

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.161 of 2021

M/s.National Insurance Company ***Appellant***
Limited

Mr. A. Das, Advocate on behalf of Mrs. M. Padhi, Advocate
-versus-

Janaki Sahoo and others ***Respondents***

Mr. K.C. Nayak, Advocate for Respondent Nos.1 & 2

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
14.02.2022

Order No.

03.

1. Heard Mr. A. Das, learned counsel, on behalf of Mrs. M. Padhi for the Appellant-Insurance Company as well as Mr. K.C. Nayak, learned counsel for the claimants-Respondent Nos.1 & 2.

2. Present appeal by the insurer is against the judgment and award dated 28.5.2020 passed in E.C. Case No.01/2018 by the Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Dhenkanal wherein compensation to the tune of Rs.6,90,080/- has been granted to the claimants-Respondent Nos.1 & 2 on account of death of the deceased in course of and arising out of the employment.

3. It is contended by Mr. Das that the Appellant having no valid license on the date of accident as the driver of the offending tractor, the right of recovery should have been extended in favour

of the insurer. It is further submitted that admittedly the deceased being a labourer, his income should have been determined basing on the prevalent rate of wages which would not exceed Rs.6450/-.

4. Having heard both the parties and considering the grounds of challenge with regard to the quantum of compensation and the admitted rate of wages of Rs.213/- per day prevalent in the year 2018, reduced the compensation of Rs.5,75,000/- consolidated is proposed in course of hearing. Learned counsel for the claimants-Respondent Nos.1 & 2 agrees to the same and Mr. A. Das, learned counsel for the Appellant-Insurance Company leaves it to the discretion of the Court. The compensation amount is accordingly fixed to that extent.

5. With regard to the submission advanced in respect of right to recovery from the owner on the contention that the driver was not authorized to drive the commercial vehicle is rejected keeping in view the fact that he had the valid license for transport vehicle.

6. Since the entire award amount has been deposited before the learned Commissioner, out of the said amount, a sum of Rs.5,75,000/- along with proportionate accrued interest be disbursed in favour of the claimants-Respondent Nos.1 & 2 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.

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

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

(B.P. Routray)
Judge

B.K. Barik

