

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.97 of 2022

***Orissa State Road Transport
Corporation***

.... ***Appellant***

Mr. Braja Kishore Sahoo, Advocate

-versus-

Ramanikanta Mishra

.... ***Respondent***

Mr. P.K. Mishra, Advocate

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
29.9.2022

Order No.

- 02.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. B.K. Sahoo, learned counsel for the Appellant and Mr. P.K. Mishra, learned counsel for claimant – Respondent.
 3. Present appeal by the employer is directed against the impugned award dated 27th January, 2022 passed by the learned Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Jagatsinghpur in E.C. Case No.24 of 2019 wherein compensation to the tune of Rs.10,45,904/- including interest has been awarded on account of injuries sustained by the claimant arising out of and in course of his employment as driver of the bus belonging to the Appellant.
 4. Mr. Sahoo submits that the Commissioner at Jagatsinghpur proceeded in the case without having jurisdiction to entertain the same

and as such the impugned award is vitiated with jurisdictional error and liable to be set aside.

5. Mr. Mishra in reply submits that in terms of the provisions contained in the EC Act, the authority of the Commissioner at Jagatsinghpur cannot be denied as without jurisdiction and the same is curable.

6. Section 20 of the Employee's Compensation Act, 1923 prescribes that, the Government is authorized to appoint by way of notification such number of Commissioners for such areas, as may be specified in the notification. The first proviso to sub-section (1) of Section 21 postulates that, no matter before a Commissioner other than the Commissioner having jurisdiction over the area in which the accident took place, shall be processed without giving notice in the manner prescribed to the Commissioner having jurisdiction over the area and the State Government concerned.

7. Further the Employee's Compensation (Venue of Proceedings) Rules, 1996 provides under the proviso to Rule 3(1) that, no matter shall be processed before or by a Commissioner other than the Commissioner having the jurisdiction over the area in which the accident took place without his giving notice in Form-A to the Commissioner having jurisdiction over the area and the State Government concerned.

8. Again, Rule 22 of the Employee's Compensation Rules, 1924 speaks that, when it appears to the Commissioner on receiving an application that it should be presented to another Commissioner, he

shall return it to the applicant endorsing the date of presentation and return with reasons thereof and designation of the Commissioner to whom it should be presented and further, if it appears at any subsequent stage, then it shall send the application to the Commissioner empowered to deal with it.

9. A cumulative reading of all those provisions gives the inference that when an application is presented at a wrong venue other than the Commissioner having jurisdiction over the place of accident, the same would be either returned or send back to the Commissioner at appropriate place or the same Commissioner to whom the application was presented may continue with the proceeding after giving the information / notice in Form-A to the Commissioner at proper place and the State Government concerned.

10. The Hon'ble Supreme Court in the case of ***Morgina Begum v. Managing Director, Hanuman Plantation Ltd., AIR 2008 SC 199*** have observed that, “XX Labour statutes are for the welfare of the workmen. ...XX.. .. In case of doubt the interpretation in favour of the worker should be preferred. ... XX A claimant can apply before the commissioner having jurisdiction over the area where the claimant ordinarily resides, and it is not always necessary to prefer a claim petition where the accident has taken place. This is for the facility of the workmen and advances the cause of welfare of the workmen. XX Section 21(1)(b) read with its proviso is beneficial legislation for the welfare of the workmen and by the above interpretation, it will advance the cause of the workmen.”

11. Coming back to the facts of the present case it is seen that the claimant resides at Jagatsinghpur. The Appellant – Corporation did not appear in the proceeding despite service of notice upon it by the Commissioner and accordingly was set *ex-parte*. It is contended that the Corporation sent intimation on 17th January, 2022 to its Lawyer to contest the case before the Commissioner and the Commissioner did not accept steps taken by their Lawyer. It is seen that the impugned award is dated 27th January, 2022. This means only 10 days before the award was pronounced, intimation was sent by the Appellant – Corporation to its Lawyer. The Appellant does not bother to explain the date of receipt of notice by it from the Commissioner nor did it say specifically in the memorandum of appeal when their Lawyer went to the Commissioner to appear and when did he took steps for appearance. In absence of such specific details in the averments, the contention raised by the Appellant that the Commissioner did not accept their appearance is found bogus and without substance.

12. On jurisdiction, it needs to be mentioned here that the accident took place under Puintala police station in the district of Bolangir and the claimant, who was working as a driver of the bus under the Appellant, started journey from Bhubaneswar to Bhawanipatna. So, it is clear that the Commissioner at Jagatsinghpur did not have the jurisdiction to entertain the application. But for the discussions made above, that itself will not vitiate the proceeding and the effect of the award cannot be nullified for that reason only. The objection raised with regard to jurisdiction which appears to be curable defect would not vitiate the proceeding before the Commissioner at Jagatsinghpur.

As such, all such contentions raised on behalf of the Appellant is rejected and the impact of the impugned award remains valid.

13. Next coming to the question of merit regarding grant of compensation and its quantum, Mr. Sahoo, learned counsel submits that the injury and the consequential expenses thereof are not established through adequate evidence on record. As per him in absence of examination of the treating doctor the expenses incurred by the claimant is not proved.

14. Upon perusal of the impugned judgment it reveals that the accident and sustenance of injuries has been proved on record by the claimant by adducing oral as well as documentary evidence. Besides the statement of the claimant he relies on the police papers including copy of the F.I.R. and injury report. The Appellant does not dispute the extent of injury as per the claim of the injured. Therefore taking note of such injuries the expenses stated to have incurred by the claimant are not seen improbable particularly keeping in view the medical papers submitted on record.

15. However, it is seen that the Commissioner while assessing the income of the injured took the same at Rs.10,000/- per month which is beyond the limit prescribed under the EC Act. The same needs to be reduced to Rs.8000/- per month as the upper cap prescribed under Section 4(1) of the E.C. Act. No dispute with regard to age of the injured being raised, the amount of compensation is calculated at Rs.4,800/- (60% of remuneration) x 153.09 (age factor) x 80% = Rs.5,87,865/-. Adding Rs.56,945/- thereto towards medical expenses as counted by the Commissioner the total amount comes to

Rs.6,44,810/-. Adding consequential interest thereto a consolidated amount of Rs.8,76,941/- is thus determined as total compensation payable by the Appellant.

16. In the result the appeal is disposed of with a direction to the Commissioner to disburse a consolidated amount of Rs.8,76,941/- (eight lakhs seventy-six thousand nine hundred forty-one) along with interest accrued thereon from the amount deposited by the Appellant before it within a period of eight weeks from today and refund the balance amount along with proportionate accrued interest to the Appellant.

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

(*B.P. Routray*)
Judge

M.K.Panda