
(2021) 03 OHC CK 0016
In the Orissa High Court
Case No : F.A.O. No.586 Of 2019

Sr.Executive, IFFCO-Tokio General Insurance Co. Ltd.	APPELLANT
Vs	
Sabitri Mandal & Others	RESPONDENT

Date of Decision : 19-03-2021

Acts Referred:

Workmen's Compensation Act, 1923 — Section 30

Citation : (2021) 03 OHC CK 0016

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : A.A.Khan, S.K.Mishra, S.K.Sahoo, S.Sen, S.Sahoo, K.C.Nayak, M.K.Swain, A.Sahu

Final Decision : Dismissed

Judgement

Biswanath Rath,J

1. This is an appeal at the instance of the Insurance Company under Section 30 of the Workmen's Compensation Act, 1923 arising out of judgment passed by the Commissioner for Employees' Compensation-cum-Divisional Labour Commissioner, Jajpur in E.C. Case No.63 of 2014.

2. Short background involving the case is that wife and children as claimants filing the claim application brought the case that there is death of Purusottam Mandal in a vehicular accident alleging to have arising out of and in course of employment while discharging his duty as a helper in TATA ACE bearing Registration No.OR-02-AW-8387 belonging to the opposite party no.1. It is further disclosed that on 01.05.2013 while the deceased was coming in the above TATA ACE in the capacity of helper from Kendrapara side towards Cuttack and on the way near Jagatpur at about 7.30 P.M. the driver of the vehicle parked the vehicle on the left side of the road and both of them went to take their tiffin before they start the onward journey. It is stated that after taking tiffin, while the helper and the driver were returning to their vehicle, at that time one unknown

vehicle dashed the helper Purusottam Mandal and fled away from the spot. After the accident, the deceased lost his sense and being picked up by PCR Van of Jagatpur Police Station, the helper was shifted to S.C.B. Medical College & Hospital, Cuttack. While undergoing treatment, the helper died on 02.05.2013. On the premises that the deceased was about 30 years at the time of accident was working as helper in the vehicle and was getting Rs.7,000/- as monthly salary from the owner, claim application was filed claiming a sum of Rs.6,00,000/- as compensation under the provisions of the Employees' Compensation Act, 1923.

2. On receipt of notice, the owner of the vehicle filed written statement admitting the employment as well as death of the helper in course of and arising out of his employment. The opposite party no.2 on his appearance filed written statement but however strongly disputing the claim of the claimants specifically disputing in course of or arising out of employment. The Insurance Company also taking support of the medical documents as well as police papers and for the disclosures in the Bed-Head ticket attempted to make out a case that there is death on account of taking poison and not involving in course and arising out of employment. Basing on the pleadings available on record, the authority below framed the following issues:

(i) Whether the deceased was an "employee" within the meaning of the E.C.Act, 1923?

(ii) Whether the accident arose out of and in the course of employment of the deceased under OP No.1

(iii) Whether the applicants are entitled to get any compensation? If so, what would be amount of compensation and by whom payable?

3. On the pleadings as well as material available on record, the authority below rendering finding in favour of the claimants, however directed payment of Rs.5,52,510/- by the Insurance Company for there involvement of insurance policy involving the vehicle where the deceased was engaged.

4. Challenging the impugned judgment passed in E.C. Case No.63 of 2014 and referring to the plea of the Insurance Company-opposite party no.2 in the authority below, Sri Khan, learned counsel for the appellant-Insurance Company contended that for the documents taken support as well as U.D. FIR, Final Report, Enquiry Report, Postmortem Report, Inquest Report and dead body challan of the U.D. GR No.170 of 2013 and more particularly, Bed-Head ticket obtained through Right to Information Act by the Investigator of the Insurance Company, attempt was made to make out the case that there involves no accident. It is on the other hand for the material disclosed in the Bed-Head ticket and the police papers, it is claimed that there is clear case of death of the deceased by taking poison. Sri Khan, learned counsel for the Insurance Company also taking the plea that there is no establishment of accident either by the claimants or by the owner of the vehicle, there is no proving of accident. It is in

the premises, a request is being made to interfere in the impugned judgment and setting aside the same. Sri Khan, learned counsel for the Insurance Company also relies on two decisions of the Hon'ble Supreme Court in the case of Malikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Co. Ltd. and Another, 2009 (2) T.A.C. 17 (S.C.) as well as in the case of Mamtaj Bi Bapusab Nadaf and others Vs. United India Insurance Co.Ltd. and others, 2010 ACJ 2661. Taking support of above judgments Sri Khan, learned counsel submitted that on the basis of aforesaid judgments of the Hon'ble Apex Court, a claim is made for there is a ground on behalf of the Insurance Company, this Court may interfere with the impugned judgment and set aside the same.

