

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.379 of 2022

Manager Legal, M/s.
CHOLAMANDALAM MS General Insurance Company Ltd. **Appellant**

Mr. G.P. Dutta, Advocate

-versus-

Chandrashekar Patra and Another **Respondents**

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

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
04.11.2022

Order No.

I.A. No.648 of 2022

01. 1. The matter is taken through hybrid mode.
2. Heard Mr. G.P. Dutta, learned counsel for the Appellant – insurer and Mr. P.K. Mishra, learned counsel for claimant – Respondent No.1.
3. Upon hearing both parties and considering the grounds mentioned in the application the delay in filing the appeal is condoned.
4. The I.A. is disposed of.

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02. 5. Heard Mr. Dutta, learned counsel for the insurer and Mr. Mishra, learned counsel for claimant-Respondent.

6. Present appeal is directed against the impugned award dated 13th April, 2022 passed by the learned Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Cuttack in E.C. Case No.1-D of 2016 wherein compensation to the tune of Rs.13,13,226/- including interest has been awarded on account of injuries sustained by the injured-claimant arising out of and in course of his employment as helper in the truck bearing registration number OR 04D 7478.

7. The case of the claimant is that he was working as a helper in the truck and the offending motor cycle dashed against him from behind when he was checking the tyre.

8. Mr. Dutta contends that the injured claimant was under the influence of liquor at the time of accident and therefore, he is not entitled for compensation.

9. Mr. Mishra, learned counsel for the claimant – injured submits that such a plea was neither taken before the Commissioner nor any material was adduced to satisfy the same.

10. Mr. Dutta fairly concedes that such a plea was not taken in the Written Statement before the Commissioner.

11. Admittedly, no evidence was adduced from the side of the insurer and no material was produced to reveal intoxication of the injured at the time of accident due to influence of liquor. Therefore such a ground taken at this stage in the appeal is untenable and rejected.

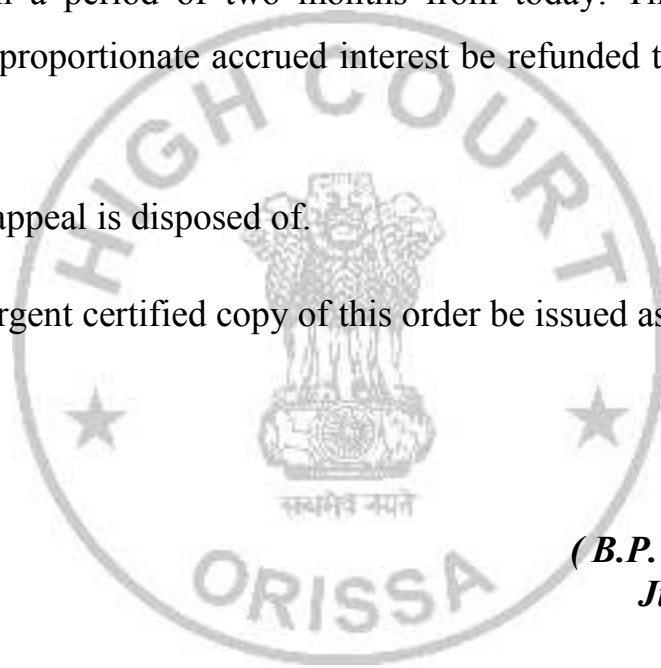
12. With regard to quantum of compensation, considering all such grounds of challenge advanced, a reduced consolidated sum of

Rs.9,00,000/- is proposed to the parties. This is agreed by Mr. Mishra, learned counsel for the claimant – Respondent and Mr. Dutta, learned counsel for the insurer leaves it to the discretion of the court. Accordingly the compensation is fixed to the said extent.

13. Since the entire compensation amount has already been deposited before the learned Commissioner, out of the same a consolidated sum of Rs.9,00,000/- (nine lakhs) along with accrued interest thereof be disbursed in favour of the claimant – Respondent No.1 within a period of two months from today. The rest amount along with proportionate accrued interest be refunded to the insurer – Appellant.

14. The appeal is disposed of.

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



(B.P. Routray)
Judge