

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.303 of 2022

***Manager (Legal), Oriental Insurance
Company Ltd.***

.... ***Appellant***

Mr. P.K. Mahali, Advocate

-versus-

Sanjulata Guru and Another

.... ***Respondents***

Mr. Bijaya Kumar Nayak, counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
15.12.2022

Order No.

- 04.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. P.K. Mahali, learned counsel for the insurer – Appellant and Mr. B.K. Nayak, learned counsel for claimant – Respondent No.1.
 3. Present appeal by the insurer is directed against impugned judgment dated 17th June, 2022 of the learned Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Nayagarh passed in E.C. Case No.4 of 2019, wherein compensation to the tune of Rs.8,02,139/- including interest has been granted on account of death of deceased Bharat @ Antaryami Guru arising out of and in course of his employment as helper of the bus bearing registration number OR 13G 2726.
 4. The case of the claimant is that the deceased was working as a helper in the offending bus and died on 17th June, 2017 due to Myocardial Infection in course of his employment.

5. Mr. Mahali, learned counsel for the insurer disputes the status of the deceased as a helper of the vehicle and according to him, the deceased was a construction worker having registration number OD NYG 001046898 dated 15th November, 2016 and the claimant being the widow of the deceased received Rs.1,00,000/- as compensation from Government on that basis. In support of his submission, Mr. Mahali relies on the copy of writ petition in WP(C) No.7527 of 2021 filed before this court.

6. Mr. Nayak on the other hand replies that the deceased though was a registered construction worker, but at the relevant point of time he was an employee of the vehicle in question.

7. It is seen from the copy of WS filed by the insurer in the claim application that no specific denial regarding employment of the deceased was taken that he was a construction worker. Therefore, such a plea raised before this court to dispute the employment of the deceased is not tenable at this stage and rejected without any prayer for additional evidence. Further the affidavit dated 5th July, 2022 allegedly sworn by the owner of the vehicle in question, as produced by Mr. Mahali in course of hearing to substantiate his stand that the deceased was never a helper of the vehicle in question, is liable for rejection for the reason that it was procured after passing of the impugned award and secondly, the clear stand of the owner before the commissioner was that the deceased was working as a helper of the vehicle in question owned by him. Therefore, all such contentions raised by the insurer to dispute the status of the deceased as an employee of the vehicle under the ownership of Respondent No.2, are rejected.

8. There being no further dispute raised to the quantum of compensation which is otherwise found reasonable, where the monthly salary of the deceased has been taken at Rs.6,405/- only, this court does not find any flaw in the impugned award to interfere with the same.

9. In the result the appeal is dismissed being devoid of merit.

10. The copies of affidavit dated 5th July, 2022 and the copies of WS, filed in course of hearing, are kept on record.

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

(B.P. Routray)
Judge

M.K.Panda

