

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.467 of 2020

Sriram General Insurance Co. Ltd. ***Appellant***
Mr. G.P. Dutta, Advocate

-versus-

Ashalata Lenka and others ***Respondents***
Mr. K. Panigrahi, Advocate for Respondent No.1
Mr. B. Singh, Advocate for Respondent Nos.2 & 3

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
23.08.2022

Order No.
03.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company, Mr. K. Panigrahi, learned counsel for Respondent No.1-claimant and Mr. B. Singh, learned counsel for the owner – Respondent Nos.2 & 3.

2. Present appeal by the insurer is directed against the judgment and award dated 21.11.2019 passed in E.C. Case No.491-D/2014 by the Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Cuttack wherein compensation to the tune of Rs.9,57,888/- including interest has been granted to the claimant-Respondent No.1 on account of death of the deceased in course of and arising out of his employment as the helper of truck bearing Registration No.OR-21-A-1921.

3. The case of the claimant is that the deceased while being employed as the helper of the truck climbed upon the stair case to

clean the cabin and accidentally fell down to sustain injuries on 20.11.2013. He was immediately shifted to SCB Medical College and Hospital, Cuttack and undergone treatment there. The deceased after his discharge from the hospital was again admitted and finally succumbed to the injuries on 27.12.2013.

4. The main contention raised on behalf of the Appellant is that in absence of any police case registered relating to death of the deceased in the accident or any report sent by the treating doctor as medico legal case, the alleged death of the deceased in the accident is not established.

5. Having examined the contention of the Appellant, it reveals from perusal of the impugned award that three eye-witnesses were examined on behalf of the claimant to prove the fact of sustenance of injury by the deceased in the accident on 20.11.2013. Such narration of accident and death arising out of injuries sustained in the accident is also supported by the witness examined from the side of the owner. Against such evidence adduced from the side of the claimant through ocular evidence corroborated by all such witnesses cannot be disbelieved for absence of registration of any police case or MLC report sent by the treating doctor. Certainly the preponderance of probability with regard to the death of the deceased in the accident in question is in favour of the claimant. As such, the contention raised by the claimant to disbelieve the fact of accidental death of the deceased arising out of his employment as the helper of the truck is rejected.

6. It is next contended by the insurer-Appellant that the learned Commissioner has erroneously accepted the monthly income of the deceased at Rs.8000/- inclusive of food allowance. In this regard, it is seen that though no document has been brought on record in support of the income of the deceased, but the owner by coming to the witness box has admitted that the deceased was being paid Rs.7000/- per month along with Rs.50/- per day towards food allowance. However, in absence of any documentary proof or production of the wage register by the employer, such contention is not found believable keeping in view the normal rate of wage prevalent during the year 2013 in respect of helper of a truck. However, the same is reduced to Rs.6000/- per month including the food allowance keeping in view the minimum rate of wages prevalent during the year 2013. Accordingly a reduced compensation of Rs.4,50,000/- is determined upon application of the age factor which is payable along with interest @12% per annum from the date of accident.

7. Upon calculation of interest which comes to Rs.3,24,000/-, the total compensation payable is found Rs.7,74,000/-.

8. Since the entire award amount has been deposited before the learned Commissioner, out of the said amount, a sum of Rs.7,74,000/- (rupees seven lakhs seventy-four thousand) 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 proportionate accrued interest thereon shall be refunded to the Appellant-Insurance Company within the same period on proper application.

9. With aforesaid directions, the FAO is disposed of.

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

(B.P. Routray)
Judge

