

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.143 of 2021

***Legal Manager (T.P.Cell) M/S.
New India Assurance Company
Ltd.***

....

Appellant

Mr.B.Singh, *Advocate*

-versus-

Subash Chandra Rout & another

....

Respondents

Mr.Pradeep Ku. Mishra, Advocate.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

31.01.2022

Order No.

2. This matter is taken up through Video Conferencing mode.
2. The present appeal is directed against the judgment dated 30th April, 2021 passed in E.C.Case No.352-D/2017 and 353 D/2017 by the Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Cuttack thereby allowing the claim application of the Claimant-Respondents.
3. Heard Mr.B.Singh, learned counsel for the appellant and Mr.P.K.Mishra, learned counsel for the claimant-respondents. Although the matter is listed under the heading of 'orders' with the consent of both sides, the matter is being taken up for final hearing.
4. The case of the claimant-respondents before the Court below is that the Respondent No.1 sustained injuries during and in course of

his employment due to a vehicular accident while he was working as a helper in the pick up van bearing Registration No.OR-21-D-7398. Both the owner and insurer appeared before the court below and contested the case by placing their respective cases on record. The appellant in his written statement has disputed the very nature of accident and it has been further stated that the claimant-respondents might have sustained injuries due to some other reason and in connivance with the owner of the vehicle the injured-claimants have filed a false claim petition against the appellant Insurance Company. Further, it has been also stated that Dr.Saroj Kumar Sahoo, who had treated the injured is not an Orthopedic Specialist to assess the disability of the injured. Further, the appellant had also disputed the monthly income of the injured in the Court below.

5. On the basis of the pleadings of the parties, the learned Commissioner framed four issues and after considering the pleadings of the parties and after hearing the arguments advanced by the learned counsel, by his judgment dated 30th April 2021 has allowed the claim application and awarded an amount of Rs.9,58,496/- with a further direction to deposit the said amount within 30 days from the date of judgment, failing which the appellant shall be liable to pay 50% penalty with 12% interest per annum on the awarded amount. Learned counsel appearing for the appellant submitted that the treating Dr.Saroj Kumar Sahoo, who had deposed before the learned Commissioner in his cross-examination has stated that he is not an Orthopedic Specialist and that the injuries sustained by the injured can only be treated by a Doctor having Orthopedic degree/qualification and that he has not issued any disability certificate to the patient. In view of such statement made by the treating Doctor, the learned counsel for the appellant submits that the

Commissioner has committed an error by relying upon the evidence of the abovenamed Doctor and further the conclusion arrived at to the effect that the injured has sustained loss of earning capacity at 75% is also vitiated.

6. Learned counsel for the appellant further submits that the Court below has not assessed the income of the injured properly. The conduct of the Commissioner in accepting the income of the injured at Rs.7000/- per month is not supported by any documentary evidence. As such the same is unsustainable in the eye of law.

7. Learned counsel for the Respondents-claimant while wholeheartedly supporting the judgment of the learned Commissioner challenged in this appeal by the appellant, submits that the Commissioner has not committed any illegality in accepting the evidence of the treating Doctor, who is otherwise competent to give such evidence. He further submits that the income assessed by the Commissioner at the rate of Rs.7000/- per month is rather on the lower side which does not include the extra income that was being earned by the claimant-respondents while calculating the monthly income of the injured.

8. Having heard learned counsel for the parties and after going through the records, this Court is of the prima facie view that the Commissioner has not committed any illegality in accepting the evidence of the Doctor, who is otherwise qualified to give such evidence. However, on the scope of income of the injured, this Court found that there is insufficient evidence to support the claim of Rs.7000/- monthly income as assessed by the Commissioner. In the absence of any specific evidence to support the monthly income as assessed by the Commissioner, for Employee's Compensation,-cum-Joint Labour Commissioner, Cuttack should have taken into

consideration the minimum wages payable to the employees under the Minimum Wages Act and he should have calculated the amount of compensation payable keeping in view the Notification of the Government declaring minimum wages payable to different categories of workers. In the present case, it is submitted that as per the Government Notification the injured are entitled to a minimum wages of Rs.6600/- per month. Therefore, the compensation amount should have been calculated taking into consideration the monthly income of the claimant at the rate of Rs.6600/- per month.

9. In such view of the matter, this Court while not interfering in the final judgment dated 30th April, 2021 passed by the Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Cuttack, this Court modifies the amount of compensation awarded to Rs.7,20,000/- (Rupees Seven lakhs Twenty thousand) consolidated. The said modified awarded amount shall be paid to the injured within a period of 30 days along with proportionate interest accrued on the deposit made before the Commissioner. The balance amount, if any along with the proportionate accrued interest be returned to the appellant Company. The award of penalty and interest at the rate of 12% are hereby set aside. Further, if the amount of compensation awarded hereby is not paid within 30 days the same shall carry interest at the rate of 12% per annum till the entire amount is paid to the claimant.

10. With the aforesaid modification the appeal is allowed partly. However, there shall be no order as to cost.

11. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in

the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

RKS

(A.K. Mohapatra)
Judge

