

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.606 of 2016

Jamuna Devi and others

....

Appellants

Mr. S.K. Singh, Advocate

-versus-

Smt. Sikha Shaw and another

....

Respondents

Mr. N.C. Mohanty, Advocate for Respondent No.2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

23.08.2022

Order No.

07.

1. Heard Mr. S.K. Singh, learned counsel for the Appellants-claimants and Mr. N.C. Mohanty, learned counsel for Respondent No.2-Insurance Company.

2. On the last occasion by order dated 27.7.2022 with regard to the dispute about validity of the insurance policy, Respondent No.2 was directed to file an affidavit. No such affidavit is filed till date.

3. On the other hand, Mr. N.C. Mohanty, learned counsel for Respondent No.2 – insurer submits upon instruction that the offending vehicle was having a valid insurance policy on the date of accident and his submission in this regard on the last occasion was a mistake of fact.

4. Considering the submission of Mr. Mohanty, it is accepted that the offending truck was having the valid insurance policy covering the date of accident and its employees.

5. Present appeal by the claimants is directed against the judgment and award dated 7.10.2016 passed in W.C. Case No.27 of 1994 by the Additional District Magistrate-cum-Commissioner Workman's Compensation, Mayurbhanj wherein the learned Commissioner has refused to grant any compensation on account of death of the deceased on 19.7.1991 arising out of and in course of his employment as the driver of the offending truck bearing Registration No.WML-212.

6. Learned Commissioner has concluded that the employer-employee relationship between Opposite Party No.1 and the deceased was not established in absence of any document filed with regard to the employment of the deceased in the truck.

7. Upon hearing both the parties and perusal of the impugned award reveals that the owner-Opposite Party No.1 by coming to contest the case has admitted about the employment of the deceased as the driver of the said truck and his death arising out of and in course of his employment as the driver. Despite such admission made by the owner, and registration of the police case regarding the accident and death of the deceased, the Commissioner has failed to appreciate the same to conclude that the employer-employee relationship between Opposite Party No.1 and the deceased could not be established. Such finding of the Commissioner being found against the established materials is set aside.

8. However, it is found from record that no evidence was adduced from the side of the claimants. She even did not examine herself to prove her contentions made in the claim application. Here notice of this Court is drawn to order dated 17.8.2016 of the Commissioner, wherein the Commissioner without production of required document declined to examine the claimant present before him. The Commissioner has observed that unless the required document were produced by the claimants, the oral evidence is not permissible. Such observation is not found correct since production of further material in support of such statements made in the oral evidence depends on the facts of the case and for non-production of the documentary evidence, oral evidence cannot be denied.

9. In the circumstances, it is felt appropriate to remand the matter back to the Commissioner for fresh adjudication after giving opportunity of adducing evidence to both the parties.

10. Thus in the result, the appeal is remanded back to the Commissioner with a direction to adjudicate the matter afresh after granting opportunity to adduce evidence to the claimants as well as the insurer and the owner, if she wants to. The process of adjudication shall be completed within a period of four months from the date of production of certified copy of this order. The parties present before this Court are directed to appear before the Commissioner on 12th September, 2022 along with copy of the present order.

11. With aforesaid observations and directions, the FAO is disposed of.

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

(B.P. Routray)
Judge

