

**(2003) 04 OHC CK 0067**  
**In the Orissa High Court**  
**Case No : M.A. No. 838 of 2001**

|                                                     |            |
|-----------------------------------------------------|------------|
| The Divisional Manager, Oriental Insurance Co. Ltd. | APPELLANT  |
| Vs                                                  |            |
| Oriental Insurance Co. Ltd.                         | RESPONDENT |

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**Date of Decision :** 22-04-2003

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 30

**Citation :** (2003) 04 OHC CK 0067

**Hon'ble Judges :** Pradip Mohanty, J

**Bench :** Single Bench

**Advocate :** A.K. Mohanty, M.C. Nayak and D.C. Dey, for the Appellant; L. Samantaray and D.K. Behera, for the Respondent

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## Judgement

Pradip Mohanty, J.—This is an appeal u/s 30 of the Workmen's Compensation Act, 1923 challenging the judgment dated 27.3.2001 passed by the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Cuttack in W.C. Case No. 123-D/1998.

2. The case of the claimant-Respondent No. 1 is that he was engaged as coolie in Truck No. ORK 9482 belonging to Respondent No. 2. The truck met with an accident on 31.12.1997 and due to the said accident he received injuries on his person which arose out of and in course of his employment.

3. The case of the Respondent No. 2, in his written statement, is that the claimant was engaged as coolie in the truck which met with an accident resulting in injuries to the claimant-Respondent No. 1. But he disputed the age of the claimant-Respondent No. 1. The Appellant opposite party in his written statement denied all the averments made in the claim application and called upon the Respondents to prove their case by adducing evidence and producing documents.

4. In order to prove the case, the claimant has examined as many as two witnesses including himself and also produced some documents including the

police papers, charge-sheet and seizure list marked as exhibits. The defence has examined one Doctor as O.P.W.2 who is a retired Professor.

5. After considering both the oral and documentary evidence, the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner came to a conclusion that the Appellant was working as a coolie under Respondent No. 2 in his truck and he sustained injuries in an accident on 31.12.1997 which arose out of and in course of his employment. The trial Court assessed the present disability and loss of earning capacity of the claimant-Respondent to the extent of 25 percent and awarded Rs. 57,183/- as compensation.

6. Learned Counsel for the Appellant submits that the Commissioner has acted illegally in gross violation of principles of natural justice by totally ignoring the opinion of the doctor examined by the Insurance Company. He further submits that there is no proof regarding the loss of earning capacity of the claimant. He also contended that the finding of the Commissioner regarding the monthly wage and loss of earning capacity of the claimant is not backed by any evidence.

7. Now the short question in this appeal is as to whether the accident took place in course of his employment and whether the present disability of the claimant Respondent is to the extent of 25 % which is permanent in nature and has lost his earning capacity accordingly.

8. The evidence on record reveals that the injured/claimant was engaged as a coolie in the offending vehicle and he sustained injuries in an accident on 31.12.1997 which arose out of and in course of his employment and thereby sustained 25 % disability which is of permanent nature and has lost his earning capacity accordingly. The assessment of the Commissioner for Workmen's Compensation is correct and there is no material before this Court to assail the same. Moreover, these are also findings of fact. This Court has no jurisdiction to interfere in the finding of facts.

9. In the midst of hearing, the learned Counsel for the Appellant-Insurance Company submitted that the Commissioner had assessed excessive compensation and the rate at which the Commissioner has calculated was arbitrary. The learned Counsel for the claimant-Respondent has, however, agreed that if a reasonable amount is deducted, the claimant may not have any serious objection. Accordingly to meet the ends of justice, the amount of compensation payable by the Appellant is assessed at Rs. 35,000/- (Rupees thirty five thousand). It is submitted that the Appellant has deposited an amount of Rs. 57,183/- (Rupees fifty seven thousand one hundred eighty three) before the Registrar (Judicial), Orissa High Court. It is, therefore, directed that the Respondent-claimant shall be at liberty to withdraw the aforesaid amount of Rs. 35,000/- along with accrued interest within two months. The balance amount out of the awarded amount deposited by the Appellant shall be returned to the Appellant.

Accordingly, the award is modified to the aforesaid extent and is disposed of as

such.