the, rice mill belonging to the present appellant. The present appellant had filed written statement denying the allegations. The Commissioner has awarded a sum of Rs. 24,957.60 paise as compensation.

2. In this appeal, it is contended by the appellant that the Commissioner has not given reasonable opportunity of hearing to the present appellant and the award has been passed illegally.

3. A perusal of the order-sheet indicates that after examination of P.W. 1. the case was being posted for cross-examination of P.W. 1 on several dates, but the case was being adjourned for some reason or the other. Ultimately, on December 26, 1994, the Commissioner passed an order fixing the case to February 28, 1995 for further cross-examination of P.W.2. Thereafter, the order dated February 28, 1995 reads as follows:

"The case taken up today. The advocate for the O.P. is present. The case posted to March 31, 1995 at 11.00 A.M. for Judgment. Direct the parties to appear on

the said date."

On March 31, 1995, the Commissioner passed the judgment directing payment of compensation. Thereafter, an application was filed by the present appellant for setting aside the decision on the ground that the matter had been taken up ex parte. The said petition was rejected by order dated April 24, 1995.

4. A perusal of the aforesaid orders clearly indicates that the Commissioner has committed an illegality by passing the judgment on March 31, 1995. As already indicated, the case had been posted to February 28, 1995 for cross-examination of witness. It further appears that on February 28, 1995, the advocate for the opposite party (present appellant) was present. The order-sheet does not indicate as to whether the witness who was to be cross-examined was present, nor does it indicate that the claimant was present. If the witness was not present, another date should have been fixed for cross-examination of the witness. The Commissioner could not have proceeded to deliver the judgment on the next date. Thus, there is sufficient force in the contention of the appellant that reasonable opportunity has not been given. For the interest of justice, the appeal is allowed and the matter is remanded to the Commissioner for disposal in accordance with law. The witness examined on behalf of the claimant shall be produced for cross-examination and thereafter the claimant may adduce further evidence if he so likes. Opportunity shall also be given to the present appellant to adduce evidence from his side. Both the parties are directed to appear before the Commissioner on November 12, 1999, on which date the Commissioner shall fix an appropriate date for further hearing as per the direction already given.

5. It appears that the awarded amount has been deposited in this Court and the same has been kept in fixed deposit. The said amount along with entire accrued interest shall be sent by the registry to the Commissioner for Workmen's Compensation, Berhampur, who shall keep the entire amount including the entire accrued interest in a fixed deposit for a period of six months. The Commissioner shall try to dispose of the matter by end of January, 2000. After disposal of the matter before the Commissioner, he shall wait for a period of two months to enable the aggrieved party to file appeal and thereafter disburse the amount along with accrued interest to the successful party. It is made clear that the Commissioner shall dispose of the matter in accordance with law on the basis of evidence on record and shall not be influenced by any observation made in the earlier order of the Commissioner, or in the present Judgment.

6. The appeal is accordingly allowed. No costs.