

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.28 of 2017

***Divisional Manager, M/s. New India
Assurance Company Ltd.***

.... Appellant

Mr. Nayan Behari Das, Advocate

-versus-

Laxmidhar Sahoo and Another

.... Respondents

Mr. P.K. Mishra, counsel for Respondent No.1

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

**ORDER
06.01.2022**

Order No.

09. 1. Heard Mr. N.B. Das, learned counsel for the Appellant and Mr. P.K. Mishra, learned counsel for the claimant – Respondent No.1.
2. The present appeal by the insurer has been directed against the judgment dated 22nd November, 2016 of the learned Commissioner for Employee's Compensation-cum-Assistant Labour Commissioner, Cuttack in E.C. Case No.306-D of 2013.
3. In the impugned judgment the learned Commissioner upon adjudicating the dispute has directed for grant of compensation to the tune of Rs.4,79,405/- on account of injuries sustained by the claimant in the accident dated 13th July, 2013.
4. The case of the claimant – Respondent No.1 before the learned Commissioner is that on the date of accident he was working as a driver of the bus bearing Registration No.OR 05 AH 9933 and

sustained injuries on his person due to the accident in course of employment.

5. It is submitted on behalf of the Appellant that admittedly present Respondent No.1 was not driving the bus at the time of accident and another driver namely Santosh kumar Sahoo was driving the bus who has been charge-sheeted for criminal prosecution in the police case. It is thus contended that present Respondent No.1 – claimant having not driving the bus at the time of accident, cannot be considered as driver of the vehicle for the purpose of employees compensation.

6. On the other hand, learned counsel for the claimant-Respondent submits that since the owner has admitted the claimant as his driver of the vehicle employed under him as such who admittedly sustained injuries due to the accident, the contention of the Appellant is without merit particularly when the insurance is valid in respect of one driver and one helper.

7. Having heard both parties and after perusal of the impugned award, it is seen that the learned Commissioner has categorically discussed the issue in the award. It is observed by the learned Commissioner that as per the pleadings and evidence of the owner (OPW-1) he has admitted that at the time of accident the present claimant Laxmidhar Sahoo who was the driver of the vehicle was sleeping in the rest shed of the bus and the bus was driven by the substitute driver being a long-run night coach bus.

8. It is further seen from the copy of deposition of OPW-1, produced in Course of hearing that, the owner has admitted in his

evidence to the effect that, *“due to the accident his driver, helper and other passengers were sustained injuries.....”* Again in the cross-examination it is further stated by him that, *“Laxmidhar Sahoo sustained injuries while driving his bus No.OR 05 AH 9933. I have paid premium to cover liability of one driver in my vehicle including one conductor, one cleaner and two some passengers as per capacity.”*

9. Thus the facts become clear that, it is the case of the claimant as well as the owner that the vehicle being a long-run night coach bus, two drivers were employed whereas the insurance policy was in respect of one driver. Admittedly the driver who was driving the bus at the time of accident and has been charge-sheeted in the police case, did not sustain any injury but the driver who was sleeping in the rest shed of the bus had sustained injuries in the accident. Therefore, no more quarrel remains there with regard to acceptance of the status of the injured as the driver of the bus within the coverage of insurance policy. Accordingly the contention raised by learned counsel for the Appellant is rejected.

10. Upon further perusal of the impugned judgment no fault is noticed in respect of determination of quantum of compensation. The only challenge advanced in that respect is the separate assessment of injury made by the doctor appointed on behalf of the insurer has not been considered by the Commissioner. Nonetheless the doctor by whom the assessment of injury was made being admittedly not the treating doctor nor examined as a witness, the assessment made by him has no evidentiary value. Thus without finding any fault in the

approach of the Commissioner in determining the quantum of compensation, this Court declines to interfere with the same.

11. Resultantly, the appeal is dismissed.

12. As submitted by both parties, since the entire award amount has been deposited before the learned Commissioner, the same be disbursed along with interest accrued thereof in favour of the claimant – Respondent without delay.

13. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

