

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.291 of 2022

The Divisional Manager, M/s.Oriental Insurance Company Limited *Appellant*

Mr. G.P. Dutta, Advocate

-versus-

Manoranjan Behera and another *Respondents*

Mr. P.K. Mishra, Advocate for Respondent No.1

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
22.09.2022

Order No.

I.A. No.570 of 2022

02.

1. Heard Mr. G.P. Dutta, learned counsel for the Appellant as well as Mr. P.K. Mishra, learned counsel for the Respondent No.1.

2. Upon hearing both the parties and considering the grounds mentioned in the petition, the delay in filing the appeal is condoned.

3. The I.A. is disposed of.

FAO No.291 of 2022

4. Heard Mr. G.P. Dutta, learned counsel for the Appellant-Insurance Company and Mr. P.K. Mishra, learned counsel for the Respondent No.1-claimant.

5. Present appeal by the insurer is directed against the judgment and award dated 26.04.2022 passed in E.C. Case No.76-D/2016 by the Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Cuttack wherein compensation to the tune of Rs.10,88,994/- including interest has been granted to the claimant-Respondent No.1 on account of injury sustained by him in course of and arising out of the employment as the labourer in the Tractor and Trolley bearing Registration Nos.OR-29-1490 & OR-29-1491 respectively belonging to Respondent No.2.

6. It is submitted by Mr. Dutta, learned counsel for the Insurance Company that the injured being the son of owner of the vehicle is not entitled for compensation under the E.C. Act. It is further submitted that the mother of the injured is the owner of the offending Tractor & Trolley, where the injured was employed as a labourer.

7. Mr. P.K. Mishra, learned counsel for the Respondent No.1-claimant in reply submits that the injured though is the son of the owner, but he was living separately from his mother and this Court earlier in the case of *National Insurance Company Ltd. vs. Sri Sachindra Roul and others* (disposed of on 02.08.2016 in FAO No.474 of 2014) have held that there is no prohibition in law for a son to be employed under his mother and therefore, the claim of the injured as an employee under his mother cannot be denied under the provisions of E.C. Act.

8. Upon hearing both parties and perusal of the order of this Court dated 2.8.2016 in FAO No.474 of 2014 reveals that, this Court has held as follows:

“The owner of the offending vehicle, who is incidentally the mother of the deceased, had adduced evidence as O.P.W.1, admitting that her deceased son, who had separated from her, was working as a driver in her vehicle. There being no prohibition in law for a son being employed under his mother and same being very probable, the findings recorded by the Commissioner cannot be faulted.”

9. In view of the above settled position propounded by this Court earlier, no merit is seen on the contention of Mr. Dutta to refuse compensation to the injured-claimant.

10. Next coming to the quantum of compensation, considering the grounds of challenge advanced, a reduced compensation of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand) consolidated is proposed to the parties in course of hearing. Mr. P.K. Mishra, learned counsel for the claimant-Respondent No.1 agrees to the same and Mr. G.P. Dutta, learned counsel for Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

11. Since the entire award amount has been deposited before the learned Commissioner, out of the said amount, a sum of Rs.5,50,000/- along with proportionate accrued interest be disbursed in favour of the claimant-Respondent No.1 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.

12. With aforesaid modification of the award, the FAO is disposed of.

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

(B.P. Routray)
Judge

B.K. Barik