5. Considering the rival contentions of the parties, this Court finds the claimants have a specific case that while Purusottam Mandal, the deceased was proceeded in TATA ACE bearing Registration No.OR-02-AW-8387 belonging to the owner, namely, Ajij Abdul, on 01.05.2013 the deceased working in the capacity of helper in the said vehicle at about 7.30 P.M. the driver of the said vehicle kept the vehicle on the left side of the road near Jagatpur and the driver and the helper both went to take tiffin.

Pleading further disclosed that after taking tiffin, while the deceased and driver were returning, at that point of time, an unknown vehicle dashed the deceased Purusottam Mandal, deceased and after the accident finding the deceased senseless, he was shifted to S.C.B. Medical College & Hospital by a PCR Van belonging to Jagatpur Police Station. It is also pleaded that while the deceased Purusottam Mandal was undergoing treatment in S.C.B. Medical College & Hospital, Cuttack, he died. To substantiate his case, it appears, the owner as opposite party no.1 also on its appearance in Court submitted that the vehicle was not involved in the case but, however, pleaded that he was the owner of TATA ACE bearing Registration No. OR-02-AW-8387 and the deceased was an employee in the said truck as helper.

The owner has also admitted in the written statement that the accident had taken place on 01.05.2013 and there is also disclosure in the manner of the accident the deceased faced. The owner did not even dispute the liability for payment of compensation but, however, on the premises of valid insurance of the vehicle while the deceased was engaged, the owner claimed compensation to be paid by the Insurance Company. To substantiate their case, the claimants also examined the driver of the vehicle who was accompanied with the deceased at the relevant point of time. This man deposed as P.W.2. From the perusal of the evidence deposed by P.W.2 being driver of the vehicle, it appears that this man in categorical statement submitted that he was driving the Mini Truck involved on the date of accident. He also stated that while moving from Kendrapara to Cuttack side and he parked the vehicle roadside and went to a nearby hotel along with deceased to take tiffin. He was also clearly stated that at the time of returning after taking tiffin, one unknown vehicle came in high speed from Cuttack side and dashed against Purusottam Mandal from his behind, as a result the deceased

sustained severe injuries on his person and being picked up by the PCR Van. It took him to S.C.B. Medical College & Hospital, Cuttack where the deceased died. The Insurance Company even though got the scope of cross-examination, looking to the cross-examination part, this Court finds the Insurance Company failed to demolish any of the claim made by the claimants or the driver even. There is absolutely no rebuttal evidence in the matter of claim of no death on account of in course and arising out of employment. Here, it appears, the Insurance Company took support of medical documents and other documents, as indicated hereinabove. This Court finds, the Insurance Company strongly relied on Bed-Head Ticket. For the opinion of this Court information on the person facing an accident on a Bed-Head ticket cannot be conclusive proof but it is ultimately the post mortem report having relevancy. From the scan of the pleading and evidence of both sides, this Court finds the claimants are able to establish a clear case of death in course and arising out of engagement. It is at this stage of the matter, on perusal and looking to Ext.J, the post mortem report, this Court finds there is the following opinion:

"The above detailed external & internal injuries are antemortem in nature and are due to hard & blunt force trauma. Death is due to crania cerebral injuries sustained. Time since death as the time of autopsy is within about around 6 hrs."

6. Looking to the opinion of the Doctor conducting post mortem, this Court finds the deceased has suffered to death for internal as well as crania cerebral injuries. There is no opinion of the Doctor poison being the cause of death of the deceased. This Court, therefore, declines to entertain the claim of the Insurance Company that there is death on account of taking poison being corroborated by Bed-Head ticket.

7. It is at this Stage, this Court here taking into account the judgment cited by the learned counsel for the Insurance Company in the case of *Malikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Co. Ltd. and Another*, finds there is establishment of a case of even having no casual connection in between employment and accident. Similarly, in the case of *Mamtaj Bi Bapusab Nadaf and others Vs. United India Insurance Co.Ltd. and others (supra)*, this Court here finds while the driver was sitting on a pond, slips into the pond and dies. This is also a case of having even no causal connection between the employment and the accident.

7. Coming back to the case at hand, this Court finds there is clear material establishing through pleading as well as evidence, more, particularly, the evidence of the driver that there is a clear connection with the accident in course of employment. It is in this view of the matter, this Court finds the findings of the Commissioner involved is justified requiring no scope for interfering in the impugned judgment which is confirmed hereby. The awarded amount since is under deposit, the same be released in favour of the claimants along with accrued interest by undertaking the entire exercise within a period of fifteen days from the date of production of certified copy of this judgment.

8. In the result, the appeal stands dismissed. However, there is no order as to cost.