IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.603 of 2020

Claim Manager, M/s. Future Generali Insurance Company Ltd. .... ***Appellant***

Mr. A.A. Khan, Advocate

-versus-

Hari Mallick and Others .... ***Respondents***

Mr. D.K. Mohapatra, counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
25.7.2022

Order No.

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

2. Heard Mr. A.A. Khan, learned counsel for the insurer-Appellant and Mr. D.K. Mohapatra, learned counsel for claimant – Respondent No.1.

3. Present appeal by the insurer is directed against the order dated 22nd June, 2020 of the learned Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Cuttack.

4. The background facts leading to the present appeal are that, initially the claimants, who are the parents of the deceased – workman, filed W.C. No.478-D of 2010 before the Commissioner. In the said case, the Commissioner directed for payment of compensation of Rs.4,39,900/- within 30 days, failing which 12% interest per annum is liable to be paid. Since the insurer-Appellant did not deposit the award amount within the stipulated period but with a

delayed period, the Commissioner by order dated 11th September, 2013 directed the Appellant – insurer to pay a further sum of Rs.1,57,200/- towards further differential compensation amount by counting the interest @ 12% from the date of accident.

5. Against the order dated 11th September, 2013 present Appellant preferred FAO No.11 of 2014 before this court and this court dismissed the said appeal on 19th July, 2019. Thereafter the claimants filed one petition before the Commissioner for getting the differential amount. The learned Commissioner by order dated 22nd June, 2020 directed for payment of further sum of Rs.3,01,446/- by observing that the High Court in FAO No.11 of 2014 has been pleased to dismiss the appeal on 11th July, 2019.

6. Mr. Khan, learned counsel submits on behalf of the Appellant that as per order dated 11th September, 2013 the Commissioner had directed for payment of Rs.1,57,200/- against which the insurer had preferred the appeal. Taking advantage of dismissal of the appeal, now the Commissioner by the present impugned order dated 22nd June, 2020 has added interest over the interest and enhanced the amount to Rs.3,01,446/-. As per the submission of Mr. Khan such approach of the learned Commissioner to enhance the interest, by interest over interest, is not permissible.

7. Mr. Mohapatra, learned counsel for the claimants, on the other hand submits that, the earlier amount of Rs.1,57,200/- in terms of the direction of the Commissioner dated 11th September, 2013 was not the interest amount but part of compensation amount. His submission is therefore, that the present amount of Rs.3,01,446/- is not interest over

interest but interest over the shortfall amount. He further submits that present appeal under Section 30 of the E.C. Act at the instance of the insurer is not maintainable since the order dated 22nd June, 2020 of the Commissioner, which is impugned in the present appeal, is an order passed under Section 31 of the E.C. Act regarding execution of the order of the Commissioner.

8. First dealing with the challenge advanced by the claimants regarding maintainability of the appeal, this court is of the opinion that the present impugned order dated 22nd June, 2020 cannot be said as an order passed in the execution proceeding under Section 31 of the E.C. Act. It is for the reason that, the order of the Commissioner is not about recovery of any pre-determined dues, but fresh amount has been decided to be paid in the order. Therefore said order is required to be treated as an order apepealable under section 30(aa) of the E.C. Act and against the same present appeal is maintainable.

9. Now coming to the merit of said order of the Commissioner dated 22nd June, 2020, it needs to be stated here that initially award was passed on 26th July, 2013 and due to non-payment of the award amount in time the earlier order dated 11th September, 2013 directing for payment of Rs.1,57,200/- was passed calculating 12% interest on the award amount. Therefore, it is clear that the amount of Rs.1,57,200/- as directed in the earlier order dated 11th September, 2013 is an interest amount and not a part of the award amount. Further, in the subsequent order dated 22nd June, 2020 it is not the case of the parties that the initial award amount of Rs.4,39,900 was not paid but it is the submission of the parties that since the said award amount was not paid within the stipulated period in terms of the

direction of the Commissioner, the subsequent order dated 11th September, 2013 was passed calculating the interest @ 12% per annum. So, the further order enhancing the amount to Rs.3,01,446/- on 22nd June, 2020 appears to be the interest amount calculated @ 12% over the amount of Rs.1,57,200/-. It is also stated by the Commissioner in the said order dated 22nd June, 2020 that by calculating 12% interest over the amount of Rs.1,57,200/- which comes to Rs.1,60,857/-, the total amount is enhanced to Rs.3,01,446/-.

10. Admittedly payment of interest on interest is prohibited under the Interest Act, 1978.

11. In the result the appeal is allowed and the order dated 22nd June, 2020 of the learned Commissioner is set aside.

12. At this stage it is submitted by Mr. Khan that the entire amount of Rs.3,01,446/- has already been deposited before the Commissioner.

13. Resultantly, the Commissioner is directed to refund the excess amount to the Appellant after deducting the amount due to the claimants as per his order dated 11th September, 2013.

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

(B.P. Routray)
Judge

M.K.Panda