

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.88 of 2019

The Managing Director, Ms Kalinga Appellant
Automobiles Pvt. Ltd.

Mr. R.K. Mohapatra, Advocate

-versus-

Manas Kumar Senapati Respondent
Mr. B.N. Rath, Advocate

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
21.04.2022

Order No.

12.

1. Heard Mr. R.K. Mohapatra, learned counsel for the Appellant-employer and Mr. B.N. Rath, learned counsel for the Respondent-claimant.

2. Present appeal by the employer is directed against the judgment and award dated 24.9.2018 passed in E.C. Case No.383-D/2013 by the Commissioner for Employee's Compensation-cum-Asst. Labour Commissioner, Cuttack wherein compensation to the tune of Rs.7,86,492/- including interest has been granted to the claimant-Respondent on account of injury sustained by him in course of and arising out of the employment as a salesman.

3. The main contention of challenge by the Appellant is that the claimant-employee being covered under the Employees State Insurance Act and the statutory deduction has been paid to ESI

Corporation, the present application under the Employees Compensation Act ('E.S.I. Act') is not maintainable in view of Section 53 of the E.S.I. Act.

4. To substantiate the challenge, learned counsel for the Appellant takes attention of this Court to the documents annexed under Annexure-4 series and exhibited by the Appellant before the learned Commissioner. It is pointed out that the declaration form being submitted by the employer coupled with the statement of deduction of statutory amount for different employees including the present employer, no further doubt remains regarding coverage of the claimant – employee under the E.S.I. Act.

5. Learned counsel for claimant – Respondent submits in reply that the Employer having not submitted the accident report till date, no claim for compensation could be processed by ESI Corporation in respect of the claimant. The claimant obtained some documents under the RTI Act pending appeal and has filed the same disclosing information in letter dated 16.3.2020 and 19.12.2019 supplied by ESI Corporation, Bhubaneswar Branch. It reveals that the risk of the injured-claimant on the date of accident i.e. on 11.3.2010 is within the coverage of insurance under the E.S.I. Act. It further reveals that the employer, i.e. the present Appellant has not submitted any accident report in respect of the claimant till 16.3.2020. Those documents as filed by the claimant-Respondent, i.e. letters dated 16.3.2020 and 19.12.2019

along with the connected application are taken on record and marked as Ext.X and X-1.

6. It needs to be mentioned at the outset that, the employment of the claimant, his income and accident in course of employment are not disputed by the Appellant – Employer.

7. As stated above, it reveals that the accident of the claimant-Respondent is within the coverage under the E.S.I. Act in view of the clear information supplied by the corporation in their reply dated 19.12.2019. Therefore, the contention put forth by the Appellant holds well that Section 53 of the E.S.I. Act shall operate as a bar against maintaining the claim application under the Employees Compensation Act. So, no further dispute remains on the same.

8. In the given facts of the instant case, the accident took place on 1.3.2010 and till date no accident report was submitted by the employer in respect of the claimant-injured as per the information supplied by the E.S.I. Corporation. Therefore, considering the plight of the poor employee, who suffered injury resulting amputation of his right leg below the knee, it is felt apposite in such atypical circumstances of the case, while holding that the application at the instance of the claimant under the E.C. Act (in E.C. Case No.383-D/2013) is not entertainable, to direct to the employer-Appellant to pay the amount of Rs.7,86,492/- as directed by the learned Commissioner within a period of three months from today without any consequential interest. At the

same time, the claimant is at liberty to raise the claim for risk coverage of the accident in question under the provisions of the E.S.I Act before the appropriate authority within said period of three months, subject to required compliance by the employer. In case any amount is granted for the accident by the appropriate authority under the E.S.I. Act, the same shall be adjusted towards the amount already paid in terms of the direction stated above.

9. At this stage, it is submitted that the entire award amount has already been deposited before the learned Commissioner by the Appellant in the meantime. As such, in view of the direction stated above, a sum of Rs.7,86,492/- out of the said amount be released in favour of the claimant and the rest amount towards interest accrued thereon be refunded to the employer within a period of three months.

10. Accordingly, the FAO is disposed of.

11. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge