

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.399 of 2018

National Insurance Company Ltd. ***Appellant***

Mr. A. Dash, Advocate on behalf of
Mr. Gautam Mishra, Senior Advocate

-versus-

Achyut Kumar Nath and another ***Respondents***

Mr. B. K. Mohanty, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
11.01.2022

Order No.

13.

1. This matter is taken up through video conferencing.
2. Heard Mr. A. Dash, learned counsel on behalf of Mr. G. Mishra, learned Senior Advocate for the Appellant as well as Mr. B.K. Mohanty, learned counsel for the Respondent No.1.
3. The present appeal filed by the insurer is directed against award dated 26.12.2017 passed in E.C. Case No. 428-D/16 by the Commissioner for Employee's Compensation-cum-Asst. Labour Commissioner, Cuttack wherein an amount of Rs.6,22,663/- has been directed to be paid as compensation to the claimant on account of his injury sustained in course of his employment on 4.9.2016.

4. The case of the claimant was that he was working as a helper in the Truck bearing Registration No.OR-06-D-1565 and on the date of accident when he was going in the said vehicle from Chandikhole towards Cuttack, on the way near Chhatia while he was crossing the road after getting down from the Truck to take his dinner, an unknown motorcycle coming in a high speed dashed against him causing fracture injury on his left leg and other multiple injuries. He has undergone treatment for different periods and incurred expenses.

5. Mr. A. Dash, submits that the cause of accident has no proximity nexus with the employment of the claimant as a helper of the vehicle, i.e. the Truck and further, the Commissioner has wrongly assessed the percentage of disability in arriving at loss of future earning capacity. It is also submitted that the Commissioner has computed the compensation taking the monthly income of the claimant at Rs.7000/- erroneously which has not been proved on record.

6. Having heard learned counsel for the claimant-Respondent No.1 and upon perusal of the impugned award, it is seen that the claimant in order to prove his injury and percentage of disability examined one Doctor as P.W.2. The said Doctor as P.W.2 has stated in his evidence that the claimant sustained disability to the extent of 60% resulting loss of earning capacity to the extent of 70% which is permanent in nature. Further the owner of the vehicle was examined as OPW-1, who has stated about the

employment of the claimant as well as monthly remuneration received by the claimant.

7. The insurer on the other hand examined one Doctor as OPW-2, who was an Orthopedic Specialist. As per the evidence of OPW-2, he examined the claimant in the court premises on 14.12.2017 and found that he has sustained fracture of left tibia along with multiple injuries and opined that the physical disability of the claimant is at 20% resulting loss of earning capacity to the extent of 30% as a helper of the vehicle by profession.

8. In examining the first contention that wheather the accident resulting sustenance of injury by the claimant has any proximity cause to the nature of employment, It is seen that the employment of the claimant as the helper of the Truck and his movement on the date of accident from Chandikhole to Cuttack remains undisputed. The submission advanced by the Appellant that the claimant having sustained injuries by an unknown vehicle has no connection with the nature of employment is found unsustainable. It is for the reason that when the fact about the employment and his movement on the date of accident is not disputed, the cause of accident even by an unknown vehicle cannot be said as without any nexus to the nature of employment. The decision cited by the Appellant in this regard in the case of ***Mamtaj Bi Bapusab Nadaf and others vs. United India Insurance Company and others, (2010) 10 SCC 536***, is distinguishable from facts of the present case. In the said cited case, the claimant sustained injury while cleaning the grocery pit for storing of the maize whereas the

employment was in respect of the uploading maize from a tractor-trailer. But here is a case that the claimant while moving in course of his employment and crossing the road for taking his dinner met with the accident by an unknown vehicle. Therefore, the facts in the present case are different from the facts in the cited case. As such, the contention of the Appellant that the accident has no proximity cause to the employment of the claimant is rejected.

9. Next coming to the percentage of disability and the respective evidence adduced by P.W.2 *vis-à-vis* O.P.W.2, it is important to first note the nature of injuries sustained by the claimant. The facts like fracture of tibia of left leg and other multiple injuries sustained by the claimant, his period of treatment as such are not disputed. It is further seen that P.W.2 is a plain MBBS Doctor and O.P.W.2 is an Orthopedic Specialist, and the authenticity of their professional qualifications are not disputed. It also reveals from the evidence of O.P.W.2 that the nature of permanent disability of the claimant to the extent of 20% is permanent in nature. Thus keeping in view the difference noticed from the evidence of P.W.2 and O.P.W.2 and keeping in mind the nature of injury as well as the nature of employment of the claimant, the loss of earning capacity is determined at 50%.

10. With regard to income of the claimant, the admitted evidence of O.P.W.1 – the employer is to the effect he was getting Rs.7,000/- per month. At the same time, it reveals that the rate of minimum wages prevailing during the year 2016 for unskilled

labour is Rs.200/- per day. Therefore, no un-usuality is seen in the earning of the claimant as stated by his employer.

11. Since the age of the claimant as 28 years is not disputed, the amount of compensation accordingly is modified to,- Rs.211.79 (age factor 28 years) x Rs.4200/- (60% of the wages) x 50% (loss of earning capacity) =Rs.4,44,759/-.

12. The liability of the insurer on behalf of the owner-employer is not questioned.

13. Accordingly, the award amount is modified to the above extent and the Appellant is directed to pay the amount of compensation of Rs.4,44,759/- (rupees four lakhs forty-four thousand seven hundred fifty-nine) to the claimant-Respondent No.1.

14. Since the entire award amount has been deposited before the learned Commissioner, out of the said amount, a sum of Rs.4,44,759/- along with proportionate accrued interest be disbursed in favour of the claimant-Respondent No.1 within a period of eight weeks from today and the balance amount along with accrued interest thereon shall be refunded to the Appellant within the same period on proper application.

15. With the aforesaid modification of the award, the FAO is disposed of.

16. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office Order circulated vide Memo No.514, dated 7th January, 2022.

(*B.P. Routray*)
Judge

