

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.460 of 2014

***The Branch Manager,
M/s.Oriental Assurance Co. Ltd..***

***.... Appellant
Mr.G.P.Dutta, Advocate***

-versus-

Arjun Sameli and others

.... Respondents

***Mr.S.K.Dalei, Advocate for Respondent No.1
Mr.B.Mohanty, Advocate for Respondent No.2
Mr.S.Singh, Advocate for Respondent No.3***

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
09.11.2022**

Order No.

13. 1. The matter is taken up through Hybrid mode.
2. Heard Mr. Dutta, learned counsel for the Insurer-Appellant and Mr. Dalei, learned counsel for claimant-Respondent No.1, Mr. Mohanty, learned counsel for Respondent No.2 and Mr.Singh, learned counsel for Respondent No.3, the principal employer.
3. Present appeal by the Insurer is directed against impugned judgment/award dated 6th May, 2014 passed by the Commissioner for Employee's Compensation and Assistant Labour Commissioner, Jeypore, in E.C. Case No.07 of 2013, wherein compensation to the tune of Rs.4,72,944/- has been granted on account of injuries sustained by the Claimant in course of his employment as a fitter engaged in wagon repairing work under Respondent No.2.

4. The main contention of the Insurer, as submitted by Mr.Dutta, is that the injured-claimant got reemployment since July, 2013 under the same employer and got wages at the rate of Rs.402/- per day. Therefore, he did not sustain any loss of income and accordingly, the amount of compensation should be reduced to a suitable extent.

5. It reveals from the copy of the engagement order dated 31st July, 2013 that, the injured-claimant, namely, Arjun Sameli was reemployed with daily wage of Rs.402.46 paisa under the same employer-Respondent No.2. This engagement order as produced by Mr. Dutta is not disputed by the Respondents. It is further seen from the deposition of injured-claimant that he has admitted in cross-examination regarding his reengagement under the Respondents and getting remuneration through bank account.

6. Perusal of the impugned judgment reveals that the Commissioner has computed the loss of income taking 50% permanent disability. Since the fact of reemployment of the injured-claimant is not disputed, considering the date of accident, nature of injuries and the date of re-employment in the same establishment, in the opinion of this Court, a consolidated sum of Rs.5,00,000/-(Five lakhs) would suffice the purpose. It needs to be mentioned here that it is true that continuation in employment would not always amount to loss of wages or loss of earning capacity, but depending on the facts the actual loss of earning capacity can be adjudged. In the instant case, keeping in view the evidence of injured-claimant that he was re-employed and earning of Rs.402/- per day with effect from July, 2013, the aforesaid amount of compensation would suffice the purpose.

7. Since the amount of compensation to the tune of Rs.4,72,944/- has already been deposited by the Appellant before the Commissioner, the balance amount of Rs.27,056/-(Twenty seven thousand zero fifty six) be deposited within a period of two months from today and the entire amount including the accrued interest be disbursed in favour of the injured-claimant without further delay.

8. Copies of depositions and the engagement order produced by Mr. Dutta are kept on record.

9. The appeal is accordingly disposed of.

10. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

