

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.690 of 2020

Divisional Manager, New India Assurance Co. Ltd. ***Appellant***

Mr. G.C. Samantaray, Advocate

-versus-

Manjari Mallik and another ***Respondents***

Mr. A.S. Nandy, Advocate for Respondent No.1

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
12.04.2022

Order No.

07.

1. Heard Mr. G.C. Samantaray, learned counsel for the Appellant-Insurance Company as well as Mr. A.S. Nandy, learned counsel for the Respondent No.1-claimant.

2. Present appeal by the insurer is directed against the judgment and award dated 22.1.2020 passed in E.C. Case No.27/2014 by the Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Dhenkanal wherein compensation to the tune of Rs.4,33,820/- along with interest has been granted to the claimant-Respondent No.1 on account of death of the deceased in course of and arising out of the employment as driver in the Truck bearing Registration No.ORY-5376.

3. Mr. Samantaray submits for the Appellant-Insurance Company that without granting any opportunity of hearing to the insurer he has been set *ex-parte* and the impugned award has been passed. It is further submitted that no driving license on behalf of the deceased has been produced on record to establish that he was, in fact, the driver of the offending vehicle.

4. Mr. Nandy, learned counsel on behalf of the claimant-Respondent No.1 submits in reply that the order setting the insurer as *ex-parte* by the Commissioner is neither questioned in the present appeal nor in any earlier proceeding. Despite he was set *ex-parte* by order dated 20.7.2018, still they did not question the same till passing of the impugned award on 22.1.2020.

5. It reveals from the certified copy of the order in E.C. Case No.27/2014 of the Commissioner that several dates were been fixed in course of the proceeding after the Appellant was set *ex-parte* and no step was taken by the Appellant to set aside that order of *ex-parte* till the award was passed.

6. Looking to the grounds of appeal as mentioned in the memorandum of appeal, nowhere the order setting the Appellant as *ex-parte* has been questioned. The challenges are mainly on the merit of the award. Thus in absence of any challenge to the order dated 20.7.2018 setting the Appellant as *ex-parte*, the present contention raised by the Appellant regarding the same is not entertainable.

7. Coming to the grounds on merit of the appeal as advanced by the Appellant, their main contention is to the effect that since no driving license of the deceased was produced on record, his employment as driver of the offending vehicle on the date of accident is not established, for which no compensation can be granted. This contention of the Appellant is rejected for the reason that nowhere they have said in the appeal memo that the deceased was not the driver of the vehicle in question or he was not authorized to drive the vehicle in question.

8. Admittedly nothing has been questioned with regard to income of the deceased and his employment under the owner. Therefore, no merit is seen in the appeal to interfere with the impugned award.

9. In the result, the appeal is dismissed.

(*B.P. Routray*)
Judge