

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.523 of 2020

M/s.Oriental Insurance Company ***Appellant***
Limited

Mr. A.A. Khan, Advocate

-versus-

Smt. Malati Nayak and others ***Respondents***

Mr. P.K. Behera, Advocate for Respondent Nos.1 & 2

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
07.04.2022

Order No.

I.A. No.520 of 2020

04. 1. Learned counsel for the Appellant does not want press this I.A.
2. Accordingly, the I.A. is dismissed as not pressed.

FAO No.523 of 2020

3. Heard Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company and Mr. P.K. Behera, learned counsel for the Respondent Nos.1 & 2-claimants.

4. Present appeal by the insurer is directed against the judgment and award dated 18.12.2019 passed in E.C. Case No.37/2015 by the Commissioner for Employee's Compensation and Divisional Labour Commissioner, Balasore wherein compensation to the tune of Rs.7,91,820/- has been granted to the claimants-Respondent Nos.1 & 2 on account of death of the deceased in

course of and arising out of the employment as driver of the vehicle bearing Registration No.OD-01-C-2784.

5. Mr. A.A. Khan, learned counsel for the Appellant-Insurance Company submits that the deceased was a student of Jhadeswari Institute of Engineering Technology, Balasore on the date of accident and as such he cannot be treated as driver of the vehicle in question on the date of accident. In this regard, he has filed I.A. No.520 of 2020 by annexing a copy of information supplied by the Principal.

6. On examination of the said contention raised on behalf of the Appellant, it is seen that the same was never pleaded before the Commissioner. The insurer never disputed the employment of the deceased as a driver of the vehicle in question before the Commissioner. Otherwise also, no difficulty or bar is there on the part of the deceased to be a student of an Engineering College as well as a driver of the vehicle simultaneously. Additionally, keeping in view the fact that the deceased was coming from Seragada (Balasore) to Cuttack on the date of occurrence, such contention raised on behalf of the Appellant is rejected.

7. Next coming to the grounds of challenge advanced on the question of quantum of compensation, a reduced compensation of Rs.7,60,000/- (Rupees Seven Lakhs Sixty Thousand) consolidated is proposed to the parties in course of hearing. Mr. P.K. Behera, learned counsel for the claimants-Respondent Nos.1 & 2 agrees to the same and Mr. A.A. Khan, learned counsel for Appellant-Insurance Company leaves it to the discretion of the

Court. The compensation amount is accordingly fixed to that extent.

8. Since the entire award amount has been deposited before the learned Commissioner, out of the said amount, a sum of Rs.7,60,000/- along with proportionate accrued interest be disbursed in favour of the claimants-Respondent No.1 & 2 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 modification of the award, the FAO is disposed of.

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

(**B.P. Routray**)
Judge