IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.484 of 2019

The Branch Manager, M/s. Reliance General Insurance Company Ltd. .... ***Appellant***

Mr. G.P. Dutta, Advocate

-versus-

Bangali Sethi and Others .... ***Respondents***

Mr. R.N. Pal, counsel for Respondents 1-3

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
19.10.2022

Order No.

16. 1. The matter is taken up through hybrid mode.

2. Heard Mr. G.P. Dutta, learned counsel for the insurer-Appellant and Mr. R.N. Pal, learned counsel for claimant – Respondents 1 - 3.

3. Present appeal by the insurer is directed against the award dated 31st January, 2019 passed by learned Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Bhubaneswar in E.C. Case No.17 of 2017 wherein compensation to the tune of Rs.7,88,240/- has been awarded on account of death of deceased Nayan Sethi @ Nayani Sethi arising out of and in course of his employment as labourer in M/s. Shree Ganesh Rice Mill.

4. It is submitted by Mr. Dutta, learned counsel that admittedly the policy of insurance is in respect of Employee's Compensation and as per the term of the policy the total declared wage during the period of insurance is Rs.2,88,000/- in respect of 8 unskilled employees.

Therefore, the value of wage falls at Rs.36,000/- per annum for each unskilled employee and thereby goes to Rs.3000/- per month. But the Commissioner has fixed the wage of the deceased workman at Rs.8000/- per month based on the evidence of the employer. However, in view of the policy condition, the liability of the insurer cannot exceed for the wage beyond Rs.3000/- per month.

5. Upon perusal of the impugned award it reveals that the claimant, who is the widow of the deceased, has stated that her husband was getting Rs.12,000/- per month. As per the evidence affidavit of the employer, the deceased was getting Rs.350/- to Rs.400/- per day plus food allowance of Rs.50/-. Such evidence is not controverted by the insurer. It is thus established that the deceased was getting more wage per month than what the value of wage according to Mr. Dutta is mentioned in the policy condition.

6. Here it is important to refer to notification No.5259 dated 28th June, 2017 and 1112 dated 24th July, 2015 of the Government of Odisha, wherein the rate of minimum wage prescribed for unskilled labourer is Rs.213.50 paisa per day. This rate of wage was prevalent on the date of accident and even on the date of commencement of the insurance policy, i.e. 18th January, 2017. Therefore the value of wage as mentioned in the insurance policy in respect of unskilled employee cannot be said to be valid in terms of the rate of minimum wage prescribed by Government of Odisha. Moreover, the fixation of wage value is a matter between the employer and the insurer where the workman was not a party though the contract of insurance is meant for the benefit of the workman. Thus, the workman being the benefactor

of the contract he would not be allowed to fall as a victim between the employer and the insurer. If any amount is found excessive according to the terms of the contract of the insurer, the insurer is at liberty to recover the same from the employer in accordance with law.

7. The contention of the insurer that its liability should be limited in respect of the wage value of Rs.3000/- only per month thus is not found convincible. No illegality is seen in assessing the wage of the deceased employee at Rs.8000/- per month which is within the limitation prescribed in the Employee's Compensation Act. Therefore, the contention of the insurer to limit its liability to such proportionate amount is not seen with any merit.

8. In view of the discussions made above, the appeal is dismissed being without merit.

9. At this stage it is submitted by both parties that an amount of Rs.2,36,472/- has already been paid in favour of the claimant in the meantime out of the total amount deposited by the insurer before the Commissioner in terms of direction of this court dated 27th September, 2019 passed in I.A. No.1047 of 2019.

10. It is thus directed that the Commissioner shall disburse the balance amount with accrued interest thereon in favour of the claimants on such terms and proportion to be fixed by him.

11. The copy of the insurance policy as filed by Mr. Dutta is kept on record.

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

(B.P. Routray)
Judge

M.K.Panda