

NAFR**HIGH COURT of CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1757 of 2016**

The Oriental Insurance Company Branch Office Laxman Avenue, Medical College Road Jagdalpur Bastar, Chhattisgarh, through the Divisional Manager, Oriental Insurance Company Ltd., Rama Trade Center, Opposite Rajiv Plaza Old Bus Stand Bilaspur, Chhattisgarh(Insurer)

---- Appellant**Versus**

1. Fagnu Ram S/o Gudiya, aged about 50 years, R/o Gangapara Village- Badrenga, Tehsil- Lohandiguda District Bastar, Chhattisgarh
2. Jagdish S/o Fagnu, aged about 16 years, minor through guardian father Fagnu Ram, R/o Gangapara Village- Badrenga, Tehsil- Lohandiguda District Bastar, Chhattisgarh
3. Rambati D/o Fagnu, aged about 15 years, minor through guardian father Fagnu Ram, R/o Gangapara Village- Badrenga, Tehsil- Lohandiguda District Bastar, Chhattisgarh
4. Raiyo S/o Fagnu, aged about 12 years minor through guardian father Fagnu Ram, R/o Gangapara Village- Badrenga, Tehsil- Lohandiguda District Bastar, Chhattisgarh(Claimants)
5. Harmesh Tiwari S/o Mithelesh Tiwari Supervisor M/s Prithivi Developers Lukad Building Jain Mandir Road Jagdalpur District Bastar Jagdalpur, Chhattisgarh
6. M/s Prithivi Developers, through Branch Manager, Lukad Building Jain Mandir Road Jagdalpur District Bastar Jagdalpur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Ghanshyam Patel under instruction of Shri Abhishek Sinha, Advocate
For Respondents 5 to 6	:	Shri Shobhit Koshta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/07/2017**

Heard on I.A. No.01/16 for condonation of delay in filing the appeal.

2. Taking into consideration that the delay in filing of the appeal is of 96 days and the reasons assigned in the said application are found to be satisfactory, I.A. No.01 is allowed and the delay of 96 days in filing the appeal stands condoned.

3. Heard the appeal on admission.

4. The present appeal has been preferred by the Insurance Company against the award of the Commissioner Employee's Compensation Act Labour Court, Jagdalpur dated 22.06.2016 in Case No. 44/2014/DWC Act/Fatal.

5. The case of the claimants i.e. respondents 1 to 4 is that the deceased is the daughter of respondent no.1 and sister of respondents 2 to 4. The deceased was an employee with the respondents 5 & 6 and was working as a daily wage worker. The deceased Sambati met with an accidental death on 25.09.2013 when she fell down from the upper floor during the construction work. The respondents 1 to 4 moved a claim application before the Commissioner, Employee's Compensation Act, Jagdalpur where the case was registered as Case No.44/2014/DWC Act/Fatal.

6. Respondents 5 & 6 including the appellant entered appearance and submitted their respective written statement. The employer i.e. respondents 5 & 6 have admitted the employment part and also stated that the deceased employee was being paid the wages of Rs.200/- per day. The Insurance Company had filed their reply denying all the contentions put forth by the claimants as well as the employer particularly in respect of the employment, the accidental death and the wages and also had pleaded breach of policy condition.

7. After conclusion of the evidence, the Commissioner for Workmen Compensation vide impugned award dated 22.06.2016 passed an award allowing the claim application holding that the claimants are entitled for compensation of Rs.5,75,562/- to be paid within a period of 45 days from the

date of award. In addition, penalty of Rs. 50,000/- has also been saddled upon the employer and the same has also been directed to be paid within a period of 45 days. It has been ordered that in the event the compensation as well as the penalty amount is not deposited within a period of 45 days, the amount shall carry interest @ 12% from the date of accident.

8. It is this award which is under challenge.

9. The sole ground of challenge to the impugned award by the appellant is that the calculation of the wages made by the Court below being incorrect, the Insurance Company cannot be saddled for making the entire compensation as the premium that was paid or the policy which was obtained by the employer was in respect of 17 employees and their approximate salary was stated to be somewhere around Rs.22,446/- and if the said amount is distributed among 17 persons, the salary per worker would fall to Rs.1321/-. Therefore, the calculation of wages made by the Labour Court is erroneous and the entire liability saddled upon the Insurance Company is also bad in law and the same deserves to be set aside.

10. From the record it reflects that the non-applicant witness no.2 namely Amar Chand Lukad, in his cross-examination has admitted the fact that the deceased Sambati was their employee, she was getting the wages of Rs.200/- per day and that they also maintain documents pertaining to the payment of wages. Further from the record it also appears that the appellant Insurance Company has not led any evidence before the Tribunal to substantiate their defence. In the absence of any cogent evidence led by the Insurance Company and considering the evidence of the employer admitting the accident, the death, the employment and the wages part, this Court has no hesitation in reaching to the conclusion that the Labour Court was justified in passing the impugned award. Thus, this Court does not find any substantial

question of law to have been raised or having not considered by the Court below.

11. In view of the same, the present appeal being devoid of merits, deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**