

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.22 of 2019

(From the judgment dated 30th July, 2018 passed by the Commissioner for Employees Compensation-cum-Deputy Labour Commissioner, Cuttack in E.C.Case No.510-D/2011)

**Divisional Manager,
National Insurance Co. Ltd.**

.....

Appellant

Versus

F@ P. Jyoti Reddy and others

.....

Respondents

Advocate(s) appeared in this case :-

For Appellant : Mr.P.K.Mahali, Advocate

For Respondents : Mr. B. Mohanty, Advocate
for Respondent Nos.1 to 5

CORAM : JUSTICE B.P. ROUTRAY

सत्यमेव जयते

JUDGMENT
20th June, 2022

B.P. Routray, J.

1. The present appeal by the Insurer-Appellant is directed against the judgment dated 30th July, 2018 of the Commissioner for Employees Compensation-cum-Deputy Labour Commissioner, Cuttack in E.C.Case No.510-D/2011 wherein compensation to the tune of Rs.5,52,510/- has been granted to the claimants on account of death of the deceased in

course of and arising out of his employment as a labourer under Respondent No.6.

2. The claimants are the wife, old parents and children of the deceased. The deceased died on 23rd October, 2011 at the project site of ARSS Infrastructure Project Ltd. at Bhubaneswar due to accidental electrocution. The deceased was 40 years old and the compensation has been calculated taking his monthly income at Rs.6,000/-.

3. The Appellant challenges the award mainly on the grounds that, when the deceased died at Bhubaneswar Project Office, the insurance coverage was taken for the project work of Cuttack-Paradeep Road and as such the same is not covered within the insurance package. Secondly, as per the policy, the insurance was taken for the rate of wage at Rs.2281.25 per month for the workman and therefore, the income of the deceased at Rs.6,000/- per month is beyond the coverage amount and for that excessive amount, the Insurer-Appellant cannot be held liable which should be paid by the employer.

4. Before delving further, it needs to be mentioned at the outset that the employment of the deceased under Respondent No.6, the ARSS Infrastructure Project Ltd. as a labourer is not disputed. As per the averments of the claimants and Respondent No.6, the deceased at that

relevant time had been to Bhubaneswar site office in connection with some ancillary work to the Project concerned i.e., for Cuttack-Paradeep road. So in other words, neither the claimants nor the owner/employer dispute the employment of the deceased for the project work of Cuttack-Paradeep Road and his death at Bhubaneswar Project Office. What is contended by the Insurer that the deceased was not an employee in respect of the insured project work of Cuttack-Paradeep Road is not found substantiated with material facts. Neither the insurer did adduce any evidence nor the employer too, to rebut the contention of the claimants. The insurer taking advantage of the death of the deceased at Bhubaneswar Project Office is developing his case as such without any supporting materials. So, in absence of any material in support of the Appellant's contention regarding death of the deceased unconnected to Cuttack-Paradeep Road Project work cannot be acceded for the mere reason that the death happened at Bhubaneswar Project Office.

5. Next coming to the contention with regard to the income of the deceased and the insurance coverage, admittedly the wage amount covered within the policy is Rs.2281.25 and it is the further admitted case of the employer and the claimants that the deceased was getting Rs.6000/- per month. The status of the deceased as an unskilled labourer

also remains undisputed. The rate of minimum wages prescribed during October, 2011 for unskilled labourer was Rs.90/- per day and therefore, the monthly rate of wage mentioned in the insurance policy is found matching to the said amount. But it is the admission of the employer that the deceased was getting Rs.6,000/- per month. Thus, keeping in view of such admission of the employer (Respondent No.6), no illegality is seen in fixing the monthly rate of wage of the deceased at Rs.6,000/- by the learned Commissioner. But the question is, whether the Insurance Company would be held liable for such compensation amount calculated upon the enhanced monthly wage amount, or his liability should be confined to the amount as per the contract in the insurance policy. When the rate of wage as per the insurance policy does not violate the minimum wage rate prescribed by the competent authority, and as per admission of the employer the labourer (employee) was paid such enhanced wage, which is without any legal bar, then it would be inappropriate to say that the Insurer would only be liable to such extent of amount as per the contract because it is all about welfare of the poor employee (workman). As such, the insurer is held liable to pay the entire compensation amount since the validity of the insurance policy is unquestioned.

6. Learned counsel for the Appellant further contends that the direction for payment of interest @12% per annum upon default payment within thirty days from the date of award is unsustainable for clear provision enshrined in Section 4-A of the E.C.Act. In the case of *Pratap Narain Singh Deo vs. Srinivas Sabata and another*, AIR 1976 SC 222 and *Kerala State Electricity Board & another vs. Valsala K. & another*, AIR 1999 SC 3502, the position has been settled that the interest is payable on the compensation amount from the date of accident. This Court also in the case of *Senior Divisional Manager, National Insurance Company Ltd. vs. Suresh Kumar Behera and another*, 2019(2) T.A.C. 461 (Ori.) and *Deputy Chief Engineer (Construction-I), East Coast Railway vs. K.Summon Reddy and another* (FAO No.535 of 2014 disposed of on 4th May, 2022) have clarified the position and settled the law that the interest is payable from the date of accident.

7. In the result, the appeal is dismissed as no reason is found in favour of the Insurer-Appellant to interfere with the impugned award.

(B.P.Routray)
Judge