

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.487 of 2009

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The Oriental Insurance Company Ltd., through Sri B. Mallick, Regional Manager, its authorized signatory cum Duly Constituted Attorney, Regional Office, Pir Mohani, P.O. and P.S.-Kadamkuan, Patna.

.... Appellant

Versus

1. Hamida Khatoon, W/o Late Md. Nizam alias Kalpu & 3 others, resident of village – Loot Mahalla, Line Bazar, P.S.-K. Hat, District-Purnia.
2. Smt. Amrita Mishra, W/o Satya Narayan Mishra, Vill-Naya Tola, K. Hat, District-Purnia.
3. The State of Bihar, through the Commissioner cum Secretary, Labour Department, Bihar, Patna.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Rana Randhir Singh, Advocate.

For the Respondent/s : Mr. Diwakar Upadhya, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 16-05-2018

Heard learned counsel for the appellant and learned counsel for the respondent no.2-owner of the offending vehicle on this Miscellaneous Appeal. None turned up on behalf of respondent nos. 1 and 3 despite service of notice.

2. This Miscellaneous Appeal has been preferred against the order dated 06.02.2008 passed by Deputy Labour Commissioner cum Commissioner for Workmen Compensation, Purnia in C.W.C. No. 7 of 2006 whereby the Deputy Labour Commissioner cum Commissioner for Workmen Compensation directed the appellant-Oriental Insurance Company Limited to pay compensation to the tune of Rs. 2,58,186/- to the claimant-respondent no.1.



3. Factual Matrix of the case is that the claimant-respondent no.1 Hamida Khatoon filed C.W.C. No. 7 of 2006 under Workmen Compensation Act for awarding compensation on account of death of her son Md. Shamim in the motor vehicle accident.

4. The opposite parties of the said case including the appellant put their appearance in the case and filed their written statement. Both the claimant and appellant adduced their ocular as well as documentary evidence in buttress of their respective case.

5. After hearing the parties and perusing the record, learned Deputy Labour Commissioner cum Commissioner for Workmen Compensation passed the aforesaid order as detailed in earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid order, appellant-Oriental Insurance Company Limited has preferred this miscellaneous appeal.

7. The appellant has assailed the aforesaid order only on the ground that under the Workmen Compensation Act, it is the Labour court who has got jurisdiction to decide the contested case and Deputy Labour Commissioner has no jurisdiction in this regard. Hence, the impugned order passed by the Deputy Labour Commissioner in this contested case is beyond jurisdiction and is liable to be set aside.



8. Learned counsel for the respondent no.2 submitted that the issue involved in the appeal has been referred to the Larger Bench in M.A. No. 215 of 2008, whereupon it is submitted by learned counsel for the appellant that the aforesaid appeal has now been dismissed as withdrawn and now the order passed by this court in **Branch Manager, United India Insurance Co. Ltd. v. Sajan Ram and Anr.** reported in **2007 (2) PLJR 593** holding the Deputy Commissioner not authorized to hear the contested case is prevailing.

9. From perusal of the record, it appears that this is a contested case as both the parties filed their written statement and adduced their evidence in buttress of their respective case. In the contested case, it is the Labour Court who has got jurisdiction to decide it and pass any order. Deputy Labour Commissioner has no jurisdiction to entertain and decide the contested case. This Court in **Oriental Insurance Company v. Ram Pyara Paswan and Anr.** reported in **2007 (2) PLJR 141** and in **Branch Manager, United India Insurance Co. Ltd. v. Sajan Ram and Anr.** reported in **2007 (2) PLJR 593** has held that when the claim is contested, matter has to be settled by the Commissioner appointed by the State Government. It is beyond the jurisdiction of Deputy labour Commissioner-cum-Commissioner Workmen Compensation to deal with such case and pass order for compensation. Deputy Labour



Commissioner-cum-Commissioner, Workmen Compensation is empowered to deal with non-contested cases only arising under the Act and once such a contest was set up, he was bound in law to refer the matter to the Labour Court having jurisdiction over the matter for adjudication.

10. Hence, the impugned order passed by Deputy Labour Commissioner cum Commissioner for Workmen Compensation is beyond jurisdiction and accordingly it is set aside. The case is remitted back to the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation, Purnia for referring the dispute to the Labour Commissioner for proper adjudication on all the points. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	18.05.2018
Transmission Date	

