

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.602 of 2020

Sunil K Dalwani@Sunil Dalwani

.... Appellant

Ms. P. Naidu, Advocate

-versus-

Sri Bidyadhar Champati

.... Respondent

Mr. S. Dash, Advocate

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

30.08.2022

Order No.

10.

1. Heard Ms. P. Naidu, learned counsel for the Appellant and Mr. S. Dash, learned counsel for the Respondent.

2. Present appeal by the employer is directed against the judgment and award dated 08.01.2020 passed in E.C. Case No.38/2017 by the Commissioner for Employees Compensation-cum-Divisional Labour Commissioner, Bhubaneswar wherein compensation to the tune of Rs.5,87,088/- has been granted to the claimant-Respondent on account of injuries sustained in course of and arising out of his employment as Cop Winding and Doubling Operator in Unit-2 Dabaspur Twisting Department of the Appellant.

3. Ms. P. Naidu, learned counsel for the Appellant submits that the claim application being filed beyond the prescribed period of limitation as per Section 10 of the Employees Compensation Act (hereinafter referred to as "E.C. Act") is not maintainable and secondly, no employer and employee relationship exists between

the workman and the Appellant. It is further submitted that the extent of disability up-to 60% as taken by the Commissioner is without any material.

4. Admittedly, the accident happened on 9.12.2014 and the claim application was presented on 31.10.2017. Upon hearing Mr. S. Dash, learned counsel for the Respondent-claimant, it is seen from the LCR that along with the claim application, the workman had filed a petition to condone the delay in filing the same and by order dated 10.11.2017, the Commissioner has condoned the delay in filing of the claim application in exercise of his discretion. The employer without challenging said order initially continued to contest the case on merit. Therefore, such objection raised now with further submission that the claimant approached the Commissioner after leaving the company in March 2016, which is a suspicious conduct on the part of the workman, has no merit for consideration.

5. So far as the contention put-forth with regard to employer and employee relationship between the Appellant and the workman-claimant-Respondent is concerned, it is seen that working of the claimant as Cop Winding and Doubling Operator in the Unit-2 Dabaspeta Twisting Department of the Appellant-Company on the date of accident is not disputed. It is stated by the Appellant that the workman was engaged by the wage contractor and thus no relationship of employer and employee exists with him. Such contention is rejected out-right for the reason that the Appellant is the principal employer of the workman who admittedly worked in the Company on the date of accident.

6. Next coming to the quantum of compensation, it is seen that based on the disability certificate marked under Ext.7, the Commissioner has accepted the disability of the workman to the extent of 60%. The nature of injury sustained by the workman is spinal injury. The submission made by Ms. Naidu that such injury being not found place in Schedule-II of the E.C. Act, the same cannot be counted for loss of income to the extent of 60% is also found devoid of merit. It is for the reason that the cause and extent of permanent disablement mentioned in the disability certificate is candid. It needs to be stated here that the prescription of extent of loss of income under Schedule-II of the E.C. Act is for guidance purpose and not the exhausted limit.

7. Admittedly, the monthly remuneration of the workman at Rs.4800/- as counted by the Commissioner is not disputed in the appeal. It is seen that the Commissioner taking same amount with appropriate age factor and 60% loss of future earning capacity, has determined the compensation amount to Rs.5,87,088/-. So in absence of any material to dispute the age and remuneration of the workman, the computation and the determination of such compensation by the Commissioner cannot be faulted with.

8. In the result, the appeal is dismissed.

9. Since the entire award amount has been deposited before the learned Commissioner, the same shall be disbursed in favour of the claimant-Respondent without delay.

(B.P. Routray)
Judge