

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.232 of 2014

Chhabi Dei and Others

....

Appellants

Mr. K.C. Nayak, Advocate

-versus-

Pramod Kumar Rath and Another

....

Respondents

Mr. Somnath Roy, counsel for Respondent No.2

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

8.3.2022

Order No.

07. 1. Heard Mr. K.C. Nayak, learned counsel for the claimant - Appellants and Mr. S. Roy, learned counsel for the insurer - Respondent No.2.
2. Since the challenge in the present appeal is mainly on quantum of compensation, no further notice is required to be served on Respondent No.1 - owner.
3. Present appeal by the claimants is directed against award dated 11th September, 2013 of the learned Commissioner for Employee's Compensation-cum-Deputy Labour Commissioner, Cuttack in W.C. Case No.45-D of 2009 wherein compensation to the tune of Rs.2,96,520/- has been awarded on account of death of the deceased in course of his employment as driver of the truck bearing Registration number OR 04 9073.

4. It is submitted on behalf of the Appellants that though the age of the deceased was 42 years on the date of accident but the learned Commissioner has committed error in taking the same as 45 years. It is further submitted that the wage of the deceased at Rs.4,500/- per month could not be properly appreciated by the learned Commissioner and the same has been reduced to Rs.3,500/- without any basis.

5. On the other hand Mr. Roy, learned counsel for the insurer supports the impugned award.

6. Having heard both parties and upon perusal of the impugned award it reveals that the age of the deceased has been discussed under issue No.III. The learned Commissioner ignoring the effect of recording of date of birth of the deceased in his driving license i.e. on 20th April, 1967, has relied on the PM report under Ext.7 where his age has been mentioned as 45 years. This approach of the learned Commissioner is not logical. Driving license is a document issued by the statutory authority. So in the context of age of the deceased, it is more authentic than the PM report where the age has been recorded on information given by others. Admittedly the DL of the deceased is not a disputed document. As such, by taking the date of birth of the deceased as 20th April, 1967, his age on the date of accident, i.e. on 21st February, 2009 is found to be 42 years.

7. Next coming to the wage of the deceased, the evidence adduced on record reveals that he was getting Rs.4000/- per month excluding food allowance. Opposite Party No.1 who is the owner of the vehicle has also admitted in his written statement that he was paying Rs.4000/-. Said Opposite Party No.1 has examined his manager as

O.P.W. No.1 who has also confirmed the said amount of Rs.4000/- as paid to the deceased per month. But the learned Commissioner basing on Ext.-A, a document produced by the insurer which is of course not an authentic document, has fixed the wage of the deceased at Rs.3,500/-. Therefore the reason for concluding the monthly income of the deceased is found erroneous because Ext.A which is a self procured document of the insurer cannot take away the effect of admission and evidence adduced on the part of the owner of the vehicle as well as the claimants. As such, the Commissioner has committed error in fixing the wage of the deceased at Rs.3,500/- per month. This is corrected to Rs.4000/- per month.

8. Accordingly upon application of the settled formula, the Insurer – Respondent No.2 is directed to deposit further compensation amount of Rs.60,000/- (Rupees sixty thousand) before the learned Commissioner within two months from today, which shall be disbursed in favour of the claimants.

9. The appeal is disposed of.

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

(B.P. Routray)
Judge